

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 674 of 2024

Md. Abdul Latif, aged about 43 years, S/O Md. Abdul Hamid
of Kwakta Ward No. 8, P.O. & P.S. Moirang, Bishnupur
District, Manipur – 795134.

...Petitioner

- Versus -

1. Food Corporation of India (FCI), Zonal Office (North East), Guwahati represented by the Executive Director, Guwahati, Assam – 781007.
2. Asst. General Manager (AGM), Personnel Division, Zonal Office (NE), FCI, Guwahati, Assam – 781007.

...Respondents

With

MC(WP(C)) No. 566 of 2024

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

JUDGMENT & ORDER

(ORAL)

06-06-2026

[1] Heard Mr. N. Surendrajit, learned counsel for the petitioner and Mr. B.K. Singh along with Mr. W. Darakeshwar, learned Standing Counsel on behalf of Food Corporation of India (FCI).

[2] By the present petition, the petitioner challenges (i) the Office Order – 140/2024 dated 28-06-2024 issued by the Assistant General Manager (Personnel), FCI extending the period of probation of the petitioner for another year w.e.f. 12-07-2023 and (ii) the Office Order – 181/2024 dated 04-09-2024 issued by the Executive Director (NE), FCI reverting the petitioner from the post of Manager (Accounts), FCI to the lower post of Assistant Grade-I (A/Cs) for non-satisfactory performance during the two

years of probation. The main ground for challenge is that the probation extension order dated 28-06-2024 w.e.f. 12-07-2023 for one year was issued after more than eleven months of the expiry of one year of extension and the reversion order dated 04-09-2024 is punitive, stigmatic and is done without conducting enquiry.

[3] The admitted brief fact of the present case is that the petitioner was initially appointed as Assistant Grade-III (Accounts) in FCI vide order dated 24-08-2009. Vide another order dated 29-10-2013, he was promoted to the post of Assistant Grade-II (Accounts); by another order dated 22-05-2017, he was further promoted to the post of Assistant Grade-I (Accounts); and vide subsequent order dated 01-07-2022, he was promoted to the post of Manager (Accounts) in FCI. As per Regulation 15 of the Food Corporation of India (Staff) Regulations, 1971 (in short, "Regulation"), a probation period of one year is mandatory for regular appointments and for promotions involving a change of category, but no probation is required for promotions within the same category or for promotions beyond the post of Deputy Manager in terms of Clause (1) of Regulation 15. As per Clause (2), the appointing authority has the discretion to extend the probation period for a period not exceeding one year. Clause (3) of Regulation 15 empowers the appointing authority to discharge an employee from service in case of direct recruit and revert to the lower post in case of promotee when the performance during the probation period as well as the extended period of probation is not satisfactory and as per Clause (4) of Regulation 15, an employee will be confirmed only after successful satisfactory completion of probation period. It is mentioned in the promotion order dated 01-07-2022 that the requirements of Regulation 15 for probation are noted in para Nos.

5, 6, 7 & 8 of the promotion order dated 01-07-2022. Scanned copies of the Office Order – 140/2024 dated 28-06-2024 and Office Order – 181/2024 dated 04-09-2024 are reproduced below:—



भारतीय खाद्य निगम Food Corporation of India

कार्मिक अनुभाग, आं. का. (उ.पू.), गुवाहाटी
Personnel Division, ZO (NE), Guwahati

जी.एल.पब्लिकेशन बिल्डिंग जी.एस.रोड, गुवाहाटी-781007
G.L.Publication Building, G.S.Road, Guwahati-781007
ईमेल-agmpeme.fci@gov.in

No. ZO NE-13.0025.0/1/2024-PERS-ZO-NE-Part(1) /Probation Conf. Date: #ApprovedDate#

कार्यालय आदेश/OFFICE ORDER -140/2024

Consequent upon promotion to the post of Manager (Accounts), Md Abdul Latif (Employee ID 186784) was placed on probation for a period of one year with effect from 12.07.2022. The probation report as well as vigilance status of the officer concerned, has been examined and Competent Authority has extended the probation period of the officer for another one year with effect from 12.07.2023, in terms of Regulation 15(2) of FCI (Staff) Regulation, 1971.

यह सक्षम प्राधिकारी के अनुमोदन से जारी ।
This issues with approval of the Competent Authority.

Signed by

Navaroon Sharma

Date: 28-06-2024 14:34:47
सहायक महाप्रबंधक (कार्मिक)

वितरण/Distribution:

1. संबंधित अधिकारी/The Officer Concerned
2. महाप्रबंधक/उप महाप्रबंधक (क्षेत्र)/The GM/DGM (R), FCI, RO, Assam/Manipur.
3. स.म.प्र. (सतर्कता)/The AGM (Vig.), FCI, ZO, (NE), Guwahati.
4. प्रबंधक (कार्मिक-2/एचआरएमएस)/The M (Pers-2/HRMS) FCI, ZO, (NE), Guwahati.



भारतीय खाद्य निगम
Food Corporation of India

आंचलिक कार्यालय (उत्तर-पूर्व), गुवाहाटी
Zonal Office(NE), Guwahati

कार्मिक अनुभाग, आ. का. (उ.पू.), गुवाहाटी
फाइल सं-ZO NE-13.0044.0/1/2023-PERS-ZO-NE/Adm Matter

दिनांक: 04-09-2024

कार्यालय आदेश/OFFICE ORDER. 181 / 2024

Whereas Md Abdul Latif, Manager (Accounts), presently posted under Manipur Region was placed under probation for a period of 1 (one) year w.e.f. 12.07.2022 on being promoted to the post of Manager (Accounts) and posted at FCI DO Tezpur w.e.f. 15.07.2022 ;

And whereas the period of probation of Md Abdul Latif, Manager (Accounts) was extended for a period of another 1 (one) year w.e.f. 12.07.2023 vide ZO (NE) O/O No. 140/2024 dated 28.06.2024, due to non-completion of probation period satisfactorily and initiation of departmental proceedings against him under Regulation 58 of the FCI (Staff) Regulations, 1971, vide ZO (NE) Memorandum No. ZO NE-26.0014.0/8/2023-VIG-ZO-NE dated 08.12.2023, for demanding illegal gratification and was caught red-handed by the CBI (Central Bureau of Investigation) on 08.09.2023 and subsequently, FIR bearing No. RC0172023A0011 dated 08.09.2023 has been registered by the CBI ;

And whereas Md Abdul Latif, Manager (Accounts) was placed under suspension vide Order No. RO AS-18.0014.0(12.0)/4/2023-Vig Division dated 12.09.2023 w.e.f. 08.09.2023 and which was subsequently revoked w.e.f. 08.12.2023, vide ZO NE O/O No. ZO NE-26.0014.0/8/2023-VIG-ZO-NE dated 08.12.2023 ;

And whereas in Clause No. 14 of the FCI HQ Circular No. EP-01-2023-14 dated 19.05.2023, it is stipulated that " during the period of probation,(...) employees promoted from a lower post to higher post shall be liable to be reverted to the lower post without notice and without assigning any reason", and Clause No. 18 in the ibid circular, it is stated that, "the employee will be deemed to have successfully completed the probation period if no order confirming, discharging or reverting the employee is issued within eight weeks after expiry of double the normal period of prescribed probation ;

And whereas the performance of Md Abdul Latif, Manager (Accounts) during his probation period, as above, has not been found to be satisfactory ;

Therefore, in exercise of the powers conferred under Regulation 15 (3) of the Food Corporation of India (Staff) Regulations, 1971 and in consonance with the Circular ibid dated 19.05.2023, Md Abdul Latif, Manager (Accounts) is hereby reverted to the post held substantively preceding his promotion, i.e to the post of AG-I (Accounts) with immediate effect.

**Signed by Divya Prakash
Shukla**

Date: 04-09-2024 11:59:49

(दिव्य प्रकाश शुक्ला)
कार्यकारी निदेशक (उ.पू.)

[4] Mr. N. Surendrajit, learned counsel for the petitioner, draws the attention of this Court to the Circular No. EP-01-2023-14 dated 19-05-2023

issued by the Asst. General Manager (EP), FCI notifying the “Guidelines for Probation and Confirmation”. Learned counsel for the petitioner, refers to Clause 4 of the Circular to the fact that the probation report for the first year should be written on the performance during that year and the report should be submitted to the Appointing Authority within fifteen days. Clause 7 of the Circular says that the probation period should be one year and under no circumstance, it should not be extended beyond the double normal period, i.e., the maximum probation period is two years. Clause 8 of the Circular says that if the performance of the officer during the first year of probation is not satisfactory, the same can be extended for a period not exceeding one year and while extending the period of probation, the shortcomings should be informed to the officer so that he should have suitable opportunity for improving his performance. Clause 8 also says that in case the probation period is not extended, the intimation of the shortcomings is not required. Learned counsel for the petitioner also further refers to Clause 11 of the Circular that in case of successful completion of probation within one year, the probationer shall be confirmed and in case of unsuccessful, the probation period may be extended by one year. Clause 18 of the Circular says that confirmation shall take effect from the date immediately following the satisfactory completion of the prescribed or extended probation period. If no order of confirmation, discharging or reversion is issued within eight weeks after expiry of double the normal period of prescribed period, the employee shall be “deemed” to have successfully completed probation under second limb of Clause 18 of the Circular. Mr. N. Surendrajit, learned counsel for the petitioner submits that the probation extension order dated 28-06-2024 is not in tune with requirement of Clause 8 of the Circular dated

19-05-2023, as the shortcomings mentioned in the extension order has not been intimated to the petitioner in time. The extended probation period was due to expire on 11-07-2024 and the extension order dated 28-06-2024 extending probation period by one year w.e.f. 12-07-2023 was issued prior to 13 days of the expiry of the extended period. In other words, the extension order was issued after the expiry of eleven months and seventeen days. In the circumstances, the petitioner was not afforded with an effective opportunity to rectify the shortcomings as mentioned in Clause 8 of the Circular. Learned counsel for the petitioner has urged that the impugned order dated 04-09-2024 reverting the petitioner from the post of Manager (Accounts) to Assistant Grade-I (A/Cs) is punitive, stigmatic and is not a reversion simpliciter. In para 2 of the Office Order – 181/2024 dated 04-09-2024, the pendency of a criminal case and disciplinary proceedings against the petitioner is cited as one of the reasons for reversion and the same cannot be done without conducting any enquiry under proviso to Article 311 (2) of the Constitution of India and the observation of unsatisfactory performance within the extended period of probation cannot be sustained, as the petitioner did not get any sufficient time for improving his shortcomings, if any. It is pointed out that the shortcoming was intimated at the fag end of expiry of two years, i.e., within thirteen days of expiry of the extended probation period. In short, it is submitted that the reversion order dated 04-09-2024 is punitive and stigmatic in nature; having been passed without any enquiry and without affording any realistic opportunity for improving the shortcomings; and the same also cannot be sustained. Mr. N. Surendrajit, learned counsel for the petitioner refers to the following case law to substantiate his plea:—

- i) In **AIR 1962 SC 1711, S. Sukhbans Singh versus State of Punjab** (five-judge Bench), Extra Assistant Commissioner was reverted to the post of Tehsildar during the period of probation and the warning was issued after one year of the impugned reversion order and the five-judge constitution Bench of Hon'ble Supreme Court held that the reversion is punitive and it violates the protection under proviso to sub-clause (2) of Article 311 of the Constitution of India.
- ii) In **1971 (1) SCC 790, K.H. Phadnis versus State of Maharashtra** (five-judge Bench), particularly in para Nos. 12 and 17, it is held that the order of reversion simpliciter will not amount to a reduction in rank or a punishment. However, in the cited case, the reversion was stigmatic on the ground that a temporary employee who has been holding the post for a long time has been reverted to the lower grade without any enquiry.
- iii) **(2000) 3 SCC 239, V.P. Ahuja versus State of Punjab & Ors** (para Nos. 7,8 9 & 10) — The two-judge Bench of the Hon'ble Supreme Court held that a stigmatic reversion of a probationer cannot be done without complying with the principles of natural justice.

- iv) **(2013) 16 SCC 59, Registrar General, High Court of Gujarat & Anr. Versus Jayshree Chamanlal Buddhbhatti** — The two-judge Bench of Hon'ble Supreme Court held that a limited enquiry for considering suitability of the probationer can be conducted. However, if other stigmatic allegation arises, the protection contemplated under Article 311 (2) of the Constitution of India must be observed.

[5] Mr. N. Surendrajit, learned counsel for the petitioner, submits that in view of the above cited judgments, the impugned probation extension order dated 28-06-2024 and the reversion order dated 04-09-2024 are stigmatic, punitive in nature and the petitioner was not afforded with sufficient time to rectify the shortcomings, if any, and the same deserve to be set aside and the petitioner be restored to the post of Manager (Accounts).

[6] Mr. B.K. Singh, learned Standing Counsel for FCI, draws the attention of this Court to Clause 18 of the Circular, particularly the provision relating to deemed confirmation, which stipulates that an employee shall be deemed to have successfully completed probation, if no order of confirmation, discharge or reversion is issued within eight weeks of the completion of double period of probation, i.e., two years. It is submitted that the double period of the extended probation was to expire on 11-07-2024 and the impugned order of reversion dated 04-09-2024 was issued within one day of expiry of the prescribed period of eight weeks within the meaning

of Clause 18 of the Circular and as such, the petitioner cannot now claim “deemed confirmation”. With regard to the extension of probation, it is submitted that the Office Order dated 26-08-2024 clearly mentioned that the probation was extended as the performance of the petitioner was not satisfactory in view of the probation report as well as the pending vigilance status. Attention of this Court is drawn to the probation report pertaining to the period from 12-07-2022 to 11-07-2023, annexed to the affidavit-in-opposition filed by respondent Nos. 1 & 2 wherein a chart defined for “correctional” is shown:—

“CORRECTIONAL

Defects noticed if any	Officer needs to improve on interpersonal skills, he should control his temper during official work.
Action taken by reporting officer to guide and correct	Verbal warnings and advice given to the officer.
Suitability for the present job	If he can improve on certain things he is suitable for present job.
Fitness for promotion	Based on the outcome of the pending departmental proceedings and CBI case decision may be taken.”

[7] Learned Standing Counsel for FCI also refers to the contents of para Nos. 9, 11 & 14 of the affidavit-in-opposition (counter affidavit) to emphasize that the probation period of the petitioner was extended on account of his unsatisfactory performance, his involvement in a criminal case for bribery and the pendency of a departmental enquiry. It is also submitted that all these reports/status are found in the portal maintained by the FCI and the petitioner has conscious knowledge of the shortcomings, his involvement in the criminal case and the pending department enquiry. It is explained that the alleged non-disclosure of the shortcomings on time is

a mere technical plea. In conclusion, Mr. B.K. Singh, learned Standing Counsel for FCI, concludes that in view of the “Circular on Probation and Confirmation dated 19-05-2023” as reflected in the pleadings of FCI in its affidavit-in-opposition, there is no inherent defect in the probation extension order dated 28-06-2024 and the reversion order dated 04-09-2024. It is prayed that the writ petition may be dismissed on these grounds.

[8] Mr. B.K. Sharma, learned Standing Counsel for FCI, relies on the decision of Hon’ble Supreme Court in the case of **Union of India & Ors versus P.S. Bhatt, (1981) 2 SCC 761** (particularly in para Nos. 7, 8 & 9) in support of the proposition that reversion of a probationer for alleged inherent behavior which has been duly notified to him, i.e., indulging loose talks and use of filthy language against the superior officer, is neither stigmatic nor punitive and is a reversion simpliciter. In the present case, the petitioner has been reverted for unsatisfactory performance during the extended period of probation and the factual aspect of his involvement in the criminal case and the pendency of a departmental proceeding cannot be denied. Reversion order is also not stigmatic.

[9] This Court has perused the materials on record, the relevant provisions of law, especially Food Corporation of India (Staff) Regulations, 1971 and the Circular on Probation/Confirmation dated 19-05-2023.

[10] The short issues arising for consideration are — (i) whether the impugned probation extension order dated 28-06-2024 is issued in terms of Clauses 8 & 12 of the Circular dated 19-05-2023; and (ii) whether the order of reversion dated 04-09-2024 is punitive and stigmatic in nature so as to

attract the mandatory provisions of proviso to sub-clause 2 Article 311 of the Constitution of India. Before proceeding further, it will be apposite to extract the relevant provisions of Regulation and Circular. Scanned copies of Regulation 15 of FCI (Staff) Regulations, 1971 and Circular on Probation/Confirmation dated 19-05-2023 are reproduced hereinbelow:—

15. Probation:

@(1)"Every person regularly appointed to any post in the Corporation under Sub-Clause (a) of Clause (1) of Regulation 7 shall be required to be on probation for a period one year from the date of appointment. Provided further that there will be no probation for a person promoted from one grade to another grade within the same category except where the promotion involved a change in the category of post in the same cadre e.g. if an Asstt. Grade-III is promoted as Asstt. Grade-II there will be no probation whereas if a Messenger (Category IV official) is promoted as Asstt. Grade.III (Category-III) or an Asstt. Grade-I (Category III) is promoted as ##Asstt. Manager (Category-II) normal probation period shall be applicable. Similarly if an ##Asstt. Manager (Category II) is promoted as #Deputy Manager (Category I) there will be normal period of probation and for persons promoted from #Deputy Manager onwards, there will not be any probation".

(2) The appointing authority may in his discretion extend the period of probation by a further period not exceeding one year.

*(3) During the period of probation an employee directly recruited shall be liable to be discharged from service without assigning any reason by giving him a notice of 30 days or pay and allowances in lieu thereof.

An employee promoted from a lower post to a higher post shall be liable to be reverted to the lower post without notice and without assigning any reason.

** (4) An employee who has satisfactorily completed his probation in any post shall thereafter be confirmed.

(5) Where an employee has rendered continuous temporary service or continuous service on députation in any post immediately proceeding his regular appointment to such post, the period of service so rendered temporarily or on deputation may be counted against the period of probation if the appointing authority so directs.

**F. No. FCI HQ-EP047/2/2022-EP
FOOD CORPORATION OF INDIA
HEADQUARTERS,
16-20, BARAKHAMBA LANE, NEW DELHI**

Dated: # Approved Date #

(CIRCULAR NO. EP-01-2023-14)

Subject: Probation/Confirmation, and procedure thereof, for employees of Food Corporation of India – reg.

Reference is invited to Circular No. EP-04-2011-19 dated 09.09.2011 regarding 'Procedure of confirmation of Food Corporation of India employees placed on probation'. The said instruction has been reviewed in view of DoPT OM No. DOPT-1669273111735 dated 24.11.2022 regarding 'Probation / Confirmation in Central Services' and DoPT OM No. 28020/3/2018-Estt.(C) dated 11.03.2019 on the subject 'Master Circular on Probation/Confirmation in Central Services'.

2. Accordingly, in supersession of Circular No. EP-04-2011-19 dated 09.09.2011 and earlier circulars issued by FCI on the subject, consolidated guidelines for 'Probation/Confirmation, and procedure thereof, for employees of Food Corporation of India' are hereby issued to provide clarity and ease of reference. The same has been attached for information, guidance and compliance by all the concerned.

3. These instructions shall come into force from the date of issue of this circular.

4. This issues with the approval of C&MD.

**Signed by Prasad Pr
Date: 19-05-2023 17:30:21
Reason: Approved
(Prasad P.R.)
Asst. Genl. Manager (EP)**

**Distribution:
As per mailing list.**

PROBATION AND CONFIRMATION IN FCI

PROBATION

1. A person is appointed on probation in order to assess his suitability for absorption in the service to which he has been appointed. There should be a very careful assessment of the outlook, character and aptitude for the kind of work that has to be done in the service before a probationer is confirmed. The appointing authority may declare successful completion or extend the period of probation or terminate the services of a temporary employee on probation, on the basis of evaluation of performance.
2. Probation is prescribed when there is direct recruitment, promotion from one Category to another or for officers re-employed before the age of superannuation. As per the Regulation 15 of FCI (Staff) Regulations, 1971, a person regularly appointed to any post in the corporation shall be required to be on probation for a period of one year from the date of appointment. However, there will be no probation for a person promoted from one grade to another grade within the same category and for persons appointed on contract basis, tenure basis and absorption.
3. The probation shall stand successfully completed upon issue of orders in writing. It is, however, not desirable that an employee should be kept on probation for long periods.
4. The first probation report covering the services for the initial year should be written on the basis of the performance of one year. The probation report should be initiated immediately after completion of one year of probation and should be sent to the Appointing Authority within 15 days on completion of the period of probation.
5. During the period of probation, or any extension thereof, candidates may be required by the Corporation to undergo such courses of training and instructions and to pass examinations, and tests (including examination in Hindi) as the Corporation may deem fit, as a condition for the satisfactory completion of probation.
6. If an employee is appointed to another post in the Corporation by direct recruitment, he shall be required to undergo probation in the new post irrespective of the fact that the employee was holding the earlier post on a substantive basis.

EXTENSION OF PERIOD OF PROBATION

7. If the Appointing Authority thinks it fit, they may extend the period of probation of an employee by a further period not exceeding one year and in no circumstance an employee should be kept on probation for more than double the normal period. In

such cases, periodic reviews should be done and extension should not be done for a long period at a time.

8. In case it is decided to extend the probation period beyond normal period of probation of one year, the performance of the Officer/ Official will be assessed and the report will be submitted immediately after completion of the extension period in the same manner as is prescribed in respect of the first year of probation. While the period of probation is extended, the Officer/ Official will simultaneously be informed about the shortcomings noticed in the working of the person concerned so that there could be suitable opportunity for improvement in the performance. Unless there is an extension of the probation period, there is no necessity of conveying any remarks of shortcomings to the concerned Officer/ Official. It will also be ensured that the Officer/ Official is placed under different Controlling/ Reporting/ Reviewing Officers during the extended period to the extent possible. If the employee works under two or more Reporting Officers during the probation period or the extended period, the report will be initiated by all the Reporting Officers under whom the employee has served for more than 3 months during the period of extended probation period.

9. If during the period of probation, a probationer has not undergone the requisite training course or passed the requisite departmental examinations prescribed (proficiency in Hindi, etc.), if any by the Corporation, the period of probation may be extended by such period or periods as may be necessary, subject to the condition that the total period of probation does not exceed double the prescribed period of probation.

10. Some employees are not able to complete the probation on account of availing leave for long duration during probation period. In such cases if an employee does not complete 75% of the total duration prescribed for probation on account of availing any kind of leave as permissible to a probationer under the Rules, his/ her probation period may be extended by the length of the leave availed, but not exceeding double the prescribed period of probation.

TERMINATION OF PROBATION

11. On the expiry of the period of probation, steps should be taken to obtain the assessment reports on the probationer so as to:

- (i) Confirm the probationer/ issue orders regarding satisfactory completion of probation, as the case may be, if the probation has been completed to the satisfaction of the competent authority; or
- (ii) Extend the period of probation or discharge the probationer or terminate the services of the probationer as the case may be, in accordance with the relevant rules, if the probationer has not completed the period of probation satisfactorily.

12. The decision whether an employee should be confirmed or his probation be extended should be taken soon after the expiry of the initial probationary period but not exceeding eight weeks of completion of normal probation period of one year, and/ or any extension thereof, and communicated in writing to the employee together with reasons, in case of extension.

13. If it appears to the Appointing Authority, at any time, during or at the end of the period of probation, or any extension thereof, that an employee has not made sufficient use of his opportunities or is not making satisfactory progress, the Appointing Authority may revert him to the post held substantively by him immediately preceding his appointment, provided he holds a lien thereon or in other cases may discharge or terminate him from service.

14. During the period of probation, an employee directly recruited shall be liable to be discharged from service without assigning any reason by giving him a notice of 30 days or pay and allowances in lieu thereof. In case of employees promoted from a lower post to higher post, he shall be liable to be reverted to the lower post without notice and without assigning any reason.

15. A Probationer reverted or discharged from service during or at the end of the period of probation shall not be entitled to any compensation.

CONFIRMATION

16. Where a probationer who has completed the period of probation to the satisfaction of the Corporation is required to be confirmed, he shall be confirmed in the Service/ Post at the end of his period of probation i.e. one year, having completed the probation satisfactorily.

17. A specific order of confirmation should be issued when the case is cleared from all angles.

18. The date from which confirmation should be given effect is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation, as the case may be. The employee will be deemed to have successfully completed the probation period if no order confirming, discharging or reverting the employee is issued within eight weeks after expiry of double the normal period of prescribed probation.

19. In order to ensure that delays do not occur in confirmation, timely action must be initiated in advance so that the time limit is adhered to.

[11] From perusal of Regulation 15 of FCI (Staff) Regulations, 1971, it is clear that the probationary period is provided herein — Clause (1) of

Regulation 15 says that the period of probation will be for one year and under Clause (2), the Appointing Authority may in his discretion extend the probation for a further period of not exceeding one year. Clause (3) empowers the competent authority to discharge direct recruit who is not able to satisfactorily complete the probation period and the reversion of the promotee to the lower post for the same reason and Clause (4) of Regulation says that an employee shall be confirmed only after satisfactory completion of his probation.

[12] Clause 1 of the Circular on Probation and Confirmation stipulates that assessment including character and aptitude of work is one of the requirements in the probation report. Clause (3) of the Circular says that the probation shall stand successfully completed upon the issuance of an order in writing. However, it is not desirable that an employee be kept on probation for long periods. Clause 7 of the Circular is in tune with Regulation 15 (2) of FCI (Staff) Regulations, 1971 wherein it prescribes that probation is for one year and may extend to another year. Clause 8 of the Circular is very important and if the performance of the officer is not satisfactory during the first year of probation, the authority may extend the same for a period not exceeding one year by informing him about the shortcomings to his works so that the officer will have suitable opportunity for improvement of his performance. Unless there is an extension of the probation period, there is no necessity of conveying the shortcomings to the officer. Clause 10 of the Circular says that if an employee is unable to complete at least 75% of the prescribed probation period because of availing permissible leave during probation, the probation period may be extended by a duration equivalent to the leave taken. However, such extension cannot exceed twice the

prescribed probation period. Clause 12 of the Circular prescribes time limit for issuance of order extending period of probation for another year. Such extension should be issued soon after expiry of initial period of probation, but not exceeding eight weeks of completion of normal probation of one year. Clause 13 empowers the Appointing Authority to revert an officer to substantive post held by him if his performance is not satisfactory during the probation or extended period of probation. Clause 18 of the Circular says that the date of confirmation will be the day immediately following the satisfactory completion of the period of probation or extended period of probation. Clause 18 further says that there will be “deemed completion of probation period” if no order of confirming, discharging or reverting the employee is issued within eight weeks after the expiry of double the normal period of prescribed probation. In other words, Clause 18 provides for “deemed confirmation” on failure to issue an order of confirmation, discharge or reversion within eight weeks from the date of expiry of two years of probation.

[13] The factual matrix of the present case has to be examined through prism of the provisions of Regulation 15 of FCI (Staff) Regulation, 1971 and the “Circular on Probation and Confirmation” dated 19-05-2023 and more particularly, Clauses 8, 12 & 18 of the Circular.

[14] For deciding the core issues in writ petition, this Court deems it necessary to highlight Clause 8 of the Circular which provides that while extending probation period for another year for an employee, the authority should inform the officer about the shortcomings in his performance during his first year of the probation so that he has ample opportunity to improve and rectify such shortcomings. Clause 18 of the Circular stipulates that the

employee will be “deemed” to have completed the probation period, if no order confirming, discharging or reverting the employee is issued within eight weeks after the expiry of double the normal period prescribed for probation. The issues involved in the present case hinge on these three Clauses of the Circular, i.e., 8, 12 & 18. On careful perusal of the extension of probation order dated 28-06-2024, the probation report and vigilance status of the officer is clearly mentioned and the same is technically in tune with the stipulation of Clause 8 of the Circular on Probation and Confirmation. Likewise, the reversion order dated 04-09-2024 has been issued within the stipulated time of eight weeks from the last date of extended period of double probation period as provided by Clause 18. In the present case, the extended period of probation expired on 11-07-2024 and hence, the expiry of eight weeks period for issuance of an order under Clause 18 of the Circular will fall on 05-09-2024. Admittedly, the order of reversion issued on 04-09-2024 is within the stipulated period of eight weeks as provided under Clause 18 of the Circular. In a strictly technical sense, it is the submission of Mr. B.K. Singh, learned Standing Counsel for FCI to the effect that in the probation extension order dated 28-06-2024, the shortcomings are mentioned and the reversion order dated 04-09-2024 is issued within the stipulated time of eight weeks.

[15] However, on close scrutiny, the impugned probation extension order dated 28-06-2024 does not meet the test of Clauses 8 & 12 of the Circular. The very soul and substance of Clause 8 of Circular is that while extending the period of probation of an officer for unsatisfactory performance during the first year of his probation period, the shortcomings have to be intimated to him so that he has a reasonable time to improve upon the

shortcomings and rectify the same. The object of Clause 8 is to provide an opportunity to the employee to improve his performance. However, by the impugned extension order dated 28-06-2024, the extension is with effect from 12-07-2023. It may be noted that the extended period of extension is to expire on 11-07-2024. In another words, the petitioner has hardly thirteen days to improve his performance and rectify the shortcomings as mentioned in the extension order. Besides, the extension order dated 28-06-2024 was issued after fifty weeks of completion of initial period of probation and not within eight weeks as stipulated under Clause 12. Technically, reasons are given in the extension order. However, the very object of providing an opportunity of rectifying his shortcomings and improvement of his performance, has become illusory for the simple reason that the extension order has been issued almost on the verge of expiry of the extended period of probation. This Court is of the view that the extension order dated 28-06-2024 cannot be said to be in strict compliance with the stipulation contained in Clauses 8 & 12 of the Circular. The employee is not afforded with a reasonable and effective period to improve his efficiency. Extension order was issued after fifty weeks in contravention of stipulated time of eight weeks as provided by Clause 12.

[16] With regard to contents of the reversion order dated 04-09-2024, it will be clear from the plain reading of para Nos. 2 & 4 of the order that the same is punitive and stigmatic in nature. It is quite apparent that the reversion order was issued for his involvement in a criminal case initiated against him and for pending disciplinary proceedings for alleged illegal gratification. It is admitted fact that both the disciplinary proceedings and the criminal case are pending before the competent authority and the findings

are yet to be arrived in these two proceedings. The reversion order dated 04-09-2024 was issued in exercise of power conferred under Regulation 15 (3) of FCI (Staff) Regulation, 1971 and in consonance with the Circular dated 19-05-2023. It may be noted that in the above cited cases, Hon'ble Supreme Court held that simpliciter reversion order is permissible under the applicable rules. However, if the order is punitive and stigmatic, the same has to be tested on the edifice of the protection guaranteed to an employee by the proviso to sub-clause (2) of the Article 311 of the Constitution. In the present case, it may be proper to reproduce para 2 of the reversion order dated 04-09-2024.

“And whereas the period of probation of Md Abdul Latif, Manager (Accounts) was extended for a period of another 1 (one) year w.e.f. 12.07.2023 vide ZO (NE) O/O No. 140/2024 dated 28.06.2024, due to non-completion of probation period satisfactorily and initiation of departmental proceedings against him under Regulation 58 of the FCI (Staff) Regulations, 1971, vide ZO (NE) Memorandum No. ZO NE-26.0014.0/8/2023-VIG-ZO-NE dated 08.12.2023, for demanding illegal gratification and was caught red-handed by the CBI (Central Bureau of Investigation) on 08.09.2023 and subsequently, FIR bearing No. RC0172023A0011 dated 08.09.2023 has been registered by the CBI;”

[17] From a bare perusal of the para 2 of the impugned reversion order dated 04-09-2024, it is apparent that the reversion is done mainly on the ground of involvement of the petitioner in a criminal case and pending disciplinary proceedings against him. It is already noted above that both the proceedings are yet to be completed and there is no adverse finding against the petitioner in the disciplinary proceedings except for the allegation of his involvement in illegal gratification. The petitioner has not been convicted in

the criminal case. In the circumstances, this Court is of the view that the impugned reversion order dated 04-09-2024 is stigmatic and punitive and cannot be an order issued in exercise of Regulation 15 (3) of the FCI (Staff) Regulation, 1971.

[18] Accordingly, Office Order – 140/2024 dated 28-06-2024 issued by the Assistant General Manager (Personnel), FCI extending the probation period w.e.f. 12-07-2023 is set aside as the same is in violation of Clauses 8 & 12 of the Circular dated 19-05-2023 only on the ground that the petitioner has not been given any sufficient and realistic time to rectify the shortcomings mentioned in the extension order; the petitioner gets only thirteen days; and extension order was not issued within eight weeks. Further the Office order – 181/2024 dated 04-09-2024 issued by Executive Director (NE), FCI reverting the petitioner from the post of Manager (Accounts) to the lower post of Assistant Grade-I (A/Cs), is also set aside as the same being punitive and stigmatic in nature and without conducting any enquiry.

[19] As a corollary, since the order of reversion dated 04-09-2024 is set aside meaning thereby the same does not exist being nullity, it leads to a situation that there is no order of confirmation, discharge or reversion of the petitioner within the meaning of Clause 18 of the Circular dated 19-05-2023. In such situation, according to second limb of Clause 18 of the Circular, this Court holds that the petitioner shall be “deemed to have successfully completed the extended period of probation” and shall consequently be “deemed to have been confirmed in service” within the meaning of sub-clause (4) of Regulation 15 of FCI (Staff) Regulation, 1971 read with Clause 18 of the Circular.

[20] Since the order of reversion is set aside, the petitioner is entitled to his due salary and other service benefits in terms of the applicable rules.

[21] Conclusion: In view of observations and directions, this Court holds that:—

- i) Office Order – 140/2024 dated 28-06-2024 issued by Assistant General Manager (Personnel), FCI is set aside.
- ii) Office Order – 181/2024 dated 04-09-2024 issued by the Executive Director (NE), FCI reverting the petitioner from the post of Manager (Accounts) to the post of Assistant Grade-I (Accounts) is set aside. Petitioner is retained as Manager (Accounts), FCI.
- iii) The probation of the petitioner is deemed to be successfully completed and the petitioner is deemed to be confirmed within the meaning of Regulation 15 (4) of the FCI (Staff) Regulation 1971 read with Clause 18 of Circular w.e.f. 06-09-2024 (i.e. eight weeks from 11-07-2024 date of expiry of extended period of probation).
- iv) The petitioner is entitled to his due salary and other service benefits in terms of the applicable rules.

[22] With the above observations and direction, the writ petition is allowed and disposed of. MC(WP(C)) No. 566 of 2024 is also closed. Cost is made easy.

[23] Before parting, it may be appropriate to record the acknowledgement of this Court to the contribution made by the learned counsel appearing for the parties in assisting this Court with the necessary Regulation, Circular and case law.

JUDGE

FR/NFR

Victoria