



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

R.A.NO.060/00025/2019 &
R.A.NO.060/00031/2019 IN
O.A.NO.060/00586/2018
Reserved on: 15.10.2020)
Pronounced on: 20.11.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

(1)R.A.NO.060/00025/2019

Ashvini Kumar Rai, son of Shri Bhadreshwar Rai, aged about 46 years, office of NHAI, PIU-Prayagraj, 18C/28A, Sarojini Naidu Marg, Civil Lines, Prayagraj, Uttar Pradesh-211001.

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Review Applicant

1. Prashant Kumar Sinha S/o Sh. Chandra Bhushan Sinha, aged 38 years, R/o B-404, Sushma Elite Cross, Old Ambala Road, Zirakpur.
2. Union of India through Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, North Block, Central Secretariat, New Delhi-110001.
3. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through its Chairman.
4. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through its General Manager-(Admn.HR).
5. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through Executive Committee.
6. Shri Keshav Vitthalrao Ghodke (Seniority No.143)
7. Shri Ram Chandra Tejawani (Seniority No.145)
8. Shri Suresh Kumar (Seniority No.96)
9. Shri Sumesh Banzal (Seniority No.95)
10. Shri Rajesh Chandra Gupta (Seniority No.127)
11. Shri Anil Kumar Jain (Seniority No.124)
12. Shri Pradeep Kumar Srivastava (Seniority No.106)
13. Shri Amrendra Singh (Seniority No.136) 13.
14. Shri Dharmendra Singh Chaudhary (Seniority No.93)
15. Shri Rajiv Narayan (Seniority No.137)
16. Shri Vishnu Kant Kankane (Seniority No.123)



17. Shri Ravindra Gupta (Seniority No.146)
18. Shri Sanjay Kumar Gupta (Seniority No.97)
19. Shri Sanjay Shivaji Kadam (Seniority No.109)
20. Shri Rajendra Kumar Gupta (Seniority No.126)
21. Shri Sunil Kumar Jain (Seniority No.117)
22. Shri Prashant Dadarao Mendhe (Seniority No.110)
23. Shri Sahi Ram (Seniority No.129)
24. Shri Pawas Pradeep Singh (Seniority No.98)
25. Shri Sunil Sharma (Seniority No.116)
26. Shri Arjun Prabhakar Sarodaya (Seniority No.131)
27. Shri Nirmal Manohar Zade (Seniority No.139)
28. Shri Krishna Murari Sharma (Seniority No.132)
29. Shri Amrish Manikrao Mankar (Seniority No.135)
30. Shri Ajay Prabhakar Gadekar (Seniority No.118)
31. Shri C.O.P. Furtado (Seniority No.113)
32. Ms. Akta Kumari (Seniority No.128)
33. Shri Ashutosh Shyamkant Pimple (Seniority No.108)
34. Shri Shashidhar Singh (Seniority No.119)
35. Shri Mudit Garg (Seniority No.133)
36. Shri Krishna Pal Singh Chauhan (Seniority No.111)
(Respondents No.5 to 35 (promoted vide office order dated 26.9.2017 (Annexure A-2) to be served through Respondent No.3)
37. Shri Yashpal Singh Jadon (Seniority No.102)
38. Shri Yogeshwar Atmaram Raut (Seniority No.130)
39. Shri H.S. Linge Gowda (Seniority No.105)
40. Shri Dhanu Shripati Zodge (Seniority No.134)
41. Shri Braham Prakash Pathak (Seniority No.115)
42. Shri Mohd. Khalid (Seniority No.138)
43. Shri Vasant Dattatray Pandarkar (Seniority No.120)
44. Shri Neeraj Gupta (Seniority No.142)
45. Shri Prafulla Bhaichandra (Seniority No.122)
46. Shri Shivaji Vasant Pawar (Seniority No.104)
47. Shri Sudhi Ranjan Bhattacharjee (Seniority No.103)
48. Shri Srikant Damodar Potdar (Seniority No.121)
49. Shri Jeevan Lal Meena (Seniority No.3)



- 50. Shri R.B. Pekam (Seniority No.114)
- 51. Shri S. Shirish Gangadhar (Seniority No.141)
- 52. Shri Prabhat Ranjan Pandey (Seniority No.107)
- 53. Shri Aman Kumar Rohilla (Seniority No.99)
- 54. Shri Krishan Lal Sachdeva (Seniority No.112)
- 55. Shri Ajay Ram Ratan Yadav (Seniority No.84)
- 56. Shri Rakesh G. Jawade (Seniority No.89)

... RESPONDENTS

(By : Ms. Sripana chatterjee, Advocate.
Mr. Vinod K. Aryan, counsel for Respondents No.2-5.
Mr. Samarth Bhutani, Counsel for Respondents No.55&56.

(2) R.A.NO.060/00031/2019

1. Union of India through Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, North Block, Central Secretariat, New Delhi-110001.
2. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through its Chairman.
3. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through its General Manager- (Admn.HR).
4. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through Executive Committee.

... Applicants/Respondents

Versus

Parshant Kumar Sinha son of Sh. Chandra Bhushan Sinha, aged 38 years, resident of B-404, Sushma Elite Cross Old Ambala Road Zirakpur, presently working as Manager (Technical) in the office of national Highways Authority of India, Panchkula (Group-A).

... Respondent

(BY : MR. V.K. ARYA, ADVOCATE FOR THE REVIEW APPLICANTS.

MR. YOGESH PUTNEY, ADVOCATE, FOR THE RESPONDENT)



ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Both these Review Applications involve identical questions of law and facts and as such these have been taken up for disposal by a common order.

2. Applicant Prashant Kumar Sinha had approached this Tribunal aggrieved by order dated 26.9.2017 (Annexure A-2) vide which Respondents no.5 to 35, junior to him were promoted as Deputy General Manager (Tech.) on regular basis and order dated 27.10.2017 (Annexure A-3), vide which Respondents No.36 to 56, also junior to the applicant, were promoted as Deputy General Manager (Tech.) on regular basis and for issuance of further direction to the respondents to consider service rendered by him with Indian Oil Corporation from 21.5.2012 to 25.11.2014 towards eligibility/seniority for promotion to the post of Deputy General Manager (Tech.) at par with Shri Savyasachi Chaudhary and to treat him as eligible and promote him to the post of Deputy General Manager from the date when persons junior to him were so promoted in accordance with OM dated 25.3.1996 etc. with all the consequential benefits. The Court allowed the Original Application vide order dated 1.5.2019 in the following terms:-

"...seniority of direct recruits through lateral entry, is to be fixed in terms of recommendation made by the Selection Committee and as per recommendation made by selection committee when applicant was appointed as Manager (T) in NHAI, his name was at serial no.17 (Annexure A-10). Next promotional post is DGM (T), for which, as per recruitment rules, Manager (T) working on regular basis having four year service to his credit and possessing required qualification is eligible for consideration for promotion. This has also been circulated by respondents vide circular dated 22.5.2017 when they have invited applications for promotion to the post of DGM (T) from Manager (T) on regular basis.

14. The eligibility clause, in the case of promotion/deputation/direct recruitment in column no.8, reads as under:-



"In case of Promotion//Deputation/Direct Recruitment:

By promotion from candidates holding the post of Manager (Technical) on a regular basis for a period of at least 4 years and possessing the educational qualifications and experience stipulated as per col.7. OR By deputation/direct recruitment from candidates having the educational qualification stipulated in Col.7 and holding analogous post in a Central/State/Govt. Deptt./Autonomous Body/Public Sector Undertaking or with 3 years regular service in the scale of PB-3 (Rs.15600-39100) with Grade Pay Rs.6600 (in CDA pattern) and possessing educational qualifications and experience as per col.7 or equivalent in that organization."

This leaves no doubt in our mind that a regular Manager (T) having four years service to his credit and possessing eligibility qualification as mentioned in column 7 having degree in Civil Engineering is eligible for promotion to the said post. Applicant who was having two years, seven months, and one day service to his credit as on 22.5.2017, when circular was issued for filling up post on promotional basis, applied being eligible in terms of DoPT OM and was declared ineligible on the ground that he has not put in four years service to his credit. Against that, applicant approached this Court and direction was issued to decide his representation, which was based on OM dated 25.3.1996 and regulation governing the field. Specific allegation by the applicant is that persons who were appointed with him as Manager (T) and placed lower in seniority list, admittedly junior to him, have been considered and promoted to the post of DGMT whereas applicant who was at no.17 was declared ineligible. Be that as it may, the fact is that applicant while challenging their promotion has sought direction from this Court in terms of OM dated 25.3.1996 issued by DoPT which mandates as under:-

"where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite/qualifying service by more than half of such qualifying/eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service."

In terms of above, if a senior is short of eligibility, but has completed probation period or half of the eligibility criteria, is eligible for consideration for promotion from the date when juniors were so considered and promoted. In the case of the applicant he has already completed probation period and is having more than two years, seven months, of service to his credit so, in terms of above provision, he ought to have been considered eligible for promotion to the post of DGMT when person junior to him were considered. The respondents have denied that OM is not applicable, but we are afraid, that this argument is not available to them because regulation 22 of 2012 Regulations makes it clear that in absence of any rule governing field, instructions issued by Govt. of India will be applicable. This has also been accepted by the respondents by issuing notification dated 13.2.2017 while amending Recruitment Rules 22nd Amendment (Annexure A-29), where at page 367 at the bottom of Rule, they have notified that where juniors, who have completed their qualifying/eligibility service, are being considered for promotion, their seniors would also be considered provided they are not short of the requisite/qualifying service by more than half of such qualifying/eligibility service or two years, whichever is less and have successfully completed their probation period as applicant had completed probation period when his juniors had completed requisite service. Thus, it does not lie in the mouth of the respondents to say that OM dated 25.3.1996 is not applicable. In view of this, we are of the considered view that decision taken by the respondents declaring applicant ineligible on the ground of being short of experience is contrary to rules and OM dated 25.3.1996, therefore, their action and impugned orders in declaring the applicant as ineligible is quashed and set aside and respondents are directed to treat him eligible and consider his case for promotion as DGM (T) from the date when persons junior to him were so promoted, and if found eligible, he be given relief with all consequential benefits arising out of it, within a period of two months from the date of receipt of a certified copy of this order."



3. Respondent No.56 (Ashwani Kumar Rai) has filed Review Application No. 25/2019 for review of the aforesaid order on a variety of grounds that notice was not served upon him and he was declared ex-parte which has caused prejudice to him. It is pleaded that in terms of decision dated 11.11.2014 in O.A.No.3696 of 2014 of Principal Bench of this Tribunal, the date of deputation as Manager (Technical) would be deemed to be regular service for promotion to the post of DGM (T). This order was upheld upto Apex Dispensation. On 22.5.2017 applications were invited for promotion to the next post of DGM (Technical) from the post of Manager (Technical). However, there were two categories, one who had been appointed by way of absorption and another by way of deputation and then absorbed. The service from the date of deputation to date of absorption was not counted by respondents. Litigation was launched by applicant in Allahabad Bench of this Tribunal. A policy decision was taken to count deputation service as regular service for eligibility and as such he was treated as eligible and promoted as DGM (Technical) notionally w.e.f. 29.12.2014. Next promotion is to the post of General Manager (Technical). Applications were invited in December, 2017. The eligibility criteria was 3 years minimum service as DGM (Technical). R.No.56 was eligible for promotion to this post whereas applicant was having only 2-1/2 years of service of service. Though the applicant was ineligible, yet he has been given benefit by this Tribunal. The reliance placed on O.M. dated 25.3.1996 is misconceived as applicant was never senior to the review applicant as the draft seniority lists, which showed him (applicant) senior were never



finalized. Position in the merit list could not be the determinative factor for fixation of seniority. Review Applicant had joined NHAH on 23.9.2014 whereas applicant in O.A. joined on 25.11.2014. The order under review has the effect of undoing the view taken by Principal Bench of this Tribunal in the indicated cases.

4. The Official Respondents have also filed R.A.no.060/00031/2019 on the ground that since in terms of the Rules and Regulations, the applicant was not having 4 years service as such he could not be given any benefit and as such order may be reviewed. It is argued that the decision of this Tribunal has the effect of upsetting the order of the Principal Bench of this Tribunal which had allowed counting of deputation service as eligibility for promotion to the higher post. It is argued that draft seniority could not afford any seniority to the applicant in O.A. over and above review applicant who was senior to the applicant as per date of joining the department.

5. M.A.No.060/908/2020 has been filed by the Review Applicant (Ashwani Kumar Rai) for condonation of delay of 90 days in filing the R.A. Even though we do not find any grounds made out for allowing the M.A. but as a matter of indulgence only, we condone the delay in filing the R.A.

6. The basic plea taken by Review applicant (Ashwani Kumar Rai) is that there has been violation of principles of natural justice as he was not served with any notice for hearing of this case and as such, he could not defend himself. However, we find from the record that applicant (Prashant



Kumar Sinha) had filed an affidavit of service of notice upon the respondents on 12.7.2018, which indicates that he had served Dasti Notices along with copy of O.A. with annexures with order dated 18.5.2018 upon respondents No.5 to 56 through email on 31.5.2018 as all the private respondents were posted at distant places. The copy of service in respect of review applicant (Respondent No.52 in O.A.) is placed at page 252 of the O.A. It indeed indicates that the notices were sent to the Review Applicant with copy of O.A. and annexures and order. An e-mail Letter dated 29.10.2018 also indicates that Manager (Legal) of respondent Department has also sent the notice with O.A. to the private respondents. His name is mentioned on the communication (Annexure MA-R-1/B) at page 279 of the paper book. In view of these documentary evidences, it is hard to believe that the applicant was not served with notices more so when he himself been in a litigation before the Allahabad Bench of this Tribunal. Thus, R.A. deserves to be dismissed on this short ground alone for an attempt to mislead this Tribunal, but with a view to satisfy our judicial conscience, we have considered the merits of the case as well.

7. An attempt was made to project that there was some contradiction in the order passed by Principal Bench of the Tribunal on the one hand, and this Tribunal on the other. This plea is bereft of any logic or reason. The Principal Bench has held that deputation service is to be counted as eligible service for promotion whereas this Tribunal has decided the O.A. on the basis of O.M. dated 25.3.1996, which provides that where juniors, who have completed their qualifying / eligibility



service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite/qualifying service by more than half of such qualifying/eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying / eligibly service.

8. A perusal of the order under review indicates that in para 6, the Bench has categorically recorded that "it has not been denied that persons junior to the applicant, as per panel seniority, have been considered and promoted to the post of DGM (T), and applicant has been declared ineligible being short of requisite experience". The Court recorded that seniority of direct recruits through lateral entry is to be fixed in terms of recommendation made by the Selection Committee and as per such recommendation, the name of applicant was at Sr. no. 17 (Annexure A-10) much above the review applicant. May the seniority list was termed as "Draft" but the fact remains that the same remained in operation for a long time and its legality was never challenged by Review applicant. So, accepting the same on its face value, the Court proceeded to rely upon the O.M dated 25.3.1996 and allowed the claim of the applicant in the O.A.

9. The pleas raised by the applicants in R.As do not fall within the limited parameters of Order 47 Rule 1 CPC. It is now well settled principle of law that the scope for review is rather limited, and it is not permissible for the Court or Tribunal to act as an Appellate Authority, in respect of the original order by a fresh and re-hearing of the matter, to



facilitate a change of opinion on merits as held in the cases of **PARSION DEVI AND OTHERS VS. SUMITRI DEVI AND OTHERS** (1997) 8 SCC 715 and **GOPAL SINGH VS. STATE CADRE FOREST OFFICERS' ASSOCIATION & OTHERS** (2007) 9 SCC 369.

10. In other words, an order can only be reviewed if case strictly falls within the pointed domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise and perusal of application shows that none of the elements which may warrant review in terms of indicated Rule formulation, are available in the case in hand. The applicants in R.A have neither pleaded nor urged any error apparent on the face of record warranting review of the order in question, except re-arguing the case all over again and raising speculative grounds which is not permissible.

11. In view of the above discussion, both the R.As and Application for condonation of delay filed by Ashwani Kumar Rai are turned out to be devoid of any merit and are dismissed accordingly.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh

Dated: 20.11.2020

HC*