

\$~1

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

Reserved on: 25.02.2019

Pronounced on: 12.04.2019

+ W.P.(C) 1135/2012

MITUL GOEL

..... Petitioner

Through: Mr. Udhav Pratap and Mr. Vijay
Kumar Kaushal, Advocates.

versus

FOOD CORPORATION OF INDIA & ORS.

..... Respondents

Through: Ms. Anjna Masih, Advocate for FCI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks quashing of the impugned discharge order No. E-1/6(5)/M(QC)/Confirmation/2011/NZ/4003, dated 18.11.2011, served to the petitioner on 04.01.2012. Consequently, directing the respondents to reinstate the petitioner, in service with full back wages as Manager (QC).

2. The brief facts of the present case are that the petitioner was selected as Management Trainee after passing the written examination, group discussion and the interview, conducted by the respondent No.1– The Food

Corporation of India (hereinafter referred to as 'Corporation'). Accordingly, an order viz. Order No. E.VI/37(2)/2007/NZ/614, dated 22.10.2008 was issued from the office of the Executive Director (North) of the respondent No. 2 for undergoing training for the period of one year. On the successful completion of the period of training, the petitioner was given the regular appointment as Manager (QC) and posted in Punjab Region under the Administrative Control of the respondent No. 3 vide letter dated 05.11.2009 as per the terms and conditions, stipulated in the Offer of Appointment, which expressly provides that the petitioner would be appointed on probation for a period of one year, which will commence from the date of joining of the service and may be further extendable for a period not exceeding, one year. In case, probation period of one year is found to be unsatisfactory, the petitioner will be liable, to be discharged from the service of the Corporation, without assigning any reason, by serving him a notice of 30 days or pay and allowance in lieu, thereof. However, on satisfactory completion of the probationary period of one year as per the expressed terms and conditions in the offer of appointment, the petitioner will be considered for confirmation, to the post of Manager (Q.C.). Accordingly, the petitioner had submitted the joining report to the regional office of Punjab at

Chandigarh on 20.11.2009. Thus, his probation period had started from 20.11.2009 and completed on 19.11.2010.

3. Learned counsel appearing on behalf of petitioner submitted that during the probation period of one year, the petitioner was never served with any notice, pin-pointing any adverse complaint against the petitioner, showing dissatisfaction of the petitioner's performance or shortcoming, if any, was ever communicated to him, to give him an opportunity to rectify himself. That even his probation period as required as per the rules of the service, was also not extended any further, beyond 19.11.2010. Therefore, the petitioner has concluded the probation period of one year, satisfactorily.

4. It is further submitted that after joining to the post of Manager (Q.C.) on 20.11.2009 at the regional office, the petitioner was allocated duties to perform at different dates and places, within the Punjab Region. The petitioner was also entrusted with the additional charge of Sadulgarh and Talwandi Sabo, in addition to his work at Raman due to his meritorious contribution of work. The petitioner was thus required to work at three centres i.e. Raman, Sadul Garh and Talwandi Sabo which are 75 Km, apart which the petitioner performed effectively to the best satisfaction of superiors without any adverse whatsoever noted against the petitioner. The

respective Rice Miller offered their consignment of Rice, consisting of 27 MT stock i.e. 540 bag of 50 kg each and dumped them in Varandah of godowns. Whereafter, the Technical Assistant inspect the same under the effective supervision of the petitioner only, for the acceptance or rejection of the stocks. In some cases, the petitioner had to do this exercise of inspection of rice stocks alone, without any assistance. The said stocks having been accepted and found fit for acceptance, was stocked and stored in the godown by the depot staff. As petitioner was posted at other place, there could have been instances of some mischief by the rice miller with the connivance of depots staff of Punjab State Warehouse Corporation but the petitioner handled the same diplomatically without any complaint, whatsoever.

5. It is further submitted that some stocks of rice accepted by the petitioner were further checked by different squads, sent by regional office/ alleged to have found the rice stock/wheat Beyond Rejection Limit (BRL) under the supervision of the petitioner and for such instances petitioner was made the scapegoat for doing nothing and proceeded with the minor penalty, which are as follows:-

“Minor penalty cases in respect of Mitul Goel, Manager (QC) Petitioner / probationer

<i>Sl. No.</i>	<i>Memo / SCN</i>	<i>Date</i>	<i>Date of declared BRL</i>	<i>Centre</i>	<i>Penalty imposed</i>	<i>Date of Vigilance case finalised</i>
<i>1.</i>	<i>6052</i>	<i>12/8/10</i>	<i>26/6/10</i>	<i>Budhlada</i>	<i>Censure</i>	<i>31/1/11</i>

2.	6171-6149	<u>20/11/10</u> <u>1/12/10</u>	25.8.10	Budhlada	2 stage lower increment without cumulative effect.	<u>23.4.11</u> 23.5.2011
3.	6840	15/5/11	10.3.11	Talwandi Sabo	Rs.2000/- recovery	28.11.11*
4.	6578	17/6/11		Talwandi Sabo	Censure	15.11.11
5.	6623	25/26.7.11	23.5.11	Raman	1 stage lower increment without cumulative effect.	15/12/2011**
6.	6590	25/26.7.11	15.4.11	Talwandi Sabo	Pending	
7.	6600	4/8/11	12.5.11	Talwandi Sabo	Rs.5000/- recovery	12.12.2011***
8.	QC:68	4/5.8.11	24.5.11	Talwandi Sabo	Pending	
9.	Wc-11/223	12/18.8.11		Raman	Warning	28.9.2011
10.	6747	11/10/11	20.7.11	Talwandi Sabo	Pending"	

6. Learned counsel, further submitted that in these cases no inquiry has ever been conducted before imposing minor penalties upon the petitioner. Some of the penalties were passed/imposed after 18.11.2011, when the petitioner was very on the corporation rolls i.e. 04.01.2012. It would not be erroneous to mention here that as required the petitioner has submitted his self-appraisal to the Management for his Annual Confidential Report (ACR) for January 2010 to December, 2010 and on receipt of the same, the Management vide its letter dated 20/23.08.2011, conveyed to the petitioner,

the overall grading analysed as “Good” for the year ending 2010, which is annexed as Annexure-P-4.

7. It is further submitted that the probation report of the petitioner is also good and satisfactory, which entitled the petitioner, to be confirmed to the post of Manager (QC), as nothing adverse has ever been reported against the petitioner during the probation period nor the period of probation was extended beyond 19.11.2010. Accordingly, the petitioner would be deemed to have been confirmed for the concerned post w.e.f. 19.11.2010. However, to a great surprise, the petitioner was abruptly served with a Memorandum dated 29.08.2011/01.09.2011, with other two officers of the Depot Cadre namely Chandrabhan Manager (Depot), District Ludhiana and Sita Ram Meena Manager (Depot) District Bhatinda with proposal to hold an inquiry against the petitioner and other two officers under Regulation 58 read with Regulation 50 of the FCI (Staff) Regulations, 1971. The inquiry proceedings were initiated against the petitioner alongwith the aforementioned two officers, by duly appointing the inquiry officer. The inquiry was attended by petitioner on two dates i.e. 14.11.2011 and 03.12.2011 but thereafter the petitioner was suddenly restrained from attending the inquiry, by stating that the petitioner was no more the employee of the respondent Corporation.

Thereafter, on 04.01.2012, the petitioner was abruptly served with the impugned order dated 18.11.2011 whereby discharged the petitioner from the services of the respondent-Corporation, indicating therein, that the petitioner is discharged from the services of the Food Corporation of India with immediate effect, due to non-completion of probationer period satisfactorily.

8. Learned counsel appearing on behalf of petitioner further submitted that the respondent-Corporation issued discharging order dated 18.11.2011 whereas the petitioner got full salary for the months of November and December, 2011. Copies of the salary slips for the months of November, 2011 and December, 2011 are annexed and marked as Annexure-P-7 (Colly).

9. In case of *Pradip Kumar vs. Union of India and Ors. 2012 (12) Scale 592* whereby held that nonetheless, the order of discharge cannot be upheld, as it is stigmatic and punitive in nature, if the period of probation is not extending within a reasonable period, from the expiry of one year, then the officer continued in service.

10. In case of *State of Punjab & Anr. vs. Shri Sukh Raj Bahadur 1968-3 SCR 234* whereby it is held that if there be a full-scale departmental enquiry

envisaged by Article 311 i.e. an Enquiry Officer is appointed, a charge sheet submitted, explanation called for and considered, any order of termination of service, made thereafter, will attract the operation of the said article.

11. Counsel further submits that when this was the situation, then, how the petitioner shall be treated to have been discharged from the services of the respondent-Corporation on 18.11.2011 and as to how the petitioner is not confirmed in the post of Manager (QC) having the Annual Confidential Report for the year 2010 being “Good” and the Probation report quite satisfactory.

12. As per circular No. EP-04-2001-03 dated March, 26, 2001, which was reiterated by FCI, Headquarters vide circular No. EP-04-2011-19 dated September 9th, 2011, made it clear that the first probation report, covering the service for the initial year, should be written on the basis of the performance of first 10 months and sent to the appointing authority within 15 days of completion of 10 months. The instructions issued by the department itself stipulate that in case, the probation report is not satisfactory, the probation period has to be extended to the maximum period of one year. It is also stipulated that the officer on probation, will be simultaneously informed about the shortcomings noticed in the working of

the probationer concerned, so that there could be suitable opportunity for the improvement in the performance. It shall be ensured that the officer is placed under various controlling /reporting/reviewing officers, during the extended period, to the extent possible, unless there is an extension of the probation period, there is no necessity of conveying any remarks of shortcomings, to the concerned officer.

13. It is further submitted that the petitioner has been subjected to hostile discrimination, whereas, vide order dated 11.05.2010, the probation period of 5 Manager (QC) was extended by the respondents as under:-

<i>S.No.</i>	<i>Name of the Officer S/Shri</i>	<i>D.O.B.</i>	<i>Place of Posting</i>	<i>Date of Joining</i>	<i>Date from which PP extended.</i>
1.	Ravinder Singh.	19.11.54	SGR	29.08.08	29.08.09
2.	Mohan Lal Kazal.	04.02.55	GSP	13.10.08	13.10.09
3.	Ramesh Kumar Goel	11.01.51	BTD	30.08.08	30.08.09
4.	Baldev Raj	28.06.51	HSP	08.09.08	08.09.09
5.	Param Hans Singh	30.11.54	FDK	17.09.08	17.09.09

14. Accordingly, the impugned order is only colourable exercise, to deprive the petitioner from the opportunity of proper defence, in the above

mentioned inquiry proceedings. Thus, the impugned order is punitive in nature, issued with malafide intent.

15. On the other hand, learned counsel for the respondent submits that the action taken by the competent authority is justified and in consonance with the Regulation 15(3) of F.C.I. (Staff) Regulation, 1971 and Para (2) of the offer of appointment:

“He will be on probation for a period of one year from the date of his joining which may be further extended for a period not exceeding one year and in case of his unsatisfactory performance, he will be liable to be discharged from the service of the Corporation without assigning any reason by giving him a notice period of 30 days or pay and allowance in lieu thereof. However on satisfactory completion of the period of probation, he will be considered for confirmation to the post of Manager (QC).”

16. Learned counsel further submits that the probation report of the petitioner was sent by RO Punjab, with delay (due to administrative reasons) i.e. in the month of Jan, 2011. Whereas, the probation period was ending on 19.11.2010. Due to late receiving of probation report of the petitioner, the confirmation case could not be processed within time and as such, there was no question of informing the petitioner, about any adverse remark within his probation period. Moreover, as an employee of Corporation, he was aware about the vigilance cases/disciplinary proceedings pending against him, and

he should have been more careful towards his duties. As per instructions available “under any circumstances, it will not be treated that the official is deemed to have been confirmed for want of receipt of probation report. The present case is not only based on poor probation report, but also on the non-satisfactory completion of probation period, as observed by the competent authority hereunder:-

“The Petitioner had joined F.C.I. on 20.11.2009 on fresh recruitment and was under probation for one year i.e. upto 19.11.2010. On perusal of his vigilance profile, received on 11.10.2011, it transpires that he was involved in vigilance case from 12.08.2010 onwards during his actual probation period and thus his probation may be treated as extended for next one year i.e. upto 20.11.2011.”

17. From the perusal of the vigilance profile, it is observed that the petitioner was continuously involved in the vigilance cases against him, during the probation period (one year) and the concerned vigilance cases (9 cases) continued during his extended period of probation. The details of the cases against the petitioner are as under:-

SI.No	Details of Charge sheet & Date	Status
1	Vig.4(BTI-6052)/QC/PB/MNR/2010, 12/08/10	Censured
2	Vig.4(BTI-6171-6149/10/6021 20/11/10	RIP in time scale of pay
3	Vig.4(BTI-6480)/QC/2011, 15/05/11	Recovery
4	Vig.4(BTI-6578)2011, 17/06/11	Censure

5	Vig.4(BTI-6590)/QC/PB/11/9190, 26/07/11	Pending
6	Vig.4(BTI-6623)/QC/PB/11/MNR, 27/07/11	Pending
7	Vig.4(BTI-6600/PB/11, 09/08/11	Pending
8	Vig.4(BTI-6685)PB/DO/2011, 01/09/11	Pending with IO
9	Vig.4(BTI-6742)/PB/QC/11/10018, 10/10/11	Pending

18. Learned counsel further submitted in view of his track record of probation period, the petitioner does not deserve to be in service. Thus, the present petition may be dismissed.

19. I have heard learned counsel for the parties in length and perused, the material on record.

20. Out of nine disciplinary cases, eight were minor and one major vigilance case initiated against the petitioner in the said probation period of 2 years, four have been decided and five cases are still pending. Undisputedly, the penalty has been imposed upon the Petitioner in the four cases decided against him and he has not been exonerated, even in a single case. It reflects on the performance of the petitioner and it can be concluded, that the petitioner has not satisfactorily completed his probation period. Thus, he was liable to be discharged from the services of F.C.I. in terms of

Regulation 15(3) of F.C.I. (Staff) Regulation, 1971 and Para (2) of his offer of appointment, which is reproduced as under:

“He will be on probation for a period of one year from the date of his joining which maybe further extended for a period not exceeding one year and in case of his unsatisfactory performance, he will be liable to be discharged from the service of the Corporation without assigning any reason by giving him a notice period of 30 days or pay and allowance in lieu thereof. However on satisfactory completion of the period of probation, he will be considered for confirmation to the post of Manager (QC).”

21. The vigilance cases against the petitioner had brought disrepute to the employer Corporation. As far as adverse remarks in the probation report are concerned, the remarks of the counter signing officer are important whereby observed as “In view of the Vig. Profile, probation period may be extended further” which is attributable as “adverse.” The position regarding reason for non-extension of probation period, it is explained that a vigilance case dated 12.08.2010 was pending against the petitioner during his probation period and thus assumed to be extended, though it could not be conveyed to the petitioner timely, due to delay by the administration. As per headquarter circular, dated 09.09.2011, vide which the circular dated 26.03.2001 has been reiterated as “Under any circumstances, it will not be treated that the official/ officer is deemed to have been confirmed for want of receipt of

probation report.” Thus, he cannot be treated as deemed to have been confirmed.

22. Late service of the discharge order, upon the petitioner, cannot be relied upon for seeking any relief by the petitioner. The discharge order dated 18.11.2011 had been issued from ZO (North) and after having it been routed through proper channel which underwent postal delay and he had acknowledged the same by 04.01.2012 and as such, in the meantime, he was paid salary for December 2011 by his local office.

23. In case of ***Suresh Chand Jain vs. Director General & Anr*** decided by Double Bench of this Court in W.P.(C) 5603/2013 vide its judgment dated February 11, 2015 had referred the decision of the Supreme Court in case of ***Abhijit Gupta vs. S.N.B. National Centre, Basic Sciences: (2006) 4 SCC 469***, wherein a similar letter was issued to the concerned employee intimating that his performance was unsatisfactory and therefore, he is not suitable for confirmation, negating the contentions raised by the employee that the termination on the ground of alleged misconduct was stigmatic, the Hon’ble Supreme Court held that the order of termination due to unsatisfactory performance is a termination ‘simpliciter’ and not ‘punitive’ in nature.

24. In view of above discussion and the aforesaid legal positions, it can be concluded that this issue is no more *res integra*, that an order of termination due to unsatisfactory performance of the probationer, cannot be ipso facto termed as 'stigmatic' or 'punitive' in nature. During the probation period, an employee has to be extra careful and diligent while discharging his assigned duties, so that he can successfully complete his probation period to get confirmation against the post he has been selected for and he does not give any chance or reason to his superiors to terminate his services. If during the period of probation, the performance of a probationer is not found satisfactory or suitable for a particular job, as per the assessment of the employer, he may be terminated from the service and such termination would be termed as termination 'simpliciter' and cannot be held to be 'punitive' in nature.

25. The petitioner joined at the regional office Punjab at Chandigarh on 20.11.2009 and probation period for the petitioner was one year. Admittedly, petitioner was not confirmed and in that case, he cannot claim, on the expiry of one year, he is deemed confirmed. On the contrary, if the order for extension of the probation is not issued, the probation is deemed extended. No doubt, the extension of probation cannot be more than the

double of the probation period. In the present case, the petitioner was on probation from 20.11.2009, admittedly, neither conformation order has been issued nor period of probation is extended. In such case, it is deemed that the probation is extended. It is not in dispute that after joining on 20.11.2009, the petitioner continued to face the vigilance cases against him, during the probation period (one year). Furthermore, nine cases were continued during his extended period of probation. Out of nine disciplinary cases initiated against the petitioner in the probation period of 2 years, four have been decided and five cases are still pending against the petitioner. The penalty has been imposed on the petitioner, in all the four cases mentioned above. Accordingly, as per the performance of the petitioner, it cannot be concluded that the petitioner has satisfactorily completed his probation period.

26. It is pertinent to mention here that the letter dated 22.10.2008 issued by respondent No. 2 to the petitioner, was for undergoing one year training. On successful completion of the training, the petitioner was given the regular appointment as Manager (QC) and posted in Punjab Region under the Administrative Control of respondent No. 3 vide letter dated 05.11.2009 on the expressly provided terms and conditions that the petitioner would remain on probation for a period of one year from the date of joining, which

may be extendable for a further period, not exceeding one year. In case, probation period of one year is found to be unsatisfactory, the petitioner will be liable to get discharged from the service of the Corporation, without assigning any reason. It was made clear that on satisfactory completion of one year period of probation, the petitioner will be considered for confirmation to the post of Manager. Thus, his probation period of one year started from 20.11.2009 and ends on 19.11.2010. It can be ascertained that the probation period of the petitioner was not confirmed. Therefore, it was deemed extended.

27. As discussed above, the petitioner had joined on 20.11.2009 and discharge from the services vide order dated 18.11.2011 i.e. within two years of the service rendered on the post of Manager(QC), on probation. It is not in dispute that during probation an employees without assigning any reason can be discharged from the service. In the present case, the track record of the petitioner under the post concerned here, had been negative. Thus, in any sense, he cannot claim that his probation period is completed on 09.11.2010. Moreover, the petitioner has received the salary for the services rendered by him as Manager (QC) in the probation period concerned.

28. In view of the above facts and observations, I find no merit in the present petition.

29. The same is, accordingly, dismissed with no order as to costs.

(SURESH KUMAR KAIT)
JUDGE

APRIL 12, 2019/rhc

