

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHENNAI BENCH**

**MA/310/00226/2020 in & OA/310/01633/2019**

**Dated the 30<sup>th</sup> day of December Two Thousand Twenty**

**CORAM : HON'BLE SHRI. S. N. TERDAL, Member (J)  
HON'BLE SHRI. C. V. SANKAR, Member (A)**

**(Through Video Conferencing)**

G.Athipathi,  
Manager (Technical), Regional Office,  
National Highways Authority of India,  
Chennai.

....Applicant/Applicant

By Advocate M/s. V. Vijay Shankar

Vs

1.The Chairman,  
National Highways Authority of India,  
G.5 and 6, Sector 10,  
Dwaraka, New Delhi 110075.

2.The Member (Administration),  
National Highways Authority of India,  
G.5 and 6, Sector 10,  
Dwaraka, New Delhi 110075.

3.The Chief General Manager (HR) (Admn),  
National Highways Authority of India,  
G.5 and 6, Sector 10,  
Dwaraka, New Delhi 110075.

4.The Deputy General Manager (HR/Admn)-IIB,  
National Highways Authority of India,  
G.5 and 6, Sector 10,  
Dwaraka, New Delhi 110075.

....Respondents/Respondents

By Advocate Mr. M. T. Arunan

**ORDER**

**(Pronounced by Hon'ble Shri. C. V. Sankar, Member(A))**

The relief prayed for in this OA is as follows:

"To call for the records pertaining to the impugned Office Order No. 11041/242/2017-Adm.II(Pt) dated 05.11.2019 of the 4<sup>th</sup> respondent and quash the same and direct the respondents to count the applicant's deputation service from 21.05.2008 to 13.06.2014 for promotion as Deputy General Manager (T) and to promote the applicant as Deputy General Manager as was done in respect of three similarly placed officers on and with effect from 27.10.2017 and as General Manager (T) with effect from 27.04.2018 along with all other services and monetary benefits including pay fixation, seniority, etc., and pass such further or other orders as the Hon'ble Tribunal may be deem fit proper under the facts and circumstances of the case and thus render justice."

2. The brief facts of the case are as follows :-

The applicant was appointed as Manager (Technical) on deputation basis in the respondent organisation w.e.f. 21.05.2008 initially for a period of three years vide order dt. 27.05.2008 (Annexure A1). He continued on deputation till 13.06.2014 and was repatriated to the parent department based on their request. In the meantime, he had applied for being absorbed as a direct recruit Manager (Technical) in pursuance of a notification issued by the respondent on 15.03.2014 and had applied for the post of Manager (Technical) on direct recruitment basis on 11.04.2014 through the parent department. Vide order dt. 02.09.2015 (Annexure A2), the applicant was appointed as Manager (Technical) on direct recruitment basis w.e.f. 26.08.2015. The next post for promotion from Manager (Technical) is Deputy General Manager (Technical) and as per the service rules in existence till 16.05.2016, persons eligible for promotion from the post of Manager (Technical) should have completed four years of regular service in the respondent organisation. To clarify the position further, the

respondents issued a circular dt. 22.05.2017 vide Annexure A3 wherein taking note of the rule position as well as the orders of this Tribunal and other judicial orders, the respondents had stated in para 6 as follows:-

“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).”

3. The main point to be noted is that the respondents had decided to treat the deputation service (if any) rendered in the post of Manager (Technical) in NHAI as regular service for the purpose of promotion to the post of DGM (Technical). The applicant had also applied for being promoted based on this circular but to his dismay, his request has not been considered despite a number of representations and finally, the order of this Tribunal in OA 992/2019 dt. 26.07.2019 wherein this Tribunal had directed the respondents to consider and dispose of the representations of the applicant (Annexure A5, A6 & A7) dt. 18.06.2018, 22.11.2018 & 24.04.2019 respectively in the light of the circular dt. 22.05.2017 (Annexure A3) by passing a reasoned and speaking order within a period of four months. Vide Annexure A9, the respondents have disposed of his representations rejecting his contentions mainly on the ground that as per the decision of the Executive Committee meeting dt. 12.10.2017, the representations of the applicant could not be considered as he was relieved from the respondent organisation on 13.06.2014 and rejoined NHAI on direct

recruitment basis only on 26.08.2015, he having been not in the service of the respondents at the time of his taking the examination for being appointed as a directly recruited Manager (Technical). The speaking order also specifically states that the other three officers quoted by the applicant continued to be on deputation with the respondents during the relevant period and therefore, they will be eligible for consideration as per the Executive Committee decision in its meeting held on 12.10.2017 which had *inter alia* decided on the creation of 30 new posts of DGM (T) and also decided as under :-

““Old Recruitment Rules (i.e. as applicable before amendment dated 16.05.2016) will be applied for the purpose of promotion to the post of DGM (T) for the officers who have applied against the circular dated 22.05.2017. This is to ensure harmony and consistency in the treatment of cases pertaining to similarly situated officers and reduce litigation in future.”

“As a strict one time measure and a special case, the deputation service (including period of absence from NHAI for filling administrative formalities e.g. submission/acceptance of technical resignation / retirement etc.) will be treated as regular service for the purpose of reckoning eligibility for the promotion to the post of DGM (T), in respect of Managers (T) who have subsequently been appointed in NHAI on Direct Recruitment basis as Manager (T). This will also end prolonged litigation and ensure fairness and justice to the candidates who chose to face competition by going for direct recruitment”.”

4. From a clear reading of this decision, it is obvious that the Executive Committee had, as a special case, decided to include the deputation service as regular service for the purpose of considering the eligibility for promotion to the post of DGM (T) in respect of Managers (T) who had been subsequently appointed as direct recruit Managers (T).

5. The respondents have placed emphasis on what was mentioned in the same para stating that this deputation service will include ‘the period of absence from NHAI for fulfilling administrative formalities eg., submission/acceptance

of technical resignation/retirement etc'. The main issue at stake is considering the period of deputation service and not the period of absence from NHAI. The period of absence from NHAI required for fulfilling certain administrative formalities was incorporated only for the sake of enabling officers who already had necessary service on deputation but who could have been absent from the respondent organisation due to technical reasons etc. This does not mean that the period of absence alone will have greater weightage than the actual service rendered on deputation. The applicant had completed the necessary minimum period of deputation. As rightly contended by the applicant, the respondents have incorporated this new interpretation which was not part of either the Recruitment Rules or the decision taken by them vide the circular dt. 22.05.2017. The said circular had clearly mentioned about treating the deputation service rendered in the post of Manager (Technical) in NHAI as regular service for promotion to the post of DGM (Technical). There is also no doubt in the factual position that the applicant was on deputation to the respondents from 21.05.2008 to 13.06.2014, a period of more than six years. The applicant has cited several decisions including **Nitish Kumar Pandey Vs State of Madhya Pradesh and ors [(2020) 2 MLJ 312 (SC)]**, **Kishore Kumar and ors Vs Pradeep Shukla and ors [(2012) 4 SCC 103]** relating to the inadmissibility of changing the rules of the game after the commencement of the recruitment process and the rules thereunder. The applicant has also cited the order of this Tribunal in Principal Bench in OA 3696/2014 r/w OA 3762/2014 wherein this Tribunal had categorically ruled that the services rendered by

persons similar to the applicant as Manager (Technical) commencing from the date of deputation would be deemed regular service. The Tribunal further ordered that the eligibility of the applicants for promotion to the post of DGM (T) should be determined after taking into account the said service on deputation. Therefore, there is no doubt that the applicant fulfilled the eligibility conditions for the promotion to the post of DGM (Technical) and the respondents' unjust rejection of his request based on the single point that at the time of writing the examination for direct recruitment and further process, he was not in the service of the respondents ignoring his six years of deputation cannot be accepted. Counsel for the respondents vehemently argued on this point and laid emphasis on what was stated in the Executive Committee decision of 12.10.2017.

6. We consider that the main import of the decision of the respondents explicitly stated vide their circular dt. 22.05.2017 and their Executive Committee decision dt. 12.10.2017 was for consideration of the deputation service specifically in the case of the individuals who were later appointed on direct recruitment basis as Managers (Technical), exactly similar to the case of the applicant. What was given as an additional relaxation in terms of the service including certain periods of absence has been interpreted to extinguish the years spent on deputation for the purpose of eligibility to the promotion. The applicant cannot be treated differently from the other three cases who continued to be in service of the respondents at the time of taking the examination for being absorbed as direct recruit Manager (Technical).

7. We, therefore, allow the OA and quash the order dt. 05.11.2019 of the 4<sup>th</sup> respondent. We direct the respondents to count the applicant's deputation service from 21.05.2008 to 13.06.2014 for promotion to the post of Deputy General Manager (Technical) and to promote the applicant as DGM as was done in the case of three similarly placed officers w.e.f. 27.10.2017 with all consequential benefits within a period of two months from the date of receipt of a copy of this order. The respondents are also directed to consider his case for promotion to the post of General Manager (Technical) as per rules.

8. OA is allowed. MA 226/2020 filed by the applicant for direction stands disposed. No costs.

**(C.V.Sankar)**  
**Member(A)**

**(S.N.Terdal)**  
**Member(J)**

**30.12.2020**

**SKSI**