

**(1993) 03 CAL CK 0004**

**Calcutta High Court**

**Case No:** Matter No. ...1993

Prafulla Kumar Majumdar

APPELLANT

Vs

Food Corporation of India and  
Others

RESPONDENT

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**Date of Decision:** March 10, 1993

**Citation:** 97 CWN 973

**Hon'ble Judges:** Susanta Chatterji, J

**Bench:** Single Bench

**Advocate:** M.K. Saha and Ambar Majumdar, for the Appellant; Prabir Kumar Santra and Achinta Kumar Sen, for the Respondent

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### **Judgement**

Susanta Chatterji, J.

The present writ petition was Tiled for a Writ of Mandamus to command the Respondent No. 2 to 5 to give immediate effect of the Office Order bearing No. 217/1991-SI dated 26/12/1991 issued in respect of the promotion of the Petitioner to the post of Deputy Manager (Q.C.) with effect from 31/12/1991 and other consequential relief. It has been stated in details that the petitioner was appointed as Fumigation Assistant of Food Corporation of India on 15/11/1960 and thereafter promoted as Quality Inspector on December, 1964 and subsequently he was promoted to the post of Assistant Manager (Quality Control) on 9.12.1971.

2. It has been placed on record that during the tenure of petitioner's service in the Food Corporation of India, there was no adverse remarks from his superior and/or Controlling Authority. He was, however, promoted to the post of Deputy Manager (Q.C.) by the Executive Director (Pers) i.e. the respondent No. 3. He was not permitted to join at the office at 10, Middleton Row, Calcutta by the respondent No. 4. The petitioner alleges that the acts done or caused to be done by the respondent No. 4 are arbitrary, discriminatory and illegal and he was compelled to move the Writ Court to seek reliefs.

3. An Affidavit-in-Opposition was filed disputing, inter alia, that the office order dated 26/12/1991 issued from the Head Quarter at New Delhi was a provisional order for promotion of the persons named therein subject to the condition that no vigilance case is either pending or contemplated against the persons named thereto. Accordingly, the order for promotion was not to be served upon him for the purpose of giving effect to the same until clearance was obtained from the concerned Vigilance Department. The respondent No. 4 has stated that on receipt of the promotion order of the writ petitioner from the Head Quarters of FCI, the Personnel Division of the office requested the Manager (Vigilance) of the Zonal office Calcutta to intimate whether, any Vigilance case is pending/contemplated against the petitioner as well as another officer of the East Zone who was included in the promotion order mentioned above. The Vigilance Division by their Inter Office note dated 31st December, 1991 intimated that there is a Vigilance case under contemplation against the petitioner. When this information was brought to the notice of the respondent No. 4, he immediately checked up as to the stage at which the Vigilance case was contemplated against the petitioner and was confirmed by the Manager (Vigilance) that charge sheets are under preparation and he recorded an order in the concerned file that since the Manager (Vigilance) had confirmed that charge sheets are under preparation, the order of promotion need not be served.

4. This Court having heard the learned lawyers of both sides and considering the materials on record directed holding of the enquiry expeditiously. A Supplementary Affidavit has been filed by the petitioner that there are various illegalities and irregularities in the enquiry proceeding. It was asserted by the letter dated 20/6/1992 i.e. immediately after he learnt about the completion of the purported enquiry, he recorded his protest finding out that he was on medical leave since 12th June and on 19/6/1992 when he went to join his duty he was handed over an order dated 17/6/1992 to attend an enquiry at any time before the completion of the enquiry. The said order dated 17/6/1992 was issued prior to the Court's order dated 18/6/1992 and in any case he appeared before the Enquiry Officer on the earliest available opportunity i.e. 20/6/1992 but he was surprised to learn that the enquiry has been closed on 19/6/1992. It is alleged that there is violation of the principles of natural justice and the order of this Court was not properly complied with.

5. Upon perusal of the materials on record in depth this Court finds that admittedly the petitioner has retired on 30/6/1992. The question of promotion after retirement does not arise. The petitioner was not, however, allowed to join the higher post in terms of the order of promotion as indicated in the order. There are serious allegations as to the irregularity of the enquiry and the manner in which record has been filed and the action taken thereto. This Court with great anxiety had looked into the materials on record in depth and is of the view that since the petitioner has retired on 30/6/1992, he has to obtain leave and retirement benefits for the successful period of job and/or service rendered by him. Steps taken by the respondent authority on the basis of Vigilance report, are unnecessary. There are

several irregularities and illegalities in conducting the enquiry and taking final step of the inflicting punishment on the basis of the report in a hurried way, is erroneous. Since the enquiry was initiated was not fair the step taken by the respondent authority inflicting punishment cannot be sustained in law. It is, however, contended by the respondents that the order of punishment is appealable and the petitioner might prefer an appeal and there is no jurisdictional error necessitating any interference by the Writ Court. This Court has also considered this aspect and after a long period of service the petitioner has retired and just before his retirement he was promoted upon appreciation of his service and eligibilities. Thus before retirement charge sheets followed and the enquiry proceeded in the haphazard manner and even the compliance with the principles of natural justice was violated and the order made cannot be sustained in law. For the foregoing reasons the writ petition is disposed of by quashing the punishment meted out from the enquiries made. After retirement the petitioner will be entitled to all retirement benefits and the respondents will not take notice either of the promotion or the punishment, if any in terms of the charge sheet and the enquiry made after his retirement .

No order as to costs.

All parties to act on the signed copy of the operative part of the judgment on the usual undertaking.