



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.876/2020

This the 3rd day of September, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sh. D. D. Parlawar,
Aged about 53 years
S/o Sh. Devanna Parlawar
R/o NHAI PIU, Dhamtari
Chhattisgarh
(Working as Manager (Tech) in NHAI, Dhamtari)
(Group A)

...Applicant

(By Advocate: Shri Surinder Kumar Gupta)

VERSUS

National Highways Authority of India
Through its Chairman,
G- 5 & 6, Sector-10,
Dwarka, New Delhi-110075

...Respondent

(By Advocate: Shri. Hanu Bhaskar)

ORDER (ORAL)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman:

The applicant was working as Assistant Engineer in the PWD Department of State of Maharashtra. On 13.10.2013, he came on deputation to National Highway Authority of India (NHAI) as Manager. Thereafter, he was absorbed in that post on 12.10.2018.



2. The promotion from the post of Manager is the post of Deputy General Manager. An advertisement was issued in February 2019 proposing to fill the post of DGM (Technical) through process of absorption as well as promotion. The case of the applicant was not considered on the ground that he did not have to his credit, five years of regular service in the feeder post, namely, Manager. This OA is filed challenging the action of the respondents in not treating him as eligible for promotion to the post of DGM. He contends that from 13.10.2013 onwards he worked against the post of Manager in the NHAI itself and there was absolutely no basis to treat him as not qualified. Reliance is placed upon the judgement of this Tribunal in OA.3696/2014 and OA.3672/2014 and the judgement of Hon'ble High Court of Delhi. It is also stated that the respondents stated themselves have issued a circular dated 22.05.2017 incorporating the law laid down by the Hon'ble Supreme Court and there was absolutely no basis for not extending the benefit thereon.

3. The respondents filed counter affidavit opposing the OA. The particulars of service furnished by the applicant are not disputed. It is however stated that the adjudication undertaken in OAs. 3696 & 3672 of 2014 and the resultant Writ Petition was specific to the applicants therein and no



general principle as such was laid down. They further contend that the applicant is far junior to many persons, who too were declared as not qualified and that there are no merits in this OA.

4. We heard Shri Surinder Kumar Gupta, learned counsel for the applicant and Shri Naresh Kaushik, learned counsel for the respondents.

5. The facts are not in dispute in this case. The applicant was originally borne on the cadre of PWD in the State of Maharashtra and he came on deputation to the post of Manager in the NHAI through order dated 13.10.2013. It is also not in dispute that he was absorbed on permanent basis in the NHAI in 2018. The whole controversy is as to whether he is eligible to be considered for the post of Deputy General Manager.

6. The recruitment rules for the post of Deputy General Manager provide for the appointment through promotion as well as deputation. We are concerned with the one of promotion. The rule reads as under:

In case of recruitment by promotion / deputation, the grades from which to be made

(1) By promotion through selection from amongst Manager (Technical) of NHAI with five years' regular service in that post and possessing the essential educational qualifications stipulated in Column 7

OR

(2) By deputation from officers under the Central Government or State Governments or Union Territories or



Universities or Recognized Research Institutions or Public Sector Undertakings or Semi Government or Statutory or Autonomous Organizations and other Government Bodies.

(i) holding analogous post on regular basis in the pay level 12 in pay matrix (Rs.78800-209200) (in CDA pattern) or equivalent in the IDA pattern in the parent cadre/department.

OR

(ii) with four years' service in the grade rendered after appointment thereto on regular basis in the pay level 11 in pay matrix (Rs.67700-2087700) (in CDA pattern) or equivalent in the IDA pattern in the parent cadre department.

OR

(iii) with nine years' service in the grade rendered after appointment thereto on regular basis in the pay level 10 in pay matrix (Rs.56100-177500)(in CDA pattern) or equivalent in the IDA pattern in the parent cadre / department.

And

Possessing the essential educational qualifications and essential experience stipulated in Column 7.

7. It is not in dispute that the applicant holds the essential educational qualification stipulated in Col. I. The whole controversy is, whether he has five years of regular service in the feeder post of Manager. If the service of the applicant from the date of deputation is taken into account, he would be qualified. If on the other hand the date of absorption is taken into account, he would not be qualified.

8. This very question arose for consideration before this Tribunal in OAs. 3696 & 3672 of 2014. It was categorically held that the experience of an officer in the post of Manager, whether it was on promotion or on deputation, must be taken into account for the purpose of determining the eligibility for promotion to the post of Deputy General Manager. The plea of the respondents that



it must be reckoned from the date of absorption was repelled. The judgement of the Tribunal was upheld by the Hon'ble Delhi High Court in W.P.(C)No. 9227 of 2014, dated 05.04.2016. The Hon'ble High Court observed as under :

“11. On the issue and meaning of the expression "regular service", we would like to refer to the ratio in K. Madhavan and Another Vs. Union of India and Others, (1987) 4 SCC 566. Elucidating on the question of deputation and transfer, the Supreme Court opined that there was not much difference between the two. Deputation may be regarded as a transfer from one government department to another. Pertinently, it was held that it would be against all rules of service jurisprudence if a government servant holding a particular post is transferred to the same or an equivalent post in another government department and the period of his service in the post before transfer, is not taken into consideration for seniority in the transferred post. We are not directly concerned as such with the second aspect in the present case, but the reasoning and ratio would support and affirm our view. It would be irrational and incongruous to hold that the period spent on the post of Manager (Technical) while on deputation would be treated and regarded as irregular or nonest service and which cannot be counted for the purpose of regular service under column 8 of the recruitment regulation for appointment to the post of Deputy General Manager (Technical). Any other interpretation, in the absence of a contrary regulation/rule, would be unfair and unjust. The deputationist would be at a disadvantage in comparison to the candidates appointed to the post of Manager (Technical) on subsequent dates by way of direct recruitment or promotion. For direct recruits, the period spent on probation is also counted as experience on the post regularly held.”

The SLP No.18898/2016 filed against the same was dismissed by the Hon'ble Supreme Court.

9. As a matter of fact, the NHAI itself issued a circular dated 22.05.2017 by taking note of the judgement of the Tribunal, Hon'ble High Court and the dismissal of the SLP. In para-6 they mentioned as under:

“6. It has also been decided to treat the deputation service (if any) rendered on the post of Manager (Technical) in NHAI as



regular service for the purpose of promotion to the post of DGM (Technical). It has also been decided that the Manager(Technical), when found suitable for promotion, shall be promoted to the post of DGM (Technical)notionally with effect from the date they fulfil the eligibility criteria for the promotion, but not before the date of absorption and the date of promotion of applicants in OA.3696/2014 and 3762/2014 i.e. dated 29.12.2014,subject to recommendations of the Selection Committee. The actual promotion shall take effect from the date of assumption of charge against the post of DGM (Technical).”

10. There is nothing on record to show that the law laid down by the Hon'ble Delhi High Court has undergone any change or that the rules were amended. The stand taken by the respondents in this OA is contrary to para-6 of the circular dated 22.05.2017. The only answer coming forth in the counter affidavit is that the adjudication before the Tribunal was persons specific and not general in nature. We do not accept that contention at all. The respondents cannot deviate from what they have laid down as recently as in 2017 that too as a measure of implementation of the order passed by the Tribunal and High Court.

11. Though the respondents plead that the applicant did not hold the post with a grade pay of Rs.6600/- for a period of five years, we are of the view that it is not a relevant condition at all. The rules specifically mentions that the experience of five years in the post of Manager and it do not refer to the scale of pay.

12. It is a different matter that as many as 54 Managers are similarly treated and in the seniority the applicant



would be far below. The only question before us is as to whether the applicant was eligible to be treated as qualified for the post of Deputy General Manager through promotion. He had to his credit the five years of service in the feeder category. It is fairly well settled that mere being eligible is not a ground in itself for being appointed or considered. Much would depend upon the number of vacancies and the place of individual in the seniority list. In other words, he must be within the zone of consideration of similarly situated officers.

13. We, therefore, allow the OA holding that

- (a) The applicant fulfils the eligibility criteria stipulated for promotion to the post of Deputy General Manager in as much as he held the post of Manager for a period of five years, ever since he came on deputation to the NHAI on 13.10.2013.
- (b) The respondents shall consider all similarly situated officials as the applicant; as eligible and prepare a list of seniority, if not already done.
- (c) If the applicant figures within the zone of consideration, they shall consider the case of all the officials within the zone of consideration vis-à-vis the vacancies and take a decision in that behalf.

(d) This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.



(MOHD.JAMSHED)
MEMBER (A)

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN

Sd/neetu