Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2460/2015
MA-2446/2016

Reserved on : 28.02.2017.

Pronounced on : 15.03.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Surendra Kumar,
Aged about 52 years,
S/o late Sh. R.B. Choubey,
R/o B-302, Platinum City,
H.M.T. Road, Yeshwant Pur,
Bagnalore.
(Working as Project Director & DGM, NHAI) ..... Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

1. Secretary,
   Ministry of Road, Transport & Highways,
   Parivahan Bhawan, Parliament Street,
   New Delhi.

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

3. Secretary,
   Road Construction Department,
   Govt. of Jharkhand,
   Project Building,
   HEC Area, Ranchi-834004. .... Respondents

(through Ms. Bhawna Dahoon, Mr. Devashish Bharuka with Mr. Ravi Bharuka, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

According to the applicant, he joined the respondent National Highways Authority of India (NHAI) on deputation in the year 2010 and was initially given a tenure of 04 years. In April 2013, the respondents invited applications of the deputationists regarding their willingness for absorption in terms of the Policy and Regulations of NHAI. In this Circular, the respondents kept the residual service for absorption as 10 years. This was contrary to the Regulations, which prescribed 05 years residual service. Hence, the respondents then reduced the residual service from 10 years to 05 years vide Communication dated 12.11.2013 of respondent No.1. However, the case of the applicant was not reconsidered by them. In the year 2014, the deputation period of the applicant was extended upto 15.05.2015 for a period of one year. Further, vide their order dated 22.04.2015, the respondents informed the applicant that his request for absorption has not been found to be feasible. Vide the same order, the applicant was also advised to arrange for No Objection Certificate (NOC) from his parent department for extension of his deputation period. On 15.06.2015 on their own the respondents gave further 02 years extension to the applicant i.e. for 6th & 7th year commencing from 16.05.2015. However, vide the impugned order dated 06.07.2015, the respondents curtailed his deputation tenure

and repatriated him to his parent department. He approached this Tribunal by filing the present OA on 09.07.2015. While issuing notice in this OA on 10.07.2015, this Tribunal stayed the impugned order dated 06.07.2015. The applicant is now seeking the following relief in this OA:-

> "(i) Quash and set aside impugned order dated 06.07.2015 (Annexure-A-1).
>
> (ii) Direct the respondents to consider/reconsider the case of the applicant for absorption on merits and in case, the applicant is found fit, the applicant be directed to be absorbed with all consequential benefits.
>
> (iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice."

2. The contention of the applicant is that respondents have erred in law as well as on facts while passing the order dated 06.07.2015. This order was in violation of the Guidelines of DoP&T dated 17.06.2010, which prescribe that in cases of pre-mature repatriation a notice of at least three months should be given to the Lending Ministry/Department as well as the employee concerned. The respondents have never considered the case of absorption of the applicant on merits even though he had submitted his willingness for the same. Under the Regulations residual service while considering absorption was kept at 05 years but the office of respondent No.1 issued Instructions increasing this to 10 years. Thereafter, the respondents issued another communication dated 12.11.2013 by

which the residual service was again reduced to 05 years but the applicant's case was never considered in terms of this reduced period. The order dated 22.04.2015 by which the applicant was informed that his request for absorption could not be acceeded to is unsustainable as the case of the applicant had never been considered on merits in terms of the Regulations of NHAI. Further, the applicant has submitted that as far as his performance was concerned, it was noteworthy that the respondents had themselves extended his deputation period for 02 years and there was no complaint against him. Thus, his repatriation order is bad in law as it is violative of the judgment of Hon'ble Supreme Court in the case of **Union of India** Vs. **V. Ramakrishna,** 2005(8) SCC 394 wherein it has been laid down that a deputationist, even though he has no right to continue on the post, has a right to be treated fairly and equitably and premature repatriation order can be challenged if it has been passed in haste or on account of mala fide. The applicant has further relied on the DoP&T Instructions dated 17.06.2010, which prescribe for 03 months advance notice in cases of premature repatriation.

3. Respondent No. 2 National Highways Authority of India and respondent No. 3 Secretary, Road Construction Department, Govt. of Jharkhand have filed their replies. Respondent No.3 has submitted that NHAI vide its letter dated 22.05.2015 had requested

for concurrence of Govt. of Jharkhand for extension of the deputation period of the applicant by 02 years. However, no concurrence was given by the parent department but respondent No. 2 had suo moto extended the deputation period of the applicant by 02 years w.e.f. 16.05.2015. NHAI, according to respondent No. 3, had no jurisdiction to do so in absence of NOC from the parent employer of the applicant. Thus, the extension order passed by the respondent No.2 was itself unsustainable in law. As such, there is no illegality in the impugned order passed by respondent No.2 by which the applicant has been repatriated to the parent cadre. Respondent No.3 submitted that as far as Govt. of Jharkhand was concerned, they had given concurrence to the extension of applicant's deputation tenure only by one year i.e. for the 5th year of deputation. During the course of the arguments, learned counsel for respondent No.3 had also mentioned that as far as absorption of the applicant in NHAI was concerned, their concurrence for the same had never been sought by respondent No.2.

4. Respondent No.2 in their reply have submitted that the applicant initially joined NHAI on deputation on 17.05.2010 for a period of 04 years. His deputation tenure was extended by one year vide order dated 19.01.2015. Thereafter, it was further extended by two years in anticipation of NOC from the parent department vide

order dated 15.05.2015. However, no response was received from the Govt. Jharkhand. Hence, the applicant was repatriated to his parent department on 06.07.2015 with the approval of competent authority.

4.1 Respondent No.2 has further stated that vide letter dated 18.04.2013 applications from interested DGMs working on deputation in NHAI were invited for absorption in NHAI. The applicant had also applied for the same in time. However, the Selection Committee did not recommend him for absorption as he was short of 10 years residual service, which was the eligibility criteria in the circular by which the applications were invited. Subsequently, the Ministry of Road, Transport and Highways reduced the period of residual service from 10 years to 05 years vide their letter dated 12.11.2013. However, by that time the applicant's case had already been considered and not recommended by the Selection Committee. The amendment carried out in the Conditions of absorption could not have been applied to the applicant's case. The applicant also failed to procure NOC from his parent department for continuation of his deputation period. Hence, he was repatriated vide the impugned order dated 06.07.2015. This order has, however, been stayed by the Tribunal on 10.07.2015.

5. The respondent No.2 has relied on several judgments to say that a deputationist has no vested right to continue on deputation post and can be reverted at any time. They have relied on the judgment of Hon'ble High Court of Delhi in Writ Petition (C) No. 2299/2016 **(Dr. Professor Santosh Panda Vs. Indira Gandhi National Open University)** dated 18.03.2016, in para-18 of which the following has been held:-

> "18. It is now well settled that deputation is just a transfer of a Government employee from one department to another. So in its very nature, the tenure of a deputationist is a precarious one. Of course, in some cases, it may be for a fixed term, but even then it is implicit that a deputationist can always be repatriated to his parent department. It is, thus, manifest that a deputationist has no right to the post held by him in the borrowing department and he can always be repatriated to his parent department. This right of the borrowing department to repatriate the employee and for that matter right of the lending department to recall their own employee sent on deputation, is well recognized in service jurisprudence."

5.1 The respondents stated that in the case of **Niranjan Kumar** Vs. **The State of Jharkhand & Ors.** [WP(S) No. 3809/2013] Hon'ble High Court of Jharkhand at Ranchi on 03/31.10.2013 in para-7 has held as follows:-

> "On a perusal of the documents on record more particularly, Annexure-2, on which the learned counsel appearing for the petitioner has relied on, I find that a communication was addressed to the Secretary, Jharkhand High Court Legal Services Committee stating that the service of the petitioner was placed at the disposal of the Jharkhand High Court Legal Services Committee. Along with the said letter dated 19.06.2002, other particulars of the petitioner was also sent to the Jharkhand High Court Legal Services Committee. From the aforesaid letter, I do not find any indication that the petitioner

was placed on deputation with Jharkhand High Court Legal Services Committee. In service jurisprudence the word 'deputation' has a specific cannotation which indicates express consent of all the three parties namely, employer, employee and the authority under which the service of the employee is sought to be put on deputation. From annexure-2 i.e. letter dated 19.06.2002, I do not find any such express consent. The petitioner has not brought on record his appointment letter or even the joining letters. In the present writ proceeding no material has been brought on record to indicate that the service of the petitioner was on deputation with the Jharkhand High Court Legal Services Committee."

5.2 Further, it was argued on behalf of NHAI that in the case of **Umapati Choudhary** Vs. **State of Bihar and Anr.,** (1999) 4 SCC 659 Hon'ble Supreme Court on 14.05.1999 in para-8 has held as follows:-

"8. Deputation can be aptly described as an assignment' of an employee (commonly referred to as the deputationist) of one department or caders or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority."

5.3 Further, it was argued on behalf of NHAI that Hon'ble High Court of Delhi in the case of **Post Graduate Institute of Medical Education & Research and Ors.** Vs. **Ajay Sehgal & Ors.** [WP(C) No.

214/2011] on 19.09.2011 in the judgment have discussed the following judgments on the same issue:-

> "(i) **Ratilal B. Soni & Ors.** Vs. **State of Gujarat & Ors.,** 1990 AIR(SC) 1132.
>
> (ii) **Umapati Choudhary** Vs. **State of Bihar,** 1999 (4) SCC 659.
>
> (iii) **UOI & Anr.** Vs. **V. Ramakrishanan & Ors.,** 2005(8) SCC 394.
>
> (iv) **Gurinder Pal Singh & Ors.** Vs. **State of Punjab & Ors.,** 2005(1)SLR 629.

5.4 The respondents have also submitted that the parent department of the applicant had never consented to extension of his deputation tenure beyond 5 years. Even in the counter-reply filed by the parent department of the applicant i.e. State Government of Jharkhand they have submitted that they had not given concurrence to the extension of applicant's deputation and that the same was extended by NHAI suo moto, which NHAI could not have done.

5.5 We have considered the rival submissions. It is clear that the extension of deputation tenure of the applicant beyond 5 years was never agreed to by the parent department of the applicant. Further, the reason for repatriation was justified, namely, non-availability of NOC from parent Govt. Therefore, the applicant cannot claim that he has been unfairly treated. As such, he cannot get the benefit of the judgment of Hon'ble Supreme Court in the

case of **V. Ramakrishna** (supra) relied upon by him. We also do not see any mala fide or malice in the decision of the respondents to repatriate him. The order is non-stigmatic and does not cast any aspersion on the applicant. Thus, there was no requirement of giving a show cause notice to the applicant before his premature repatriation as held by Hon'ble High Court of Delhi in the case of **L/NK V.H.K. Murthy** Vs. **Special Protection Group & Anr.**, 2000 (4) AD(Del) 624 and in the case of **Sh. Sitamber Singh** Vs. **UOI & Anr.** (WP(C) No. 12773/2009) dated 15.07.2010.

5.6 The next issue to be decided is whether this can be termed as premature repatriation and whether an advance notice of 03 months was required as is provided in DoP&T Instructions dated 17.06.2010. From the facts of the case it is evident that the applicant had initially come on deputation for a period of 04 years, which he completed. Thereafter, he was given an extension of one year, which also he satisfactorily completed. The respondents had given him further extension of 02 years in anticipation of no objection from his parent department. Since the NOC did not come, they passed the impugned order curtailing the extension and repatriating the applicant. In our opinion, this cannot be termed as premature repatriation even though the extended period of deputation was terminated abruptly and suo moto. This is because the applicant

had already completed five years of deputation when he was repatriated. This is the maximum permissible period under DoP&T Instructions. Thus this is not a case in which DoP&T O.M. dated 17.06.2010 would apply. Moreover, the issue of giving 03 months notice has been considered by us in a judgment of this very Bench in OA-278/2017 **(Nawal Kishore Sharma** Vs. **NHAI & Ors.)** dated 28.02.2017 where we have come to the conclusion that such a direction has to be treated as directory and not mandatory since consequence of non-observance of the same have not been provided for in this O.M. In this regard, we have placed reliance on the judgment of Apex Court in the case of **Modern School** Vs. **Shashi Pal Sharma & Ors.,** (2007) 8 SCC 540. Paras-21 & 22 are relevant and are reproduced as herein:-

> "21. Reliance placed by Mr. Ramamurthy on the departmental instruction dated 17.10.1996 is not relevant. The said departmental instruction reads thus :
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> > "As per provisions of Delhi School Act and Rules, 1973, the Managing Committee of the school is the appointing authority in respect of aided and unaided recognized schools. On various occasions the Managing Committee has to discharge the statutory obligation of obtaining approval of the Director of Education to various proposals by passing a resolution.
> >
> > Before any proposal is put up before the D.E., for obtaining his approval, the individual proposal is to be examined on merits, which includes scrutiny of the resolution passed by the Managing Committee.
> >
> > In the past, it is observed that most of the schools are not adhering to the approved Scheme of Management. DE

nominees have been provided to all the aided and unaided schools, who are not invited by the Managing Committee of the schools. In some cases, 'special invitees' are invited to attend the meeting of the Managing Committee in contravention to the approved Scheme of Management.

All the Managers of aided/unaided schools are therefore, directed-

1. to call the meeting of the Managing Committee in accordance with the approved Scheme of Management.

2. to invite the DE nominees/advisory board nominees in the meeting and notice of the meeting should be sent by special messenger or by Regd. Post only.

3. to incorporate in the body of resolution, the names of members who have attended the meeting of Managing Committee. If the DE nominee has not attended the meeting, a certificate should be recorded therein that notice of meeting of Managing Committee was sent on _____ (date) by registered post or by special messenger.

4. Resolution should not be passed by circulation among the members."

22. The manner in which the meeting of the Managing Committee should be called for is a matter governed by the internal rules of the school. The said departmental instructions does not state that any deviation therefrom would result in the Resolution passed by the Managing Committee by circulation, if rendered nullity, the same must be held to be directory."

5.7 Thus, our conclusion is that as far as repatriation of the applicant is concerned, it was in order and there was no infirmity in the same.

6. The second issue to be considered is whether the applicant's case for absorption had been rightly considered by the respondents.

The applicant contended that the respondents had erred in insisting on 10 years residual service as a necessary condition for absorption since this was contrary to the Regulations, which prescribed residual service of only 05 years. He claimed that when the applicant's case was considered by the Selection Committee, it was rejected on this very ground alone. Subsequently, the respondents issued a Circular reducing the same from 10 years to 05 years. However, applicant's case was not reconsidered according to the reduced residual period. The applicant submitted that discriminatory treatment had been meted out to him as many similar cases were reconsidered by the respondents on their own. He argued that since insistence on 10 years residual service was contrary to Regulations, this Tribunal vide their order dated 28.04.2014 in OA-3949/2012 had set aside it declaring it to be de hors the rules. Thereafter, it was incumbent on the part of the respondents to reconsider all those cases which had been rejected on this very ground. Orders of the Tribunal should have been applied retrospectively. To support his claim the applicant relied on the judgment of Apex Court in the case of **M.A. Murthy** Vs. **State of Karnataka and Ors.,** (2003) 7 SCC 517 wherein in para-8 the following has been held:-

> "Learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective its stage of pendency

because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective over-ruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath and Ors. v. State of Punjab and Anr. (AIR 1967 SC 1643). In Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors. (1993 (4) SCC 727) the view was adopted. Prospective over-ruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. (1997) 5 SCC 201, Baburam v. C.C. Jacob (1999) 3 SCC 362). It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective over-ruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective over-ruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma's case No.II. All the more so when the subsequent judgment is by way of Review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."

6.1 On the same issue, he relied on para-68 of the judgment of Apex Court in the case of **Managing Director, ECIL, Hyderabad &**

Ors. Vs. **B. Karunakar and Ors.,** (1993) 25 ATC 704, which reads as follows:-

> "Prospective overruling, therefore, limits to future situations and excludes application to situations which have arisen before the decision was evolved. Supreme Court of United States of America in interpretation of the Constitution, statutes or any common law rights, consistently held that the Constitution neither prohibits nor requires retrospective effect. It is, therefore, for the court to decide, on a balance of all relevant considerations, whether a decision overruling a previous principle should be applied retrospectively or not. In Great Northern Railway Company v. Sunburst Oil and Refining Co. ((1932) 287 U.S. 358, "77 L. Ed. 360). Justice Cardozo speaking for the unanimous Supreme Court of U.S.A. for the first time applied prospective operation of the decision from the date of the judgment. The Supreme Court of Montana overruled a previous decision granting shippers, certain rights to recover excess payment regulated by Rail-Road Commission of intrastate freight rate. The Montona Court held that the statute did not create such a right. While approving the above rule it was held that it would not apply to past contracts or carriages entered into in reliance upon earlier decision."

6.2 The applicant has further submitted that on their own respondents have reviewed several such cases. Even NOC from the parent department has not been insisted upon while putting up these cases before the Selection Committee and NOC has been sought after the Selection Committee has declared the official fit for absorption. At that stage, the applicant also has a chance to resign from his parent department in case his parent department was not willing to grant NOC. However, in the case of the applicant he has neither been considered again for absorption in accordance with Regulations prescribing 05 years residual service nor has he been

considered for absorption in anticipation of NOC from his parent department. The respondent No.2 has thus acted in a discriminatory manner by selectively extending benefits to a chosen few. To support his case, the applicant relied on the judgment of Hon'ble Supreme Court in the case of **Rameshwar Prasad** Vs. **Managing Director, U.P. Rajkiya Nirman Nigam Limited and** Others, (1999) 8 SCC 381, in para-17 of which the following has been held:-

> "In our view, it is true that whether the deputationists should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent No. 1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary but is coupled with duty not to act arbitrarily, or at whim or caprice of any individual. In the present case, as stated earlier, the General Manager (N.E.Z.) specifically pointed out as early as in the year 1988 that appellant's service record was excellent; he has useful in service and appropriate order of his absorption may be passed. His application for absorption was within three years as provided in Rule 5. There is nothing on record to indicate that for any reason whatsoever, he was not required or fit to be absorbed or the power under Rule 5(1) of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 was not required to be exercised in his favour. Interim order dated 17.7.1991 passed by the High Court would not be applicable in case of appellant because his case was considered for absorption in the year 1988. Further on completion of five years on 19.11.1990 he could not have ordinarily been continued on deputation in the service of Nigam. It is apparent that he was absorbed from 19.11.90 because from that date his deputation allowance was also discontinued. If he was to be continued on deputation, there was no reason for non-payment of deputation allowance. So on the basis of statutory rules as well as the policy, appellant stand absorbed in the service of Nigam."

Further, the applicant cited judgment of a Co-ordinate Bench of this Tribunal in OA-4705/2015 (**Sanjay Kumar Arora** Vs. **UOI & Ors.**) dated 26.04.2016. The applicant submitted that following portion of the aforesaid judgment is relevant:-

> "The respondent-NHAI has not rebutted the fact of consideration and permanent absorption of Sh.O.P.Bhatia, DGM (Tech.) even in the absence of consent/NOC of the cadre controlling authority in the parent department. Thus, it is found that the respondent-NHAI, in exercise of its power under sub-regulation (7) of Regulation 13, ibid, has taken a decision to consider the cases of deputationists for permanent absorption even in the absence of consent/NOC of the cadre controlling authority in the parent department, and also to issue offers of appointment on absorption basis in favour of the officers, who are found suitable for permanent absorption, with the rider that they should submit the consent/NOC of the cadre controlling authority of the parent department and/or the acceptance of their resignation/voluntary retirement by the parent department under the proviso to clause (d) of sub-regulation (5) of Regulation 13, ibid. In the above view of the matter, we have found much force in the contention of the applicants that the denial of consideration of their cases for permanent absorption solely on the ground of non-receipt of consent/NOC of the cadre controlling authority in the parent department amounts to invidious discrimination against them, and that the impugned circular dated 16.10.2015 stopping the ongoing recruitment process for the post of Manger (Tech.), being arbitrary and illegal, is unsustainable and liable to be quashed."

6.3 The respondents, on the other hand, submitted that the Circular in response to which the applicant had applied for absorption clearly indicated that 10 years residual service was a necessary condition for absorption. His case was duly considered by the Selection Committee and not recommended because he did not meet this criteria. Thereafter, there was no requirement to consider

his case again. The respondents have further submitted that the applicant had no vested right to be absorbed as has been laid down in several judgments of the Apex Court. Some of the judgments relied upon by the respondents are as follows:-

(i) In the case of **Kunal Nand** Vs. **UOI & Ors.,** (2000) 5 SCC 362 the Hon'ble Supreme Court in para-6 has held as follows:-

> "6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad v. M.D., U.P. Rajkiya Nirman Nigam Ltd., (1999) 8 SCC 381 : 1999 AIR SCW 3427 : AIR 1999 SC 3443 : 1999 Lab IC 3285 : (1999 All LJ 2220) is inappropriate since, the consideration herein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent-department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."

(ii) **Ratilal B. Soni & Ors.** Vs. **State of Gujarat and Ors.,** 1990(Supp) SCC 243.

6.4 Respondents argued that in the case of **NHAI** Vs. **Sh. Mukul Saxena** [WP(C)-3822/2012] Hon'ble High Court of Delhi on 15.03.2013 has cautioned the Ministries from considering cases of absorption of employees on the principle of implied consent of the parent department. The relevant extracts are as follows:-

> "4. The only grievance of the petitioner is that it being directed to presume a no objection would create irsurmountable problems in the future, not only for the petitioner but even the employees, for the reason in the W.P.(C) Nos.3822, 3920, 3921 & 3922/ 2012 Page 4 of 5 absence of an express consent from the Parent Department the proportionate money payable towards terminal benefits not being made available by the Parent Department nor the Provident Fund Account being transferred, the employee would face an uncertain future. Besides, there may be good reasons, in public interest, for the Parent Department to refuse permission for permanent absorption in another organization.
>
> 5. We agree with the contention urged by the petitioner. Without going into the reason why the Parent Department was taking time to accord the consent, and if the reason was found to be unjustified, without a direction to the Parent Department to grant consent, no direction could be issued to the petitioner to proceed ahead as if consent had been accorded. The effect of the direction issued by the Tribunal is to create an uncertain future for the employees, who for a better today are not seeing the uncertainty of the future.
>
> 6. Accordingly, we dispose of the writ petitions quashing the direction contained in the impugned order dated September 29, 2011 that the petitioner would treat a deemed no objection if the Parent Department does not grant approval for an employee to be absorbed within a reasonable time. In said circumstance the right of the applicants before the Tribunal would be to seek directions against their Parent Department."

6.5 Lastly, the respondents argued that the applicant herein has been already repatriated to his parent department. Under these circumstances, he has no right to be considered for absorption. Relying on the judgment of Hon'ble High Court of Delhi in **NHAI** Vs. **Ashok Kumar Gupta** [WP(C)-8412/2014] dated 03.12.2014 the respondents further argued that they had a right to choose which officer to absorb and no interference in this regard was warranted from the Tribunal.

7. We have considered the arguments advance by both sides. It is evident from the facts narrated above that the applicant's case for absorption was only considered once by the respondents with the condition of 10 years residual service and was rejected when it was found that he did not possess the same. However, subsequently when this condition was dropped and requirement of residual service was reduced to 05 years his case was not reconsidered. The applicant has quoted several examples where the respondents have done so on their own. He has also quoted examples of this Tribunal in the case of **Sanjay Kumar Arora** (supra) where cases for absorption were considered in absence of NOC from the department with the rider that NOC may be subsequently obtained. However, we notice that in the instant case the applicant was last considered for absorption in the meeting of the Selection Committee

held in May, 2013. He was not recommended for absorption as he did not have 10 years residual service. Thereafter, this condition of 10 years residual service was dropped by a Communication received from respondent No.1 dated 12.11.2013. The applicant thereafter continued on deputation with the respondents for more than 1½ years till he was repatriated on 06.07.2015. During this period, there is no record of his either representing for reconsideration of his case or of obtaining NOC for absorption from his parent department. Now, the situation is that the applicant has been repatriated and his parent department have also not consented even to extension of his deputation, leave aside absorption. Further, we notice that the repatriation order passed by the respondents was stayed by us while issuing notice in this O.A. and the applicant is continuing with the respondents on the strength of our interim directions. Under these circumstances, even though there is some force in his arguments that his case has not been reconsidered unlike some others whom the respondents reconsidered for absorption on their own, yet noticing that the applicant has already been repatriated and that in earlier part of our judgment, we have upheld the repatriation order, no directions at this stage can be given to the respondents to reconsider his case for absorption. In this regard, we place reliance on the judgment of Hon'ble High Court of Delhi in the case of **Ashok Kumar Gupta**

(supra) wherein under similar circumstances Hon'ble High Court had set aside the order of the Tribunal by which reconsideration of the case of the respondent therein for absorption had been ordered. Hon'ble High Court had held that it was upto the organization concerned to decide whom to absorb and whom not to and that the Tribunal should not routinely interfere in such matters.

8. In view of the discussion made above, we do not find merit in this O.A. and the same is dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/