

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 312/2013

Jodhpur, this the 5th day of September, 2013

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Judl. Member
Hon'ble Ms. Meenakshi Hooja, Adm. Member

Lokesh Singh Rajpurohit s/o Shri Ganpat Singh Rajpurohit, aged about 43 years r/o B-404, Udaipur, New Flora Complex, Pula, Udaipur, at present working as Manager (Tech.) under office of the NHAI, PIU, Udaipur, 10-A, Panchwati, Udaipur.

.....Applicant

Mr. (Dr.) P.S.Bhati and Mr. R.S.Shekhwat, counsel for applicant

Versus

1. Union of India through the Secretary, Ministry of Road Transport and Highways, 1, Parliament Street, Transport Bhawan, New Delhi.
2. The National Highway Authority of India through its Chairman, G-5 and 5, Sector-10, Dwarka, New Delhi- 110 075.
3. Chairman, the National Highways Authority of India, G-5 and 5, Sector-10, Dwarka, New Delhi-110 075.

.....Respondents

Mr. Manish Sisodia and Mr. Vinit Sandhiya, counsel for respondents

ORDER (Oral)

This application has been filed by Shri Lokesh Singh Rajpurohit under Section 21 of the Administrative Tribunals Act, 1985 challenging legality of the order Ann.A/1 dated 29.8.2012 and A/1A dated 29.7.2013 and prayed to direct the respondents to absorb the applicant on the post of Manager (Tech.) in the National Highway Authority of India (NHAI) as per the consequence of absorption process initiated on 28.11.2009 and give him all consequential benefits. It has also been prayed to restrain the respondents from repatriating the applicant to the parent department and to absorb the applicant as per the absorption process initiated on 28.11.2009 with any appropriate relief which this Tribunal may deem just and proper in the facts and circumstances of the case.

2. The short facts of the case as brought out by the applicant are that the applicant was initially appointed with the PWD on the post of Junior Engineer and since then he was continuously discharging his duties with utmost sincerity and dedication. The National Highway Authority of India became functional in the year 1995 and Recruitment, Seniority and Promotion Regulations, 1996 were notified for the purpose of carrying out function of the NHAI. In the month of October, 2004, the NHAI invited applications for the post of Manager (Technical) on deputation basis vide advertisement Ann.A/2. The applicant was working on the post of Junior Engineer, therefore, he applied through proper channel vide application dated 11.10.2004 and the same was forwarded by the competent authority. The parent department of the applicant gave the NOC vide letter dated 16.4.1005. After recommendations of the

Selection Committee, the respondents issued a list of selected candidates and vide order dated 5.5.2005, the applicant was appointed on the post of Manager (Technical) on deputation basis. In para-4 of the advertisement a condition has been specifically laid down that the candidates initially appointed on deputation basis will be considered for absorption in accordance with the policies and requirement of the NHAI. The NHAI issued a notification dated 23.10.2009 in exercise of the powers conferred by Section 35 read with Section 9, of the NHAI Act, 1988 and NHAI made the regulations further to amend the NHAI (Recruitment, Seniority) Regulations, 1996. These Rules are called NHAI (Recruitment, Seniority, Promotion) Third Amendment Regulations, 2009 and Regulation No.3 has been inserted by third amendment in the Regulations of 1996 i.e. regarding absorption. The applicant's application for absorption is pending before the respondent department as per Regulation 13 of Regulations of 1996, therefore, repatriation of the applicant is bad in the eyes of law as the applicant is presently working on deputation basis in the respondent department.

3. The Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Govt. of India issued Office Memorandum dated 20.11.2009 giving relaxation in the guidelines in respect of officers who are working in NHAI on deputation basis and now the officers who are on deputation with NHAI can be retained beyond the prescribed period of 5 years as per Ann.A/8. In his parent department the applicant was also promoted on the post of Assistant Engineer vide office order dated 18.6.2008 (Ann.A/9).

The NHAI thereafter issued advertisement in December, 2008 whereby applications were invited from the officers under the Central/State Government Departments/Autonomous Bodies/Public Sector Undertakings for appointment by direct recruitment through lateral entry. The applicant also applied for the post of Manager (Technical) by direct recruitment. Applicant's application was forwarded by his parent department for appointment on direct recruitment basis. The period of deputation of the applicant was extended by the respondents upto 20.4.2010 vide order dated 1.9.2009. The applicant was called for interview on 30.9.2009 but subsequently this date was changed to 8.10.2009. Later, upon approval of the Minutes of 74th Meeting of the office of respondent No.2, applications were invited vide OM dated 28.11.2009 for permanent absorption and last date was extended for filing application upto 18.12.2009.

4. On 4.12.2009, the applicant submitted application for permanent absorption and his application is still pending with the respondent department. It has been averred by the applicant that on the basis of continuous working under respondent No,4, the deputation period has been extended from time to time. The respondent department conducted interview on 15.3.2010 for appointment of the applicant on the post of Manager (Technical) on absorption basis. While, the selection process was being conducted an amendment was introduced in the NHAI (Recruitment, Seniority and Promotion) Regulations, 1996 changing the constitution of the selection committee. The respondent NHAI

has conducted the interviews after declaring the list of provisionally eligible candidates for appointment to the post of Manager (Technical) on permanent absorption basis on their official website, in which the applicant stood at S.No. 15.

5. Some of the similarly situated persons challenged the process of lateral entry in accordance with Rules of 1996 and this Tribunal passed the order while disposing of seven connected OAs and directed the respondents to complete the process within a period of six weeks. The respondent department subsequently passed the office order dated 13.12.2010 for repatriation of the employees in which the applicant's name was also there. The applicant and other similarly situated persons also filed OA No.179/2011 before this Tribunal and after hearing the matter this Tribunal directed the respondents not to repatriate the applicant till such time a final decision as regards regular absorption of the applicant is taken by them. The applicant and other similarly situated persons filed OA No.179/2011 as they would be repatriated to their parent department without considering their case for permanent absorption. The Central Administrative Tribunal in an another case ordered vide order dated 29.9.2011 that there is no need to the respondents to wait indefinitely for no objection from the parent department and this order was passed in the light of para-7 of Regulation 13 of the NHAI Third Amendment Notification 2009 in which power to relax any of the provisions of these guidelines remains with the authority.

6. The NHAI preferred D.B. Civil Writ Petition No. 3822/2012 before the Hon'ble High Court of Delhi and the Hon'ble Delhi High Court stayed the order dated 29.9.2011. However, the learned counsel for NHAI assured the Hon'ble Court that continued efforts would be made to obtain no objections from the parent department. The NHAI has been continuously making correspondence with the parent department of the applicant and requesting them to give their willingness and NOC, but in vain. The NHAI gave the cut off date as 31.7.2012 for presenting the NOC and if the parent department does not give the consent/NOC then the applicant would be relieved from NHAI. The cut off date was challenged by the applicant by way of filing SB Civil Writ Petition No. 7785/2012 in which the Hon'ble High Court has issued notices. The said Writ Petition was dismissed vide order dated 17.4.2013 on the stand taken by the respondents that the NOC was no longer required from the State Government. On 30.8.2012, the NHAI again wrote a letter to the parent department of the applicant and similar other letters were also issued.

7. The NHAI (Recruitment, Seniority and Promotion) Fourth Amendment Regulation, 2012 was notified on 24.8.2012 whereby the Selection Committee was slightly amended while finalizing Regulation 11 of the Regulations of 1996. The Chairman, NHAI contrary to the Regulations of 1996 and all the future amendments has passed order dated 21.9.2012 whereby the regional officers are suppose to give complete assessment of each officer. The applicant, however, participated in the selection process initiated

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vide advertisement of December, 2008 and the interview letter issued vide letter dated 7.9.2009. The result of the lateral entry is still awaited, meanwhile, the absorption process started on 2.12.2009 and the applicant submitted his application form on 4.12.2009 which after screening was published as list of provisionally eligible candidates for interview. The applicant would have been selected had the NOC been released by the parent department of the applicant.

8. It has been further averred by the applicant that the amendment in the Regulations and the last letter dated 21.9.2012 was not applicable on the applicant and his absorption was to be completed as per the earlier exercise which already stood finalized. However, a circular was issued on 29.8.2012 whereby fresh applications were invited for absorption but the persons like the applicant who had applied in response to the circular dated 28.11.2009 were exempted from applying again. The applicant has been shocked that without any information, intimation and opportunity or any kind to notice, a fresh circular dated 29.8.2012 was issued regarding fresh process. In the new selection process, there was neither an advertisement nor screening, nor interview or assessment of ACR. On these parameters, the selection process for absorption in pursuance of circular dated 29.8.2012 is bad in the eyes of law.

9. The applicant filed another Writ Petition No. SB CWP No. 12206/2012 in which the Hon'ble High Court vide order dated

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9.11.2012 directed the NHAI not to repatriate the petitioner. In this Writ Petition, the Government took a stand that NOC from State Government was no more issue and, therefore, it does not prejudice the applicant anymore and, therefore, now the contest of the rights only remains with NHAI. In this changed dimension, while the earlier Writ Petition was declared infructuous and the Writ Petition in which interim order continued until 26.7.2013 was withdrawn with liberty to pursue the remedy with the Central Administrative Tribunal.

10. Being aggrieved by the process of recruitment/absorption and the order of repatriation, the present OA has been filed praying for the following reliefs:-

- (a) By an appropriate order or direction, the absorption process in pursuance of circular dated 29.8.2012 (Annex.A/1) and order dated 29/7/13 (Ann.A/1/A) may kindly be quashed and set aside.
- (b) By an appropriate order or direction, the respondents may kindly be directed to absorb the applicant on the post of Manager Technical with NHAI as per the consequence of absorption process initiated on 28.11.2009 and give him all consequential benefits.
- (c) By an appropriate order or direction, the respondents may kindly be restrained from repatriating the applicant in the parent department i.e. respondent no.1.
- (d) By an appropriate order or direction, the respondents may kindly be directed to absorb the applicant on the post of Manager (Technical) in pursuance of the Regulations of 1996 and further amendments.
- (e) By an appropriate order or direction, while considering the applicant for Manager (Technical) as per the absorption process initiated on 28.11.2009, the respondents may be directed to complete the absorption process as per the then regulations and further amendments of doing away with the advertisement, screening committee and interview

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may not be made applicable upon the absorption process upon the applicant and also the letter dated 29.8.2012 of the Chairman may also be ignored for completing the selection process.

- (f) Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- (g) Application of the applicant may kindly be allowed with costs.

11. The respondents by way of counter have averred that the applicant in the instant case has not only made mis-statements but also concealed important facts from the knowledge of this Hon'ble Tribunal and the OA has been filed by suppressing many glaring factual information which directly and substantially affect adjudication of present case. With regard to SBCWP No. 7785/2012, Lokesh Singh Rajpurohit and ors. vs. State and ors before the Hon'ble High Court against the action of Govt. of Rajasthan withholding the consent regarding absorption in NHAI, it is stated that the State Govt. did not issue NOC/consent, then the NHAI vide notification dated 24.8.2012 (Ann.A/31) amended the Regulation 13 (5)(d) of the National Highways Authority of India (Recruitment, Seniority and Promotion), 1996. As per the said amendment the requirement of consent from parent department was dispensed with in case of acceptance of resignation/voluntary retirement of the officers or employees by the parent department. During the pendency of said Writ Petition, the applicant alongwith other incumbents were considered for absorption but the applicant was found unsuitable for the same. Subsequently, during pendency of earlier Writ Petition, the applicant has filed another SBCWP No.12206/2012 challenging

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his non selection for absorption. However, when the Writ Petition No. 7785/2012 came up for hearing, the Hon'ble High Court vide order dated 17.4.2013 dismissed the said Writ Petition. Later on the subsequent Writ Petition No. 12206/2012 was also dismissed by the Hon'ble High Court.

12. It has been further averred that deputation of the applicant was extended from time to time but as per the sixth amendment in the NHAI (Recruitment, Seniority and Promotion) Rules, 1996 published in the official gazette on 22.11.2012 (Ann.R/9) the maximum deputation period is fixed upto seven years. The applicant has already completed aforesaid maximum deputation period but due to ex-parte interim orders of Hon'ble High Court he could not be repatriated and relieved to his parent department. Further, the Department of Personnel and Training, Govt. of India vide its office memorandum dated 1.3.2011 (Ann.R/10) followed by OM dated 16.5.2013 (Ann.R/11) made clear that the deputationist officer is deemed to have been relieved on the date of expiry of the deputation period unless the competent authority extended the period of deputation. Therefore, on the basis of above circulars, the applicant is deemed to have been relieved as his deputation period has been ended when the interim order has been ended alongwith dismissal of Writ Petition on 26.7.2013 and respondent No. 3 relieved the applicant on 29.7.2013.

13. It has been further averred in the reply that it is a settled preposition of law that absorption of a deputationist is a pure

discretion of the borrowing department and the deputationist can not claim the same as a matter of right. In addition to it, the applicant has not cleared the requisite criteria for absorption, therefore, he could not be absorbed. The applicant has challenged his non selection for absorption and the order dated 29.7.2013 (Ann.A/1/A) whereby he was repatriated and relieved to the parent department, but the present OA is not maintainable firstly because both the reliefs arose out of separate cause of action and the same cannot be claimed jointly in the instant OA and secondly, because in the entire OA there is no factual or legal foundation for challenging the order dated 29.7.2013. It has been further averred that that it is settled preposition of law that unless the necessary facts are averred in the pleadings regarding any particular order, it cannot be challenged nor any relief can be sought against it.

14. It is submitted that the applicant cannot claim his absorption as a matter of right as it is a prerogative/discretion of the organization to absorb or not to absorb the officer depending upon the circumstances, policy and rules of NHAI. It is denied that the applicant is fulfilling all the requirements of Regulation 13 of the NHAI (Recruitment, Seniority and Promotion) Regulations, 1996. As per clause (5) of Regulation 13 certain criteria for absorption have been prescribed. The applicant along with other incumbents was considered in absorption process but he was not found suitable for absorption. The respondents have annexed result of the selected candidates for absorption as Manager (Tech.) in NHAI as Ann.R/14. Further, the process of absorption had been completed and due to

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non-suitability of the applicant he was not selected for the same. He has already completed more than 7 years tenure on deputation basis, therefore, as per DOPT guidelines he has to be repatriated immediately after expiry of the deputation period. It is further stated that when candidature of the applicant was considered by the Selection Committee and he was not found fit for absorption now his case for extending the period of deputation cannot be considered. Even as per amended Regulation 13(5) issued vide notification dated 24.8.2012, the applicant is not eligible for absorption. It has been further averred that the allegation made by the applicant are baseless and without substance. By way of reply, the respondents have denied the facts averred in the OA and prayed to dismiss the OA.

15. Heard both the parties. Counsel for the applicant contended that the respondent department intentionally amended various provisions and procedure for absorption process and by way of arbitrary action of the respondent department less meritorious and qualified persons were absorbed by the respondents and the applicant was deprived from the absorption intentionally and malafidely. The counsel for the applicant further contended that after starting process of recruitment for absorption, no amendment can be made by the department and in the present case, the respondent department amended the basic criteria of recruitment, therefore, entire process of absorption be quashed and in support of his arguments, he relied upon the following authorities:-

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(i) Order of the Hon'ble Apex Court passed in Civil appeal No. 6227 of 2008 (Arising out of S.L.P. (C) No. 26556 of 2004), Abhijit Ghosh Dastidar vs. Union of India and Ors.

(ii) Judgment dated 16.3.2005 of the Hon'ble Apex Court in Secretary, A.P. Public Service Commission vs. Swapna and ors. in Appeal (Civil) 1775 of 2005.

16. We have perused both the judgments. In Civil appeal No. 6227 of 2008, the Hon'ble Apex Court held that if the entries which are adverse to the public servant must be communicated. The learned counsel while relying upon this decision contended that ACR of the applicant for 2 ½ years were 'Very Good' but the same were not communicated to him. In another authority cited by the learned counsel for the applicant, it has been held that there cannot be appointment beyond the advertised number of vacancies and secondly, the norms cannot be amended after the selection process started.

17. Counsel for the applicant also contended that there are variations in the proforma of application required to be submitted by the applicant regarding qualification and experience in OM dated 28.11.2009 (Ann.A/16) and that issued on 29.8.2012 (Ann.A/1). He also contended that the Selection Committee resolved to apply the criteria contrary to Regulations of 1996 by which they have resolved to ignore the minor penalties and recorded warnings for permanent absorption. He also contended that the Selection Committee selected the candidates belonging to OBC even from the creamy layer category. Thus, the selection process for absorption was not in accordance with laid down regulations, thus depriving the applicant of his due absorption.

18. Per contra, the counsel for the respondents contended that the process of absorption was started vide memorandum dated 28.11.2009 and due to prolonged litigation in Central Administrative Tribunal and High Court, the process of recruitment could not be completed and the department while considering long period of process and the fact that more candidates may have become eligible, issued the circular Ann.A/1. After receipt of all the applications, a Screening Committee was constituted vide order dated 9.8.2012 and the Selection Committee headed by the CGM (Tech.) Technical after considering candidature of all the candidates vide minutes dated 25.10.2012 recommended total 68 candidates for the post of Manager (Tech.) and the applicant could not find place in that list. Therefore, contention of the applicant that he was considered for recruitment process started in pursuance to notification dated 29.8.2012 is perverse as candidature of the applicant was also considered in pursuance to the notification Ann.A/16 and same criteria was applied and the applicant could not find place in the list of selected candidates for absorption and since he has already crossed the period of deputation, he was repatriated and relieved vide Ann.R/12 and R/13 and he has not challenged the legality of the order Ann.R/12 and R/13 by any substantial averment in the application; therefore, application filed by the applicant lacks merit. He further contended that unless the claim of a deputationist is supported by any statutory rule or any order, the deputationist has no right for absorption in the department where he is on deputation. In support of his arguments,

he has relied upon the judgment of the Hon'ble Supreme Court reported in AIR 2000 SC 2076, Kunal Nanda vs. Union of India and ors. and the judgment of the Hon'ble Guwahati High Court in the case of Abdul Qadir Siddique vs. State of Arunachal Pradesh dated 19th august, 2005 reported in 2007 (2) GLT 671.

19. We have considered the rival contention of both the parties and also perused the relevant record. It is a settled proposition of law that deputationist has no right to claim for absorption or continuation unless and until his claim is supported by any statutory rules or regulations or orders. So far as permanent absorption of the applicant is concerned, the applicant was duly considered by the Selection Committee constituted by the respondent department for absorption and he was not found fit for the same. We have also considered the contention regarding change of criterion for selection. Because the applicant was considered pursuant to the process initiated in the year 2009, therefore, contention raised by the counsel that a different criteria has been adopted while considering the case of the applicant cannot be accepted being devoid of any force. Thus, it can be said on the basis of the judgment of the Hon'ble Apex Court (Kurnal Nanda v. Union of India & Ors), as cited by the learned counsel for the respondents that the applicant now has no right to get permanent absorption in the respondent department.

20. Counsel for the applicant also contended that consent of the parent department is no more required for permanent absorption

after coming into force the NHAI (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2012. The learned counsel drew our attention towards Ann.A/31 by which clause (7) and (8) were inserted after clause (6) and contended that in view of amended sub-clause (d), Clause (8) of Regulations of 2012, no such NOC is required. For ready reference, clause (d) is reproduced as under:-

"(d) Consent of the cadre controlling authority in parent department.

Provided that this condition may be dispensed with in case of officers of employees whose resignation/voluntary retirement has been accepted by the parent department."

21. On the contrary, the learned counsel for the respondents contended that even after insertion of sub-clause (d) of Regulations of 2012, consent is required in the case of the applicant as no resignation or voluntary retirement has been accepted by the parent department of the applicant. Therefore, the consent is essential/necessary for permanent absorption.

22. We have considered the contention raised by the applicant. Even before the Hon'ble High Court, in the rejoinder filed by respondent No. 1 and 4, it has been averred that the screening committee recommended names of 126 persons as found provisionally eligible for selection/appearing for interview subject to vigilance clearance, cadre NOC and ACRs. In our considered view by way of insertion of sub-clause (d) of new clause (8) of Regulations of 2012, it cannot be said that general provisions has been introduced which dispensed with the consent of the parent

department in respect of each and every person. Therefore, the argument raised by the applicant in this regard does not carry any force.

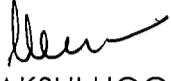
23. We have also considered the contention regarding the procedure adopted for final absorption. It is evident from NHAI (Recruitment, Seniority and Promotion) Second Amendment Regulations, 2009 wherein sub-clause (2) and (3) were inserted in Regulations 11. Under sub-clause (2), the Selection Committee for selection could adopt any procedure i.e. written test or interview or both or as decided by the Selection Committee. Therefore, in our considered view, this argument also does not carry any force.

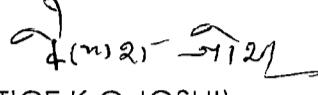
24. Now we come to the point of repatriation of the applicant. The Department of Personnel and Training, Government of India has laid down criteria for the deputationists to stay for maximum period and as per this criteria the applicant can stay with the respondent department for 5 years which can be further extended for 2 years. The applicant continued with the respondent department due to interim orders passed by the Hon'ble High Court and this Tribunal and he has completed 7 years of deputation period, therefore, he was repatriated as per order of the Government of India.

25. Further, the applicant has not challenged the legality of the Office Memorandum by which this criteria was fixed or the Regulations of 1996, which provide for maximum period of 7 years for deputation.

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26. Therefore, in our considered view, the OA filed by the applicant, for the reliefs as narrated in para-10 above, has no force and therefore, it is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

 R/