

**RESERVED**

**THE HIGH COURT OF MEGHALAYA**

**WP(C)NO. 81 OF 2011**

Shri Swarup Mukherjee, son of (L) Shri BK Mukherjee, R/o 138, RR Colony, P.O. Rynjah, Shillong – 793006, District East Khasi Hills, Meghalaya and 12 Ors.

.....**Petitioners**

**-Versus-**

1. Union of India represented by the Secretary, Department of Food & Public Distribution, Government of India, Krishi Bhawan, Dr. Rajendra Prasad Road, new Delhi- 11000.
2. Food Corporation of India, a body Corporation having its Corporate Office at Khadya Sadan, 16-20 Barakhamba Lane, New Delhi-1 represented by its Chairman & Managing Director.
3. Executive Director (Personnel) Food Corporation of India, Khadya Sadan 16-20, Barakhamba Lane, New Delhi-1 .
4. Executive Director (NE), Food Corporation of India, Zonal Office NE Region, Ulubari, Guwahati-07, District : Kamrup, Assam.

.....**Respondents**

Shri BK Deb Roy, Advocate, with Shri SD Upadhyaya, Advocate, present for the petitioners.

Shri R Deb Nath, CGC, present for respondent No. 1.

Shri KS Kynjing, Advocate General, with Shri ND Chullai, Sr. GA, present for the respondents No. 2-4

Date of hearing 27<sup>th</sup> January, 2014

Date of Judgment and Order 31<sup>st</sup> January, 2014

**HON'BLE THE CHIEF JUSTICE  
and HON'BLE MR. JUSTICE T NANDAKUMAR SINGH**

**JUDGMENT AND ORDER**

**ORAL: HON'BLE PRAFULLA C. PANT, CHIEF JUSTICE**

By means of this writ petition, the petitioners have challenged the Notification No. 99/Amendment EP-1(1)/2009 dated 12.03.2010 issued by the Food Corporation of India (for short FCI) as ultra vires to the provisions of the Constitution. The petitioners have further challenged the decision of the Board of Directors (for short BOD) of FCI in its meeting held on 23.09.2009 regarding recruitment and promotions at various level for its employees.

2. Heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit on record.

3. Brief facts of the case are that the petitioners are the employees of the FCI. It is stated that the Regulation 7 of the Food Corporation of India (Staff) Regulations, 1971, provides procedure for recruitment of employees at various levels. To remove stagnation in promotion, a consultant namely, M/s McKinsey & Co. was engaged by FCI who

made certain recommendations to it. However, ignoring the recommendations the BOD of FCI approved certain amendments in Regulation 7 of FCI (Staff) Regulations 1971. Same were notified vide Notification No. 99/Amendment EP-1(1)/2009 dated 12.03.2010 after BOD approved the same in its meeting held on 23.09.2009. The grievance of the petitioners is that due to the stagnation in promotion, there is frustration among the employees. It is pleaded on behalf of the petitioners that allowing the direct entry at every level of Executive Cadres is uncalled for, and their apprehension is that practically there is no scope of promotion for the employees of Category -III level. Para 7 of the writ petition discloses position as on 31.12.2010, at executive level which is reproduced below :

<b>Post</b>	<b>Sanctioned Post</b>	<b>Promotional Recruitment (PR) Post</b>	<b>Direct Recruits (DR) Post</b>
General Manager	74	49	25
DGM	191	143	48
AGM	670	447	223
Manager	6054	4541	1514

4. Referring to the case of ***Food Corporation of India & Ors. Vs. Parashotam Das Bansal and Ors (2008) 5 SCC 100***, it has been pleaded in the writ petition that the FCI was reminded by the Apex Court regarding need to

formulate a scheme which provides promotions to the Officers of different Departments. Alleging that direct entry at the level of Assistant General Manager (AGM), Deputy General Manager (DGM) and General Manager (GM) is uncalled for. It has been stated in the writ petition that such direct entries have led to miscarriage of justice to the employees of FCI. The petitioners also alleged that there is no rationality and logic in maintaining the entry of direct recruits at 33.33% at the level of AGM particularly when the same was reduced to 25% for the higher posts. It is pointed out in the writ petition that against 6054 posts of Managers there are only 670 posts of Assistant General Managers in existence, and by providing 33.33% direct recruits at the level of AGM, only 447 posts will be available for promotees as such out of 14 Managers, 13 Managers will hardly get any chance for promotion. It is further stated in the writ petition that the decision dated 23.09.2009 taken in the meeting of BOD held on 30.07.2010 prescribing higher qualification for Category-II Managers at the entry level have further adversely affected

the chances of promotions of the employees. On the above grounds, the amendment of Regulation 7 of FCI (Staff) Regulations 1971 vide Notification No. 99/Amendment EP-1(1)/2009 dated 12.03.2010 has been challenged as violative of Articles 14, 16 and 21 of the Constitution of India.

5. In the affidavit-in-opposition filed on behalf of respondents No. 2, 3 and 4, it has been stated that the writ petition is misconceived. The answering respondents have pleaded that M/s McKinsey & Co. was engaged by the Government of India to conduct a study on FCI to bring about substantial and sustainable efficiency improvement in the organization. The recommendations of the consultant were not binding on FCI. It is further stated that the recommendations of the consultant M/s McKinsey & Co. wherein it was proposed that direct recruits at the level of Deputy General Managers and General Managers Cadre be done away, were placed before the BOD in its 307<sup>th</sup> meeting held on 15.07.2009. However, after considering the recommendations, the BOD decided that instead of doing away with the direct entry, the same be reduced from 33.33% to 25% at the level of DGMs and GMs. It is pleaded on behalf of the answering respondents

that on the basis of decision taken by the BOD, the amendment was proposed in Regulation 7 of FCI (Staff) Regulations 1971, and the same was approved by the Government of India. It is further pleaded that vide amendment in Regulation 7, chances of promotions of Managers of various levels (including the petitioners) have improved which is clear from the Chart reproduced below :

<b>Level of Post</b>	<b>Mode of recruitment prior to Notification No. 99 dated 12.3.2010</b>	<b>Mode of recruitment after Notification No. 99 dated 12.3.2010</b>
ED	PR/DR/deputation to be determined by Chairman on each occasion	Same
GM(Genl.)	33 $\frac{1}{3}$ % by DR/deputation to be decided by the Chairma, 66 $\frac{2}{3}$ % by PR	Same
DGM(Genl.)	33 $\frac{1}{3}$ % by DR and 66 $\frac{2}{3}$ % by PR	25% by DR and 75% by PR
AGM(Genl.)	33 $\frac{1}{3}$ % by DR and 66 $\frac{2}{3}$ % by PR	Same

To remove the anomaly of prescribed educational qualifications required for various posts, a proposal was made in the Rules by amendment that in respect of Direct

Recruits post of Category-III level preference will be given to the candidates having proficiency in computers.

6. As to the constitutionality of the impugned amendment, it is stated in the counter affidavit filed on behalf of respondents No. 2 to 4 that Section 45 of Food Corporation Act, 1964 empowers the FCI to frame Regulations. It is further stated that the approval of the Government of India was obtained as required under Section 45 of Food Corporation Act, 1964. It is further pleaded that Articles 14, 16 and 21 of the Constitution of India do not apply to Career Progression Schemes. In para 18 of the counter affidavit, it has been further pointed out that in addition to the promotional avenues of the petitioners an Assured Career Progression Scheme providing financial up-gradation to the pay scale of next post on completing ten, twenty and 30 years of service has been approved by the BOD in its 325<sup>th</sup> meeting held on 05.06.2010. In para 25 of the counter affidavit, it is stated that 216 Promotees Recruits (PR) posts will be available for 3207 Managers (Depot) of General Cadre. Out of total 3207, Direct Recruits (DR) posts are 801, and that of PR are 2396 posts. First 1238 PR posts and 412 DR posts of General Cadre will be integrated in 3:1 ratio to make

integrated seniority list of General Cadre. Similarly, 1168 PR posts and 389 DR posts of Depot Cadre will be integrated in 3:1 ratio to prepare integrated seniority list of Depot Cadre, as such speculations of the petitioners that almost 3 out of 4 direct recruit Managers will be in entry grade for entire career is not true.

7. The petitioners have filed their rejoinder affidavit in which they have reiterated their stand taken in the writ petition.

8. Since vires of the amendment in Regulation 7 of FCI (Staff) Regulations 1971 has been challenged, it is relevant for us to see the source of power to make regulations. Section 45 of Food Corporation Act, 1964 which empowers the FCI to make regulations is reproduced below :

***“ 45. Power of food corporation to make regulations- (1) A Food Corporation may, with the previous sanction of the Central Government, by notification in the Official Gazette make regulations not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.***

***(1A) The power to make regulations under this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interest of any person to whom such regulation may be applicable.***

***(2) Without prejudice to the generality of the foregoing power, such regulation may provide for –***

*(a) the methods of appointment, the conditions of service and the scales of pay of the officers and employees of a Food Corporation, other than the Secretary of the Food Corporation of India.*

*(b) the duties and conduct of officers and employees of a Food Corporation, other than the Secretary aforesaid.*

*(c) the functions and duties which may be entrusted or delegated to the managing director or, as the case may be, the General Manager or a Food Corporation.*

*(d) the times and places at which meetings of a Food Corporation of any committee thereof shall be held and the procedure to be followed thereat;*

*(e) the fees and allowances payable to the members of a committee under sub-section (6) of section 14 or sub-section (6) of section 24;*

*(f) generally, the efficient conduct of the affairs of a Food Corporation.*

*(3) The Central Government may, by notification in the Official Gazette, rescind any regulation which it has sanctioned and thereupon such regulation shall cease to have effect.*

*(4) Any regulation which may be made by the Food Corporation of India under this Act may be made by the Central Government within three months from the establishment of that Corporation and any regulation which may be made by a State Food Corporation under this Act may be made by the Food Corporation of India within three months from the establishment of such State Food Corporation, and any regulation so made may be altered or rescinded by the Food Corporation concerned in the exercise of its powers under this Act.*

*(5) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment*

***shall be without prejudice to the validity of anything previously done under that regulation.”***

9. Learned counsel for the respondents drew our attention to para 39 of the counter affidavit and submitted that with due approval from the Government of India, the impugned amendment in Regulation 7 of FCI (Staff) Regulations 1971 vide Notification No. 99 dated 12.03.2010 was made under Section 45 of Food Corporation Act, 1964. Learned counsel for the petitioners did not contradict this fact that the approval was taken before the amendment was made in the regulation, as required under Section 45 of the FC Act.

10. On behalf of the petitioners, reference was made to the case of ***Food Corporation of India & Ors. Vs. Parashotam Das Bansal and Ors (2008) 5 SCC 100*** and it is argued that what is necessary is to provide an opportunity of advancement, promotion being a normal incidence of service. We have carefully gone through the judgment referred by the learned counsel for the petitioners. In the above mentioned case, the writ petitioners were appointed in Engineering Section of Food Corporation of India with no promotional channel for them. The case of the present writ petitioners is not similar to

that of the engineers who were the writ petitioners of said case. In facts and circumstances of the above mentioned referred case, the Apex court upheld the judgment of Calcutta High Court whereby the High Court directed to implement Accelerated Career Progression Scheme for the engineers as there was no promotional channel for them. We are at lost as to how the above mentioned case is of any help to the petitioners for whom there is a promotional channel available in their organization (FCI).

11. Similarly, the case of ***State of Tripura and Ors vs. KK Roy (2004) 9 SCC 65*** relied on behalf of the petitioners is of little help to them. In the said case also, in the matter of single cadre post with no promotional avenues it was held by the Apex Court that the petitioner was entitled to two higher grades one at the expiry of 12 years of joining of his service, and other on the expiry of 24 years. The present petitioners have made no such prayer. They (present petitioners) have come against the impugned notification by which infact their promotional avenues have been improved but not to their satisfaction. The petitioners want that the direct recruit entry should not have been made at all at the level of AGM, DGM and GM, and if it is reduced to 25% for the post of DGM, it should have been

reduced to 25% (from 33.33%) at the level of Assistant General Manager also. There is no such fundamental right available to the petitioners under Articles 14, 16 and 21 of the Constitution of India, particularly when there is no discrimination made against them. As such in the above facts and circumstances of the case, impugned amendment made in Regulation 7 of FCI (Staff) Regulations 1971, cannot be said to be without any rational or logic.

12. Therefore, in our opinion, this writ petition has no force which is liable to be dismissed. Accordingly, this writ petition is dismissed. No order as to costs.

**(HON'BLE MR JUSTICE TNK SINGH)**  
**JUDGE**  
**31.01.2014**

**(HON'BLE PC PANT)**  
**CHIEF JUSTICE**  
**31.01.2014**

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