



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

O.A. No. 545 of 2019

(Through Video Conferencing)

Orders reserved on : **11.08.2021**

Orders pronounced on : **03.09.2021**

**Hon'ble Mr. R.N. Singh, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri Manish Ranjan, Aged 49 years,
s/o Late Sh. Bakshi S.S. Sinha,
working as Section Officer/Court Officer,
in CAT (P.B.) New Delhi
r/o Flat No.403, Block A-1,
CPWD Multi Story Housing Complex,
Dev Nagar, Karol Bagh, New Delhi-110005.

...Applicant

(By Advocate: Shri Yogesh Sharma)

VERSUS

1. Union of India through the Secretary,
Ministry of PPG & Pension, Department of Personnel &
Training, Govt. of India,
North Block, New Delhi.
2. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench, 61/35, Copernicus Marg,
New Delhi.

...Respondents

(By Advocate: Shri Sanjay Kumar)

O R D E R



Hon'ble Mr. R.N. Singh, Member (J):

The applicant, who is working as a Section Officer/Court Officer (hereafter referred to as 'SO/CO') under the respondent No.2, has approached this Tribunal by way of the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, praying therein for the following reliefs:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 05.12.2018 (Annex.A/1) declaring to the effect that the whole action of the respondents not counting the deputation period of the applicant for the purpose of granting Non-Functional scale is totally illegal, arbitrary and against the law and consequently pass an order directing the respondents to consider and grant the Non-Functional scale of the applicant w.e.f. 6.12.2017 in Grade Pay of Rs.5400/- after counting the deputation period service of the applicant as qualifying service by way of extending the benefits of judgment passed by the Hon'ble Tribunal, Calcutta Bench in OA No.1015/2013, Bombay Bench in OA No.52/2013 and Principal Bench in OA No.3867/2015 with all consequential benefits including the arrears of difference of pay and allowances.
- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the condition put in the impugned order dated 12.4.2017 for not counting the service rendered on deputation basis for the purpose of Non Functional Grade/Scale.



- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

2. The undisputed facts leading to the present OA and on the basis of the pleadings on record are that:-

2.1 The applicant was initially appointed under the Indian Railways on 4.3.1996. Thereafter the applicant joined the respondent No.2 as a SO/CO on deputation basis on 6.12.2013. Before his joining the services of the respondent No.2, the applicant was holding the substantive post of Chief Controller (Pay Band-2 Rs.9300-34800 with Grade Pay Rs.4600) in his parent department, i.e., the Indian Railways. The respondent No.2 issued Memorandum dated 9.6.2016 (Annexure R-1) seeking willingness of the applicant for his permanent absorption in the cadre of SO/CO under the respondent No.2 providing conditions therein that upon his absorption under the respondent No.2, he will be assigned seniority in the grade of SO/CO from the date of his permanent absorption and the absorption will not bestow upon him any right for counting the services rendered on deputation basis for the purpose of seniority in the grade of SO/CO as well as for eligibility for grant of Non-Functional Grade or regular promotion to the next higher grade. It was also provided therein that the post of SO/CO under the respondent



No.2 is having all India service liabilities and on absorption, he will be liable to be posted in any of the Bench where a vacancy is available at the relevant point of time. The applicant has submitted his willingness dated 16.6.2021 (Annexure R/2). The Departmental Promotion Committee constituted on 9.3.2017 did not recommend his case for absorption in the grade of SO/CO as the applicant was holding the substantive post of Chief Controller (Pay Band-2, Rs.9300-34800 with Grade Pay Rs.4600/-). However, the said Committee recommended his name subject to relaxation of the Clause of 'Group of Post' by the Hon'ble Chairman of respondent No.2. The competent authority keeping in view the relevant rules has approved the requisite relaxation and the applicant was permanently absorbed vide Office Order dated 12.4.2017 (Annexure A/2) as SO/CO, Group 'B' Gazatted w.e.f. 6.4.2017 in the level 8 of Pay Matrix corresponding to the pre-revised Pay Band-2 (Rs.9300-34800) with Grade Pay Rs.4800/-. In the impugned order dated 12.4.2017, it has been provided that the applicant will be assigned seniority in the grade of SO/CO under the respondent No.2 from the date of his permanent absorption and the absorption would not bestow upon him any claim for his absorption in the grade of SO/CO prior to the date of absorption and the services rendered on deputation basis in the grade of SO/CO would not be countered for the



purpose of seniority in that grade and for eligibility for grant of Non-Functional Grade/Scale or regular promotion to the next higher grade. The Govt. of India, i.e., respondent No.1 vide OM dated 1.4.2009 (Annexure A/7) introduced grant of Non-Functional pay scale of Rs.8000-13500/- to the Section Officers/Private Secretaries under the respondent No.2 on completion of four years of approved service in that grade initially w.e.f. 1.1.1996 on notional basis and on actual basis w.e.f. 3.10.2003. The respondent No.1 vide letter dated 28.9.2010 (Annexure A/3) conveyed to the respondent No.2 that for grant of Non-Functional pay scale, the period of four years approved service should be counted from the date of absorption and not from the date of deputation. One Private Secretary under the respondent No.2 approached the Calcutta Bench of this Tribunal vide OA No.1015/2012 and the issue was raised therein in the said OA that as to whether the services rendered as Private Secretary on deputation basis under the respondent No.2 shall be treated as approved service for grant of Non-Functional pay scale of Rs.8000-13500 or not. The Division Bench at Calcutta of this Tribunal vide Order/Judgment dated 8.10.2013 (Annexure A/4) held that the services rendered on deputation shall be treated as approved service for grant of Non-Functional pay scale of



Rs.8000-13500. The paragraphs 4 to 6 of the said Order/Judgment dated 8.10.2013 read as under:-

“4. The respondents in their reply stated that the applicant’s service of four years were not complete counting from the date of absorption and that is why his pay scale was refixed. They have quoted the DOP&T’s letter dated 28.02.2010 in this regard. It is further clarified vide DOP&T’s letter dated 28.09.2010 that the period of four years’ approved service should be counted from the date of absorption and not from the date of deputation. It is further stated that Hon’ble HOD, C.A.T., Guwahati while disposing of his application had held that the applicant’s claim of counting four years should be from 13.11.1998 and not from 30.06.1997. It is only thereafter that he was served a notice for recovery of overpayment on refixing of his pay.

5. The sole question to be decided is whether the period on deputation as Private Secretary before absorption in C.A.T., should be treated as approved service for the purpose of counting four years’ service. In view of the judgment of Hon’ble C.A.T., Principal Bench(Supra), Hon’ble High Court in Writ Petition No.4651 of 2011 and Hon’ble High Court in Rajendra Kumar & Ors.(supra) it is clear that the services of the applicant on deputation prior to absorption has to be counted for the purpose of counting the four years’ period towards approved service. In view of that the O.A. has to be allowed.

6. The O.A. is, therefore, allowed with a direction to the respondents to restore the pay of the applicant as was fixed by order dated 05.05.2009 treating the services of the applicant as Private Secretary on deputation in the Central Administrative Tribunal as approved services for grant of non-functional scale of Rs.800-13500/-. The order dated 21.12.2010 and 03.09.2012 are quashed with a direction to the respondents to refund the amount, if any, recovered from the applicant towards alleged overpayment as per notice dated 03.09.2012. The respondents are also directed to grant other consequential benefits



including the difference of pay and allowances etc. As a consequence of the above order. No order as to cost.”

Another OA being OA No.52/2013, titled **Sunny Joseph vs. Union of India and others**, was preferred before the Mumbai Bench of this Tribunal wherein quashing of letter dated 28.9.2010 and declaration to the effect that for grant of Non-Functional pay scale, the period spent on deputation prior to absorption will qualify towards eligibility for four years approved service/regular service in the grade etc. had been sought. Paras 8 to 15 of the said Order/Judgment dated 28.3.2014 read as under:-

“8. Heard the learned counsel for the parties.

9. Learned counsel for the applicant gave a complete chronology of the events and submitted that the applicant joined the CAT on 03.04.2000 and was absorbed in September, 2003. Therefore, the approved regular service was counted from 03.04.2000 and financial benefit given to the applicant in the non-functional selection grade. The counting of services right from the day a person joined on deputation and prior to his absorption has been decided by various judgments. He referred to the order passed by the Principal Bench in OA No.3718/2010 in O.P. Gaba vs. Union of India, Department of Science & Technology and DOPT, in which the Hon’ble Tribunal mentions as follows:-

“This Tribunal, relying on the above judgement of the Honourable Supreme Court, made the following observation in Sridhar Prakash V. Union of India and others, OA number 871/1995, decided on 05.09.1995:



A person appointed by way of transfer on deputation cannot be considered to be an adhoc employee. Transfer on deputation is also a method of recruitment according to the recruitment rules. Therefore, the appointment though on transfer on deputation was appointed regularly to the post of Sub-Inspector which carried a pay scale of Rs. 380-560. Though the applicant was absorbed in service only on 25.08.1984 and probably entitled to seniority in that grade only with effect from that date his services rendered prior to absorption as a deputationist being regular service has to be treated as regular service in determining eligibility for promotion. Even if the applicant was holding a lien on a post in the parent department which has a different pay scale does not alter the position. We are, therefore, of the considered view that the five years period for determining the eligibility should be reckoned from 10.2.1982 and not from 25.08.1984. We supported in taking this view by the dictum of the ruling of the Hon'ble Supreme in Shir K.Madhavan Vs. UOI, in 1987 Vol (4) SCC 566 where it was held that the services rendered on deputation prior to regular absorption can be treated as regular service for the purpose of eligibility for promotion..

The Respondents are directed to consider the Applicant for in situ promotion under FCS and promote him, if found fit, from the date he completed four years of residency after coming on deputation in the year 2004. Since the Applicant has not been promoted because of the fault of the Respondents, he would be eligible for all consequential benefits including arrears of pay from the date of his promotion and also count his eligibility for promotion to the grade of Scientist 'E' from that date in the year 2008."

The above order of the Principal Bench was also upheld by the High Court of Delhi in WP No.4751/2011. He also referred to the order passed by



the Calcutta Bench in OA No.1015/2012 in the case of *Ajay Kumar Chinya Vs. DOPT & CAT, Principal Bench* in which the Tribunal observed as follows:-

“3. The applicant’s case is that in the order dated 01.04.2009 in Para 2(i) it is mentioned that:-

“Grant of non-functional pay scale of Rs.8000-13500/- is admissible to Section Officers/Private Secretaries of C.A.T. on completion of four years of approved service in that grade subject to their vigilance clearance.”

‘Approved service’ has not been explained or defined. According to the applicant, his service on deputation between 30.06.1997 till the date of his absorption i.e. from 13.11.1998 should be treated as approved service because he was selected by CAT as per the Recruitment Rules through proper procedure, and, therefore, that period should be treated as on regular service. It is contended that there is no definition of ‘approved service’ and, therefore, the literal meaning available in the dictionary has to be borrowed and shall connote the meaning ‘sanctioned service’ and since his deputation was as per the Recruitment Rules by the competent authority, it should be treated as regular service.

The following judgments were cited in support of his contentions:-

(a) O.A. 3718/2010 of Principal Bench – In this case, the issue was whether the period of deputation before absorption in a particular grade will be counted as eligibility period for promotion and the Hon’ble CAT held that the date shall be counted from the date of coming on deputation. The same was challenged in Writ Petition No.4751 of 2011 before the Hon’ble High Court and Hon’ble High Court dismissed the same.”



(b) W.P.(Civil) No.14097-100/2005 (Dr. Rajendra Kumar & Ors. Vs. Govt. of NCT of Delhi) Here again the issue is whether the period spent on deputation should be counted for the purpose of regular service and the Hon'ble High Court held that the date should be counted from the respective appointment on deputation for the purpose of fulfilling the condition of five years service.

4.

5. The sole question to be decided is whether the period of deputation as Private Secretary before absorption in C.A.T., should be treated as approved service for the purpose of counting four years' service. In view of the judgment of Hon'ble CAT, Principal Bench(Supra), Hon'ble High Court in Rajendra Kumar & Ors.(supra) it is clear that the services of the applicant on deputation prior to absorption has to be counted for the purpose of counting the four years' period towards approved service. In view of that the O.A. has to be allowed."

10. He also mentions that the similar order has been passed by the Ernakulam Bench of CAT in OA No.45/2008 which was upheld by the Hon'ble High Court of Kerala. He also mentions that the order of WP No.14097-14100/2005 in the case of *Dr. Rajendra Kumar vs. National Capital Territory of Delhi*, which have been referred to in the order of the Calcutta Bench has also been upheld by the Supreme Court in CA No.1753/2007. Therefore, learned counsel submitted that the order communicated by the Principal Bench dated 20.12.2011 saying that for grant of non-functional grade, the period of four years of approved service should be counted from the date of absorption and not from the date of deputation is not sustainable and should be quashed. The benefit already being provided to the applicant reckoning his approved regular service from 03.04.2000 should not be unsettled in view of the order of DoPT which is



unsustainable. Learned counsel for applicant submitted that he is not pressing for other reliefs sought in the application, i.e. to allow the service rendered in equivalent grade on deputation basis in other Department prior to joining CAT towards eligibility criteria of four years' approved regular service.

11. Learned counsel for the respondents reiterated the position already submitted in the written reply and explained earlier and submitted that the communication dated 20.12.2011 which is under challenge was based on DOPT's decision communicated vide letter dated 20.09.2010 saying for grant of non-functional scale, the period of four years approved service should be counted from the date of absorption and not from the date of deputation. This has also been communicated to the applicant by letter dated 06.01.2012. Therefore, the OA has no merit.

12. We have carefully considered the facts of the case and submission made by the parties. The issue here relates to the date from which the service of the applicant should be considered as regular/approved service for the purpose of awarding non-functional grade. The applicant joined the CAT Mumbai on 03.04.2000 on deputation and become permanently absorbed on 19.09.2003. Counting services for the period when an employee is under deputation till he is absorbed in that grade on regular basis as regular service/approved service has been clearly decided in various orders passed by Principal Bench and other benches of the Tribunal which have been highlighted in the preceding paras. Since there has been no order/judgment to the contrary, it can be accepted that all these orders of the Court have attained finality. The case of the applicant is exactly similar to the case of the applicant in OA No.1015/2012 before the Calcutta Bench of this Tribunal where the Tribunal has held that the services of the applicant on deputation prior to absorption has to be counted for the purpose of counting of four years period towards the approved service. This seems to be quite logical and there does not seem any reason for holding any contrary view. The same principle will apply in this case also.



13. Therefore, after careful consideration, we hold that in the case of the applicant, the period of regular/approved service shall be counted from the date he joined the CAT, Mumbai on deputation basis i.e. from 03.04.2000 and not the date when he was absorbed in the CAT. The communication from DOPT dated 28.09.2010 based on which the letter of 20.12.2011 (Annexure A-1) and subsequent letter of 17.01.2012 were issued violates the principles already held by the different benches of this Tribunal in various judgments which have also been upheld by High Courts. Accordingly, the Communication at Annexure A-1 as well as the DOPT letter of 28.09.2010 based on which this communication was issued are quashed. The service of the applicant from 03.04.2000 when he joined CAT, Mumbai on deputation shall be counted towards regular/approved services and he is entitled to all the benefits based on the same.

14. The applicant in the relief claimed in the OA had also sought direction for computing the services rendered by him on previous ex-cadre post carrying identical post scale treating the same as regular service or approved service in the grade of Private Secretary. The same does not stand to reason as he had gone back to the previous lower scale on reversion and the service on deputation is not continuous. However, since the learned counsel for the applicant during the pleadings did not press for this relief, we are not going in to the merit of this relief in detail or consider the same.

15. The Original Application is, therefore, allowed in terms of the above direction. No order as to costs.”

Further similarly placed persons approached this Bench of the Tribunal by way of OA 3867/2015 and in the said OA also issue was identical i.e. as to whether period of four years of approved service should be counted from the date of absorption or from the date of deputation for grant of Non-Functional grade. This



Tribunal vide Order/Judgment dated 25.1.2017 allowed the said OA. Paragraphs 9 to 11 of the Order/Judgment dated 25.1.2017 read as under:-

“9. When the same issue came up before the Calcutta Bench in A.K. Chinya’s case and Bombay Bench in Sunny Joseph’s case, the Tribunal held that the four years’ period has to be counted from the date they joined on deputation and not from the date they were absorbed. In fact, the letter dated 28.09.2010 relied upon by the respondents has already been quashed in Sunny Joseph’s case. In A.K. Chinya’s case, the Tribunal had been guided by orders of the Principal Bench in O.A. No. 3718/2010 and of the Hon’ble High Court in **Dr. Rajendra Kumar & Ors. vs. Govt. of NCT of Delhi** in WP(C) No.14097-100/2005, in both of which it was held that date shall be counted from the date of coming on deputation.

10. It is clear that these orders are declaratory in nature and the applicants cannot be denied the benefit of these orders on the ground that they had not approached the court. The principle laid down by the Hon’ble Supreme Court in **Ghanshyam Dass** (supra) is that litigants should not be forced to approach courts unnecessarily and it is the duty of the authority to extend the benefit of a concluding decision in all similar cases.

11. In view of the clear finding of the Tribunal/High Court and the law settled by the Hon’ble Supreme Court that if an order is declaratory in nature, then it is the Government’s duty to give the benefit to all the similarly situated persons, we allow this O.A. Order dated 12.06.2015 with order dated 18.06.2015 and 10.03.2015 are hereby quashed and set aside and the respondents are directed to count the deputation period service of the applicants as approved/regular service for the purpose of grant of nonfunctional scale of Rs.8000-13500 on completion of four years of service. No order as to costs.”



In view of the aforesaid judgments of Calcutta Bench, Mumbai Bench and this Bench of this Tribunal, the applicant approached this Tribunal earlier vide OA No.3973/2018 and this Tribunal vide Order dated 17.10.2018 (Annexure A/8) disposed of the said OA with direction to the respondents to consider the applicant's representation dated 12.01.2018 along with the OA keeping in view the judgments and to pass appropriate reasoned and speaking order. Purportedly in compliance of aforesaid direction of this Tribunal dated 12.1.2018 passed in the said OA filed by the applicant, the impugned order dated 5.12.2018 (Annexure A/1) has been passed.

3. Pursuant to notice from this Tribunal, the respondents have filed their counter reply and the applicant has also filed his rejoinder.

4. We have heard the learned counsels for the parties.

5. Shri Sharma, learned counsel for the applicant has argued that the reason for refusing the claim of the applicant has already been adjudicated by this Tribunal in the aforesaid cases in which identical issue was raised and the judgments were passed by the three Benches of this Tribunal and it has been clearly ruled therein that the period spent on deputation is required to be taken into consideration for grant of Non-Functional pay scale



and, therefore, the impugned order dated 5.12.2018 (Annexure A/1) is bad in the eyes of law. He has further argued that in spite of the fact that the issue had already been decided by this Tribunal in the aforesaid three cases that the period spent on deputation shall be required to be counted for grant of Non-Functional pay scale, the condition was made in the order dated 12.4.2017 (Annexure A/2) that the period rendered on deputation in the grade of SO/CO will not be counted for the purpose of grant of Non-Functional pay scale is bad in the eyes of law. Learned counsel for the applicant has relied upon the law laid down by the Hon'ble Apex Court in the case of **Bharat Sanchar Nigam Limited v. Ghanshyam Dass and others** (2011 (4) SCC 374, wherein it has been ruled as under:-

“It is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief only in the following circumstances:-

- (a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;
- (b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;
- (c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and



(d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the right which had accrued to others."

It is also argued that this Tribunal vide Order/Judgment dated 25.11.2017 (Annexure A/6) has clearly ruled that the orders referred to therein are declaratory in nature and the applicant cannot be denied the benefits of those Orders/Judgments on the ground that they have not approached the Court. He has further added that in spite of consistent view by this Tribunal in all the aforesaid three Orders/Judgments, which have attained finality, the respondents have not only incorporated the condition, which has already been quashed, in the impugned order dated 12.4.2017 (Annexure A/2) but have also rejected the claim of the applicant vide impugned order dated 4.12.2018 and, therefore, the same is bad in the eyes of law and the applicant is entitled for the reliefs sought in the present OA. Learned counsel for the applicant has further placed reliance on the Judgment of the Hon'ble Apex Court in Civil Appeal No.1549/2011 in the case of ***The State of Punjab and others vs. Dharam Pal*** decided on 5.9.2017 to contend that even if the applicant has accepted the



offer for absorption which contains illegal condition, the applicant will not be precluded from the reliefs sought in the present OA. To substantiate his such argument, learned counsel for the applicant invites our attention to para 22 of the said Judgment of the Hon'ble Apex Court, which reads as under:-

“22. In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in **Smt. P. Grover** (supra) and **Hari Om Sharma** (supra). As far as the authority in **A. Francis** (supra) is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in **Hari Om Sharma**, (supra) and resultantly we hold that the view expressed by the High Court is absolute impeccable.”

6. Learned counsel for the applicant has further submitted that though the claim of the applicant is squarely covered by the aforesaid Orders/Judgments of this Tribunal, however, the claim of the applicant is further strengthened in view of the decision of this Tribunal in Order/Judgment dated 3.3.2011 passed in OA No.3718/2010 in the case of **O.P. Gaba vs. Union of India and others**. The para 6 of the said Order/Judgment dated 3.3.2011 reads as under:-



“6. In view of the above discussion, we are of the considered opinion that the impugned order dated 08.06.2010 is illegal. The impugned order is accordingly quashed and set aside. The Respondents are directed to consider the Applicant for in situ promotion under FCS and promote him, if found fit, from the date he completed four years of residency after coming on deputation in the year 2004. Since the Applicant has not been promoted because of the fault of the Respondents, he would be eligible for all consequential benefits including arrears of pay from the date of his promotion and also count his eligibility for promotion to the grade of Scientist 'E' from that date in the year 2008. These directions would be complied with within four months of receipt of a certified copy of this order. No costs.”

He has also placed on record the Order/Judgment dated 3.9.2020 of the coordinate Bench consisting one of us (Hon'ble Mohd. Jamshed, Member (A)) of this Tribunal passed in OA 876/2020 in the case of ***D.D. Parlawar vs. National Highways Authority of India***. In the said Order/Judgment also, the Tribunal has relied upon the Order/Judgment dated 5.4.2016 of the Hon'ble High Court of Delhi in Writ Petition (Civil) No.9227/2014. In para 8 of the said Order/Judgment, this Tribunal has quoted para 11 of the Order/Judgment of the Hon'ble High Court of Delhi dated 5.4.2016, which reads 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 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."

Further reliance has been placed on another Order/Judgment of the coordinate Bench dated 7.12.2020 in OA 1229/2020, titled ***Vipin Mangla and others vs. National Highways Authority of India and others***, wherein it has been held that the services rendered by the officers of NHAI on deputation must be counted in the context of determining eligibility condition for the next higher post.

7. *Per contra*, learned counsel for the respondents with the assistance of the reply filed on behalf of the respondents has argued that in the letter dated 9.6.2016 seeking willingness of the applicant for his permanent absorption, it was clearly provided that the applicant's services on deputation shall not be counted for the purpose of seniority for regular promotion and/or for grant of Non-Functional grade and the same has been accepted by the applicant and only thereafter the order of absorption has been passed in favour of the applicant and, therefore, the applicant is estopped from challenging the said conditions. He has further argued that the applicant before coming on deputation under the respondent No.2 was though in Pay Band-2 Rs.9300-34800/-, however, his Grade Pay was Rs.4600/- and whereas the applicant



had joined the services of respondent No.2 on deputation basis as SO/CO in the same Pay Band i.e. Rs.9300-34800/-, however, with Grade Pay Rs.4800/-. He has contended that the Grade Pay of the applicant in his parent department, i.e., the Indian Railways was less than the Grade Pay which was admissible to the post of SO/CO under the respondent No.2 on which the applicant came on deputation. He has further argued that the applicant was absorbed only in view of relaxation of Rules by the Hon'ble Chairman keeping in view his acceptance of the rider and the recommendations of the concerned DPC. He has further argued that in terms of the earlier directions of this Tribunal vide Order/Judgment dated 17.10.2018 in OA 3973/2018 filed by the applicant, the representation of the applicant has already been considered and a detailed dated 5.12.2018 (Annexure A/1) has been passed and, therefore, indulgence of this Tribunal any further is not required. He has placed reliance upon the law laid down by the Hon'ble Apex Court in the Order/Judgment dated 28.4.2006 in Civil Appeal No.6960/2005, titled **Indu Shekhar Singh and others vs. State of U.P. and others**, reported in (2006) 8 SCC 129. He has argued that in view of the law laid down by the Hon'ble Apex Court in the case of **Indu Shekhar Singh** (supra), the applicant is not entitled to seek counting of his



services spent as SO/CO on deputation basis under the respondent No.2 for grant of Non-Functional grade benefits.

8. We have carefully considered the submissions made by the learned counsels for the parties and have also perused the pleadings on record. It is not in dispute that the applicant has joined the services of the respondent No.2 in the grade of SO/CO in view of the selection process therefor and in accordance with the provisions of the relevant Recruitment Rules. It is also not in dispute that the applicant was absorbed in the grade of SO/CO under the respondent No.2 in view of the recommendations of the concerned DPC and by the competent authority, i.e., the Hon'ble Chairman of this Tribunal keeping in view the relevant Rules and instructions on the subject. It is also not in dispute that deputation is also a known source of appointment in the eyes of law and rules. Moreover, the issue as to whether a person who has been appointed on deputation by the competent authority, the services spent on deputation shall be required to be taken into account for grant of upgradation/Non-Functional grade has been raised and adjudicated by the various Benches of this Tribunal and most of them have been referred to and relied upon by the applicant and have also been precisely noted hereinabove, the said issue is no more *res integra*. The stand of the respondent No.1 vide their OM dated 28.9.20210 (Annexure A/3) that the



period only after absorption is required to be taken into consideration for grant of Non-Functional grade has already been rejected by the Calcutta Bench, Mumbai Bench as well as this Bench of this Tribunal in the cases referred to hereinabove and the said judgments have attained finality and have been given effect to. In another case titled ***D.D. Parlawar vs. National Highways Authority of India*** (supra), this Tribunal has already ruled, as noted hereinabove, that the period spent on deputation is required to be taken into consideration for determining the eligibility for promotion to the next higher grade. The said judgments have attained finality and the said Order/Judgments have been passed by referring to and relying upon the law laid down by the Hon'ble High Court as well as of the Hon'ble Supreme Court. So far as the reliance of the learned counsel for the respondents on the law laid down by the Hon'ble Apex Court in the case of ***Indu Shekhar Singh*** (supra) is concerned, the same has been referred to by the learned counsel for the applicant also. We have gone through the same. In the said Judgment, it is clearly noted as under:-

“The High Court evidently proceeded on the premise that seniority is a fundamental right and thereby, in our opinion, committed a manifest error.

The question which arises is as to whether the terms and conditions imposed by the State in the matter of absorption of Respondent Nos. 2 to 4 in the permanent



service of Ghaziabad Development Authority is ultra vires Article 14 of the Constitution of India."

We are of the considered view that in the said case, the Hon'ble Apex Court was considering as follows:-

"In Ram Janam Singh (supra) this Court held:

"...It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service which will be consistent with the requirement of Articles 14 and 16 of the Constitution. Of course, if the circumstances so require a group of persons, can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority. But, whether such group of persons belong to a special class for any special treatment in matters of seniority has to be decided on objective consideration and on taking into account relevant factors which can stand the test of Articles 14 and 16 of the Constitution. Normally, such classification should be by statutory rule or rules framed under Article 309 of the Constitution. The far-reaching implication of such rules need not be impressed because they purport to affect the seniority of persons who are already in service."

There is yet another aspect of the matter, which cannot be lost sight of. This Court, in D.R. Yadav & Anr. vs. R.K. Singh & Anr. [(2003) 7 SCC 110], having regard to the statutory scheme, opined:

"What was, therefore, relevant for the purpose of determination of seniority even in terms of Rule 7 of the 1985 Rules, was the continuous service rendered by the employees concerned "on similar posts", which would mean posts which were available having been legally created or borne on the cadre.

The ad hoc or temporary promotion granted to the appellants on 3-5-1986 and 13-1-1987 respectively on non-existent post of Assistant Executive Engineer



would not, therefore, confer any right of seniority on them. Thus, for all intent and purport for the purpose of determination of seniority, the appellants were not promoted at all. Once they have been absorbed with Respondent 1 and other employees similarly situated, their inter se seniority would be governed by the statutory rules operating the field. The case of the appellants vis-à-vis Respondent 2 although may be governed by the special rules, in terms of Rule 7, the same has to be determined on the criterion of continuous length of service including the service rendered in a Development Authority, Nagar Mahapalika, Nagarpalika or Improvement Trust on similar posts. The appellants, it will bear repetition to state, although were promoted at one point of time on purely ad hoc basis to the post of Assistant Executive Engineer as the said posts even in their parent authority were not of similar type, the same would not be relevant for the purpose of determining the inter se seniority. If the rule of continuous service in same and similar posts is to be resorted to, the date of initial appointment would be a relevant criterion therefor. [See M. Ramchandran v. Govind Ballabh (1999) 8 SCC 592, K. Anjaiah v. K. Chandraiah (1998) 3 SCC 218, Vinod Kumar Sharma v. State of U.P. (2001) 4 SCC 675 and S.N. Dhingra v. Union of India (2001) 3 SCC 125.] xx xx xx xx As the post of Assistant Executive Engineer was not a cadre post, the appellants cannot be said to have been working on a higher post for the purpose of Rule 7 of the 1985 Rules."

For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly."

9. It is evident from the above that the facts and rules before the Hon'ble Apex Court in the case of **Indu Shekhar Singh** (supra) were entirely different than the one in the present case. Accordingly, we are of the considered view that the Judgment of



the Hon'ble Apex Court in **Indu Shekhar Singh** (supra), is of no help to the respondents.

10. In view of the aforesaid facts, discussion and law on the subject, we are of the considered view that OA deserves to be allowed and the same is accordingly allowed with the following directions:-

- (i) The impugned order dated 05.12.2018 (Annexure A/1) is quashed. Condition in the order dated 12.04.2017 (Annexure A/2) that period spent on deputation on the post of SO/CO shall not be counted for determining eligibility for grant of Non-Functional grade is also quashed;
- (ii) The respondents are directed to count the services of the applicant spent on deputation under the respondent No.2 as 'approved/regular service' for the purpose of grant of Non-Functional pay scale of Rs.8000-13500/-;
- (iii) The respondents shall re-fix the pay of the applicant keeping in view the aforesaid direction;
- (iv) The respondents shall grant consequential benefits, i.e., difference of pay etc. to the applicant;



- (v) The aforesaid exercise shall be completed by the respondents as expeditiously as possible and in any case within a period of eight weeks of receipt of a copy of this Order.

11. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(R.N. Singh)
Member (J)

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