

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.100/1120/2016
With
OA 100/1112/2016
OA 100/1152/2016

New Delhi this the 19th day of November, 2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

OA 1120/2016

Sh. Pramod Kumar Sabat,
Aged about 55 years,
S/o Shri Narayan Sabat,
R/o Flat No.1065, Plot No.4,
Rajnigandha Apartment,
Sector-19, Dwarka, New Delhi
(Working as Manager (Tech.))

... Applicant

(Through Shri S.K. Gupta)

VERSUS

National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075
(Under M/0 Road, Transports
& Highways.

... Respondent

(Through Shri Ramesh Kumar)

OA 1112/2016

1. Manoj Kumar Sharma,
Aged about 45 years,
S/o Late Shri P.D.Sharma,
R/o C-403, Bahawalpur Apartment,
Sector-6, Dwarka, New Delhi
(Working as Manager (Tech.))
2. Sh. Manoj Kumar Garg,
Aged about 55 years,
S/o Late Om Prakash Garg,
R/o H.No.746, Metro View Apartment,
Sector-13, Dwarka, New Delhi
(Working as Manager (Tech))
3. Sh. Bhupendra Singh Chauhan,
Aged about 52
Raghunath Singh Chauhan,

R/o 52, Defence Colony,
Jalandhar
(Working as Manager (Tech.))

... Applicants

(Through Shri S.K.Gupta)

VERSUS

National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075
(Under M/0 Road, Transports
& Highways.

... Respondent

(Through Shri Ramesh Kumar)

OA 1152/2016

Sh.D.S.Chaudhary,
Aged about 51 and ½ years,
S/o Late Sh.Pritam Singh,
R/o 1101, Highland Apartment,
Sector-12, Dwarka,
New Delhi-110075
(Presently working as Manager (Tech)
in NHAI)

... Applicant

(Through Shri S.K.Gupta)

VERSUS

National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075
(Under M/0 Road, Transports
& Highways.

... Respondent

(Through Shri Ramesh Kumar)

O R D E R (ORAL)

Mr. Shekhar Agarwal, Member (A):

The issue involved in all these three OAs is the same and, therefore, they are being disposed of by this common order. For the sake of convenience, facts of OA no. 1120/2016 are being discussed as hereunder:-

- (1) The applicant joined the respondents on deputation on the post of Manager (Technical) on 8.01.2007. Thereupon, in accordance with the regulations, an opportunity was given to the applicant to get absorbed in the respondent-organisation. The applicant submitted his willingness for the same and was interviewed on 15.03.2010. However, he was not absorbed because the respondents imposed a condition of 10 years residual service for absorption. Some similar individuals who had been denied absorption approached this Tribunal challenging the action of the respondents. This Tribunal vide its judgment dated 28.04.2014 while considering the OA no. 901/2013 along with other connected OAs allowed them and directed that the condition of 10 years residual service imposed by the respondents was de hors the rules and, was, therefore, quashed and set aside.
- (2) Further by a separate order dated 17.04.2014, the respondents invited applications for further promotion to the post of Deputy General Manager (Technical) but the applicant could not submit his application as he had not been absorbed till then. Finally, it was on 7.10.2014 that the applicant was absorbed. On 13.10.2014, the respondents called the counterparts of the applicants who had been absorbed earlier to participate in the interview scheduled on 15.10.2014 for next promotion. Some

of the absorbed Managers were not called as the respondents were not counting their service on deputation for the purpose of determining their eligibility for next promotion. Such persons filed OA No. 3696/2014 along with OA No. 3762/2014 before this Tribunal. This was decided on 11.11.2014 and directions were given to the respondents to determine the eligibility of absorbed Managers for next promotion by taking into account their service on deputation. The aforesaid order of this Tribunal has attained finality inasmuch as Writ Petition No.9227/2014 filed before Hon'ble High Court of Delhi challenging the order of this Tribunal was dismissed on 5.04.2016. SLP (C) No. 18898/2016 (**National Highways Authority of India Vs. B.S.Salunke and Ors**) filed against the order of High Court has also been dismissed by Hon'ble Supreme Court vide its order dated 27.10.2016.

2. The contention of the applicant is that he was similarly placed as applicants of OA No. 3696/2014 and, therefore, deserved to be promoted alongwith the applicants of that OA. The only reason why he was not promoted alongwith them was because the respondents had delayed his absorption and, therefore, he could not submit his application for promotion when the same was invited on 17.04.2014.

3. In their reply, the respondents have opposed the averment of the applicant and submitted that the applicant was not interviewed alongwith others on 15. 10. 2014. As such, he cannot claim

consideration for promotion as per the judgment dated 11.11.2014 since that judgment applies to officers who were absorbed prior to the Circular dated 17.04.2014 by which applications for promotion to the post of DGM (Tech.) were invited. Since the applicant had not been absorbed by that date, he was neither eligible nor had he applied for promotion. He, therefore, cannot seek parity with those who already stood absorbed in NHA I prior to issue of that Circular.

4. Further the respondents have submitted that the issue whether regular service be taken from the date of deputation of the officers as Manager (Tech) in NHA I or from the date of their absorption is yet to be finalized. The applicant has filed this OA without awaiting finalization of this issue.

5. We have heard both sides and have perused the material placed on record. It is not disputed that the applicant joined the post of Manager (Technical) with the respondents on deputation basis on 8.01.2007. Some of the counterparts of the applicants including those who had joined on deputation basis after the applicant were absorbed much before the applicant. The applicant's absorption was delayed as the respondents had imposed condition of 10 years of residual service as a pre-requisite for absorbing the officers. This condition was found to be de hors the rules and set aside by this Tribunal vide its order dated 28.04.2014 in OA No.901/2013 and other connected OAs. It was only thereafter that the applicant was absorbed. By the time, the applicant's absorption letter was issued, he had become too late to respond to the Circular issued by respondents inviting applications for next promotion. Since the absorption of the applicant was unnecessarily delayed by the respondents and this was the only reason

why he could not respond to the Circular inviting applications for next promotion, it would only be just if the applicant is now considered for promotion from the date from which similarly placed persons were so considered. In other words, he should be treated at par with applicants of OA 3762/2014 and OA No. 3696/2014.

6. The respondents contention that the issue of counting service on deputation followed by absorption as eligible service for next promotion has still to be decided also cannot now be accepted. This is because the judgment of this Tribunal dated 11.11.2014 in OA No.3696/2014 has attained finality inasmuch as the Writ Petition filed against the same has been dismissed by the Hon'ble High Court of Delhi and SLP (C) 18898/2016 filed against the judgment of Hon'ble High Court has also been dismissed by the Apex Court. Thus, the respondents are not justified in saying that this issue is still to be decided. Perhaps they have stated so because when their affidavit was filed on 3.10.2016, their SLP was still under consideration of the Hon'ble Supreme Court. However, the same has now been dismissed vide order dated 27.10.2016. Hence, now this issue has attained finality.

7. Resultantly, we find that there is no merit in the contention of the respondents. The OA is allowed and the respondents are directed to consider the applicant for promotion to the post of Deputy General Manager (Tech.) within a period of eight weeks from the date of receipt of a certified copy of this order. In case, the applicant is found fit, he shall be notionally promoted with effect from the same date from which applicants of OA 3762/2014 and 3696/2014 were

promoted. He shall also be entitled to consequential benefits of pay fixation and seniority.

8. Let a copy of this order be placed in OA No. 1112/2016 and 1152/2016.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

`sk'