

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

+ **LPA No.90/2014**

% **Reserved on:** 10th August, 2016
Date of Decision: 29th September, 2016

FOOD CORPORATION OF INDIA & ORS Appellant
Through Mr. Rajeev K. Virmani, Sr. Advocate
with Mr. Ajit Pudussery and Ms. Shruti S.
Hazarika, Advocates.

versus

MANOJ KUMAR SINGH & ORS Respondent
Through Mr. Ravi Gupta, Sr. Advocate with
Mr. Swastik, Advocate.

LPA 91/2014

FOOD CORPORATION OF INDIA & ORS Appellant
Through Mr. Rajeev K. Virmani, Sr. Advocate
with Mr. Ajit Pudussery and Ms. Shruti S.
Hazarika, Advocates.

versus

BIBHUTI BHUSAN SAHU & ANR. Respondent
Through Mr. Ravi Gupta, Sr. Advocate with
Mr. Swastik, Advocate.

LPA 92/2014

FOOD CORPORATION OF INDIA & ORS Appellant
Through Mr. Rajeev K. Virmani, Sr. Advocate
with Mr. Ajit Pudussery and Ms. Shruti S.
Hazarika, Advocates.

versus

PRASHANT SINGH KHOKAR Respondent

Through Mr. Ravi Gupta, Sr. Advocate with
Mr. Swastik, Advocate.

LPA 93/2014

FOOD CORPORATION OF INDIA & ORS Appellant
Through Mr. Rajeev K. Virmani, Sr. Advocate
with Mr. Ajit Pudusery and Ms. Shruti S.
Hazarika, Advocates.

versus

PHOOL CHAND MEENA Respondent
Through Mr. Ravi Gupta, Sr. Advocate with
Mr. Swastik, Advocate.

LPA 94/2014

FOOD CORPORATION OF INDIA & ORS Appellant
Through Mr. Rajeev K. Virmani, Sr. Advocate
with Mr. Ajit Pudusery and Ms. Shruti S.
Hazarika, Advocates.

versus

SH PARVINDER SINGH & ORS Respondent
Through Mr. Ravi Gupta, Sr. Advocate with
Mr. Swastik, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J.

The present intra-Court appeals arise from the common order dated
13th November, 2013, whereby W.P. (C) Nos. 3129/2011, 1145/2012,
1459/2012, 1460/2012, 2297/2012 filed by the respondents have been

allowed, holding that the appellants were wrong in not counting the training period as Management Trainees as qualifying experience for direct recruitment to the post of Assistant General Manager (Technical). As it was still disputed whether the respondents would qualify even when the training period as Management Trainees was counted, and since the factual position was unclear, the impugned order dated 13th November, 2013 records as under:-

“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 qualification 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.”

2. We have heard the learned counsel for the appellants and the respondents and are inclined to allow the present appeals.

3. The essential qualifications stipulated for appointment to the post of Assistant General Manager (Technical) through direct recruitment were;

- (i) A degree in Agriculture, or a degree in Science with a Diploma in Food Technology or a Master's degree in Zoology or Biochemistry or equivalent qualifications;
- (ii) Five years' experience in the storage of food-grains and maintenance of stocks or in the examination, inspection and analysis of food grains in

Government or Public/Private Ltd. Undertakings. The experience acquired as Junior/ Senior Research Fellows while pursuing higher studies would be reckoned as required experience.

Desirable: knowledge of toxicology of insecticides, raticides and fumigants in use in grains stocks.

4. Pertinently, the Recruitment Rules stipulate that 1/3rd of the posts of Assistant General Manager (Technical) are to be filled by way of direct recruitment and 2/3rd posts by promotion through selection from persons who have five years' experience as Manager (Technical).

5. The respondents herein were working as Managers (Quality Control) with the appellant Corporation. They were inducted as Management Trainees, in terms of the scheme approved by the Board of Directors of the appellant Corporation on 8th October, 1996.

6. On 4th August, 1993, the Board of Directors had approved a proposal for recruitment, through competitive examination, of fresh candidates, possessing requisite qualifications but without any experience, as Management Trainees and then absorbing them as Managers after intensive "on the job training". The scheme was approved by the Government of India vide letter dated 4th November, 1993. However, due to strong sentiments and resistance by the existing employees, who felt that their promotional avenues would be adversely affected, the follow up and induction of

Management Trainees had remained in abeyance. By the aforesaid resolution dated 8th October, 1996, the scheme was re-introduced by the Board. As per the resolution, the Management Trainees were entitled to a consolidated monthly stipend during the training of one year, in addition to being eligible for Travel Allowance and Dearness Allowance as admissible to Managers during training. On successful completion of the training, they were to be appointed as Managers at the minimum scale of pay applicable to the post of Managers.

7. Pursuant to their selection as Management Trainees, the respondents underwent training for one year. The letters of selection had specifically stated that on successfully completing the induction training programme, the respondents would be posted as Managers (Quality Control). The respondents would be paid a consolidated stipend, which varied between Rs.6,000/- and 16,400/-, depending upon the year of selection. They were paid regular scale pay of the post of Manager after the successful completion of training, and from the date they assumed charge as Managers. After appointment as Managers they were on probation for a period of one year, which term could be extended for a further period not exceeding one year.

8. The training programme, placed on record, would indicate that it was broken into four phases i.e. A, B, C & D. The number of working days earmarked in each phase was stipulated. The training programme envisaged

visits to training locations in order to enable the trainees to familiarize themselves with different aspects across the supply chain such as stack formation, siding depot loading and unloading, good shed loading etc. Phase A was spread across 151 calendar days which included 88 days of lectures in addition to familiarization of work in all divisions over 20 days and an additional 24 days of field visits. After the completion of the first two stages of phase A, a common evaluation test was to be conducted across all cadres in which five papers were prescribed. There was another examination over a period of 5 days at the final stage of phase A. In phase B, the trainees were attached to specified operational centres in zones not of their preference for a period of 90 days. In phase C, the trainees were to be posted in applied cadres in other non-preferred zones, as far as possible, also for a period of 90 days. Phase D related to examination and evaluation after the completion of the earlier phases and was to last for a period 5 days. Phases B and C carried a weightage of 10 marks in each, to evaluate the performance of each trainee.

9. Perusing the aforesaid programme, its contents, etc., it is clear that the persons selected, who could be fresh graduates, had to undergo both theoretical as well as practical training. The practical training was to be under the supervision and control of the Central Training Institute, New Delhi. The scheme also envisaged evaluation of the performance of Management Trainees during and at the end of the course.

10. The advertisement calling for applications to the post of Assistant General Manager (Technical) had stipulated that experience acquired as a Junior/Senior Research Fellow while pursuing higher studies would be counted or reckoned as required experience. This stipulation reflects that a specific postulate was made for those who had undertaken relevant post-graduate research. The aforesaid stipulation was meant to equate candidates, who had pursued higher studies/research and had not opted to take up employment. This stipulation would not assist and help the respondents. The Management Trainees were not junior or senior research fellows. The minimum qualification prescribed for selection as Management Trainees was a graduation degree. In fact the respondents do not claim, and have not asserted or alleged, that the Management Training programme should be equated with, or treated as, time spent on pursuing higher studies as a junior or senior research fellow and, therefore, should be reckoned for computing the “experience”. The aforesaid stipulation would, in fact, negate the contention of the respondents that the time spent on training as a Management Trainee would be counted and included in the work experience of 5 years as prescribed. The training or study period was not to be included as work experience unless the candidate had post graduate qualifications and was pursuing higher studies as a junior/senior research fellow.

11. The submission that the requirement of practical experience can be equated with, or is identical to, on-the-job training is far-fetched, fallacious and has to be rejected. Training entails theoretical instruction and practical exposure by instructors and others who have requisite practical experience and expertise. On-the-job training is undertaken under the careful watch and supervision of the instructors and experts. An employee on the other hand gains self taught knowledge through experience and by watching others. An employee, as per the job profile, is required to implement directions of superiors and to take decisions while on the job and working. It cannot be doubted that work experience counts, and is of great relevance and importance, for it enhances understanding, awareness and knowledge. Training may have a similar objective, but the two differ and are not equated to each other by persons in trade and business. An employee enjoys far greater “freedom” and creativity while working and performing his job. The responsibilities are significantly and perceptibly higher. The expectation, requirement and responsibilities of a trainee are palpably lower and not equivalent to what is expected and required from an employee. Trainees, even if inquisitive and constructive, are required to imbibe, follow and learn what they are told by the instructor.

12. In these circumstances, we do not think that the practical or on-the-job training included in the period of training as Management Trainees

undergone by the respondents can be treated as qualifying experience under the advertisement. The experience stipulated was specific and particular to storage of food-grains and maintenance of stocks, or in the examination, inspection and analysis of food grains in Government or Public/Private Ltd. undertakings.

13. What had weighed with the single Judge, and is the cornerstone of the impugned decision, was the Circular No. 59 of 1986 dated 22nd September, 1986 and the Government of India's order dated 8th March, 1983. Both of them have been reproduced in the impugned judgment, and for the sake of clarity, are reproduced below:-

“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”

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“Govt. of India's order dated 8.3.1983

“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.”

14. Circular No.59 of 1986 dated 22nd September, 1986 states that the appellant Corporation would follow the Central Government Rules, Regulations, Instructions or Orders in the absence of specific provisions,

Rules, Regulations or Instructions made by or under the Food Corporation of India Act, 1964. However, where rules, regulations or instructions of the Corporation are clear, there would be no need to follow Central Government Rules, Regulations, Instructions or Orders on the subject. In Swamy's Pension Compilation relating to the Central Services (Pension) Rules, 1972, Rule 22 and the Government of India's decisions, read as under:-

“22. Counting of periods spent on training

The Government may, by order, decide whether the time spent by a Government servant under training immediately before appointment to service under that Government shall count as qualifying service.

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GOVERNMENT OF INDIA'S DECISIONS

(1) Pre-appointment training period counts as qualifying service. [G.I. Dept. of Per. & A.R., O.M. No. 28/32/81-Pension Unit, dated 22.12.1983]-

The Staff Side to 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 may be treated as qualifying service for pension.

2. The request made by the Staff Side of the National Council (JCM) has been examined and it has now been decided that in respect of Groups 'C' and 'D' employees, who are required to undergo departmental training relating to jobs before they are put on regular employment, training period may be treated as qualifying service for pension, if the training is followed immediately by an appointment. This benefit will be

admissible to all Groups 'C' and 'D' employees even if the officers concerned are not given the scale of pay of the post but only a nominal allowance.

3. The Ministry of Finance, etc., are requested to bring the above decision to the notice of all officers working under them including those in the attached and subordinate offices for their guidance.

4. These orders come into force with effect from 22nd December, 1983.

5. Benefit of these orders will be available to all those employees who retired on or after 22nd December, 1983.

6. No restriction is imposed on the admissibility of the above benefit to the employees who were recruited in 'C' and 'D' posts but retired from Groups 'A' and 'B' posts.

(2) Treatment of interruption between training and regular appointment. [D.G., P&T., Memo No. 4/4/84-Pen., dated 18.07.84]-

Reference Decision (1) above, some of the Circles, etc., have raised a doubt about treating the period of interruption between training period and regular appointment which is caused due to journey from training place to the posting place or the non-availability of post, etc. The position has been examined in consultation with the Department of Personnel and Administrative Reforms and clarified as follows:-

It is mentioned that the Decision (1) above is effective from the date of issue, i.e., 22-12-1983. Thus, the benefits of this order can be given to an officer who is in service on that day and retires thereafter.

As regards treating the interruption period in between training period and regular appointment, it is stated that the training should be followed immediately by an appointment which means that there should not be any interruption. Even, if any interruption falls between the training period and regular appointment, that should not

exceed the joining time admissible under the relevant rules for the purpose of benefit to be given under Decision (1) above.

In view of the position stated, it is requested that this provision may be brought to the notice of all concerned subordinate units including P & T Training Centres.

(3) Condonation of administrative delay in issuing posting order after training, for counting training period for pension. [G.I.. Dept. of Telecom, Letter No. 36-14/88-NB/T/Pen., dated 25.08.1990]-

1. Rule 22 of CCS (Pension) Rules, 1972 and Government of India's Instructions issued on the subject from time to time provide that a period of training can be counted as qualifying service for the purpose of pensionary benefits if the training is immediately followed by appointment. Even if any interruption falls between the training period and regular appointment, that should not exceed the joining time admissible under the relevant rules.

2. But instances have come to notice where there has been administrative delay in giving appointment letters, etc., after the training period is over and the appointment takes more time than the joining time admissible under the relevant rules.

3. The question as to how the intervening period in such type of cases can be treated if it exceeds the joining time admissible and the delay on the part of the Government in giving appointment letters and as to whether that intervening can be condoned, was referred to Department of Pension and Pensioner's Welfare who have advised that in cases where the delay is purely administrative, they have no objection to condoning the said period.

4. They have further advised that effort should be made to eliminate the administrative delays particularly where it is known in advance that the trainees have to be given final appointment letters, etc."

15. A reading of Rule 22 indicates that the Government has the option and can, by an order, decide whether the time spent by the Government servant under training, immediately before appointment to service, is to be counted as qualifying service for pension or not. The Government of India's order dated 22nd December, 1983 was issued on the recommendation of the staff side of the National Council for the Joint Consultative Machinery. As per the said order, Group C and D employees required to undergo departmental training relating to jobs before their regular appointment, were entitled to count the training period as qualifying service for pension, if the training was immediately before the appointment. We are not deciding or examining whether the training period would qualify as service for purposes of pension. The order itself would show that benefit was extended to Group C (Category III) and D (Category IV) employees. The benefit is applicable even if the Group C and D employees were given only a nominal allowance during the training period. The said order would have no application to the post of Managers which is a Group B (Category II) post and not a Group C (Category III) post.

16. Thus, the training period as per Rule 22 of the Pension Rules per se or ex facie is not to be counted as qualifying service even for pension unless and until there is an order to that effect, and the Government has to direct when the training period would be counted.

17. The Our attention was drawn to sub Rule (6)(b), Fundamental Rule 9, which reads:-

F.R. 9. (6) (b) A Government servant may be treated as on duty-

- (i) during a course of instruction or training in India, or
- (ii) in the case of a student, stipendiary or otherwise, who is entitled to be appointed to the service of the Government on passing through a course of training at a University, College or School in India, during the interval between the satisfactory completion of the course and his assumption of duties.

The abovementioned Rule states that a Government servant may be treated as on duty during a course of instruction or training in India, whether as a student on stipendiary or otherwise, when the said person is entitled to be appointed to the service of the Government after having completed the course. Sub Rule (6) of Fundamental Rule 9, when it deems and treats a trainee as on duty during the training or during the induction course, has a different purpose and import than treating the period of training as work experience. It ensures that candidates selected for Government service undergoing training, adhere to and follow the rules and regulations applicable to Government servants while on duty. Obviously Fundamental Rule 9 would not apply for it relates to and postulates a different and distinct situation. The mandate is different. The trainee must adhere to, and follow rules applicable to the Government servants on duty.

18. Faced with the aforesaid difficulty, learned counsel for the respondents had referred and relied on OM No.14034/5/81-Estt.(D) dated 8th March, 1983, the relevant paragraphs of which have been reproduced above in Paragraph 13.

19. The OM dated 8th March, 1983, by a deeming fiction states that service rendered by an employee before his regular employment shall be counted as qualifying service for purposes of eligibility for departmental examination, even if during the training period the trainee is not given the scale of pay equivalent to that of the post, and was paid only a nominal allowance. The relaxation granted by the aforesaid O.M. is limited and confined to treating and counting the training period as service/duty for the purpose of appearing in departmental examinations. In the impugned judgment, it has been observed that if the period of training could be counted as experience for departmental examination, it should also be counted as experience for direct recruitment to the post. We find difficulty in accepting the said reasoning. The Office Memorandum gives a limited and restricted concession to Government employees by treating the training period as qualifying service, solely for the purpose of departmental examination. It would apply equally to all governmental servants inducted to a post after a training course and entitled to be considered for promotion on clearing or qualifying in the departmental examination. Eligibility or relaxation granted

by counting the training period as experience for departmental examination would not, as a sequitur, mandate that the training or course period would be counted as work experience for all purposes. This is not so stated and stipulated. In direct recruitment, candidates working in other departments and organizations are also eligible and compete. It is an open selection and not restricted or limited to departmental candidates. Relaxation by including a training period for a particular set of trainees may cause grievance and prejudice to others. Uniform and identical criteria must apply to all, when the eligibility requirement is examined and interpreted. The training period is not counted for any other purposes, including fixation of pay, increments, etc. The Office Memorandum No.14034/5/81-Estt.(D) dated 8th March, 1983 is distant and remote, for it does not suggest or elucidate that the training period would count as work experience.

20. Noticeably, after completion of the stipulated training period and on being appointed as Managers, the respondents were to remain on probation for one year, extendable for a further period of one year. It is only after successful completion of training, that an offer of appointment as Managers was to be made. One such letter dated 5th November, 2009, which is on record, would show that the respondents, upon appointment as Managers, were entitled to the regular pay-scale plus allowances. The offer of appointment was provisional and subject to verification of character

certificates, caste certificates etc. The training period was not counted for fixation of pay, increments, etc.

21. Another reason has found favour with us in allowing these appeals. The advertisement for appointment to the post of Assistant General Managers (Technical) was published on 8th January, 2011. The applications forms had to be filled up on-line on or before 07.02.2011. The onus was on the candidates to satisfy themselves that they fulfill the eligibility criteria before applying for the post. On the basis of the information and details furnished by the applicants including the respondents, admit cards of eligible candidates were uploaded on the internet on 20th March, 2011. The admit cards of the respondents were not uploaded for the reason that the appellants felt and had held that the respondents did not fulfill and meet the eligibility requirements. The shortlisted candidates, meeting the eligibility requirements, had appeared and participated in the written test held on 3rd April, 2011. On the basis of the result in the written examination, the select list of candidates securing the highest marks in the General and reserved categories was prepared.

22. The first writ petition, W.P.(C) 3129/2011, raising the claim and contention that the respondents were wrongly denied, and not issued admit cards, was filed on 09.05.2011 i.e. more than one month after the written examination. This writ petition was filed by Manoj Kumar Singh and 8

aggrieved candidates and was heard for the first time on 09.05.2011, when an interim order was passed permitting the respondent no.1 Corporation to proceed with the selection process, however restraining them from making any appointments sequent thereto. Only thereafter did the respondents in LPA Nos. 91-94/2014, ten in number, file the Writ Petitions (C) Nos. 1459/2012, 1145/2012, 2297/2012 and 1460/2012 respectively. Thus, the writ petitions were filed after the written examination was held. This inexplicable delay is a sufficient ground to deny the relief, on account of laches. If the writ petitions in question are allowed, then the written examination and the select list would have to be cancelled and quashed.

23. The writ petitions were initially predicated on the assertion that in some cases, admit cards had been issued to candidates who had included the Management Trainee program period as experience. The principle of equal treatment was pleaded. The appellant Corporation avers that as a precept the Management Trainee program period was not to be counted as work experience. Erroneous or wrong issuance of admit cards would not confer a legal right. Any discrepancy noticed at any point of the recruitment process could be rectified to ensure compliance with the prescribed criteria. We agree that if there was an error or mistake and admit cards had been issued to those who had counted the Management Trainee period, *ipso facto*, would not confer any legal right. Article 14 and the right to equality is an

affirmative right. The respondents cannot claim equity and seek direction that illegality should be perpetuated, for a wrong admit card was issued in another case. This contention must fail.

24. As a result of the interim orders passed in the writ petitions and subsequently in the Letters Patent Appeals, of the 41 vacancies for the post of AGM (Technical) advertised, 24 posts have not been filled up. This was directed as appointment letters to 17 candidates had already been issued.

25. In view of the aforesaid discussion, we would allow the present appeals and set aside the impugned order dated 13th November, 2013. The writ petitions filed by the respondents would be treated as dismissed. There would be no order as to costs.

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(SANJIV KHANNA)
JUDGE

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(SUNITA GUPTA)
JUDGE

September 29, 2016
NA/VKR