

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-749/2016
MA No.1338/2016
CP No.194/2016

Order Reserved on: 31.05.2016
Order Pronounced on: 15.11.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

OA No.749/2016

Shri O.P. Bhatia,
Aged about 58 years,
S/o Late Mool Chand Bhatia,
R/o 10, Plot No.7,
Manjil Apartment, Sector-9,
Dwarka, New Delhi.

-Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Chairman,
National Highways Authority of India,
Plot No. G5&6, Sector-10,
Dwarka, New Delhi.

-Respondent

2. Chief Engineer,
Public Works Department,
State of Rajasthan,
Jacob Road, Jaipur,
(Rajasthan)

-Proforma Respondent

(By Advocate: Mr. Ravi Sikri, Sr. Advocate with
Mr. Vivek Paul Oriel, Mr. Deepank Yadav,
Mr. Adarsh Kumar and Mr. Anil Kumar)

CP No.194/2016

Shri O.P. Bhatia,
Aged about 58 years,
S/o Late Mool Chand Bhatia,
R/o 10, Plot No.7,
Manjil Apartment, Sector-9,
Dwarka, New Delhi.

-Petitioner

(By Advocate: Shri S.K. Gupta)

Versus

1. Shri Raghav Chandra,
Chairman,
National Highways Authority of India,
Plot No. G5&6, Sector-10,
Dwarka, New Delhi. -Respondent

(By Advocate: Mr. Ravi Sikri, Sr. Advocate with
Mr. Vivek Paul Oriel, Mr. Deepank Yadav,
Mr. Adarsh Kumar and Mr. Anil Kumar)

ORDER**Per Sudhir Kumar, Member (A):**

This OA and CP of the same applicant and petitioner came to be heard together, and reserved for orders together, and are, therefore, being disposed of through a common order.

OA No.749/2016

2. The applicant of this OA approached this Tribunal on 18.02.2016, because he was aggrieved with the respondents having issued an Office Order dated 04.01.2016 relieving him from the respondent-organization, NHAI HQs, and having directed the applicant to submit No Objection Certificate (NOC, in short) from all concerned divisions within three days, so as to enable him to be relieved from National Highways Authority of India (NHAI, in short), and, thereafter, the Office Order dated 11.01.2016 (Annexure A-2), through which, even though the applicant had not produced the NOC, he was relieved from NHAI HQs., and had been told

to join his parent department, i.e., PWD-Rajasthan w.e.f. 07.01.2016, however, subject to submission of NOC. Ostensibly, the ante-dated date of 07.01.2016 had been mentioned counting three days' time earlier given to the applicant to submit the NOC.

3. The applicant has assailed these actions of the respondents as being totally contrary to the offer of appointment on absorption basis for the post of DGM (Technical) issued to him through Annexure A-3 dated 27.01.2014, through which also he was directed to bring the consent of his Cadre Controlling Authority, and it had been provided for that the consent of the Cadre Controlling Authority for absorption may be dispensed with in case of his resignation/voluntary retirement having been accepted by his parent department/Cadre Controlling Authority.

4. The applicant is aggrieved with the inaction on the part of Respondent No.R-2 also, when he had impleaded as proforma party respondent only, and to whom he had submitted a notice of voluntary retirement, and since he did not receive any reply communication whatsoever, he has pleaded for him to be deemed to have been retired on voluntary basis as such, thereby fulfilling the requirement of the NHAI's offer of appointment on absorption basis dated 27.01.2014 (Annexure A-3).

5. The applicant was substantively employed with Respondent No.R-2, initially on the post of Junior Engineer in the year 1980, and was promoted to the post of Assistant Engineer in the year 1992, and

thereafter to the post of Executive Engineer in the year 2007. While holding such post of Executive Engineer with Respondent No. R-2, he applied in response to the open Advertisement issued by Respondent No.R-1 for the post of DGM (Technical), to be filled up on deputation basis, and after having gone through the process of selection, he was appointed as such DGM (Technical) through order dated 28.02.2008 (Annexure A-4) for a period of 4 years, which period could have been extended or curtailed at the discretion of Competent Authority in NHAI. The standard terms and condition of deputation were enclosed, and it was mentioned that the post carries All India Transfer Liability.

6. On 07.03.2016, the learned counsel for the applicant had pressed for stay of the operation of the Office Order dated 11.01.2016, but since there had been no appearance from the side of respondents for last three hearings, and hence there was no opposition to the prayer of the applicant from the side of the respondents, the operation of the Office Order dated 11.01.2016 (Annexure A-2) had been ordered to be stayed for a period of 14 days. Thereafter, on 21.03.2016, this Interim Relief had been ordered to be continued only till the next date of hearing.

7. When the learned counsel for respondents first put in his appearance on 18.04.2016, he had pointed out and submitted that even before the interim order had been passed by this Tribunal on 07.03.2016, the applicant had already been relieved by the respondents. But, by that time, the applicant had also filed his CP No.194/2016, and it was ordered that this aspect (of contempt) would be considered at the time of

final hearing, and the interim order as passed earlier shall, however, continue un-amended and un-altered till the next date of hearing. The O.A. case had then been heard clubbed with the C.P. and reserved for orders.

8. Through their letter dated 11.03.2008, the applicant's Controlling Department in the State Government of Rajasthan-R-2 had permitted the NHAI selected persons at Sl. No. I to IX to be relieved, to join NHAI on deputation basis, including the applicant herein. Through Office Order dated 15.04.2008 (Annexure A-6), it was later certified by NHAI that the applicant had joined, and had been appointed as DGM (Technical) on deputation basis w.e.f. 02.04.2008, for a period of four years, or until further orders, whichever is earlier. Even after completion of six years thereafter, through Office Order dated 02.06.2014 (Annexure A-7), the deputation of the applicant was extended upto 01.04.2015, on the existing terms and conditions, for the last permissible seventh year of deputation also.

9. Through Annexure A-8, the applicant has brought on record the NHAI Recruitment Regulations (RRs, in short), notified in respect of the Authority under Respondent No.1, through Gazette Notification dated 11.03.1996 called the "National Highway Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996". These Regulations came to be partially amended through Annexure A-9 Gazette Notification dated 23.10.2009, called NHAI (Recruitment, Seniority and Promotion) Third

Amendment Regulations, 2009 inserting a new Regulation-13, after the Regulation-12 of the previously notified Regulation, 1996. We shall shortly revert to this new Regulation-13.

10. Thereafter this Regulation-13 was further amended through NHAI (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2012, dated 24.08.2012, through which, in the new Recruitment-13, introduced w.e.f. 23.10.2009, certain Amendments had been brought about in sub-Regulation-5 of that Regulation-13, by amending the previously existing Clauses (b), (d), (g) & (h) of the said sub-Regulation-5 of Regulation-13. For the sake of better appreciating the facts of the case, it will be appropriate for us to reproduce here the said Regulation-13 as it stood amended on 24.08.2012, as follows:-

<u>Unamended (dt. 23.10.2009)</u>	<u>Amended (dt. 24.08.2012)</u>
“(b) At least two years continuous service on deputation basis in the Authority for the posts at the level of General Manager and below.	(b) At least two years of continuous service on deputation basis in the Authority in the post for which the officer seeks absorption.
(c) xxx (Not reproduced here).	
(d) Consent of the cadre controlling authority in parent department.	Consent of the cadre controlling authority in the parent department. Provided that this condition may be dispensed-with in case of officers or employees whose resignation/voluntary retirement has been accepted by the parent department.
(e) & (f) xxx (Not reproduced here).	
(g) The officer should be less than 56 years of age as on 1 st day of January of the year in which the officer is being considered for absorption.	(g) The officer should be less than 55 years of age as on 1 st day of January of the year in which the officer is being considered for absorption and should have at least 5 years of residual service as per age for superannuation prescribed in Regulation 10 of the NHAI (Recruitment, Seniority and Promotion) Regulations, 1996 as amended from time to time.
(h) Vigilance clearance from the Authority and parent department. The officer should not have been awarded	(h) For officers who are already on deputation, vigilance clearance from Vigilance Division of NHAI will be

any punishment under any	required”.
departmental enquiry.	

11. The above mentioned Amendment of 24.08.2012 had also amended the RRs in respect of the post of DGM (Technical), as produced at pages 66 & 67 of the paper book of the OA. Thereafter, through their Circular dated 01.11.2012, the respondent-NHAI had invited applications for absorption from the officers of the rank of DGM (Technical), currently on deputation, who were willing to get absorbed as per the two prescribed eligibility criteria, namely (1) at least two years of continuous service on deputation basis in NHAI as on 01.01.2012, and (2) the age of the applicant should be 50 years or less as on 01.10.2012, so that he shall have remaining service of ten years as on that date. The eligible officers under the above criteria were permitted to submit their applications for absorption latest by 09.11.2012, and since only 8 days' time had been allowed through that Circular, Para-4 of that Circular itself had stated that the NOC from their parent department, and its verification, may be submitted later. The applicant, considering himself eligible, applied for such absorption in NHAI, in the format annexed to the Circular dated 01.11.2012.

12. The case of the applicant was considered for absorption, whereafter he was issued the offer of appointment on absorption basis dated 27.01.2014 through Annexure A-3, as already mentioned above. Since one of the requirements of this offer was consent of the Cadre Controlling Authority to such absorption, the applicant had written a letter not to the Respondent No.R-1, but to his Controlling Authority, the Principal

Secretary to Govt. of Rajasthan, PWD Rajasthan, Govt. Secretariat, Jaipur, on 26.02.2014, through Annexure A-12, requesting to be allowed to seek such absorption on technical resignation basis. It was further submitted by him in that letter itself that if such technical resignation is not accepted, he may be allowed VRS, as per the Rules of the Govt. of Rajasthan, so that he could join NHAI on absorption basis.

13. 8 months thereafter, the applicant again wrote to the new incumbent who had now been posted against the post of Secretary to Govt. of Rajasthan, PWD, Deptt., through his letter dated 31.10.2014 (Annexure A-13), submitting once again that he had requested for acceptance his technical resignation, or being allowed for VRS. No reply was received by him, but since in the meanwhile NHAI had considered his request for joining time upto 31.12.2014, he once again requested the Secretary to the Govt. of Rajasthan, PWD Department, to either issue NOC for his absorption, or to allow VRS in accordance with Rajasthan Service Rules, so that he could join NHAI on the post offered to him. He marked a copy of this to the DGM (HR-II) of NHAI also, with the request that he had accepted the offer of NHAI for absorption on the post of DGM (Technical) and as soon as NOC was granted or VRS allowed by his parent Cadre, he shall be joining NHAI on substantive basis.

14. Still nothing was heard by him till even 31.12.2014, and, therefore, the applicant again wrote to the Secretary to Govt. of Rajasthan, PWD Department, on 06.01.2015, by way of reminder, and sought from DGM

(HR-II) of NHAI grant of further three months' time for getting himself relieved from his parent department. When still nothing was heard, on 25.02.2015, he wrote to the Respondent No.R-2, again requesting to accept his technical resignation, or to allow VRS, and further requested for his date of VRS to be fixed w.e.f. 01.06.2015, so that he can join NHAI on the post of DGM on absorption basis. Still no reply was received from the Respondent No.R-2 also, and then, through Office Order dated 12.08.2015 (Annexure A-14 colly), the NHAI ordered the applicant to be relieved, with direction to him to report to his parent department, and a copy of that Office Order was marked to the Secretary to Govt. of Rajasthan, PWD, Rajasthan, Govt. Secretariat, Jaipur. Another Office Order of the same date was issued in continuation of the Office Order of 01.04.2015, through which while the applicant had been directed to have been repatriated to his parent department, PWD, Rajasthan, with immediate effect, and he had been further directed to obtain NOC from all concerned divisions of NHAI before being relieved.

15. In the meanwhile, through their letter dated 10.06.2015 (Annexure A-15), the Govt. of Rajasthan, PWD Department, had written to the Respondent No.2 of this OA, that it is not possible to accept the voluntary retirement request of the applicant, and a copy of the same had been marked to the applicant also, to be delivered through Respondent No.R-2, along with information in respect of such orders. The applicant thereafter wrote to the Member (Administration) of NHAI on 17.08.2015, through Annexure A-16, taking the stand that he had

applied for a decision on his request for being granted VRS w.e.f. 01.06.2015, but his parent department had, through their letter dated 10.06.2015 (supra), declined his request for VRS, but as such this had now become a case of deemed VRS, since the decision of the Rajasthan State Government was not communicated within the notice period, and that he should be deemed to have been voluntarily retired as of that date. He had also submitted that against that order dated 10.06.2015 of Govt. of Rajasthan, refusing to accept his application for VRS, he has filed an appeal before Rajasthan Civil Service Administrative Tribunal (RCSAT, in short), Jaipur, on 06.07.2015, with a request for early hearing of the case, and praying for quashing of the impugned letter dated 10.06.2015, and acceptance of his VRS for the purpose of absorption of his services in NHAI. He had further submitted that hearings in the matter had taken place before RCSAT on 21.07.2015 & 11.08.2015, and the next date of hearing was 16.09.2015, and he had, therefore, prayed for NHAI withdrawing the letters dated 01.04.2015 and 12.08.2015 regarding repatriation of his services, till the decision in this matter is pronounced by RCSAT. He had further submitted that repatriating him at this stage will only hamper its efforts in getting his VRS sanctioned.

16. For some time thereafter, no precipitate action was taken by the NHAI, till, all of a sudden, the impugned order dated 04.01.2016 was issued, in continuation of the earlier Office Order dated 21.08.2015. The applicant has alleged in Para 4.14 of his OA that he had not received any

order or communication dated 21.08.2015. The applicant has alleged that in the meanwhile he had been regularly performing his duties, as is apparent from Annexure A-17, which only goes to show that the organization was in need of his services. He, thereafter, still represented to the Member (Admn.), NHAI, through Annexure A-18 on 16.01.2016, seeking relaxation in joining time upto March 2016, and keeping in abeyance the previous orders, since the next date of hearing of the case filed by him before RCSAT was on 12.02.2016, and if the period of relaxation for joining time is till the end of March, 2016, he would be able to join NHAI on absorption basis. Simultaneously, through his letter dated 06.01.2016, the applicant again wrote to Respondent No.2 that since NHAI has considered his request for extension of joining time, and his wife is undergoing treatment at various Government Hospitals, his VRS may be accepted, w.e.f. 21.01.2016, or on an early date, in accordance with Rajasthan State Civil Service Rules, by granting relaxation in prescribed three months' notice period, so that he could join NHAI on the post of DGM (Technical) on absorption basis.

17. The applicant has also brought on record the Office Order dated 14.09.2015 issued by the State Government of Rajasthan, which is not a party respondent before us, through which the request for VRS of two other of his compatriots, namely, Shri Manoj Kumar Sharma and Shri Bhupender Singh Chauhan, had been accepted under Rajasthan Civil Rules (Pension), 1996, w.e.f. 15.09.2015. The NHAI had through their letters dated 21.10.2014 (Annexure A-20 colly) first extended the time

period for the applicant to join with the requisite documents upto 31.12.2014, and thereafter through letter dated 16.01.2015, the time was further extended upto 31.03.2015, and in that letter itself, it was stated that he should join NHAI-HQ along with the requisite documents by 31.03.2015, failing which he may be repatriated to his parent department, since his maximum term of deputation in NHAI will expire on 01.04.2015.

18. The Respondent No.R-1 had also taken up the matter with the Secretary to the Government of Rajasthan, PWD, Rajasthan, through their letter dated 11.03.2015, requesting that either NOC may be issued to the applicant, or his technical resignation may be accepted before 31.03.2015, to enable him to join as DGM (Technical) on absorption basis, as in the absence of such NOC or acceptance of his resignation, his case for absorption will not be considered in NHAI. Even thereafter, through letter dated 30.04.2015 also, further request had been sent by NHAI to the Secretary to the Govt. of Rajasthan, PWD, Rajasthan, for accepting the applicant's resignation, or allowing him to take VRS w.e.f. 01.06.2015, so that he may join on absorption basis in NHAI.

19. In their counter reply, Respondent No.1 had taken the preliminary objection that the present OA is completely frivolous, baseless and untenable both on facts and in law, and had been filed with *mala fide* intentions, and the applicant has tried to mislead this Tribunal by portraying events in a manner which is untrue according to the facts. It

was submitted that the sum and substance of the applicant's case is that the impugned Office Orders dated 04.01.2016 and 11.01.2016 (Annexures A-1 & A-2) had been issued by the Respondent No.R-1 arbitrarily. It was further alleged that the applicant is trying to portray a picture as if he has been ordered to be relieved with immediate effect, without giving him any opportunity to bring/produce NOC from his parent department, i.e., Respondent No.R-2 herein, which submission on the part of the applicant was stated to be false and incorrect. It had been pointed out that the applicant had joined in the Respondent Authority-NHAI on deputation basis w.e.f. 02.04.2008 for a period of four years, and his term of deputation was extended on year to year basis for 7 years, which period finally expired on 01.04.2015.

20. It was pointed out that more than a year before that date, on 27.01.2014, the applicant had been given an offer of appointment on absorption basis, with direction to join within 30 days, latest by 27.02.2014, with NOC from his substantive employer Respondent No.R-2, because of which that offer of appointment on absorption basis was provisional, as it was subject to the condition of the consent of the Cadre Controlling Authority of the applicant in his parent department. When the applicant could not join in terms of the said offer dated 27.01.2014, he was given extension of joining time upto 31.12.2014, which time was further extended upto 31.03.2015, prior to the date 01.04.2015 on which the applicant was to have had completed the maximum period of 7 years' deputation with Respondent No.R-1 Authority. But when the

applicant could not join even by that date of 31.03.2015, the order of his repatriation was issued on 01.04.2015, as he had completed the maximum period of seven years of his deputation in NHAI.

21. However, even after that, the respondents did not actually relieve the applicant, and even before that they had written to the applicant's parent department on 11.03.2015, requesting them to either issue NOC, or accept his technical resignation before 31.03.2015. Since the applicant had, in the meanwhile, informed that he had also requested repeatedly to Principal Secretary to the Govt. of Rajasthan for accepting his technical resignation, or allowing him to take VRS, and the applicant was informed by his parent department that action on his request for VRS can be taken only when he fixes a suitable date for availing of the VRS, in accordance with the Service Rules of the State, the applicant had then requested to the Secretary, PWD Rajasthan through his letter dated 25.02.2015 to fix his date of VRS as on 01.06.2015, in order to cover up the 90 days' notice period. However, the Secretary, PWD of Rajasthan Government had, through their letter dated 10.06.2015, though issued after his notice period had expired on 01.06.2015, declined his request for VRS, because of which the applicant has claimed it to have become a deemed VRS case, since the decision was not communicated within the notice period. However, it was pointed out that this matter was *sub-judice*, as the applicant had appealed before the RCSAT, Jaipur, on 06.07.2015, praying for quashing that impugned letter dated 10.06.2015, and had, in turn, requested the respondents that the order

of his repatriation may be withdrawn, till the decision in the matter is pronounced by the RCSAT.

22. In view of this request of the applicant, after obtaining orders of the Competent Authority, one more month's time was allowed to the applicant on 19.06.2015 to join the NHAI on absorption basis. Since the applicant still could not join within that one month period starting w.e.f. 19.06.2015, the orders for his repatriation were again issued on 12.08.2015.

23. It was submitted that the applicant had actually been ordered to be repatriated on two occasions earlier, i.e., on 01.04.2015, and on 12.08.2015, both of which decisions had been taken with the approval of the Competent Authority, and the orders for his being relieved from NHAI were issued on 21.08.2015, and the three Office Orders dated 01.04.2015, 12.08.2015 and 21.08.2015 were annexed as Annexure R-2 (colly). It was thereafter submitted that though the applicant had been ordered to be relieved from NHAI on 21.08.2015, he was allowed to be continued to be on the rolls of the NHAI, without any approval/extension by the Competent Authority, only due to his failure in obtaining the NOC or VRS. Finally, a decision was taken, with the approval of the Competent Authority, and orders were issued on 04.01.2016 relieving the applicant from NHAI, and giving him three days' time for producing of NOCs from all Departments of NHAI for his being relieved. The applicant avoided these directions, and failed to do so, leading to the order dated 11.01.2016 being issued, relieving him from NHAI w.e.f. 07.01.2016, and

also conveying that he was entitled for salary only upto 07.01.2016, and even his security access card was cancelled.

24. The respondents had further pointed out that on 08.03.2016 itself, through Annexure R-4, they had rejected his request for grant of 60 days' post repatriation leave, which he had been asked to avail from his parent department, and a copy of which order has been received by him.

25. It was, therefore, submitted that the Respondent-NHAI has acted fairly, and had provided ample time and several opportunities to the applicant to bring NOC from his parent department, or to get his case of VRS finalized from his parent department. However, since the applicant could not do so, in spite of several opportunities having been provided to him, he now stands relieved from NHAI w.e.f. 07.01.2016, and is not on the rolls of NHAI any more from that date onwards. It was further submitted that now his request for absorption cannot be considered at this stage too, without his having obtained the NOC in terms of the offer letter for absorption dated 27.01.2014, as had been prayed for in the present OA. It was submitted that production of NOC from parent department, or obtaining VRS from there, was mandatory in terms of the offer letter issued to him on 27.01.2014. Therefore, it was submitted that the present OA is without any merit, and deserves to be rejected.

26. It was also submitted that the applicant has through his letter dated 15.02.2016 since intimated the Respondent-NHAI that in compliance of the impugned orders dated 04.01.2016 and 11.01.2016,

he had requested for 60 days' post repatriation leave, as per DoP&T Rules, but his request was not acceded to, and he was asked to get such leave sanctioned from his parent department. It was, therefore, submitted that no harm has been caused by the respondent-NHAI to the applicant, which may serve as an excuse for him to file the present OA.

27. It was further submitted that in view of the facts narrated, the interim orders dated 07.03.2016 and 21.03.2016 obtained by the applicant by mis-representing facts, are required to be vacated, as by those dates the applicant had already been repatriated and relieved vide impugned orders dated 04.01.2016 and 11.01.2016, and he was no longer on the rolls of NHAI, and even his request for post repatriation leave, submitted by him in compliance of those orders, had been rejected. It was, therefore, submitted that the present OA is liable to be rejected with costs.

28. It was further submitted that consequent to the orders passed by this Tribunal on 07.03.2016 and 08.03.2016, the applicant had submitted a fresh joining report to the NHAI, but the same had not been approved by the Competent Authority, as the applicant had already been repatriated and relieved through the impugned orders dated 04.01.2016 and 11.01.2016. But then it was also submitted that the Respondent Authority-NHAI would be duty bound to follow the directions of this Tribunal, if it is held that he be allowed to rejoin his duties in NHAI.

29. It was denied that the impugned Office Orders dated 04.01.2016 and 11.01.2016 were issued in an arbitrary manner, and it was reiterated that absorption of the applicant with the respondent-NHAI was subject to the submission and verification of the required documents, including the consent of his Cadre Controlling Authority, namely, the parent department, for such absorption, or granting him VRS, neither of which the applicant could procure and produce, despite his having been provided several opportunities by the Respondent-NHAI, even though it was mandatorily required as per the terms of the offer of absorption issued to him. It was admitted that the applicant had made efforts to obtain such NOC from his parent department, and had even given notice to avail of VRS, yet it was submitted that he could not obtain either of the two, and, rather, his parent department has since rejected his application for VRS through order dated 10.06.2015, which the applicant has challenged before the RCSAT, and, therefore, the whole matter is *sub-judice*. It was, therefore, submitted that when the applicant himself is affirming and admitting his legal infirmity for providing either NOC, or acceptance of his resignation, or VRS, one of which was mandatory for his being allowed to join NHAI on absorption basis, the present OA ought to be dismissed on this ground alone.

30. It was submitted that ever since the date of issuance of letter/offer of absorption dated 27.01.2014, for more than two years the applicant could not obtain either NOC from his parent department, or take VRS, and, in the meanwhile, he also completed his maximum period of

deputation on 01.04.2015, because of which the Respondent-Authority-NHAI had to issue the relieving orders, with the approval of the Competent Authority, which are impugned herein. It was submitted that the present OA does not raise any substantial grounds for consideration before this Tribunal on judicial review, and, therefore, the OA is liable to be dismissed.

31. It was further submitted that the Respondent-NHAI did not err in passing the impugned order of repatriation/relieving of the applicant, in view of explanation provided in detail (as discussed above). It was submitted that even as per the Office Order dated 12.08.2015, the applicant had been repatriated to his parent department, and had been directed to submit handing over/taking over of the charge report from all concerned in Respondent-NHAI, but when he could not do so, relieving orders had first been issued on 21.08.2015. Later events were then described again.

32. All the other grounds taken by the applicant in the OA were denied, and it was submitted that the applicant has not been able to make out any case in his OA for his case to be treated in an extraordinary manner, and even for grant of any Interim Relief, and the OA, therefore, is liable to be dismissed. It was further submitted that much before the interim order had been passed by this Tribunal, the applicant had already been repatriated/relieved, and he was no longer on the rolls of NHAI, and, moreover, he had himself accepted the fact of his repatriation, as he had

even applied for post repatriation leave for 60 days, which could not be approved by the Competent Authority in NHAI, and in view of this it was prayed that this Tribunal may vacate the interim order passed on 07.03.2016, which was further extended on 21.03.2016.

33. The applicant filed his rejoinder on 18.04.2016, more or less reiterating his contentions as taken by him in his OA. It was submitted that since the Respondent No.2 had not passed an order regarding his request for VRS to be granted w.e.f. 01.06.2015, and had later passed the orders on a date consequent to that, the Respondent No.1-NHAI should have considered him to have been deemed to have retired voluntarily w.e.f. 01.06.2015, and they should have, accordingly, absorbed him under the deeming provision, and, therefore, the OA as filed, is not frivolous. It was further submitted that since he ought to have been deemed to have retired, as no communication to the contrary was received by him upto the date of 01.06.2015, the Respondent-NHAI should have absorbed him w.e.f. 01.06.2015 itself, and hence his subsequent repatriation at this juncture is bad in law. He had, thereafter, filed a copy of the relevant Rules of his parent organization as Annexure Rej-I, to show that under those Rules the applicant ought to have been deemed to have been absorbed w.e.f. 01.06.2015.

34. The applicant had further submitted that in terms of the orders passed by this Tribunal at Guwahati Bench in OA No. 393/2013, read with the judgment of the Hon'ble High Court of Guwahati in WA

No.324/2014 **Shri Swapan Kumar Mallik vs. Union of India & Ors.**, decided on 25.01.2016, produced by him at Annexure Rej-3, the applicant cannot be termed to have been working with NHAI on deputation basis any longer, once the offer of appointment had been issued to him, and thereafter the applicant had applied for NOC, even though no communication had been received thereupon.

35. It was further submitted that the respondents are wrong in submitting that he was no longer on the rolls of NHAI, as such submission is contemptuous towards the interim orders passed by this Tribunal on 07.03.2016, a copy of which he had served upon the respondents on 08.03.2016.

36. It was thereafter submitted that it is wrong on the part of the respondent-NHAI to submit that he is no longer on the rolls of NHAI, as he had received an Office Order dated 11.03.2016, i.e., after the interim order dated 07.03.2016, by which he was made a part of the Screening Committee for submitting a report, and thereafter, he along with two other Members, submitted the report of the Screening Committee, and he had even put his signatures on 11.03.2016, which report is in custody of the respondent-NHAI.

37. It was further submitted that according to the Rules applicable to deputation, he is on the rolls of the borrowing department from the date of his being relieved from the parent department, till the date of his re-joining. It was further submitted that after having received the interim

directions of this Tribunal dated 07.03.2016 and 08.03.2016, it was the duty of the respondent-NHAI to allow him to perform his duties, which they have done through OM dated 11.03.2016, making him a Member of the Screening Committee. It was reiterated that the judgment of the Hon'ble High Court of Guwahati in the case of **Swapan Kumar Mallik** (supra) covers the issue, and just because the applicant could not obtain the NOC, which was only a technical formality, and that in a similar case Hon'ble Guwahati High Court had viewed that to be only as a technical lapse, and had not only set aside the repatriation order, but had also issued further orders.

38. It was further submitted that through the judgment of Hon'ble High Court of Guwahati dated 25.01.2016 in the case of **Swapan Kumar Mallik**(supra) (Annexure Rej-3), even the repatriation order was set aside. It was further submitted that when the Respondent-NHAI themselves has knowledge about the request for voluntary retirement of the applicant not having been accepted, they ought to have treated his case as a case of deemed VRS, and should have absorbed him, as no objection over the notice for VRS had been raised by Rajasthan Govt. till 01.06.2015. It was submitted that by implication of the Rules, as produced at Annexure Rej-I, the applicant was no longer on the strength of the Rajasthan Government, and, therefore, the orders of his repatriation back to Rajasthan Government were illegal, and that the case regarding non-production of NOC from the Office of R-2 is entirely covered by the judgment of the Hon'ble High Court of Assam at

Guwahati. It was further submitted that in view of the pendency of his case before the RCSAT, Jaipur, challenging the communication dated 10.06.2015 issued to him by the Rajasthan Government, the Respondent-NHAI ought to have deemed and treated him to have voluntarily retired, and once an offer of appointment is issued, withdrawing the same, and passing impugned order for repatriation is illegal. Therefore, it was once again prayed that the OA be allowed.

39. Before the case was heard and reserved for orders, on 21.04.2016, the respondents filed a copy of the charge handing over/taking over report signed by the applicant on 15.02.2016, and reiterated that his office access card had also been cancelled on the same date. It is seen that in this letter dated 15.02.2016, the applicant had stated as follows:-

“Shri Pradeep Kumar,
 General Manager (HR-II)
 NHAI, New Delhi.
 Sub:- Charge handing over/taking over report

Ref: (i) NHAI Office order No. 11012/1807/2013-Admn dated
 04.01.2016

(ii) NHAI Office order dated 11.01.2016
 (iii) NHAI Office order dated 21.01.2016

Sir,

In compliance to NHAI Office Order No. 11012/1807/2013-Admn dated 04.01.2016, order dated 11.01.2016 and order dated 21.01.2016, I have handed over the charge of Odisha Div. to Shri L.S. Rajpurohit, DGM (T) CM on 01.02.2016 and charge of West Bengal project to Shri Manoj Kumar Garg, Manager (T) WB on 05.02.2016. Copy of the charge handling over/taken over reports are enclosed for further necessary action please.

A post repatriation leave of 60 days may please be allowed as per DOPT rules.

(O.P. Bhatia)
 DGM (T) OR
 15.02.2016”

40. We shall revert to our observations and order on the O.A. after discussing the Contempt Petition case filed by the applicant as a petitioner.

CP No.194/2016

41. This Contempt Petition had been filed by the petitioner on 31.03.2016, alleging non-implementation of the interim orders passed by this Tribunal on 07.03.2016, as extended vide order dated 21.03.2016. It was submitted that the petitioner has challenged the order of his repatriation, by which he was asked to report to his parent organization. It was further submitted that initially this Tribunal had issued notices, and when nobody appeared, in spite of the fact that service was complete, this Tribunal had vide order dated 07.03.2016 (Annexure CP-2) stayed the operation of the order dated 11.01.2016 (Annexure CP-3).

42. It was further submitted in the Contempt Petition that on receipt of the orders of the Tribunal dated 07.03.2016, the petitioner had submitted a representation to NHAI on 08.03.2016, and through this representation, he had submitted his joining report, copies of which were annexed as Annexure CP-4. The petitioner had further submitted a representation dated 16.03.2016 (Annexure CP-5). Thereafter, on 21.03.2016 (Annexure CP-6), the respondents had appeared before this Tribunal, and had sought time for filing their reply, and while adjourning the matter for 18.04.2016, this Tribunal had extended the interim orders upto 18.04.2016. When the respondents still did not comply with the

interim order, the petitioner had submitted another representation dated 28.03.2016 (Annexure CP-7) through e-mail, followed by another representation dated 30.03.2016 (Annexure CP-8). Left with no other option, the petitioner had filed the present Contempt Petition, with the following prayer:-

- “i) to initiate the contempt proceeding against the respondent under Contempt of Court Act, 1971;
- ii) direct the respondent to implement the order dated 07.03.2016 as extended on 21.03.2016;
- iii) may also pass any further order(s) as be deemed just and proper to meet the ends of justice”.

43. We shall revert to our observations and order on the Contempt Petition after discussing the Miscellaneous Application, which had been filed by the respondent-NHAI praying for vacation of the interim orders passed on 07.03.2016.

MA No.1338/2016

44. This MA had been filed by the respondent-NHAI on 08.04.2016, under Rule-24 of the CAT (Procedure) Rules, 1987, seeking vacation of the interim order passed by this Tribunal dated 07.03.2016, as extended on 21.03.2016. It was submitted that despite several opportunities having been given to the applicant of the O.A. to submit NOC from his parent department, or to get his case finalized for VRS, which was mandatory for absorption of his services, the applicant of the O.A. could not furnish the requisite NOC. Therefore, it was submitted that the interim relief granted in his favour by this Tribunal was liable to be vacated.

45. It was further submitted by the respondents that by the time the interim order was passed by this Tribunal on 07.03.2016, the applicant had already been repatriated, and relieved, vide impugned orders dated 04.01.2016 and 11.01.2016, and that he was not on the rolls of NHAI. It was submitted that the applicant had himself accepted his repatriation, and that he had even applied for post repatriation leave for 60 days, which was also not approved by the Competent Authority in NHAI. It was, therefore, prayed that the interim order passed by this Tribunal on 07.03.2016, and extended on 21.03.2016, may be vacated.

DISCUSSION AND COMMON ORDER ON OA, CP & MA

46. Heard. The case was argued very vehemently by both the sides. During his arguments, learned counsel for the applicant laid great emphasis upon the amendments brought in the NHAI (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2009 dated 23.10.2009 (Annexure A-9), and in particular, Regulation-13 thereof, which had been amended through the NHAI (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2012 dated 24.08.2012 (Annexure A-10), by which the criteria for absorption of officers in NHAI as prescribed under sub-regulation (5) of Regulation-13 had been changed, particularly Clauses (b) (d) (g) (h) of Clauses (5) of that Regulation-13, as already reproduced in tabular form earlier. He submitted that while earlier, as per Regulation-13 (5) (d), the consent of the Cadre Controlling Authority in parent department was an essential

criterion, but that has since been replaced by the formulation as already reproduced above.

47. But this Clause-(d) was read by both the learned Counsel for the applicant, and by the learned counsel for the respondents in a different manner. Learned counsel for the applicant submitted that when it had been provided that the consent of the Cadre Controlling Authority in parent department of the Officers to be absorbed could be dispensed with in case of officers or employees whose resignation/voluntary retirement had been accepted by the parent department, the applicant had to be given full benefit of this proviso, as he automatically stood voluntarily retired when the time period prescribed by him for acceptance of his request for voluntary retirement made to his parent department, PWD Rajasthan, had expired.

48. However, the learned counsel for the respondent-NHAI emphasized that a separate consent of the Cadre Controlling Authority of the parent department had been dispensed with only in the cases of those officers or employees, whose resignation/voluntary retirement had been accepted by their parent department, since, thereafter, the officer concerned would not have any parent department or Cadre Controlling Authority from whom such consent could thereafter have been obtained by him. He, therefore, submitted that since the applicant's request of voluntary retirement had not been accepted by the Rajasthan Government, by passing an appropriate order in this regard, in his case the condition of

consent of Cadre Controlling Authority in his parent department could not have been dispensed with.

49. Learned counsel for the respondents further pointed out that the applicant was still an employee of the Govt. of Rajasthan Government, and that his request for voluntary retirement had not yet been accepted by his parent department, which was clear from the fact that that denial of his request, and his request not having been accepted and acceded to in time by the Rajasthan Government, was the very subject matter of the case filed by the applicant himself before the RCSAT, as has already been disclosed by the applicant himself in his pleadings. He, therefore, submitted that in such a situation, the consent of the Cadre Controlling Authority in parent department could not have been dispensed with by NHAI, and for the purpose of his absorption in NHAI, it was essential that he should have obtained NOC from his Cadre Controlling Authority, i.e., Rajasthan Government.

50. Laborious and elaborate arguments were advanced by the learned counsel for the applicant stating that the applicant had made repeated requests to the Government of Rajasthan, and his superior authorities in NHAI had also made repeated requests to Government of Rajasthan in regard to either the acceptance of his voluntary retirement, or his technical resignation, so that he could join NHAI on absorption basis, and when once those requests of the applicant as well as the NHAI had

not been acted upon by the Rajasthan Government, he ought to have been deemed to have retired voluntarily from the Rajasthan Government.

51. We are not convinced with the laborious and elaborate arguments advanced by the learned counsel for the applicant. If it was indeed true that the deeming provision, as available in the relevant Rules for the Rajasthan Government, had already come into play, and that the applicant was no longer an employee of the Government of Rajasthan, then there was obviously no need for him to agitate this matter before the RCSAT, the pendency of which legal proceedings had been submitted by the applicant himself in his pleadings. Therefore, it is clear that till the RCSAT decides the case pending before it in favour of the applicant and holds that the deeming provision had indeed come into effect, and he had to be deemed to have voluntarily retired from a particular date, in so far as the respondents of the instant O.A. case-NHAI are concerned, they cannot be faulted for treating him to continue to be a Rajasthan Government servant, and, therefore, they were within their rights to insist upon him obtaining NOC from his parent department.

52. On the contrary, in the case of another person Shri Manoj Kumar Sharma, the Government of Rajasthan had, through its order dated 14.09.2015 (Annexure A-19), accepted the request of voluntary retirement of the said Shri Manoj Kumar Sharma, but in the case of the applicant of the present OA, the Rajasthan Government had apparently taken an entirely different stand altogether, and had, through its

communication dated 10.06.2015 (Annexure A-15), stated that it is not possible to accede to the request of the present applicant seeking voluntary retirement w.e.f. 01.06.2015.

53. In view of these circumstances, till the disposal of the appeal No. 1121/2015 filed by the applicant before the RCSAT, Jaipur, it cannot be the case of the applicant that he stood automatically voluntarily retired from the services of Rajasthan Government w.e.f. 01.06.2015, and that the Respondent-NHAI should have necessarily accepted that date to be his date of voluntary retirement, and should have acted accordingly.

54. The very fact of the applicant having approached RCSAT, Jaipur, also goes to show that even he is aware that his lien with the Govt. of Rajasthan's PWD has not yet been extinguished. In such circumstances, while he still holds a lien in Rajasthan, the applicant cannot be allowed to plead to acquire another second lien with NHAI also.

55. We have also gone through the judgment of the Hon'ble Guwahati High Court in **Swapan Kumar Mallik** (supra), and find that that case was different on facts, the applicant cannot be allowed to enure any benefit out of the said judgment of Hon'ble Guwahati High Court. In the case before the Hon'ble Guwahati High Court, the Hon'ble High Court was pleased to observe that the petitioner before it had become a persona non-grata in both the NHAI and Border Road Organization, and that he was neither here nor there. But that is not the case in the case of the

present applicant. As is clear from the pendency of appeal No.1121/2015 before the RCSAT, Jaipur, the applicant of the present OA continues to be an employee of the Government of Rajasthan, and to hold a lien to go back to a post with Rajasthan PWD, and his case cannot, therefore, be treated at par with the case of **ShriSwapan Kumar Mallik** (supra), the petitioner before the Guwahati High Court.

56. Therefore, we find that due to the inability of the applicant to fulfil all the conditions as enumerated by the Respondent-NHAI through their Office Order dated 01.11.2012 (Annexure A-11) addressed to him, which included the conditions of his obtaining the NOC from his parent department, the respondent-NHAI cannot be faulted for having come to the conclusion that applicant having failed to complete all the conditions for the purpose of absorption of his services with the NHAI, and more than two years' time having been allowed to him to do so, he was not eligible for consideration any longer of his case for absorption of his services with NHAI. Therefore, we find no merit in the OA, and the OA is, therefore, dismissed.

CP No.194/2016

57. It is seen from the pleadings of the OA that as per Annexure R-3 dated 15.02.2016, the applicant had handed over the charge of Odisha Division to one officer, and the charge of West Bengal project to another officer, and had, after submitting his charge handing over reports, even prayed for post repatriation leave of 60 days to be sanctioned to him.

The OA itself was filed by the applicant after that date of his handing over charge on 15.02.2016. But in the body of the OA, the applicant did not mention anywhere that he had already been relieved of his duties from the NHAI, and that he was no longer in service with the respondent-NHAI. The applicant had, therefore, stood reverted back to the Government of Rajasthan on 15.02.2016, but still his Counsel made a submission before the Bench on 03.03.2016 that the Respondent No.2, Government of Rajasthan, is only a proforma party, to whom notice has been sent by Speed Post, and it was nowhere disclosed by the applicant, or by his learned counsel, that as on that date, i.e., 03.03.2016, the applicant was actually an employee under Respondent No.2, and had even approached RCSAT in Appeal No.1121/2015 in that capacity. In the absence of Annexure R-3 not having been filed by the applicant in a truthful manner, the Bench believed the submissions of the learned counsel for the applicant, as an Officer of the Court, believing him to have put forth all the facts truly and faithfully. On 07.03.2016, the Bench was led to believe that as per affidavit dated 29.02.2016, Dasti Notice was served upon the respondent-NHAI, and the tracking report of India Post filed on 03.03.2016 showed that the notices of the proceedings had been served upon the Respondent No.2. However, it is apparent that the Respondent No.2, in particular, was never informed about the case having been fixed for hearing on 07.03.2016.

58. Believing the submission made on behalf of the applicant that the Office Order dated 11.01.2016 (Annexure A-2) had not yet been given effect to, the Bench had that day passed an order that since there has been no opposition to the prayer of the applicant for grant of Interim Relief from the side of the respondents, the operation of the Office Order dated 11.01.2016 was ordered to be stayed for a period of 14 days.

59. But, as is apparent from Annexure R-3, this interim order was *non-est* in the eyes of law, because the said NHAI Office Order dated 11.01.2016 had already been given effect to, and had been acted upon by the applicant himself, by his having handed over charge of Odisha Division as well as of the West Bengal project on 15.02.2016, as is now apparent through Annexure R-3.

60. Therefore, it is obvious that the applicant has been less than truthful, and had thus obtained the order on 07.03.2016, which could not at all have been given effect to, as the Office Order dated 11.01.2016, had already exhausted itself, as it had already been operated and acted upon by the applicant himself on 15.02.2016, even before filing of the OA, and an order which had exhausted itself after it having been already acted upon, could not have been stayed. The truthful position was not disclosed by the applicant even on 21.03.2016, when Interim Relief was prayed to be continued till the next date of hearing, and even on 18.04.2016, when again, on the prayer of the applicant, that in-effectual

interim order passed earlier was ordered to be continued un-amended and un-altered till the next date of hearing.

61. To say the least, the applicant had failed in making truthful submissions, inasmuch as till the respondents had filed the Annexure R-3 and R-4 on 21.04.2016, and till those Annexures were pointed out during the course of arguments of the case on 31.05.2016, the applicant had never disclosed of his own volition that he had already handed over charge on 15.02.2016 through Annexure R-3, and was no longer on the rolls of the respondent-NHAI.

62. It is trite law that fraud unravels every right. It is clear from the detailed discussion of the case, as above, that the ineffectual interim orders obtained by the applicant on 07.03.2016 were obtained by him through a fraud played upon the Court, by not disclosing either in his pleadings, or by way of Annexures, or by way of oral submissions made on his behalf, regarding his having already handed over charge of his post, in pursuance of the very same order dated 11.01.2016, in respect of which he was seeking a stay in the interregnum.

63. Therefore, it is clear that there has been no contumacious act on the part of the respondent, and this CP is closed, and notice issued to the respondent is discharged.

64. However, in view of the fraud played by the applicant upon this Tribunal, a cost of Rs.50,000/- (Rs. Fifty Thousand only) is imposed upon him, payable to Respondent No.1-NHAI.

65. Consequently, MA No. 1338/2016 also stands disposed of accordingly.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.