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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DA NO.77/90

DATE OF DECISION: 10.7.90

SHRI G.S. VOHRA

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENT

SHRI S.C. MEHTA

ADVOCATE FOR THE APPLICANT

SHRI S.N. SIKKA

ADVOCATE FOR THE RESPONDENT

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

Shri G.S. Vohra, the applicant was a permanent employee of Ministry of Agriculture, Department of Food, Government of India before his services were transferred to Food Corporation of India, w.e.f. 1.3.1969 under section 12A of the Food Corporations Act, 1964. He was permanently absorbed in accordance with the prescribed procedure in the Food Corporation of India. He was placed under suspension on 24th April, 1974 under the powers conferred by sub section 1(C) of Staff Regulation 66 of Food Corporation of India, while working as District Manager, FCI, Hissar in respect of a criminal offence which was under investigation. The suspension was revoked on 29th April, 1976, and thereafter he remained on duty from 18.5.1976 to 7.3.1979 when he was dismissed from service on March 7, 1979 after

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conducting enquiry etc. His appeal was rejected on 8th August, 1979 and review petition on July 10, 1980.

His Civil Writ Petition No. 42/1981, was allowed by the Delhi High Court with all consequential benefits. During the pendency of litigation, the applicant retired on superannuation on 31.10.1982. The various payments including terminal benefits due to the applicant were released after substantial delay resulting in the applicant's demand for payment of interest at the prevailing rate.. This application has been filed by the applicant against Food Corporation of India's order PGF/V-16/FC dated 18th January, 1989 rejecting his claim for payment of interest on account of delay in payment of terminal benefits and other dues.

The claim of the applicant is based on various provisions made in the Central Civil Services (Pension) Rules, 1972 and Government of India's decisions related to these rules.

2. The respondents in their reply have submitted that the petitioner is an employee of Food Corporation of India which is a public limited concern and that in absence of a notification under Section 14 of the Administrative Tribunals Act, 1985 the matter does not come under the jurisdiction of the Tribunal. It has further been submitted that similar view has been expressed by the Gujarat High Court in Civil Review Application No. 175/86 in the matter of FCI Vs. Sewak Dayaram. The petition is also said to be barred under sections 20 & 21 of the Administrative Tribunals Act, 1985 and under Section 115 of the Evidence Act.

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3. Section 12A of the Food Corporation Act, makes special provisions regarding the transfer of the Government employees to the Corporation in certain cases as under:-

"(1) Where the Central Government has ceased or ceases to perform any functions which under section 13 are functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates (which may be either retrospective to any date not earlier than the 1st January, 1965 or prospective) as may be specified in the order, to the Corporation any of the officers or employees serving in the Department of the Central Government dealing with food or any of its subordinate or attached offices and engaged in the performance of those functions:

Provided that no order under this sub-section shall be made in relation to any officer or employee in such Department or office who has, in respect of the proposal of the Central Government to transfer such officer or employee to the Corporation, intimated within such time as may be specified in this behalf by that Government, his intention of not becoming an employee of the Corporation.

(2) In making an order under sub-section (1), the Central Government shall, as far as may be, take into consideration the functions which the Central Government has ceased or ceases to perform and the areas in which such functions have been or are

performed

(3) An officer or other employee transferred by an order made under sub-section (1) shall, on and from the date of transfer, cease to be an employee of the Central Government and become an employee of the Corporation with such designation as the Corporation may determine and shall, [subject to the provisions of sub-sections (4), (4A), (4B), (4C), (5) and (6)], be governed by the regulations made by the Corporation under this Act as respects remuneration and other conditions of service including pension, leave and provident fund, and shall continue to be an officer or employee of the Corporation unless and until his employment is terminated by the Corporation.

(4) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option in writing to be governed—

(a) by the scale of pay applicable to the post held by him under the Government immediately before the date of transfer or by the scale of pay applicable to the post under the Corporation to which he is transferred,

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations made by the Corporation under this Act, and such option once exercised shall be final:"

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4. Section 12 (A) of the Food Corporation Act, 1964 deals with the matters relating to transfer of the Government employees, conditions of service etc. after transfer to Food Corporation of India. These Government employees were transferred to Food Corporation of India as the Central Government ceased to perform functions relating to purchase, storage, movement, transport, distribution and sale of food grains and other foodstuffs from the appointed day. Further, transfer orders in such cases were made after obtaining the consent of the employees. The said Section of the Act also provides that once an employee has been transferred, he ceases to be an employee of Central Government and becomes an employee of the Corporation. He will thereafter be governed by the Regulations made by the Corporation under the Act in respect of remunerations and other conditions of service. The transferees were also to exercise option in writing whether they would be governed by the pay scales applicable to the post held under Central Government or by the pay scales applicable to the post under the Corporation to which he is transferred. They could also choose either to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time or by the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the Regulations made by the Corporation. The applicant Shri G.S. Vohra is one of the employees of the Central Government who was permanently absorbed

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be transferred from the Government in accordance with the provisions of Section 12 (4) of the Food Corporation Act. He is governed by the Regulations of the Food Corporation of India, as is borne out by the order of suspension and other orders regarding his disciplinary etc. made by the FCI under the Corporations Regulations. The Act vide sub-section (5) of Section 12. (4) also makes provisions as existed in Article 311 of the Constitution before its amendment so that the services of such transferred employees are not terminated except according to the procedure laid down in the statute. Thus, the employees transferred from the Department of Food of the Central Government more or less retained the privileges, they enjoyed as Government servants by virtue of the statutory provisions made in the Act, in accordance with the option exercised by them. These benefits although connected to the provisions applicable to Government servants, they are available to the transferees by virtue of the provisions made in the FCI Act, 1965, as they ceased to be Government Servants, once they were transferred to the FCI and got absorbed there. The decision of the High Court in CWP (2)/1981 dated 26.1.1982 filed by Shri G.S. Vohra quashing the orders of disciplinary etc. was on the ground that he was not afforded any opportunity of being representation against the proposed penalty in accordance with the provisions of the FCI Act and not on any ground that would effect his status as an employee of FCI.

The status of an employee transferred and absorbed by FCI in accordance with the Act, therefore, without any ambiguity is that of an employee of the Food Corporation of India and not that of an employee of the Central Government.

3. S-r. S.C. Mehta, learned Counsel for the applicant, pleaded that the case falls under the jurisdiction of the Tribunal as the pension payment order was issued by the Pay & Accounts Officer of the Ministry of Food and Civil Supplies. The revised pension payment order was also issued by the Central Government. He cited ATR, CAT, 141, Shri T.S. Ramchander Rao Vs. Union of India & Others in support of his contention.

4. The learned counsel for the respondents, Shri S.N. Sikka, however, submitted that as Food Corporation of India is not notified under Section 14(2) of the Administrative Tribunals Act, the Tribunal has no jurisdiction to entertain the application and adjudicate the same. In support, he cited the decision of the Gujrat High Court in Civil Review Application No. 175/86 dated 21.6.1986 in the matter of FCI Vs. Sewak Dayaram.

7. We have heard the learned counsel of both the parties and considered the matter carefully. We are of the view that the status of the applicant is clearly that of an employee of the Food Corporation of India. He ceased to be an employee of the Central Government after he was transferred to the FCI. The mere fact that some arrangements exist between the Central Government and Food Corporation of India for making payment of pension etc. to those FCI employees who opted for being governed by the Central Government Pension Rules etc. does not change the status of the employee. Under the circumstances, we feel that the matter does not fall within the jurisdiction of the Tribunal as FCI is not notified under Section 14 (2) of the Administrative Tribunals Act. Besides, the decision of Gujrat High Court cited

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by Shri Sikha, learned counsel for the respondents, the decision of this Tribunal in T-645/86 (S,212/85) decided on 8.9.1986 in the matter of Shri Narinder Kumar Vs. Food Corporation of India etc. dealing with service matter of FCI fortifies our conclusion.

In the facts of the case, we are of the view that Food Corporation of India is a statutory corporation having a distinct legal personality of its own. Applications in respect of service matters of its employees cannot be entertained by this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 unless a notification as envisaged in sub-section (2) of Section 14 of the Act is issued. Such a notification has not so far been issued.

The application No.77/90 filed by Shri G.S. Vohra may, therefore, be sent back to him or Shri S.C. Mehta, learned Counsel for the applicant, for being presented to the appropriate forum, if so advised. 2

(Signature)
(I.K. (ASBOT/A))
MEMBER (A) 17/7/90

(Signature) 10.7.90
(T.S. OBEROI)
MEMBER (J)