

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.3129/2011 & conn.

% 13th November, 2013

+ WP(C) 3129/2011 & CMs 3250/13, 11098/12, 11097/12, 1225/12 & 6611/11

MANOJ KUMAR SINGH & ORS. Petitioner

**Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Ankit Jain and Mr. Ajay Gulati,
Advocates.**

VERSUS

FOOD CORPORATION OF INDIA & ORS. Respondents

**Through: Mr. Rajeeve Mehra, ASG of India
with Mr. Ajit Pudussery, Mr.
M.Chandra Sekhar and Mr. Aditya
Malhotra, Advocates .**

+ WP(C) 1145/2012

PRASHANT SINGH KHOKKAR Petitioner

**Through: Mr. Sanjay Ghose and Mr. Akshay
Goel, Advocates.**

VERSUS

FOOD CORPORATION OF INDIA & ORS. Respondents

**Through: Mr. Rajeeve Mehra, ASG of India
with Mr. Ajit Pudussery, Mr.
M.Chandra Sekhar and Mr. Aditya
Malhotra, Advocates .**

+ WP(C) 1459/2012 & CM 3185/2012 (Stay)

BIBHUTI BHUSHAN SAHU & ORS.

.....Petitioners

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Ankit Jain and Mr. Ajay Gulati,
Advocates.

VERSUS

FOOD CORPORATION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajeeve Mehra, ASG of India
with Mr. Ajit Pudussery, Mr.
M.Chandra Sekhar and Mr. Aditya
Malhotra, Advocates .

+ WP(C) 1460/2012 & CM 3187/2012 (stay)

PARVINDER SINGH & ORS.

.....Petitioners

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Ankit Jain and Mr. Ajay Gulati,
Advocates.

VERSUS

FOOD CORPORATION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajeeve Mehra, ASG of India
with Mr. Ajit Pudussery, Mr.
M.Chandra Sekhar and Mr. Aditya
Malhotra, Advocates .

+ WP(C) 2297/2012 & CM 4925/2012 (for stay)

PHOOL CHAND MEENA

.....Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Ankit Jain and Mr. Ajay Gulati,
Advocates.

VERSUS

FOOD CORPORATION OF INDIA & ORS. Respondents
Through: Mr. Rajeeve Mehra, ASG of India
with Mr. Ajit Pudussery, Mr.
M.Chandra Sekhar and Mr. Aditya
Malhotra, Advocates .

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes.**

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No. 3129/2011

1. By this writ petition, petitioners pray for the relief of quashing of the selection process for the post of Assistant General Manager (Technical) in which they were disqualified on account of lacking 5 years experience. Prayer made is that since petitioners had the necessary qualifications, their applications for the post of Assistant General Manager (Technical) be considered by the respondent no.1/Food Corporation of India.

2. Admittedly, the requirement for appointment to the post of Assistant General Manager (Technical) as per the advertisement in question reads as under :-

“Assistant General Manager (Technical) (Post Code: 06) –i) Degree in Agriculture, or Degree in Science with Diploma in Food Technology or Master’s Degree in Zoology or Biochemistry or equivalent qualifications, ii) 5 years experience in storage of food-grains and maintenance of stocks or in the examination, inspection and analysis of food grains in govt. or Public/Private Sector Undertaking, **Desirable:** (knowledge of toxicology of insecticides, rodicides and fumigants in use in grains/stocks. The experience acquired as Junior/Senior Research Fellow while pursuing higher studies, will be reckoned as required experience ”

3. The issue is whether petitioners have 5 years experience of examination, inspection and analysis of food grains in government and/or public/private sector undertakings.

4. Petitioners claim that they have the necessary experience inasmuch as they are existing employees of the respondent no.1 working as Managers (Quality Control), and before their appointments as Managers (Quality Control) they worked as Management Trainees for these very posts with the respondent no.1, and such period of training has to be included for calculating the period of 5 years experience as per the subject advertisement.

5. On behalf of respondent no.1 reliance is placed upon the scheme of Management Trainees dated 30.11.2000 to argue that for the B and C phases which would be towards storage/maintenance of stocks, such periods are only of 90 days i.e training of only 90 days in the second and third training period of one year for B and C phases is given, and therefore, petitioners can at best have experience of 180 days in one year of 365 days and not for the total period of 365 days because other days are towards lecturers and so of a Trainee.

6. I was inclined at one stage to agree with respondent no.1 because 5 years experience training necessarily means complete 5 years experience as Managers (Quality Control), and petitioner do not appear to have that experience if the training period is excluded, however, that initial impression has been negated on behalf of the petitioners by referring to circular of the respondent no.1 numbered 59/86 dated 22.9.1986 read with the Govt. of India order dated 8.3.1983, and conjoint reading of both the circular and the Govt. of India order shows that period spent in training has to be counted towards departmental examination which has to be given. The circular dated 22.9.1986 and Govt. of India's order dated 8.3.1983 read as under:-

CIRCULAR NO. 59 OF 1986

NO.EP.16(11)/82

Dated: September 22, 1986

Subject: Application of Rules, Regulations, Instructions, Orders issued by the Central Government in The Food Corporation of India

As per the directions of the Central Government under Section 6(2) of the Food Corporations Act, 1964, all the concerned in the Corporation are hereby informed that in all cases where there are no specific provisions in the Food Corporation Act, 1964, or Rules or Regulations or Instructions made thereunder, the Food Corporation shall follow the Central Government Rules Regulations, Instructions, Orders issued from time to time on the subject where relevant.

2. All the concerned in the Corporation are, therefore, advised to follow the Central Government Rules, Regulations, Instructions, Orders in the absence of any specific Rules, Regulations Instructions, Orders in the Food Corporation of India. It is also clarified that wherever Food Corporation of India's Rules/Regulations/Instructions are clear, there shall be no need to follow the Government Rules/Regulations/Instructions/Orders etc. on the subject.

3. This issues with the approval of the Chairman.

Sd/-

A.K.Pandey

Personnel Manager"

Govt. of India's order dated 8.3.1983

“(16) Period of training before appointment to be treated as ‘duty’ for eligibility to sit for departmental examinations.- The Staff Side of the National Council (JCM) had suggested *inter alia* that the service rendered by an employee during the training period before his regular appointment to the grade be treated as duty for eligibility to sit for the departmental examination.

2. The request made by the Staff Side of the National Council (JCM) has been examined and it has been decided that in all cases where pre-service training is considered necessary before actual appointment to the post, the period spent by an officer on training

immediately before such appointment would count as qualifying service for the purpose of eligibility for appearing in departmental examinations, even if the officer is not given the scale of pay of the post but only a nominal allowance.”

7. In my opinion, once the circular dated 22.9.1986 and the office order dated 8.3.1983 exist, there can only be two obstacles for not granting the benefit to the petitioners of the training period as their experience for being included in the 5 years experience. First would be that respondent no.1 has issued a rule or regulation or instruction/order deviating and disagreeing with the Govt. of India order dated 8.3.1983. The second aspect is that whether the expression ‘departmental examination’ should be restricted to only a literal meaning that training period can only benefit for seeking promotion by departmental examination or it can even apply to direct recruitment, keeping in view the fact that petitioners are aspirants to the subject post by the direct recruitment process.

8. So far as the first aspect is concerned, admittedly there is no rule or regulation issued by the respondent no.1 changing the applicability or denying the applicability of the circular of the Govt. of India dated 8.3.1983. The issue then is whether there is any instruction or order issued by the respondent no.1 for not applying the Govt. of India order dated 8.3.1983. In my opinion, the language of the circular dated 22.9.1986 requires that

instruction /order has to be in the nature of a specific instruction or order or circular that the circular of the Govt. of India dated 8.3.1983 will not apply so far as the respondent no.1 is concerned. In the present case, there is no instruction or order or circular issued specifically waiving or deviating from the applicability of the Govt. of India order dated 8.3.1983 to the respondent no.1, and therefore, I hold that petitioners would be given benefit of the Govt. of India order dated 8.3.1983.

9. The second aspect is that as to whether benefit of training period can be counted as experience only for departmental examination or also for direct recruitment. In my opinion, the expression 'departmental examination' found in this order dated 8.3.1983 cannot be read in a narrow and pedantic manner because if experience is good enough for promotion to a higher post by departmental examination, there is no reason why experience of training is not good enough when a departmental candidate applies for direct recruitment post. Therefore, I hold that the order of the Govt. of India dated 8.3.1983 will also apply with respect to departmental candidates who seek benefit of direct recruitment/appointment to a higher post.

10. I may note that it is not disputed before me on behalf of respondent no.1 that if the training period of each petitioner is added to the period of service of the petitioners as Managers (Quality and Control) then, the petitioners will have the 5 years experience which is required as per subject advertisement.

At this stage, after the aforesaid judgment was dictated, it transpires that petitioners, as now argued on behalf of the respondent no.1, may or may not have the requisite 5 years experience because even if the training period of the petitioners with the respondent no.1 is counted as experience, yet the experience of the petitioners will not total to 5 years.

11. The fact of the matter is that not only the eligibility criteria has to be complied with before the selection process is complete, it is also necessary in law that if a person is rejected the reasons of rejection will have to be stated and be those reasons which are given at the time of rejection of the candidature of the candidate for being considered for selection. In the counter-affidavit filed by respondent no.1 though various factual aspects are mentioned to state that petitioners do not have the eligibility criteria, however, the documents filed by the petitioners show that various grounds which are now taken up in the counter-affidavit were not put to the

petitioners as being their disqualifications with respect to their not having completed the 5 years experience period. The net effect is that there are shortcomings not only on behalf of the petitioners of whether they gave or did not give the experience documentations but also the respondent no.1 in not giving the appropriate objections at the time of rejecting the candidatures of the petitioners. The question is that then what should be done in this scenario.

12. One thing which is clear is that a person's candidature can only be considered if that candidate is otherwise qualified in terms of requirement specified in the advertisement. This aspect cannot and could not be disputed by either of the parties. Since there is shortcoming on both the sides, it is therefore eminently just that now a fresh consideration takes place of whether or not the petitioners have the necessary 5 years experience as on the date of the advertisement in question having been issued on 8.1.2011. In order to determine this aspect, respondent no.1 will designate an appropriate/competent officer who will hear each of the petitioners who will be entitled to file all documents to show that they have the necessary 5 years experience. If the competent officer of the respondent no.1 decides that one or more of the petitioners do not have the necessary 5 years experience, then,

a specific communication giving the specific reasons as to why the 5 years experience is not completed by one or more petitioners, will be given to the petitioners. If the petitioners at that stage are dis-satisfied on account of any alleged illegal action of the respondent no.1, then petitioners at that stage can approach the Court.

13. The writ petition is disposed of by directing that respondent no.1 will consider afresh the eligibility of the petitioners of having 5 years experience as on 8.1.2011. In terms of this judgment, so far as the training period is concerned, the same will be counted as a period of experience required in terms of the advertisement because of the reasons given hereinabove. So far as the other periods are concerned, so as to total up to the 5 years experience required, these aspects will be examined by the competent officer of the respondent no.1 after hearing the petitioners, putting to them the necessary queries, asking them to file the necessary documents with respect to the queries which are raised by the competent officer, and thereafter, passing an order giving reasons and addressing a specific communication accordingly to the petitioners if they meet or do not meet the qualifications criteria of 5 years experience. This order will be communicated to the petitioners, who if entitled in law, can challenge the rejection, if so done as regards one or more

of the petitioners, by the respondent no.1 for the appointment to the post of Assistant General Manager (Technical) with the respondent no.1. The aforesaid exercise be now completed within a period of three months as jointly prayed for by the parties, and for that period and further till the decision is communicated to the petitioners of their rejection if any and also for a further period of 15 days thereafter, the interim orders passed by this Court reserving posts of Assistant General Manager (Technical) will continue. The writ petition is disposed of in view of the aforesaid observations. Parties are left to bear their own costs.

WP(C) 1145/2012, WP(C) 1459/2012 , WP(C) 1460/2012 & WP(C) 2297/2012

These writ petitions will stand disposed of in terms of the directions given in W.P.(C) 3129/2011 of the petitioners being given a liberty to satisfy the competent officer of the respondent no.1 as their meeting the 5 years experience criteria, and also as per the detailed directions as already given. Interim orders which have been passed in the aforesaid writ petitions are granted in these cases as per directions in W.P.(C) 3129/2011 inasmuch as

learned ASG of respondent no.1, on instructions, states that the posts in question have till date not been filled up on a regular/permanent basis.

NOVEMBER 13, 2013
ib

VALMIKI J. MEHTA, J.