

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR**

Original Application No.200/00816/2019

Jabalpur, this Friday, the 16th day of October, 2020

**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER**

Sanjay Verma, S/o Sh. Ved Prakash Verma,
Aged about 54 years, working as Manager (Tech)
Under PIU, Gwalior (MP) R/o D-22, Garden Homes,
Phase-1, Alka Puri, Gwalior (MP)-474001 **-Applicant**

(By Advocate – **Shri Manoj Sharma**)

V e r s u s

1. Union of India, through Secretary, Ministry of Road Transport & Highways, Parivahan, Bhawan, Parliament Street, New Delhi-110001
2. National Highways Authority of India, Through its Chairman G-5 & 6 Sector 10, Dwarka, New Delhi-110075

(By Advocate – Shri Vikram Singh)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed against the action on the part of respondent No.2 in not considering the candidature of the applicant for the purpose of promotion to the post of Deputy General Manager (Tech) in pursuance to the notification dated

21.02.2019 by which , the applications have been invited amongst Manager (Tech) for the purposes of promotion/deputation.

2. The applicant has sought for the following reliefs in this Original Application:-



“8. Relief Sought:-

- (i) Summon the entire relevant record from the possession of respondents for its kind perusal.*
- (i-A) To quash and set aside the impugned rejection order dated 24.12.2019.*
- (ii) To direct the respondents to treat the applicant as eligible for the purposes of promotion to the post of Dy. General Manager (Tech) and consider his case on merit and if the applicant is found fit, the applicant may be allowed all consequential benefits.*
- (iii) Grant any other relief/s, which this Hon'ble Tribunal deems fit and proper.*
- (iv) Award the cost of the instant lis to the applicant.”*

3. From the pleadings the facts emerges that the applicant is holding the post of Manager (Tech) in National Highways Authority of India (in short 'NHAI') and presently posted under PIU Gwalior. The applicant is aspirant for the post of Dy. General Manager, (Tech) to be filed up under promotion



quota. The applicant came on deputation through an open advertisement issued by the respondent No.2 and after going throughout the selection process, the applicant was appointed as Manager (Tech)in the office of respondent No.2 and joined the post on 22.04.2008. In the meanwhile, the regulations were amended by the office of respondent No.2 in the year 2009 i.e. in the month of October, 2009 incorporating Regulations 13 by which, the provision was made for absorption of the deputation in NHAI. The aforesaid regulations were further amended on 24.08.2012 by which, certain provisions regarding fixation of seniority was also incorporated. Copies of the aforesaid regulations of the year 2009 and 2012 are cumulatively filed as Annexure A-3. The applicant remained on deputation upto 09.04.2015 i.e. for a period of seven years and thereupon, he was sent back to the parent organization. Copy of order dated 09.04.2015 is annexed as Annexure A-7 and

immediately around two months, the applicant joined NHAI w.e.f. 12.06.2015 on deputation basis. Copy of appointment dated 06.07.2015 w.e.f. 12.06.2015 of the applicant in NHAI as Manager (Tech) on deputation basis is annexed as Annexure A-8.



4. The applicant was absorbed in NHAI w.e.f. 11.10.2018. A copy of absorption letter dated 25.03.2019 w.e.f. 11.10.2018 is annexed as Annexure A-9. The office of respondent No.2 issued the circular in the month of February 2019 to which the last date was 08.05.2019 by which, the applications were invited for the purposes of promotion/deputation on the post of DGM (Tech) and also the appointment on the post of Manager (Tech) on deputation basis. As per the advertisement, it was made clear that for the purposes of promotion to the post of DGM (Tech), the post will be filled up by way of promotion amongst Manager (Tech) of NHAI with five years regular service in that post possessing



essential qualification as referred in column No.1. A copy of the circular dated 23.02.2019 is annexed as Annexure A-11. The applicant applied for the purpose of promotion to the post of DGM (Tech) on the premises that apart from the fact that he is having the qualification as per column no.1 of the circular/advertisement, he is having 5 years regular service as Manager (Tech) in NHAI as his working with NHAI on deputation basis since 2008 onwards except two months in 2015 when he was sent back to the parent organization and thereupon, he joined back in the month of June, 2015. Copy of the application dated 22.04.2019 is annexed as Annexure A-12.

5. The applicant submitted detailed representation on 07.06.2019 & 25.07.2019 and claimed that his application may kindly be considered by placing before Screening Committee and it should be clarified that the applicant is having regular service



for the purpose of promotion and he be treated as eligible for the purposes of promotion to the post of DGM (Tech) in NHAI. Copies of representation/s dated 07.06.2019 & 25.07.2019 are cumulatively annexed as Annexure A-13. As regards, the selection process as initiated in terms of the circular issued on 23.02.2019 to which, the last date was 08.05.2019, the applicant came to know that the screening committee has already convened and submitted the list of eligible candidates to be sent before the selection committee but the name of the applicant is not there because of the best know to the respondents. The fact cannot be ignored that the applicant is having 5 years regular service. During the pendency of this O.A. the representation of the applicant has been decided and rejected by the respondent authorities on 24.12.2019. Copy of rejection order dated 24.12.2019 is annexed as Annexure A-16. Furthermore, during the pendency of

this O.A. the respondents have cancelled the earlier advertisement (Annexure A-11) and new advertisement in the month of February, 2020 for selection to the post of Deputy General Manager (Tech) and Manager (Tech) has been advertised. Copy of the same is annexed as Annexure A-17. Hence this Original Application.



6. The respondents have filed their reply to this Original Application. In preliminary submissions to their reply they have submitted that an advertisement for recruitment of 117 posts of DGM (T) on promotion/deputation basis (82 posts under promotion mode and 35 under deputation mode) was published with 08.05.2019 as last date for receipt of the application. In reference to the said advertisement 57 applications from internal candidates (under promotion mode) including that from the application in the present case were received. It has been specifically submitted by the



replying respondents that the applicant joined NHAI on deputation basis as Manager(T) on 12.06.2015 and subsequently was absorbed in the same post w.e.f. 11.10.2018. The requisite qualifying service and experience for under promotion mode through selection from amongst Manager (T) of NHAI is five years regular service in that post. Since the applicant is lack of requisite experience of five years regular service in the post of Manager (T) in NHAI, hence, his candidature for the post of DGM (T) on promotion basis as not considered by the Screening Committee. All the internal candidates including the present applicant who applied for promotion to the post of DGM (T) on promotion mode were recommended as not eligible for promotion by the Screening Committee as none of the candidates fulfilled the criteria of five years regular service in the post of Manager (T). The screening committee in its meeting held on 02.08.2019 considers the candidature of 57



candidates and found none of the internal candidates as eligible for promotion to the post of DGM (T) owing to non-fulfillment of eligibility criteria as laid down in RRs/advertisement for the said post. So in view of the above, the present Original Application deserves to be dismissed and the claim of the applicant to consider his case for promotion to the post of DGM (T) is not sustainable in the eyes of law.

7. The respondents in their Para-wise reply to the Original application have submitted that the seniority and regular service in the context of the post of Manger (T) in NHAI are two different issues. In the matter of seniority the DoPT has issued instructions vide O.M. dated 27.03.2001. The recruitment action to the post of Deputy General Manger is strictly in accordance with NHAI (Recruitment, Seniority and Promotion) Regulations, 1996, as amended from time to time. So keeping in view the guidelines, applications of all the candidates (both internal as

well as none-NHAI candidates) have been got screened by the duly constituted Screening Committee.



8. So it has been specifically submitted by the replying respondents that the candidature of the applicant for promotion to the post of DGM (Tech) was considered/evaluated by the Screening Committee. Since the requirement of 05 years regular service in the grade of DGM (Tech) was not fulfilling in the case of the applicant, the Screening Committee recommended him as 'Not Eligible' for promotion to the post of DGM (Tech). Resultantly the replying respondents prays for dismissal of the Original Application.

9. We have heard the learned counsel for both the sides and have also gone through the documents attached with the pleadings.



10. From the pleadings it is admitted fact by both the parties that the applicant joined on the post of Manager (T) on deputation in the office of respondent No.2 and joined the post on 22.04.2008. and remained on deputation upto 09.04.2015. Thereafter, the applicant again joined on the post of Manager (T) on 12.06.2015 and ultimately subsequently was absorbed with effect from 11.10.2018. It is also admitted fact by both the parties that the applicant had applied for the post of Deputy General Manager (T) under promotion mode with reference to Annexure A-11. It is also admitted fact that the applicant made representations to the competent authority dated 07.06.2019 and 25.07.2019 (Annexure A-13). The representation of the applicant has been decided and rejected by the respondent authorities on 24.12.2019. It is also admitted fact by the parties that the respondents have cancelled the earlier advertisement (Annexure A-11) and new

advertisement in the month of February, 2020 for selection to the post of Deputy General Manager (Tech) and Manager (Tech) has been advertised.

Further, the respondent authority has re-advertised the post of Deputy General Manager and selected the persons. The subsequent event of advertisement (Annexure IA-3) and promotion order of some Manager (Technical) to the post of Deputy General Manager (Technical) (Annexure IA-4) has been taken on record vide order dated 20.08.2020.

11. The main contention put forth by the applicant is that as the applicant had earlier worked as Manager (Tech) with the respondents on deputation with effect from 22.04.2008 to 09.04.2015 and thereafter with effect from 12.06.2015 till his absorption with effect from 11.10.2018. The impugned action of the respondents for rejecting the representation of the applicant dated 07.06.2019 and 25.07.2019



(Annexure A-13) by the respondent department is illegal.

12. It has been submitted by the applicant that the instant case is fully covered by the judgment passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 3696/2014 pronounced on 11.11.2014 (Annexure A-4), wherein a similar issue has been decided. The applicant has further relied upon the judgment passed by Hon'ble High Court of Delhi in W.P.(C) 9227/2014, wherein the order passed by CAT, Principal Bench in O.A. No. 3696/2014 has been affirmed. The applicant has also relied upon the judgment passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 876/2020 decided on 03.09.2020 wherein a similar issued has been decided and the deputation period has been counted as a regular period for promotion



to the post of Deputy General Manager for the purpose of eligibility.

13. On the other side the contention of the respondents are that the applicant has not completed five years regular service as the applicant was earlier worked as Manager (Tech) with effect from 22.04.2008 to 09.04.2015 and thereafter the applicant was repatriated back to the parent department and has again inducted on deputation till his permanent absorption. The requisite qualifying service and experience for under promotion mode through selection from amongst Manager (T) of NHAI is five years regular service in that post. Since the applicant is lack of requisite experience of five years regular service in the post of Manager (T) in NHAI, hence, his candidature for the post of DGM (T) on promotion basis as not considered by the Screening Committee. The screening committee in its meeting dated 02.08.2019 considered the candidature of 57





candidates and found none of the internal candidates as eligible for promotion to the post of DGM (T) owing to non-fulfillment of eligibility criteria as laid down in RRs/advertisement for the said post. So the representation of the applicant has been decided and has been rightly rejected on 24.02.2019 (Annexure A-16).

14. The Principal Bench of Central Administrative Tribunal, New Delhi in Original Application No. 3696/2014 passed on 11.11.2014 decided this issue.

The relevant portion of the same is as under:-

“6.6 In the instant case, we find that NHAI Regulation do provide for appointment of officers on deputation as Manager (T). Thus deputation as a mode of recruitment is prescribed under the Regulations. There is also no doubt that the vacancies against which the applicants were appointed were long term regular vacancies as the applicants had continued on these posts for several years. It follows that the appointment of applicants as Manager (T) on deputation basis in NHAI was regular appointment and the service rendered by them commencing from their date of deputation would be deemed to be regular service. Hence, the eligibility of the applicants for promotion to the post of DGM (T) should be determined after taking into account this service.

Since it is not in dispute that the applicants joined NHAI on different dates between 2004 to 2008, it is obvious that all of them have completed 04 years of regular service as Manager (T) and have therefore become eligible for consideration for promotion to the post of DGM(T) provided they are otherwise eligible.”



As per Annexure A-5 the Hon'ble High Court of Delhi at New Delhi has also upheld the order passed by Principal Bench of this Tribunal.

15. We have also perused the judgment passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 876/2020 decided on 03.09.2020. The relevant portion of the same is as under:-

“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 judgment 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).”

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.”



16. In the instant case also the issue is similar as decided above by the Principal Bench of this Tribunal. So we are of the confirmed view that the instant case is fully covered by the order passed by the Principal Bench of this Tribunal in O.A. No. 3696/2014 and in O.A. No. 876/2020. The applicant fulfills the eligibility criteria as stipulated for promotion to the post of Deputy General Manager (T) in as much as he held the post of Manager for more than five years.

17. In view of the above, the Original Application is allowed and the impugned rejection order dated 24.12.2019 is quashed and set aside. The

respondents are directed to consider the applicant for promotion to the post of Deputy General Manager (Tech) with all consequential benefits. No order as to costs.



(Naini Jayaseelan)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member