

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2263/2014

With

OA No.2291/2014

OA No.2292/2014

OA No.2293/2014

OA No.2302/2014

OA No.2316/2014

**Reserved on:13.08.2015
Pronounced on:18.09.2015**

Hon'ble Mr. G. George Paracken, Member (J)

Hon'ble Mr. Shekhar Agarwal, Member (A)

OA No.2263/2014

Shri G. Siva Rama Raju

Age 57 years

S/o Shri G. Kodanda Rama Raju

R/o Flat No.1B, Laxmi Karpura Apartment,

Street No.3, Subramaniampuram,

Karaikudi

(working as Manager (Tech.) in the

Office of Respondent No.2).Applicant

By Advocate: Mrs. Jyoti Singh, Sr. Counsel with Shri
S.K. Gupta.

Versus

1. Union of India through
Secretary,
Ministry of Road, Transport and Highways,
1, Parliament Street,
Transport Bhawan, New Delhi.
2. National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075. ..Respondents

By Advocate: Ms. Meenakshi Sood.

OA No.2291/2014

Shri Vinod Kumar Gupta
Aged about 54 years
S/o Shri Prabhati Lal Gupta
R/o 287, Vivek Vihar,
New Sanganer Road,
Sodala, Jaipur
(Working as Manager (Tech.) in the
Office of Respondent No.2 and posted
At Palanpur under PIU-Gandhidham
In Gujrat).Applicant

By Advocate: Mrs. Jyoti Singh, Sr. Counsel with Shri
S.K. Gupta.

Versus

Union of India through

1. Secretary,
Ministry of Road, Transport and
Highways,
1, Parliament Street,
Transport Bhawan,
New Delhi.
2. The National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075. ..Respondents

By Advocate: Ms. Meenakshi Sood.

OA No.2292/2014

Shri B. Ravi Shankar
Age 56 years
S/o Shri B. Chandra Shekhar
R/o H.No.2195, 11th Main A-Block,

Sulramaaya Nagar, Rajaj Nagar,
Bangalore-10
(Working as Manager (Tech.) in the
Office of Respondent No.2 at
PIU-Palakkad). ... Applicant

By Advocate: Mrs. Jyoti Singh, Sr. Counsel with Shri
S.K. Gupta.

Versus

1. Union of India through
Secretary,
Ministry of Road, Transport and Highways,
1, Parliament Street,
Transport Bhawan,
New Delhi.
2. National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075. ..Respondents

By Advocate: Ms. Meenakshi Sood.

OA No.2293/2014

Shri Pradeep Kumar Srivastava
Age 51 years
S/o Shri Sri Ishwar Saran Srivastava,
R/o B-15, Ram Nager Colony,
Mohaddipur, Gorakhpur,
UP-273008.
Presently working as Manager (Tech.)

PIU, NHAI, Gorakhpur (UP). ...Applicant
By Advocate: Mrs. Jyoti Singh, Sr. Counsel with Shri
S.K. Gupta.

Versus

1. Union of India through
Secretary,
Ministry of Road, Transport and Highways,
1, Parliament Street,
Transport Bhawan,
New Delhi.
2. National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075. ..Respondents

By Advocate: Ms. Meenakshi Sood.

OA No.2302/2014

Shri Sanjay Channa
Age 50 years
S/o Late K.B. Channa
R/o 710-C, Falcon Residency,
Patia, Bhuwneshwar, Odisha
(Presently working as Manager (Tech.)
At Bhuwneshwar)Applicant

By Advocate: Mrs. Jyoti Singh, Sr. Counsel with Shri
S.K. Gupta.

Versus

1. Union of India through
Secretary,
Ministry of Road, Transport and Highways,
1, Parliament Street,
Transport Bhawan,
New Delhi.

2. National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075. ..Respondents

By Advocate: Ms. Meenakshi Sood.

OA No.2316/2014

Shri Ram Chandra Tejwani
Aged about 55 years
S/o Late Tek Chand Tejwani
R/o 3-K-23, Vaishali Nagar,
Ajmer (Raj)-305006
(Working as Manager (Tech.) in the
Office of Respondent No.2 at
PIU-NHAI-Pali,
Rajasthan). ..Applicant

By Advocate: Mrs. Jyoti Singh, Sr. Counsel with Shri
S.K. Gupta.

Versus

1. Union of India through
Secretary,
Ministry of Road, Transport and Highways,
1, Parliament Street,
Transport Bhawan,
New Delhi.
2. National Highways Authority of India,
Through its Chairman,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075.

By Advocate: Ms. Meenakshi Sood.

ORDER**Hon'ble Mr. G. George Paracken, Member (J)**

In all these Original Applications, the issue raised by the Applicants is the same and, therefore, they are disposed of by this common order. They were also the Applicants in OA No.901/2013 and connected cases filed by them earlier on the same issue and disposed of by this Tribunal vide order dated 28.04.2014. They are now aggrieved by the decision of the Respondent-NHAI taken purportedly in pursuance of the aforesaid order. While all of them have challenged the "minutes of meeting of the Selection Committee held on 27.06.2014 for reviewing its recommendations given in October, 2012 for the post of Manager (Tech.) on absorption in compliance of the aforesaid order dated 28.04.2014, order dated 23.10.2013 of the Bangalore Bench and the order dated 16.04.2014 of the Lucknow Bench of this Tribunal, the impugned common orders dated 08.07.2014 repatriating them to their respective parent offices have been passed by the Respondent-NHAI only in respect of the Applicants S/Shri G. Siva

Rama Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chandra Tejwani. In the case of S/Shri Pradeep Kumar Srivastava and Sanjay Channa, no order of repatriation was passed as their current deputation period would end only in March, 2016.

2. Brief facts:

2.1. The Respondent No.2, namely, National Highway Authority of India ("NHAI" for short) discharges the functions as enumerated under Section 16 of National Highways Act, 1988. For the said purpose, it employs personnel in accordance with the NHAI (Recruitment, Seniority and Promotion) Regulation, 1996. Appointments are made on deputation as well as on contract basis from the Central/State Government and/or their Authorities. Certain employees are also employed on regular basis. It has, therefore, been issuing advertisements from time to time inviting applications for appointment to the post of Manager (Technical) on deputation basis. Such appointments were governed by Rule 13 of the "National Highways Authority of India (Recruitment, Seniority and

Promotion) Regulations, 1996". The Applicants S/Shri Siva Rama Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chandra Tejwani were appointed with effect from 26.08.2004, 21.08.2004, 31.07.2000 and 01.05.2006 respectively on their selection in terms of the respective advertisements issued in the years 2004, 2003, 1999 and 2005. The Applicants S/Shri Pradeep Kumar Srivastava and Sanjay Channa were appointed on 16.03.2009 and 09.03.2009 respectively in terms of the respective advertisements issued in the years 2008 and 2009. Later on, the Respondent-NHAI invited applications for appointment to the same post through lateral entry. Many of the employees likely to be adversely affected by the aforesaid decision including some of the Applicants herein challenged it before this Tribunal vide **OA No.2807/2009** and connected cases and this Tribunal, vide order dated 09.10.2009, directed the Respondent-NHAI to maintain status quo. During the pendency of the said OAs, the Respondents amended the aforesaid Regulations, 1996 vide National Highways Authority of India (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2009 and notified it on

23.10.2009. By the said amendment, the deputationists who were less than 56 years of age as on 1st day of January with two years of continuous service were eligible to be absorbed at the level of General Manager and below. Rule 13 of the said amended Regulations which deals with absorption is reproduced as under:-

"13. Absorption: (1) Only those officers/employees shall be considered for permanent absorption who fulfill the prescribed qualifications and eligibility criteria for the post at the time of appointment on deputation.

(2) The officers serving on deputation may be considered for absorption at the level of the General Manager and below.

(3) Appointment by absorption, direct recruitment and direct recruitment through lateral entry, including existing cadre of NHAI Officers/employees, does not exceed 50% of the sanctioned posts at the level of the General Manager and below at any point of time and the absorption, direct recruitment and direct recruitment through lateral entry shall be undertaken in a phased manner enhancing the recruitment from 25% to 50% in the coming recruitment years.

(4) The process of recruitment for increasing the permanent cadre strength shall be in the order of promotion, absorption and lateral entry, i.e., if eligible candidates are not available for promotion, absorption will be undertaken and once the eligible candidates for absorption are exhausted, lateral entry shall be undertaken. While increasing the permanent cadre strength, the feeder cadres may be enhanced first and higher cadres subsequently, so that career progression opportunities are not blocked for the lower cadres.

5) The criteria for absorption shall be as follows:

- (a) Need for retention of the officer in the Authority.
- (b) At least two years continuous service on deputation basis in the Authority for the posts at the level of General Manager and below.
- (c) Willingness of the officer.
- (d) Consent of the cadre controlling authority in parent department.
- (e) Observance of statutory reservations as prescribed in the roster points.
- (f) Performance and achievements of the officer

during his tenure in the Authority.

(g) The officer should be less than 56 years of age as on 1st day of January of the year in which the officer is being considered for absorption.

(h) Vigilance clearance from the Authority and parent department. The officer should not have been awarded any punishment under any departmental enquiry.

(6) Absorption of officers is to be decided by the Selection Committee, as prescribed in the NHAI (Recruitment, Seniority and Promotion) Regulations, 1996 (as amended from time to time).

(7) The power to relax any of the provisions of these guidelines will remain with the Authority".

2.2. Thereafter, the NHAI issued Memorandum dated 28.11.2009 inviting applications for absorption from the eligible candidates. The Applicants S/Shri G. Siva Rama Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chandra Tejwani applied for absorption duly forwarded by their respective parent offices. There were 121 Applicants found eligible by the

Screening Committee/Selection Committee held its meeting held on 15.3.2010 headed by the Chairman, NHAI. Thereafter, noting the submissions made on behalf of the Respondents that they will first consider the cases of the Applicants for their absorption and only thereafter, they would fill up the posts by lateral entry, **OA No.2807/2009** and connected cases (supra) were closed by this Tribunal **vide** order dated 25.3.2010. As the Respondent did not comply with the aforesaid order, the Applicants have filed MA therein for execution and it was disposed **vide** order dated 29.09.2011 granting three more month's for the Respondent to implement and further holding it that there will be no need for them to wait indefinitely for 'no objection' from the parent Department of the deputationist and it will be well within their jurisdiction to presume 'no objection' if the same is not reported/given by the Parent Department of the concerned deputationist. The Respondent, **vide W.P.C. No.3822/2012 and connected cases** challenged the aforesaid order before the High Court

of Delhi to the limited extent of the direction of this Tribunal "to treat the no objection as deemed to have received". But the Respondent finally agreed to accept the aforesaid order of this Tribunal dated 25.03.2010 and submitted that the delay in implementation was due to non-receipt of the "No Objection". In spite of the aforesaid assurance, the Respondents did not take any further steps to implement the aforesaid order of this Tribunal dated 25.03.2010.

2.3. Later on, the Respondent carried out both the 3rd and 4th amendments to the National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996 on 24.8.2012. In the 3rd Amendment Regulations, the residual service was increased from 4 years to 5 years. The relevant part of the said amended provision is reproduced as under:-

"3. In sub-regulation (5) of the regulation 13 of the National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996 (hereinafter referred to as the principal regulations), for the clauses (b), (d), (g) and (h), the following clauses shall be substituted, namely,

"(b) At least two years of continuous service on deputation basis in the Authority in the post for which the officer seeks absorption.

(d) Consent of the cadre controlling authority in 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.

(g) The officer should be less than 55 years of age as on 1st 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) For officers who are already on deputation, vigilance clearance from Vigilance Division of NHAI will be required".

By the 4th Amendment Regulations, 2012, change has been brought about in Regulation 11 of the Regulations, 1996 as under:-

"2. In regulation 11 of the National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996 (hereinafter referred to as the principal regulations), after clause (b) of sub-regulation (3), the following clauses shall be inserted, namely:-

"(c) to the Group 'A' technical posts in the grades of Deputy Manager (Technical) and Manager (Technical), the Selection Committee will comprise of three officers (not below the rank of Chief General Managers) to be nominated by the Chairman.

(d) to the Group 'A' technical post in the grade of Deputy General Manager (Technical), the Selection Committee will comprise of a Member (Technical/Project) and three Chief General Managers to be nominated by the Chairman.

(e) to the Group 'A' posts in the grade of General Manager, the Selection Committee will comprise of Chairman and two Members to be nominated by the Chairman.

Provided that in each Selection Committee constituted under clauses (b), (c), (d) and (e) above, a Group 'A' officer of appropriate rank belonging to the Scheduled Caste or Scheduled Tribe shall also be inducted as a Member, in case no member of the Selection Committee belongs to the Scheduled Caste or Scheduled Tribe"."

2.4. Based on the aforesaid amendments, the Respondents issued another Circular dated 29.08.2012 inviting fresh applications and in response to the same many others have applied. The Applicants who have already applied in response to the earlier circular dated 28.11.2009 were told not to apply again. As the selection process in his case was completed in the year 2010 and the result of the selected candidates were not declared, they filed MA No. 10105/2012 in **OA No.2807/2009** (supra) for execution of the order dated 25.03.2012. On receipt of the notice in the said MA, the Respondents issued order dated 07.11.2012 informing them that their applications were forwarded to the Screening Committee constituted by the Competent Authority in NHAI for scrutiny along with other applications and the Screening Committee considered their applications and again found eligible. Accordingly, their names were recommended to the Selection Committee for the final selection but Selection Committee has not recommended their candidatures considering their performance during their tenure as discernable from his Annual Confidential

Reports and Descriptive Assessment Report furnished by his CGM (Tech.) RO. A copy of the said letter dated 07.11.2012 issued to Shri B. Ravi Shankar Applicant in OA No.3841/2012 is produced as under:-

"National Highways Authority of India
(Ministry of Shipping, Road
Transport and Highways)
G-5&6, Sector-10, Dwarka,
New Delhi-110075

File No.11012/155/2009-Admn.

07 November, 2012

To

Shri B. Ravi Shankar
National Highways Authority of India,
10, Kamadhnu Nagar,
Karur-639002
Ph.04324-223670

**Sub:Application for the post of
Manager (Tech.) on absorption in
NHAI.**

Please refer to your application dated 02.12.2009 for the post of Manager (Tech.) in NHAI in response to NHAI's OM 11012/155/2009-Admn dated 28.11.2009 on the above subject.

2. I am directed to inform you that your application was forwarded to the Screening Committee constituted by the Competent Authority in NHAI for scrutiny alongwith other applications. The Screening Committee had considered your

application and found eligible. Accordingly, your name was recommended to the Selection Committee for the final selection. However, Selection Committee has not recommended your candidature based on the performance during the tenure as discernable from your Annual Confidential Reports and Descriptive Assessment Report furnished by your CGM (Tech.) RO.

3. You are requested to acknowledge the receipt of this letter.

Thanking you,

Yours faithfully,

(M.K. Singh)
Dy. General Manager
HR (Admin)

Copy to:

The Chief Engineer
Govt. of Karnataka,
Communication and Buildings (S)
Bangalore".

2.5. Meanwhile the Respondent-Road Transport and Highways have issued the impugned letter dated 20.09.2012 to the Chairman, NHAI directing him to repatriate all officers who have completed more than ten years on deputation and to consider only those officers with ten or more years of remaining service

for absorption. The said letter is also reproduced as under:-

"Government of India
Ministry of Road Transport
and Highways
(Establishment-II (B) Section)

Transport Bahwan,
1, Parliament Street,
New Delhi-110001.

No.A-12025/19/2008-E-II(B)

Dated the 20th September, 2012

To

The Chairman,
National Highways Authority
of India,
G-5&6, Sector-10,
Dwarka,
New Delhi-110075.

Sub: Extension of deputation
tenure/absorption in respect of
Manager (Tech.), DGM (Tech.) and
GM (Tech.) level officers in NHAI.

I am directed to say that in the
meeting held on 28.08.2012 in the
chamber of Hon'ble Minister
(RT&H) to discuss the above issue,
the following decisions have been
taken:-

(i) These officers who
have completed more than
ten years on deputation in
NHAI may be repatriated.

(ii) The officer with ten or more years of remaining service may be considered for absorption if otherwise found appropriate by NHAI.

(iii) The officers must be rotated after five years on regular intervals.

2. NHAI is, therefore, requested to take necessary action on the above points and to expeditiously devise a suitable mechanism of absorption/recruitment to meet the shortage of personnel at NHAI. Action taken in this regard may please be communicated to the Ministry so as to inform the Hon'ble Minister (RT&H) accordingly".

2.6. The Applicants challenged the aforesaid letters dated 20.09.2012 and 07.11.2012 in **OA No.901/2013 and connected cases** (supra) on the ground that they were not sustainable legally as well as factually. According to them, the stipulation in the letter dated 20.09.2012 that the officers with 10 or more years of remaining service shall only be considered for absorption was contrary to the Amendment Regulation, 2009, OM dated 28.11.2009 and the Amendment Regulations, 2012. They have

also stated that it was the settled law that after the initiation of recruitment process including notification of the terms and conditions, they cannot be altered during the process of selection or even thereafter. The selection process in the case was initiated in the month of November, 2009 and it was almost complete by September, 2012. Therefore, there was no reason for the Respondent-NHAI to send the aforesaid communication dated 20.09.2012. Again according to them, as per Regulations, 1996, they were entitled to get seniority in the cadre of Manager (Tech.) from their respective dates of initial appointments from the dates of they initially reported for duty. They have also pointed out that they were recruited initially in terms of the Recruitment Regulations, 1996 and pursuant to the Memorandum dated 28.11.2009 they applied in the month of December, 2009 but it took three years to finalize the selection and the result was declared only in the month of September, 2012. They have, therefore, challenged the order dated 07.11.2012 stating that it was illegal and arbitrary.

According to them, there was no provision for constitution of two Screening Committees in terms of Regulation, 2009 and the recommendations of Committee which met and recommended his name in 2009 were final and binding. They have also stated that their ACRs were rated over and above the prescribed benchmark and the said fact could not have been ignored and it was not feasible to say after serving the NHAI for long years, they were not fit for the post of Manager (T) based upon those very same ACRs. Further, according to them, the NHAI could not have ignored the fact that after completion of 5 years, in spite of that their parent departments wrote several letters to it to repatriate them, it continued to request them to retain them beyond 5 years as their services were very much required by them in the interest of the national projects handled by them. In the case of the Applicant, Shri G. Siva Rama Raju, his parent office, vide its letter dated 10.02.2011, informed the NHAI that in terms of deputation rules, if the candidate continued beyond the approved period, it

was to be treated as deemed resignation from service and unless he was not being repatriated immediately and continue to retain him on deputation beyond approved period, he shall be deemed to have resigned from services and no further correspondence shall be entertained and the NHAI will have to shoulder the responsibility of all the consequences. Even then the Respondent continued with his services but now abruptly repatriated him.

2.7. In the reply affidavit, the Respondent-NHAI have submitted that a deputationist has no right for absorption but he has only a right of consideration for absorption in accordance with the rules/administrative instructions in force on the date of consideration and the applicants were duly considered by a high powered selection committee on a criteria uniformly applicable to all. They have also submitted that it is a well settled that the courts do not act as a selection bodies and substitute their own opinion in place of the opinion of the expert bodies. They have also stated that that it was wrong to say that the statutory

regulations were sought to be amended by administrative order whereas the regulations were framed by virtue of power derived from section 35 of NHAII Act, 1958. They have denied the Applicants' contention that two selection process – one of 2009 and other of 2012 were clubbed together but the fact was that the process initiated in 2009 was not taken to its logical end on account of variety of reasons including non-availability of 'No Objection Certificate' from the parent departments. They have also stated that just because there were 300 applications and the screening committee has shortlisted 121 candidates including the applicants who were interviewed, they had no vested right for any declaration of the results of interview and for an order of absorption in their favour. On the other hand, it was open to the respondents to stop the selection process before a candidate was actually absorbed and no candidate can compel the Employer to complete the process merely on the ground that the selection process had reached an advanced stage. They have also stated that that

the M/o Road Transport and Highways, vide letter dated 20.09.2012, laid down that officers with ten or more years of residual service only be considered for absorption so that the absorbees will have sufficient service left to be of use to the organization. Their further contention was that they have the right to select the best candidates for permanent absorption and the directions issued by its Chairman vide note dated 21.09.2012 was to subserve that purpose.

2.8. However, this Tribunal, vide order dated 28.04.2014, held that the Respondents were quite arbitrary and whimsical in the entire recruitment process adopted by them for the absorption of the Applicants who have been on deputation with them for a considerable period. It was also observed that they were the earlier claimants for absorption on the basis of the then existing "National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996" as amended vide National Highways Authority of India (Recruitment, Seniority and Promotion) Third Amendment

Regulations, 2009 and notified it on 23.10.2009, according to which, for absorption of deputationists at the level of the General Manager and below, one of the criteria was that the deputationists should have at least two years continuous service on deputation in NHAI. The other criterion was that they should have been less than 56 years of age as on 1st day of January of the year in which they were being considered for absorption. As the Applicants fulfilled those criteria, the Screening Committee constituted under the said Regulations considered them and declared them eligible for absorption. Accordingly, their names were recommended to the Selection Committee and the said Committee has also considered them way back on 15.03.2010. This Tribunal further observed that the only reason given by the Respondents for not finalizing their absorption was that the NOC and Vigilance Clearance from their parent cadres were not received and they repeatedly misled both the Applicants and the Tribunal by assuring that they will finalize the selection soon.

Therefore, the contrary stand taken by them that they were required to be subjected to a fresh consideration by the Screening Committee was absolutely illegal, wrong and disrespect to the rules and regulations. Therefore, those OAs were allowed and declared that the order dated 20.09.2012 and letter dated 07.11.2012 issued by them were de hors the rules. Consequently, they were directed to delink the process of absorption of the Applicants initiated by them, pursuant to their Memorandum dated 28.11.2009 from the subsequent Memorandum dated 29.08.2012 to finalize the earlier strictly in accordance with the "National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996" as amended vide National Highways Authority of India (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2009 and notified it on 23.10.2009. To the aforesaid extent, it was also directed that the decision of the Selection Committee held in October, 2012 shall be reviewed and if the Applicants were found fit, they

shall be absorbed in NHAI with all consequential benefits including their seniority reckoning the initial dates of their appointment on deputation basis. The operative part of the said order is reproduced as under:-

"17. In the result, these OAs are allowed. We also declare that the Annexure A-2 order dated 20.09.2012 and the Annexure A-1 letter dated 07.11.2012 have been issued de hors the rules and, therefore, they are quashed and set aside. The Respondents are directed to delink the process of absorption of the Applicants initiated by them, pursuant to their Memorandum dated 28.11.2009 from the subsequent Memorandum dated 29.08.2012 and to finalize the process of absorption initiated in terms of their Memorandum dated 28.11.2009 shall be finalized strictly in accordance with the "National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996" as amended vide National Highways Authority of India (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2009 and notified it on 23.10.2009. To the aforesaid extent, the decision of the Selection Committee held in October, 2012 pursuant to the circular dated 29.08.2012 shall also be reviewed. If the Applicants are found fit, they shall be absorbed in NHAI with all consequential benefits including their seniority reckoning the initial dates of

their appointment on deputation basis. As far as the Private Respondents are concerned, their absorption shall be strictly based on their seniority on the deputation post. The aforesaid directions shall be complied with, within a period of 2 months from the date of receipt of a copy of this order. No costs".

2.9. Meanwhile, the Bangalore Bench of this Tribunal in the case of one Shri P.N. Gewasane considered his grievance vide order dated 23.10.2013 in **OA No.944/2012** with regard to the gradings given to him in his ACRs and directed the Respondent-NHAI to pass a reasoned and speaking order. Pursuant to the said direction, the Chairman of the Respondent-NHAI issued a speaking order dated 22.04.2014 upgrading his ACRs for the years 2009-10, 2010-11 and 2011-12 as "Very Good" and recommended for consideration of his candidature for the post of Manager (Tech.) by absorption.

2.10. The Lucknow Bench of this Tribunal also in its order dated 16.04.2014 in the case of **OA No.497/2012 – Shri Mukul Saxena Vs. U.O.I. & Others** decided on 16.06.2014 considered the

following points in relation to the consideration of the NHAI for the absorption of the Applicant therein as Manager (Tech.) and held that he was entitled to be absorbed as Manager (Tech.) in NHAI. The relevant part of the said order reads as under:-

"POINTS FOR CONSIDERATION -

- (a) Whether the procedure adopted by the Selection Committee to take a decision for absorption of officers is in accordance with the NHAI Regulation 1996?
- (ii) Whether the assessment of Selection Committee in respect of the applicant is a fair assessment?
- (iii) Whether the Selection Committee can take into account the recommendation made by the Regional Officer?
- (iv) For the purpose of taking a decision as to the absorption of an officer in NHAI, whether the Selection Committee is required to follow only the eligibility criteria prescribed under the said Regulations 1996 or the guidelines of the Chairman of NHAI dated 21.09.2012 (Annexure A/10).

POINT NO. (i)

XXX XXX XXX

17. The recruitment to the posts in the Authority is regulated by the Regulations called 'The National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996. The said Regulations is made by the Authority in exercise of the powers conferred by Section 35, read with Section 9, of the said Act, 1988. The Regulation of recruitment and conditions of service is, thus, a field occupied by the Regulation made by the Authority. After the commencement of the said Regulations, 1996, it is not permissible to regulate or provide for the matters covered by the regulations for the Chairman or any of the Members of the Authority. After the commencement of the Regulations, 1996, the Chairman cannot provide anything for filling up the posts in the Authority by way of absorption.

18. It is settled law that once Statutory Rules have been made, the appointment shall be only in accordance with the Rules. This being settled position of law; we observe that there is no power for the Chairman under any of the provisions of the Act to prescribe the eligibility criteria for appointment of officer by way of absorption in NHAI in the instant case for absorption.

19. The Constitution Bench of the Hon'ble Supreme Court in **Anjum**

M.H. Ghaswala [AIR 2001 SC 3868 : 2001 AIR SCW 4318] reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. In view of this position, the task of the Selection Committee in taking a decision of an officer for absorption into NHAI shall be only well within the four corners of the eligibility criteria prescribed under sub-regulation 13(5) of the Regulations and cannot be on the basis of any other consideration.

20. Admittedly, the Selection Committee has assessed the applicant with reference to the recommendation made by the Regional Officer as directed by the Chairman in his order dated 21.09.2012 (Annexure A/10). Hence, our answer to the Point No. (i) is that the procedure adopted by the Selection Committee to take a decision for absorption of officers is not in accordance with the eligibility criteria prescribed under the NHAI Regulations, 1996.

POINT NO. (ii)

XXX XXX XXX

23. We shall now proceed with our reasons as to why the consideration by the Selection Committee which met on 25.10.2012 is not 'fair' and why it

is liable to be set aside on Wednesbury principle.

Firstly, the assessment starts from the year 2004-05, when he came on deputation to NHAI from Rajasthan Public Works Department. Barring the year 2008-09, the applicant has been graded as "outstanding" but for part of the year 2011-12 where the applicant has been downgraded by the Reviewing Authority from '9' i.e. "Outstanding" to '7' i.e. "Very Good". In the ACRs/APRs of all the said years commending from 2004-05 till the year 2011-12, in the relevant column relating to fitness for promotion, it is recorded as "Fit". A perusal of APR for the year 2011-12, the overall rating given by the Reporting Officer is '9', which came to be downgraded by the Reviewing Officer as '7' in a scale of 1 to 10 points. The Reviewing Officer while downgrading the overall rating of the applicant from '9' to '7' has not assigned any reason for such downgrading. Thus, due importance was not given by the Selection Committee for the "Outstanding" grading of the applicant recorded in the APR. Secondly, the Selection Committee did not give any due importance to the assessment made by the earlier Selection Committee when his candidature was considered in response to a memorandum dated 28.11.2009 and he was provisionally selected for

absorption showing his name at Sl. No. 77 in the select list dated 15.03.2010 (Annexure A/6). Thirdly, the Selection Committee in its meeting held on 25.10.2012 had taken a decision by relying upon the fact that the Regional Officer has not recommended his case for absorption. Fourthly, the criteria that has been adopted by the Selection Committee is not as prescribed under sub-clause (5) of Regulation 13. On the other hand, the criteria adopted by the Selection Committee is the guidelines prescribed by the Chairman in his order dated 21.09.2012 (Annexure A/10). Fifthly, the benchmark of "Outstanding" followed by the Selection Committee for the purpose of taking a decision is not benchmark specifically spell out under the Regulations. Sixthly, even the downgrading of '7' by the Reviewing Officer is "Very Good". Seventhly, at an earlier point of time i.e. the General Manager & Project Director, Project Implementation Unit, Lucknow by his letter dated 24.12.2009 (Annexure A/5), strongly recommended the case of the applicant for absorption. Eighthly, in the absence of a specific benchmark in the regulations, the relevant factors which are required to be taken into account by the Selection Committee is whether an officer who is working on deputation is (i) free of vigilance clearance, (ii) any warning is

issued and (iii) any investigation is pending on receipt of a complaint against an officer. It is an admitted fact that the applicant does not fall in any case of the above four circumstances. Thus, the assessment of Selection Committee in respect of the applicant was not a fair assessment and is in the breach of the Wednesbury principle.

POINT NO. (iii)

24. In view of the discussions made hereinabove for the Point Nos. (i) & (ii), we hold that the Selection Committee cannot take into account the recommendations of the Regional Officer for the purpose of assessing the suitability of the applicant for absorption into NHAI since such a requirement falls outside the requirement of the Regulations.

POINT NO. (iv)

25. In view of the discussions made hereinabove for the Point Nos. (i) & (ii) and also in view of the fact that Section 25 of the said Act specifically excludes the Authority to delegate its powers either to the Chairman or any other member or to any officer of the Authority in respect of the power under Section 35 of the said Act, we hold that the Selection Committee is required to follow the eligibility criteria prescribed under

the said Regulations, 1996 and not the order of the Chairman of NHAI dated 21.09.2012 (Annexure A/10).

26. Learned counsel for the applicant by placing reliance upon the judgments of the Hon'ble Supreme Court in the case of (i) Dev Dutt vs. Union of India & Ors. [2008 (8) SCC 725], (ii) Abhijit Ghosh Dastidar vs. Union of India & Ors. [2009 (16) SCC 146] and (iii) Sukhdev Singh vs. Union of India & Ors. [2013 (4) SCT 127 SC, argued that though the benchmark "Outstanding" is required for being considered for absorption, admittedly, the entry of downgrading from '9' to '7' by the Reviewing Officer was not communicated to the applicant as he was having '9' in the previous years. We find force in the argument of the learned counsel for the applicant. In view of principles laid down by the Hon'ble Supreme Court in the said three cases, in our opinion, non-communication of the entries of ACR/APR of the applicant for the year 2011-12 has civil consequence as it has affected his right to get absorption in the NHAI. Hence, non-communication of the said downgrading ACR/APR is arbitrary and is violative of the constitutional provisions. Therefore, the entries '7' in the ACR/APR and the non-recommendation of the candidature of the applicant by the

Regional Officer should not have been taken into consideration by the Selection Committee for the applicant being considered for absorption in NHAI in the post of Manager (Tech.)

27. We, therefore, come to the conclusion that there is merit in the claim of the applicant that he is entitled to be absorbed in NHAI in the post of Manager (Tech.). Accordingly, the Original Application succeeds and is allowed. We direct the respondents to hold a review Selection Committee meeting to revive the decision of the Selection Committee held on 25.10.2012 and consider the case of the applicant for absorption in the post of Manager (Tech.) in NHAI afresh in the light of the observations made and the findings given hereinabove. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Under the circumstances, there shall be no order as to costs”

2.11. The Respondent-NHAI, pursuant to the aforesaid directions of this Bench, Bangalore Bench and Lucknow Bench held the Review Selection Committee on 27.06.2014. According to the minutes of the said meeting 13 Applicants including the Applicants herein

were to be considered for absorption. The Review Selection Committee observed that two of the Applicants in this OA, namely, S/Shri Sanjay Channa and P.K. Srivastava had applied for absorption against the OM datead 28.09.2012. Therefore, their cases have not been considered further. Out of the remaining 11 candidates, Shri P.N. Gasawane was considered fit for absorption and accordingly he was absorbed. Another candidate, Shri Mukul Saxena has already went back to his parent office. In the case of another candidate Shri Keshav Vitthalrao Godke Veshava Vitthalrao Godkle, vigilance case was pending. Hence, he was not absorbed. Out of the remaining 8 candidates, three candidates, namely, S/Shri Manoj Kumar Garg, Bhupendra Singh Chauhan and Manoj Kumar Sharma were absorbed. But the remaining Applicants in this OA, have not been found suitable and hence they were not absorbed. The relevant part of the said Minutes of the Committee is reproduced below:-

"2.3 Speaking order dated 22.04.2014 of Chairman, NHAI issued in case of Shri P.N.

Gawasane as per the order dated 23.10.2013 of Hon'ble CAT Bangalore in OA No.226/2012 & 944/2012:

....NOW THEREFORE, the undersigned keeping in view of above said facts, hereby upgrades the ACR grading upto "Very Good" uniformly for all the years 2209-10, 2010-11 and 2011-12 based on his past performance and grading given therein and recommends for consideration of his candidature for the post of Manager (Tech.) in absorption.....

3. The Committee noted the provisions in the applicable Regulations of NHAI pertaining to absorption. Para 5, Rule 13 of NHAI (Recruitment, Seniority and Promotion) Regulation, 1996 as amended vide NHAI's Third Amendment Regulations, 2009 which is reproduced below:-

- (a) Need for retention of the officer in the Authority.
- (b) At least two years continuous service on deputation basis in the Authority for the posts at the level of General Manager and below.
- (c) Willingness of the officer.
- (d) Consent of the cadre controlling authority in parent department.
- (e) Observance of statutory reservations as prescribed in the roster points.
- (f) Performance and achievements of the officer during his tenure in the Authority.
- (g) The officer should be less than 56 years of age as on 1st day of January of the year in which the officer is being considered for absorption.
- (h) Vigilance clearance from the Authority and parent department. The officer should not have been awarded any punishment under any departmental enquiry.

4. In view of the above cited orders and applicable regulations, the Selection Committee has now decided the following criteria for examining the eligibility of the applicants under

consideration for absorption to the post of Manager (Tech.).

In place of earlier selection criteria relating to 10 years residual service and recommendation/rating in the report of Regional Officer/CGMs (Technical) concerned besides ACRs, the Selection Committee has now decided to adopt the residual service as per Regulations (i.e. 5 years) and the selection criteria of "outstanding" grading of available ACRs average for the applicable period.

5. Out of 13 applicants to be considered now, 11 applicants (including Shri P.N. Gawasane and Shri Mukul Saxena) had applied against OM dated 28.11.2009 whereas 2 applicants (Shri Sanjay Channa and Shri P.K. Srivastava) had applied against OM dated 28.09.2012. Accordingly, the average of available ACRs up to 2009-10 in case of 11 applicants has been considered, whereas in respect of Shri Sanjay Channa and Shri P.K. Srivastava the average of available ACRs up to 2012-13 has been considered. Administration Division has provided the average of available ACRs which was replied upon by the Selection Committee.

6. In case of Shri Mukul Saxena, Administration Division vide OM dated 11.06.2014 reported that he has been repatriated vide office order dated 16.09.2013 and relieved on 21.09.2013. This OM dated 11.06.2014 also states that continuation on deputation of the officer is required for considering him for absorption as per NHAI's regulations. The Administrative Division may seek the decision of the Competent Authority first about the eligibility for absorption of Shri Mukul Saxena when he is not continuing in NHAI on deputation. Thereafter, the Committee will recommend on his suitability for absorption.

7. In case of Shri Keshav Vitthalrao Ghodke, Administrative Division informed that the matter of levy of major penalty or minor penalty is in correspondence between NHAI and CVC. Hence, the Committee decides to defer its recommendations in respect of Shri Keshav Vitthalrao Ghodke till the final decision on the penalty to be imposed on him is taken.

8. In view of the above, the Committee recommends, at present the following 4 candidates for absorption for consideration and approval of the Competent Authority:-

Sl.No.	Name of candidate	Parent Department	Date of Birth	Date of joining on deputation in NHAI
1.	P.N. Gawasane	CIDCO Ltd., Maharashtra	14.06.1970	14.01.2003
2.	Manoj Kumar Garg	PWD-Rajasthan	22.09.1960	09.02.2004
3.	Bhupendra Singh Chauhan	PWD-Rajasthan	23.09.1963	09.02.2001
4.	Manoj Kumar Sharma (Applicant in OA No.902/2013)	PWD-Rajasthan	03.04.1971	20.04.2005

Note: The above table does not indicate any order of merit or seniority of the candidates and these are governed by NHAI's Regulations. Administration Division confirmed receipt of vigilance clearance for absorption in case of above 4 (four) candidates and provided the gist which is enclosed as Annexure-I".

3. The Respondent-NHAI, has, therefore, issued the separate and detailed impugned orders dated 08.04.2014 passed in case of Applicants S/Shri G. Siva Rama Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chander Tejwani. The order issued to Shri G. Siva Rama Raju is reproduced as under:-

"National Highways Authority of India
(Ministry of Road Transport and Highways)
G-5 & 6, Sector-10, Dwarka, New Delhi-110075
No.11041/110/2014-Admn. 08.07.2014

OFFICE ORDER

In pursuance of the Hon'ble CAT (PB) order dated 28.04.2014 and on the basis of the

consideration of the then Selection Committee, Shri G. Siva Rama Raju has not been found suitable for the post of Management (Tech.) on absorption.

2. Accordingly, the Competent Authority has accorded to repatriate and relieve Shri G. Siva Rama Raju, Manager (Tech.), PIU-Karaikudi with immediate effect as he has completed maximum permissible deputation tenure in NHAI (i.e.07 years).

3. The officer is directed to report for his duty to parent department i.e. R&B Department, Government of A.P. consequent upon his repatriation and relieving from PIU concerned.

4. The officer is advised to obtain NOC/No dues certificate from all concerned along with proper handling/taking over the charge before relinquishing the charge of the post.

5. His charge relinquishment/relieving report may be sent to the undersigned.

Sd/-
(M.K. Singh)
Dy. General Manager (HR/Admn.-II)

To

Shri G. Siva Rama Raju
Manager (Tech.)
PIU-Karaikudi".

4. The Applicants have again challenged the aforesaid minutes of the Selection Committee and the order dated 08.07.2014 in this Original Application seeking the following reliefs and interim reliefs:-

Reliefs

"(i) Call for the records of the office of respondent No.2 relating to the absorption of applicant including the file of selection process in which the

interviews were conducted on 15.03.2010;

(ii) quash and set aside the communication dated 08.07.2014 (Annexure A-1) and also the minutes of the selection committee dated 27.06.2014 (Annexure A-2);

(iii) direct the respondents to reconsider the selection of the applicant to the post of Manager (Tech.) and issued the absorption letter with all consequential benefits in terms of the judgment of this Hon'ble Tribunal dated 28.04.2014 in OA No.3949/2012;

(iv) till the prayer as referred in sub-para (iii) is complied with, the respondents be directed not to promote the counterparts of the applicant further; and

(v) may also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice".

Interim Reliefs

"Pending final disposal of the OA, the office of respondents be directed not to enforce the impugned communication dated 08.07.2014 (Annexure A-1) and status quo as regards the continuance of the Applicant may kindly be maintained".

5. After hearing the Sr. Counsel, Mrs. Jyoti Singh along with Shri S.K. Gupta on behalf of the Applicant and having found that there is *prima facie* merit in favour of the Applicants, vide order dated 10.07.2014, as interim relief, we directed the Respondents not to give effect to the aforesaid impugned order dated 08.07.2014.

6. According to the learned counsel for the Applicants, the Hon'ble High Court of Judicature of Rajasthan at Jodhpur decided the same controversy in Civil Writ Petition No.12033/2013 - ***Lokesh Singh Rajpurohit Vs. U.O.I.*** decided on 16.12.2013 and the selection pertains to 2009 as of the Applicant and now, Shri Lokesh Singh Rajpurohit has been absorbed with Very Good and Outstanding ACRs. The relevant part of the said judgment reads as under:-

"Briefly put, the relevant facts and the background aspects of the matter are that the petitioner herein was initially appointed with the Public Works Department ('PWD') of the Government of Rajasthan on the post of Junior Engineer ('JEN'). In the month of October 2004, NHAI invited applications for the post of Manager(Technical) on deputation basis, in accordance with its Recruitment, Seniority and Promotion

Regulations of the Year 1996. The petitioner, who was working on the post of JEN with PWD, Government of Rajasthan applied therefor and ultimately, he was selected by the respondents and was appointed on the post of Manager (Technical) on deputation basis by the order dated 05.05.2005. It was given out in the advertisement for the said post that the candidates initially appointed on deputation basis would be considered for absorption in accordance with the policies and requirements of NHAI.

Shorn of unnecessary details, suffice it to notice that in due course of time, by way of amendments, the provisions were made in the said Regulations for absorption and the NHAI proceeded to issue a notification in that regard on 23.10.2009. The petitioner submitted an application 04.12.2009 for permanent absorption. His deputation period was also extended from time to time. The respondents conducted interviews on 15.03.2010 for appointment on the post of Manager (Technical) on absorption basis but, while the selection process was going on, an amendment was further introduced to the Regulations changing the constitution of the selection committee. In any case, in the first list published by the respondents, of provisionally eligible candidates for appointment to the post of Manager (Technical) on permanent absorption basis, the name of the petitioner stood at S.No.15.

It appears that on one hand, the process remained pending and on the other hand, there had been a spate of litigation where some of the similarly situated

persons challenged the process of lateral entry in accordance with the Regulations of 1996 wherein the CAT directed the respondents to complete the process within a period of 6 weeks. Ultimately, the respondents issued the office order for repatriation of the employees in which the petitioner's name was also included.

After having referred to certain intervening events including those relating to the litigations, the petitioner approached the CAT stating his grievance against absorption process newly taken up by the respondents, as also against other proposition of his repatriation to the parent department and prayed for the following reliefs: -

"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/1A) 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 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 allowed with costs."

The respondents submitted in their counter before the CAT that the petitioner had not stated the correct and relevant facts. It was, *inter alia*, submitted that

during the pendency of writ petition filed by the petitioner (CWP No.7785/20120 in this Court), the petitioner and other incumbents were considered for absorption but the petitioner was found unsuitable. The respondents further submitted that even under the amended scheme, the maximum deputation period could have been of 7 years and the petitioner having already completed this maximum deputation period, was required to be repatriated; and had been relieved to join his parent department. It was also submitted that the petitioner would be deemed to have been relieved on the date of expiry of the deputation period unless the deputation was extended. It was further submitted that the petitioner was not entitled to claim his absorption as a matter of right, as it was basically the prerogative/discretion of the organization to absorb or not, dependent upon the circumstances, policy and the regulations. The respondents particularly submitted that the petitioner was not fulfilling the criteria for absorption, as provided under Clause 13 of the Regulations of 1996.

After having heard the parties, the CAT found no reason to grant the prayer made by the petitioner, particularly with reference to the fact that though he was considered for absorption but was not found fit for the same. The CAT, *inter alia*, observed as under: -

"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."

The contention of the petitioner that the requirement of the consent from the parent department had been done away with was also negatived by the CAT. The CAT also observed that the petitioner had not challenged the legality of the office memorandum fixing the criteria for absorption.

Seeking to question the order so passed by the CAT the petitioner has raised several contentions before this Court including his stand about violation of several clauses of the Regulations of 1996; and that the amendment in the Regulations

made in the year 2012 could not have been applied to his case where the process of absorption had been taken up in the year 2009 itself. It is also submitted that the requirements of confidential assessment report has been approached by the respondents in a rather perfunctory manner, detached from the crux and realities of the matter; and unnecessary distinction was sought to be made in the expressions "recommended" or "strongly recommended". It is also sought to be submitted that some of the incumbents were absorbed without considering all other service records. According to the petitioner, his service record was not only unblemished but, from the year 2005-06 to the year 2008-09 he had earned the grading "outstanding". It is also submitted that even under the new procedure prescribed in the year 2012, his absorption would be lawful when he had earned the grading "outstanding" in the years 2006-07, 2007-08, 2008-09 and the grading "very good" in the year 2009-10 and 2010-11. It is further submitted that in the confidential report dated 28.09.2012, the Reporting Officer specifically recommended for his absorption but these factors were omitted from consideration.

The petitioner has also contended that ventilating all his grievances, he had indeed made a detailed and exhaustive representation on 06.11.2012 but the respondents, for the reasons best known to them, have not attended on the said representation. It is also contended that this being a matter of absorption, there had not been any specific requirement of the consent of the parent department; and if seeking voluntary retirement from the

parent department be the condition at all, he would be seeking the same.

The respondents though have duly supported the order impugned but could not deny the fact that the Regional Officer indeed recommended for the petitioner's absorption in the recommendation dated 28.09.2012. The learned counsel for the respondent has also frankly submitted that the requirement of consent from the parent department had been for the purpose of continuing with deputation and not related to the case of absorption.

In our view, when it had surfaced before the CAT that all the submissions of the petitioner had not been given due consideration by the respondents and his representation remained pending, looking to the subject matter of the litigation, it would have been in the fitness of things if the CAT had directed the respondents to reconsider the matter of the petitioner without dilating on the other contentions raised. True it is that whether to absorb or not; or whether to continue a person on deputation or not, are essentially the matters in the domain of the employer but then, the respondents, being of an agency and instrumentality of the Government, are obviously required to adhere to all the principles of reasonableness, rationality and fair play. In the present matter, it appears that all the related aspects concerning the services rendered by the petitioner, as also the material on record, were not duly considered by the respondents before they proceeded to decline his prayer for absorption. Suffice it appears for the present purpose to indicate that from the material on record, it is difficult to arrive at

a definite concision that the Regional Officer's assessment and recommendation dated 28.09.2012 was duly taken into consideration by the respondents.

In view of what has been observed and indicated hereinabove, as also looking to the subject matter of this litigation and in the singular and particular facts of this case, it appears apt and appropriate that the case of the petitioner for absorption, pursuant to the process initiated in the year 2009, be re-considered by the respondents while taking note of the material on record, even if the same is required to be dealt with as per the amended provisions applicable as on 25.10.2012, i.e., the date when the matter of the petitioner was considered earlier.

It is also pointed out that during the pendency of this matter before the CAT, there had been an interim order operating in the petitioner's favour and, thereafter, he is on regular leave, but has not joined on repatriation with the parent department.

Having regard to the circumstances of the case, we deem it proper and in the balance of equities, particularly looking to the fact that petitioner is said to have not joined the parent department, that the operation, effect and execution of the office order No.11019/1156/2007-ADMN dated 29.07.2013 be kept in abeyance for a period of 2 weeks, i.e., until 30.12.2013. It is expected of the respondents that a final decision in the matter of the petitioner, after re-examining the record as also keeping in view the representation made by him on 06.11.2012, is taken expeditiously and communicated to the petitioner.

This petition stands partly allowed; the order passed by the CAT stands modified; and the OA stands partly allowed to the extent and in the manner indicated above. No costs".

7. Learned counsel has also submitted that the Respondents were quite discriminatory in their decision to repatriate the Applicants. In this regard he has pointed out that while Shri S.D. Chitnis and Shri B.S. Salunke who were having "Very Good" gradings in their ACRES have been absorbed but Shri Sanjay Channa and Shri P.K. Srivastava having the ACR grading of "Very Good" have not been absorbed as they were not having "strong recommendations". Since they were the candidates for the selection year 2012, they should have been considered in accordance with the criteria of 2012 only and whether the recommendations was strong or otherwise as the concept of "strong recommendations" has been held to be illegal and arbitrary by the Hon'ble High Court of Judicature of Rajasthan at Jodhpur in the cases of

Mukul Saxena (supra) and also in case of ***Lokesh Singh Rajpurohit*** (supra).

8. He has further submitted that, admittedly, in 2012 selection also, there was no requirement of Outstanding ACRs and various individuals were absorbed with Very Good ACRs. The fact that cannot be ignored again is that the performance of the Applicants were satisfactory and hence, their deputation periods were extended for from time to time. He has also pointed out that this Tribunal, vide order dated 28.04.2014, directed the Respondents to delink the selection process and complete the earlier selection process initiated in pursuance to the office memorandum dated 28.11.2009 but the Respondents adopted the new criteria of average of the "Outstanding" gradings in the ACRs which is not apt in law. At the same time, in respect of various other persons, the average of "Very Good" gradings in the ACRs has been considered and they have been absorbed. There was also a finding of fact that the selection process of the year 2009 was complete in all

respects but absorption letter could not be issued for want of NOC in some cases but the Respondents ignored that fact and conducted the new selection. Further according to the learned counsel for the Applicant, the Respondent-NHAI was supposed to recruit 25% (120 nos.) of posts in 2010, 15% (17 nos.) of in 2011 and 10% (48 nos.) of posts in 2012 to the permanent cadre as per the original programme. But they have selected only 69 nos. of posts up to 2012 and about 100 nos. posts of Manager (T) on direct recruitment basis.

9. The Respondent-NHAI in its reply has submitted that in 1999, vide Order No. 11012/20/98 dated 12.05.1999, it has issued certain guidelines for absorption of employees on deputation and, vide office memorandum no. 11012/155/2009 dated 28.11.2009, the process for absorption was initiated by inviting applications from eligible candidates who were already serving NHAI on deputation basis. The Applicants applied for absorption in pursuance of the aforementioned Memorandum. Thereafter, another

OM No.11012/174/2012 dated 29.08.2012 was also issued inviting applications for permanent absorption from interested/eligible officers for permanent absorption who have not applied vide the aforeaid earlier Memorandum dated 28.11.2009 making it clear that the officers who had applied earlier in terms of Memorandum dated 28.11.2009, need not apply again. 158 applications in terms of the memorandum dated 28.11.2009 were already received and 98 more applications were received in terms of the memorandum dated 29.08.2012. Subsequently, vide Office Order No. 11012/155/2009-Admn dated 09.08.2012, a Screening Committee consisting of 3 officers of Respondent-NHAI was constituted to scrutinize the applications and, vide Office Order dated 10.10.2012, a Selection Committee comprising of three officers of the rank of CGM and one officer of GM rank (SC/ST representative) was constituted to consider the list of eligible applicants/officers furnished by the Screening Committee, for absorption. The Selection Committee after having

scrutinized the said list of officers with reference to the requisite documents such as ACRs/Descriptive Assessment Report received from the concerned CGMs (Tech.), Vigilance/Disciplinary Clearances and No Objection Certificate and recommended 69 officers for absorption. As the Applicants were not selected, they filed Original Application No. 4007 of 2012 before this Tribunal and connected cases challenging the selection process and the Tribunal, vide order dated 28.04.2014, quashed the memorandum dated 20.09.2012 and letter dated 07.11.2012.

10. It has stated furtehr that in compliance of the aforesaid order dated 28.04.2014, the selection committee held meeting on 27.06.2014 for reviewing its recommendation given in October 2012. In the Review meeting, the Selection Committee adopted the residual service strictly as per regulation 2009 i.e. 5 years and the selection criteria of "Outstanding" grading of available ACR's average for the applicable period. Accordingly, the Selection committee selected four candidates, namely, P.N. Gawasane, Manoj

Kumar Garg, Bhupendra Singh Chauhan Manoj Kumar Sharma and the Competent Authority approved their absorption. Thus the Respondent, while conducting the exercise of absorption, strictly followed the Regulations and adopted the criteria of "Outstanding" grading not only for the reason that it has the right to select/absorb the best candidates but also for the reason that it has only limited requirement with regard to the permanent employee. It has specifically denied the allegations of the Applicants that it adopted the method of pick and choose policy in absorbing the deputationists. According to it, it has gone strictly by seniority and merit of the individual officers. Further according to it, the Selection Committee met in 2012 did not take proper care while selecting the officers on deputation. Therefore, the later Selection Committee in its meeting held on 27.06.2014 decided to adopt the residual service 2009 Regulations of 5 years and the criterion of the average of the "Outstanding" grading of available ACR's for the applicable period. In the

case of the Applicants, the average of available ACR's upto the year 2009 was only "Very Good" whereas as per the criterion adopted and followed by the Selection Committee, the same should have been "Outstanding". It has, therefore, submitted that the Applicants are trying to reagitate the issues which have already been decided by this Tribunal vide its earlier order dated 28.04.2014.

11. We have considered the submissions made by the learned counsel for the parties. We have also perused the Respondent's record made available by their learned counsel. In our considered view, the decision of the Respondent-NHAI to repatriate the Applicants S/Shri G. Siva Ram Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chander Tejwani is nothing but an arbitrary and whimsical one. In fact its decision is a perversion of the principle of right of consideration as understood in the service jurisprudence. The attitude of the Respondent-NHAI as reflected from their reply affidavit is that since this Tribunal has directed it to consider the case of the

Applicants for absorption, it considered but rejected on the ground that they have only the right of consideration and not of absorption. It is well settled that the concept of consideration does not envisage an empty formality. Rather, fair play and reasonableness are the touchstones of any good administration. Arbitrariness and discrimination vitiate any process of selection. The Hon'ble Supreme Court in ***Man Singh Vs. State of Haryana and Others*** 2008 (12) SCC 331 observed as under:-

".....Any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it.

It is seen that in the earlier round of litigation, this Tribunal came to the conclusion that the entire recruitment process adopted by the Respondents for the absorption of the Applicants who have been on deputation with them for a considerable period of time was quite arbitrary. The Applicants S/Shri G. Siva Rama Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chandra Tejwani have applied for absorption in terms of the Respondents Memorandum

dated 28.11.2009 based on the 'National Highways Authority of India Act, 1988' as amended by the third Amendment Regulations, 2009 and notified on 23.10.2009, according to which the deputationists with two years of continuous service and less than 56 years of age as on 1st day of January of the year in which they are considered for absorption, could apply. The Screening Committee constituted for the purpose, screened them and recommended them for absorption. They have also appeared before the Selection Committee on 15.03.2010 as the last stage in the process of absorption. But the said selection was not finalized only for the reason that the NHAI did not receive the No Objection Certificate ("NOC" for short) and Vigilance Clearance of some of the Applicants. The NHAI had also given an assurance before this Tribunal that they will fill up the posts by lateral entry only after the case of the Applicants for absorption was decided and the Tribunal directed it to complete the process of absorption within 6 weeks.

As it failed to comply with the directions, they have sought extension for compliance and this Tribunal **vide** order dated 29.09.2011 granted them three more months to them to comply with the aforesaid order of this Tribunal dated 25.03.2010 with the further direction that there will be no need for them to wait indefinitely for 'no objection' from the parent Department of the deputationist and it will be well within the jurisdiction to presume 'no objection' if the same is not reported/given by the Parent Department of the concerned deputationist. Neither the Tribunal nor the Applicants had any reason to disbelieve them as they were expected to issue the absorption order without any delay. However, the Respondents after carrying out the amendments in the Regulations on 24.08.2012, invited fresh applications for absorption **vide** OM dated 29.08.2012 dispensing the condition of NOC from the parent cadres on technical resignation of the Applicants concerned but reducing the maximum age limit from 56 to 55. The Ministry of Road Transport and Highways has also issued letter

dated 20.09.2012 directing the NHAI that "the officers who have completed more than ten years of deputation shall be repatriated and officers with ten or more years of remaining service only be considered for absorption. The Applicants had no grievance against the aforeaid decision as they have already been recommended for absorption and the Selection Committee met on 15.03.2010 did not finalize the selection only for want of NOC and vigilance clearance from the parent offices of some of the Applicants and they have also been specifically asked not to apply afresh for absorption in terms of the OM dated 29.08.2012. Subsequently, their applications have also been forwarded to the Screening Committee and it found them again eligible applying the norms prescribed in the Respondents Memorandum dated 28.11.2009 based on the 'National Highways Authority of India Act, 1988' as amended by the third Amendment Regulations, 2009 and notified on 23.10.2009. But the Selection Committee did not recommend their names as they

followed different norms prescribed in the NHAI's amended Regulations dated 24.08.2012 and the letter of the Ministry of Road Transport and Highway dated 20.09.2012. We, therefore, held that the aforesaid decision of the Selection Committee was dehors the rules and directed the Respondents to delink the process of absorption of the Applicants initiated by them pursuant to their Memorandum dated 28.11.2009 from the process based on the subsequent Memorandum dated 29.08.2012 and to finalize the case of the Applicants for absorption strictly in accordance with the "National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996" as amended vide National Highways Authority of India (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2009 and notified it on 23.10.2009 and take a decision for absorption of officers. While so directing, this Tribunal was guided by the principle that once the statutory rules regulating the Recruitments are in place, the appointments have to

be made in accordance with the said rules [**J &K Public Service Commission Vs. Dr. Narinder Mohan** (1994) 2 SCC 630]. Further, the amendment to Recruitment Rules has no effect on vacancies that arose before such amendment and they will be governed by the un-amended provisions of the rules as held by the Apex Court in the case of **Y.V. Rangaiah & Others Vs. N. J. Srinivasa Rao & Others** 1983 (3) SCC 284 and the amended rules will not have retrospective effect and they cannot affect the right of the candidates adversely as held by the same Court. We have also followed the decision laid down by the Apex Court in its judgment in **Commissioner of Income Tax, Mumbai Vs. Anjum M.S. Ghaswala and Others** AIR 2001 SC 3868 that when a statute vests certain powers in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner prescribed in the statute and not in any other manner.

12. Meanwhile, the Bangalore Bench of this Tribunal considered the case of one **Shri. P.N. Gawasane**, a Manager (Tech.) who joined the NHAI on 14.01.2003 and similarly placed as the Applicants. As his ACRs were found to be wrongly graded, the Tribunal directed the Respondents-NHAI to reconsider them. After reconsideration, the NHAI, upgraded his ACRs as "Very Good" and the Chairman, NHAI, recommended him for absorption. Accordingly, he was absorbed. In the case of **Shri Mukul Saxena**, another similarly placed Manager (Tech.), the Lucknow Bench of this Tribunal held that the proceedings adopted by the Selection Committee held on 25.10.2012 was not in accordance with the eligibility criteria prescribed under the NHAI Regulations, 1996 for the reasons that the Selection Committee did not give any due importance to the assessment made by the earlier Selection Committee when his candidature was considered in response to a memorandum dated 28.11.2009 and he was provisionally selected for absorption showing his

name at Sl. No. 77 in the select list dated 15.03.2010; the Selection Committee in its meeting held on 25.10.2012 had taken a decision by relying upon the fact that the Regional Officer has not recommended his case for absorption; the criteria that has been adopted by the Selection Committee was not as prescribed under sub-clause (5) of Regulation 13 but it was based on the guidelines prescribed by the Chairman in his order dated 21.09.2012; the benchmark of "Outstanding" followed by the Selection Committee for the purpose of taking a decision was not benchmark specifically spell out under the Regulations; even the downgrading of '7' by the Reviewing Officer is "Very Good" and in the absence of a specific benchmark in the regulations, the relevant factors which were required to be taken into account by the Selection Committee were whether an officer who was working on deputation was (i) free of vigilance clearance, (ii) any warning is issued and (iii) any investigation is pending on receipt of a complaint against an officer

and the applicant did not fall in any of case of the above four circumstances. The Respondents were, therefore, directed to hold a review Selection Committee meeting to review the decision of the Selection Committee held on 25.10.2012 and consider the case of the applicant for absorption in the post of Manager (Tech.) in NHAI afresh in the light of the aforesaid observations. According to the impugned Minutes of the Selection Committee held on 27.06.2014 for reviewing the recommendations given in October, 2012 for the post of Manager (Tech.), during the selection process Shri Mukul Saxena was repatriated to his parent office vide order dated 16.09.2013 and the Selection Committee decided to absorb him subject to clarification as to whether he is eligible as he is not continuing with the NHAI on deputation. The Committee further observed that if he is eligible, he will be recommended for absorption.

13. In view of the above position, we are of the considered view that the cases of S/Shri G. Siva

Rama Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chandra Tejwani are squarely covered by the aforeaid orders of the Bangalore Bench and the Lucknow Bench. From the order of the Bangalore Bench, it is seen that the benchmark of "Outstanding" was not being followed by the Selection Committee itself in all cases as it was not the benchmark specifically spelt out under the Regulations. Unlike Shri Mukul Saxena, these Applicants are still continuing on deputation. Therefore, the finding of the Selection Committee that they are not suitable for the post of Manager (Tech.) on absorption and to repatriate them are irrational, illegal and arbitrary. Rather, the Selection Committee has taken an adamant attitude in the case of the Applicants which is quite unreasonable. We, therefore, in the interest of justice, do not find it appropriate to remit the cases of the Applicants for another review by the Selection Committee. Consequently, we allow this Original Application and set aside the Respondent's Office Order dated 08.07.2014 issued to them with all

consequential benefits. The Respondents shall pass appropriate orders in compliance, within two months from the date of receipt of a copy of this order.

14. As far as the Applicants S/Shri Pradeep Kumar Srivastava and Sanjay Channa are concerned, since there are no orders of repatriation in their cases and still they are continuing on deputation, they may make appropriate representations to the Respondents with regard to the Minutes of the Selection Committee held on 27.06.2014 concerning their cases. On receipt of such representations, the Respondents shall consider their cases afresh taking into consideration all factors including observations made in this OA and pass appropriate orders under intimation to them within two months from the date of receipt of a copy of this order.

15. There shall be no order as to costs.

Let copies of this order be placed in all the files.

(Shekhar Agarwal)
Member (A)

(G. Geroge Paracken)
Member (J)

Rakesh