

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.2120/2017
M.A.No.2278/2017

Order reserved on 17th August 2017

Order pronounced on 5th April 2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Abdulla Javed Azmi, aged 31 years
s/o Sh. Maqbool Rahim Azmi
r/o Flat No.321, Plot No.21
Sant Sunder Dassji CGHS, Sector 12
Dwarka New Delhi – 110 078
2. Ramanjaneya Reddy Meka, aged 34 years
s/o Meka Venkateswara Reddy
r/o Flat No.B-101, Plot No.36
Vinayak Apartments CGHS Sector 10
Dwarka, New Delhi – 110 075
3. Mukesh Kumar Meena, aged 37 years
s/o B L Meena
r/o 262, Adarsh Apartment, Pocket 16
Sector 3, Dwarka, New Delhi – 110 078
4. Uma Kant Meena, aged 31 years
S/o Rewati Raman Meena
R/o 79 Second Floor
Indraprastha Apartment, Pocket-III
Sector-12 Dwarka, New Delhi – 110078.
5. Santosh Kumar Bajpai, aged 34 years
S/o Mahesh Chandra Bajpai
R/o Flat No. 621, New Ashiana CGHS
Plot No. 10, Sector 6 Dwarka
New Delhi – 110075.
6. Prashant Kumar, aged 30 years
S/o V.P. Singh, R/o D2C
203, Golflink Residency
Sector-18, Dwarka, New Delhi.

..Applicants

(All applicants working as Manager (Technical)
in NHAI)

(Mr. Pardip Dahiya, Advocate)

Versus

1. National Highway Authority of India
Through its Director
G-5 & 6, Sector – 10
Dwarka, New Delhi – 110075.
2. Sh. Bhupendra Singh Chauhan
S/o Raghunath Singh Chauhan
R/o 52, Defence Colony, Jalandhar.
3. Sh. Manoj Kumar Garg
S/o Late Om Prakash Garg
R/o H. No. 746, Metro View Apartment
Sector – 13, Dwarka, New Delhi.
4. Sh. Manoj Kumar Sharma
S/o Late Shri P.D. Sharma
R/o C-403, Bahawalpur Apartment
Sector – 6, Dwarka, New Delhi.
5. Sh. Pramod Kumar Sabat
S/o Sh. Narayan Sabat
R/o Flat No. 1065, Plot No. 4
Rajnigandha Apartment
Sector – 19, Dwarka, New Delhi.
6. Sh. Dharmendra Singh Chaudhary
S/o Late Sh. Pritam Singh
R/o 1101, Highland Apartment
Sector – 12, Dwarka, New Delhi – 110075.
7. Sh. Rajiv Nayanam
S/o Late J.P. Sharma
R/o A-102, Media Society
Plot No. 18A, Sector – 7
Dwarka, New Delhi.
8. Sh. Suresh Kumar
S/o Sh. Vijay Singh
R/o H. No. 394, Sector – 31
Faridabad, Haryana.
9. Sh. Sanjay Kumar Mishra
S/o Late Sarju Mishra
R/o 13/801, Vasundhara
Ghaziabad (UP).

10. Sh. Pawas Pradeep Singh
S/o Sh. Chandan Singh
R/o 15, Green City Colony
Aligarh (UP).
11. Sh. Mudit Garg
S/o Late V.L. Garg
R/o B-506, Astha Apartment
Plot No. 19B, Sector – 6
Dwarka, New Delhi.
12. Sh. Krishna Pal Singh Chauhan
C/o Sh. Ram Pal Singh Chauhan
R/o 136, D.K> Cottages, E-8 Extension
Arera Colony, Bhopal (M.P.).
13. Sh. Yash Pal Singh Jadon
S/o Sh. Radhey Lal
R/o H.No. 140, 2nd Floor, Sector-15-A
Faridabad (HR).
14. Sh. Braham Prakash Pathak
S/o Late Kanti Krishna Pathak
R/o 802, Chelsa Tower, Omex Heights
Vibhutikhand, Gomto Nagar, Lucknow.
15. Mohd. Khalid
S/o Late Ahmed Mian
R/o Raham Manjil, Near GIC
Raje Babu Road, Bulandshehar.
16. Sh. Pandarkar Vasant Dattatraya
S/o Sh. Dattatraya Kishanrao Pandankar
R/o Flat No. 18, Vinkayak Apartment
335, Shanivar Peth, Pune.
17. Sh. Shrikant Damodar Potdar
S/o Sh. Damodar Vasudeo Potdar
R/o E-2, Surya Prabha Garden
Kondhawa Road, Bibwewadi, Pune.
18. Sh. Prafulla B. Dewan
S/o Sh. Bal Chandra B.Diwan
R/o 496, Narain Path, Pune – 411030.
19. Sh. Pekam Rajesh Balaji Rao
S/o Sh. Balaji Rao Rajaram Pekam
R/o 89, Onkar, Ashtavinayak Nagar
Taroda (Kd), Nanded, Maharashtra.

20. Sh. Sanjay Shivaji Kadam
 S/o Shivaji Dhondiram
 R/o 162/12, Residency Near Nath House
 Railway Lines, Pankaha, Vaheer Area
 Solapur – 413001.

21. Sh. Krishna Murari Sharma
 S/o Sh. Bameshwar Prasad
 R/o Flat No. 222, Gaur Galaxy Apartment
 Plot No. 5, Sector – 5, Vaishali
 Ghaziabad – 201010.

22. Ms. Akta Kumar
 W/o Sh. Ranjeet Kumar R/o M-2K, Aura, 113
 First Floor, Sector-47, Gurgaon.

23. Sh. Pawan Shivaji Vasant
 S/o Sh. Pawar Vasant Narayan
 R/o 103, Arundhati CHSL, Akashganga Complex
 Opp. to Saraswati High School
 Rabodi, Thane (W), Maharashtra.

..Respondents

(Respondents No. 2 to 23 through Respondent No. 1)
 (Mr. Manish Kumar Bishnoi, Advocate for respondent No.1 -
 Mr. S K Gupta, Advocate for respondent Nos. 2 to 23)

O R D E R

Mr. K. N. Shrivastava:

M.A. No.2278/2017

M.A. seeking joining together in a single petition is allowed.

O.A. No.2120/2017

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(i) quash and set aside the impugned orders dated 19.11.2016 in O.A. Nos.1120/2016, 1112/2016 & 1152/2016; 7.11.2016 in O.A. No.3733/2016; 20.1.2017 in O.A. No.252/2017; 10.2.2017 in O.A. Nos.501/2017 & 504/2017; 10.3.2017 in R.A. No.65/2017 in O.A. No.1112/2016, R.A. No.68/2017 in O.A. No.1120/2016 and R.A. No.69/2017 in O.A. No.1152/2016; passed by the Hon’ble Central Administrative Tribunal (Principal Bench), New Delhi;

(ii) Quash and set aside the impugned Circular No.NHAI/11041/242 /2017-Admn. dated 22.5.2017 issued by NHAI in compliance of the aforesaid impugned orders in prayer clause (i);

(iii) Direct the respondent-NHAI to finalize the seniority list of Manager (Technical) and then make promotions to the post of DGM (Technical) as per the NHAI (Recruitment, Seniority and Promotion) Second Amendment Regulations, 2016.”

quash and set aside the impugned order dated 6.12.2017 (Annexure A-1), as being unjust, arbitrary and unsustainable;

(ii) direct respondent no.1 to forthwith approve the inter-cadre transfer of the Applicant on a permanent basis to Haryana Cadre, in view of the “extreme hardship” faced by the Applicant and the concurrence accorded by the State Government of Haryana dated 7.8.2017.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The private respondent Nos. 2 to 23 were appointed in the respondent-organization – National Highways Authority of India (NHAI) as Manager (Technical) during the period 2004-2012. They were absorbed on different dates; details of which are given in the table mentioned in paragraph 4.1 of the O.A.

2.2 NHAI invited applications for the post of Manager (Technical) by way of lateral entry. The said decision of NHAI was challenged by the deputationists working as Manager (Technical) in O.A. No.2807/2009 and other connected O.As. The Tribunal, vide order dated 09.10.2009, directed the NHAI to maintain status quo.

2.3 Apparently, the NHAI amended the NHAI (Recruitment, Seniority & Promotion) Regulations, 1996 (for short ‘RRs 1996’) on 23.10.2009, which

provided for the deputationists with two years of continuous service eligible for absorption at the level of General Manager and below subject to fulfillment of certain conditions, including that such officer should be less than 56 years of age as on 1st January of the year (Annexure A-8).

2.4 Vide its Annexure A-9 O.M. dated 28.11.2009, NHAI invited the eligible officers working on deputation basis to show their willingness for absorption in writing, pursuant to which officers deputationists working as Manager (Technical) applied for absorption.

2.5 It is stated that as per an assurance of NHAI to the Tribunal during the course of hearing in O.A. No.2807/2009 and other connected O.As. that it would consider the cases of the applicants therein for absorption and only thereafter they would fill up the posts by lateral entry, the said O.As. were disposed of by the Tribunal vide its order dated 25.03.2010.

2.6 Apparently, the absorption process could not be accomplished, as the deputationists could not get 'no objection' from their parent organizations. As a result, they filed an M.A. for execution, which was disposed of vide order dated 29.09.2011 granting three more months to NHAI for completion of the absorption process, with a further direction that there will be no need for NHAI to wait indefinitely for 'no objections' from the parent departments of the deputationists, and NHAI would be fully justified to assume 'no objections' in case of delays.

2.7 The order dated 29.09.2011 of the Tribunal was challenged by NHAI before the Hon'ble High Court of Delhi in W.P. No.3822/2012 wherein,

vide order dated 09.07.2012 (Annexure A-10), following directions were issued:-

“In the meanwhile the operation of the impugned order dated 29.09.2011 to the extent it directs that the petitioner need not wait for no objection from the parent department shall be kept in abeyance. However, the learned counsel for the petitioner assured this court that continued efforts would be made to obtain no objections from the parent department so that the orders passed by the Tribunal on 25.03.2010 while disposing of the Original Application of the respondent is implemented at an early date.

Mr. Rao, learned senior counsel appearing on behalf of the petitioner has made it clear that they have accepted the order of the Tribunal passed on 25.03.2010 and are keen to implement the same and same has not been implemented only for the reason that the requisite ‘no objections’ have not been received from the respective parent departments.”

2.8 NHAI amended the Regulation 15 (3) of RRs 1996, which specifically provided that the seniority of the officers working on deputation basis, upon absorption, would be determined as per the Department of Personnel & Training (DoPT) guidelines. The amendment also increased the period of regular service from 4 years to 5 years. This amendment was carried out on 24.08.2012 (Annexure A-11).

2.9 The Hon’ble High Court of Delhi disposed of the pending W.P. No.3822/2012 and other related petitions vide its judgment dated 15.03.2013 with the following directions:-

“6. Accordingly, we dispose of the writ petitions quashing the directions 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 circumstances the right of the applicants before the Tribunal would be to seek directions against their Parent Department.”

2.10 On 15.03.2014, the NHAI, vide its Annexure A-13 Advertisement, invited applications, *inter alia*, for the post of Deputy General Manager (Technical) (DGM) (T)). It also permitted the officers to participate in the selection process, who had been absorbed as Manager (Technical). This decision of NHAI was challenged by some deputationists, who had not been absorbed by that time, in O.A. No.901/2013 and other connected O.As. before this Bench of the Tribunal. The Tribunal, vide its Annexure A-14 order dated 28.04.2014, allowed the O.As. and directed the NHAI to delink the process of absorption *qua* the applicants in those O.As. The direction issued by the Tribunal reads 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. 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.”

2.11 Some deputationists, who had already been absorbed, filed O.A. No.2795/2014 before this Tribunal seeking quashment of Annexure A-13 Advertisement dated 15.03.2014. The said O.A. was disposed of vide order

dated 22.08.2014 with observation that in terms of Regulation 13 (4) of RRs 1996, NHAI would not select personnel by way of direct recruitment till such time the eligible internal candidates were considered for promotion. The Tribunal thus directed the NHAI not to declare the results of written examination conducted on 23.08.2014 pursuant to the Annexure A-13 Advertisement dated 15.03.2014.

2.12 NHAI constituted a Screening Committee to determine the officers working on the posts of Manager (Technical) for promotion to the post of DGM (T). The said Committee found that out of 56 officers working as Manager (Technical) on absorption basis, only 23 officers were eligible for consideration for promotion to the said post, as rest of the officers were found to be not holding analogous grade and pay scale in their parent departments prior to their absorption in NHAI. Accordingly, NHAI picked-up 23 eligible officers, holding the post of Manager (Technical), for considering them for promotion to the post of DGM (T).

2.13 Some of the deputationists, who although had been absorbed as Manager (Technical) but were not considered eligible for promotion to the post of DGM (T) for the reason mentioned *supra*, filed O.A. Nos.3696/2014 and 3762/2014 before this Bench of the Tribunal, which was disposed of vide order dated 11.11.2014 directing the NHAI to consider the applicants therein also for promotion to the post of DGM (T).

2.14 The order of the Tribunal dated 11.11.2014 in the said O.As. was challenged by the NHAI before the Hon'ble High Court of Delhi in W.P. (C) No.9227/2014. Meanwhile, NHAI issued letters of appointment to the

private respondents vide letters dated 25.03.2015, 28.09.2015 and 09.10.2015.

2.15 The present applicants filed C.M. No.7306/2016 on 22.02.2016 seeking their inclusion as intervenors in the said W.P. filed by NHAI. The said W.P. was disposed of by the Hon'ble High Court judgment dated 05.04.2016 (Annexure A-16) with the following directions:-

“19. We accordingly direct the petitioner to formulate a seniority list for the post of Manager (Technical) as well as the Deputy General Manager (Technical). We have issued directions for formulation of a seniority list for the post of Deputy General Manager (Technical) for the reason that many of the applicants as well as private respondents have been promoted to the said post. We hope and expect that a seniority list for the aforesaid posts will be prepared within a period of six weeks from the date a copy of this order is received.”

2.16 In regard to C.M. No.7306/2016 filed by the present applicants for including them as intervenors in W.P. (C) No.9227/2014, the order dated 05.04.2016 of the Hon'ble High Court has noted as under:-

“20. Before we conclude, we must refer to C.M. No.7307/2016 filed by the direct recruits, who were appointed to the post of Manager (Technical) in September, 2014. They were not impleaded and were not parties to the two OAs. It is obvious that they never thought it necessary to be impleaded as parties. We have not allowed the said application but liberty was given to the counsel for the applicants to address arguments before us. We have heard the learned counsel appearing for the applicants in C.M. No.7306/2016, who had nothing further to add and has reiterated the arguments advanced by the counsel for the NHAI.”

2.17 NHAI further amended the RRs 1996 by Second Amendment Regulations, 2016 on 16.05.2016. The amendment prescribes that for the post of DGM (T) by promotion through selection from amongst Manager (Technical) of NHAI, a minimum of five years of regular service is required

together with all essential educational qualifications and essential experience stipulated in column 7.

2.18 NHAI published draft seniority list of Manager (Technical) as on 01.11.2016 vide Annexure A-19 O.M. dated 30.01.2017. It is the contention of the applicants herein that they are senior to the private respondents in the said draft seniority list and that the action of the NHAI in promoting the private respondents would cause serious prejudice to their interests and such action would also be in contravention of the *ibid* directions of Hon'ble High Court.

2.19 The applicants have referred to impugned Annexure A-7 circular 22.05.2017, purported to have been issued in compliance of the Tribunal's order dated 19.11.2016 in O.A. Nos.1120/2016, 1112/2016 & 1152/2016, in which, *inter alia*, it has been stated as under:-

“6. It is also decided to treat the deputation service (if any) rendered on the post of Manager (Technical) in NHAI as regular service for the purpose of promotion to the post of DGM (Technical). It has also been decided that the Manager (Technical) when found suitable for promotion, shall be promoted to the said post of DGM (Technical) notionally with effect from the date they fulfill the eligibility criteria for the promotion, but not before the date of absorption and the date of promotion of applicants in OA 3696/2014 and 3762/2014 i.e. dated 29.12.2014, subject to recommendations of the Selection Committee. The actual promotion shall take effect from the date of assumption of charge against the post of DGM (Technical).”

Aggrieved by this circular, the applicants have filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicants have also placed reliance on the following judgments of Hon'ble Apex Court:

- i) **K. Ajit Babu & others v. Union of India & others** (1997) 6 SCC 473,
- ii) **Deepak Agarwal & another v. State of Uttar Pradesh & others** (2011) 6 SCC 725; and
- iii) **Pradeep Kumar & others v. Govt. of NCT of Delhi & others** 2016 SCC OnLine Del 4599,

4. Pursuant to the notices issued, the respondents entered appearance and filed their respective replies. Respondent No.1 – NHAI, besides tracing the history of the controversy involved, has made the following important averments:-

4.1 This Tribunal, vide order dated 28.04.2014 passed in O.As. No.902/2013, 3945/2012 and 4407/2012, directed that the process of absorption may be finalized strictly as per RRs 1996 as amended vide amendment dated 23.10.2009. The *ibid* order of the Tribunal has been implemented.

4.2 Some of the deputationists, including Mr. P K Sabat and others, filed O.A. Nos.1120/2016, 1112/2016 & 1152/2016, claiming promotion to the post of DGM (T) on the basis of absorption process initiated in the year 2009-2012. The said O.As. were allowed by the Tribunal vide order dated

19.11.2016, in compliance of which, the impugned Annexure A-7 circular dated 22.05.2017 has been issued.

4.3 It was decided to treat the deputation service (if any) rendered on the post of Manager (Technical) in NHAI as regular service for the purpose of promotion to the post of DGM (T) and was further decided that the Manager (Technical) when found suitable for promotion shall be promoted to the said post notionally with effect from the date they fulfill the eligibility criteria for the promotion. The actual promotion shall take effect from the date of assumption of charge against the post of DGM (T). The eligible Managers (Technical) working in NHAI on regular basis can also apply for consideration for promotion to the post of DGM (T).

4.4 The applicants herein have also applied for their consideration for promotion to the post of DGM (T) in response to Annexure A-7 circular dated 22.05.2017. Their eligibility will be adjudged by the Screening Committee / Selection Committee.

4.5 As per the judgment of this Tribunal, the private respondents are also to be considered for promotion, if found fit. They have been promoted on 29.12.2014 in terms of the old Regulation as the new RRs 1996 had not been notified by the time.

4.6 As per the DoPT circular on the issue of promotion, in case higher eligibility criteria are prescribed in the new RRs, 2016 for the vacancies existing prior to the promulgation of new RRs, the old RRs are to be considered for filling up of such vacancies. Hence, the contention of the

applicants that after the promulgation of the new RRs on 16.05.2016 all promotions should be done as per the new RRs, is without any merit.

4.7 The Selection Committee has considered 10 years of residual service as on 01.01.2012, the outstanding Annual Confidential Reports (ACRs) and recommendations of the Regional Offices as the criteria for promotion. Although seniority list for Manager (Technical) cadre had been notified twice, first on 05.04.2016 and thereafter on 30.01.2017, but due to several objections received, it has not been possible to finalize the seniority list.

4.8 The present applicants, in any, case, are not eligible for promotion to the post of DGM (T) as of now, as they do not fulfill the requisite criterion of four years of regular service since they have been appointed during October – November 2014.

5. The private respondent Nos. 2 to 23 in their reply, by and large endorsing the averments in the reply of NHAI, have made the following averments:-

5.1 In terms of the order of this Tribunal dated 11.11.2014 passed in O.A. Nos.3696/2014 and 3762/2014, which has been affirmed by the Hon'ble High Court of Delhi and Hon'ble Apex Court, all private respondents are eligible to be considered for promotion in accordance with the old RRs 1996. They are also eligible for promotion even under the now amended RRs 2016, amended on 16.05.2016.

5.2 The applicants herein are not even eligible to be considered for promotion, as they are not having the required minimum length of regular service, as prescribed in the old and new RRs.

5.3 The applicants herein were duly heard by the Hon'ble High Court during the course of hearing of the W.Ps. challenging the Tribunal's order dated 11.11.2014 in O.A. Nos.3696/2014 and 3762/2014 and they were also heard by the Hon'ble Apex Court in their I.A., which they had filed seeking permission of the Apex Court to file S.L.P. challenging the judgment of Hon'ble High Court of Delhi dated 05.04.2016.

5.4 The applicants have made prayer for setting aside the order of this Tribunal in some of the O.As., which have already been adjudicated. Such a relief cannot be granted, as the Tribunal does not have such power.

5.5 The DoPT has made it clear that on the ground of amendments to the RRs, holding of Departmental Promotion Committee (DPC) should not be delayed for the purposes of filling up of un-filled vacancies and the old vacancies are required to be filled under old RRs, except when the new RRs are given retrospective effect. Judgment of Hon'ble Supreme Court in **Y.V. Rangaiah & others v. V.J. Sreenivasa Rao & others**, AIR 1983 SC 852 is relied upon in this regard.

5.6 In spite of directions of this Tribunal dated 22.08.2014 in O.A. No.2795/2014, the respondent No.1 – NHAI declared the results of the applicants, which was contrary to the directions contained in the Tribunal's order, which reads as under:-

“9. In the above facts and circumstances of the case, when the consent of the learned counsel appearing for both parties, we dispose of this OA with the direction to the respondents to ensure that the appointment through the method of promotion of the existing eligible officers shall be undertaken as expeditiously as possible but in any case prior to the pronouncement of the results of the selection based on the impugned advertisement. We further direct the Respondent that the result of the examination being conducted, pursuant to the impugned order shall not be published before the process of promotion is completed and the applicants are informed of the position. With the aforesaid directions this OA is disposed of.”

5.7 Despite the above directions of the Tribunal, the official respondent – NHAI is not implementing the judgment dated 19.11.2016 in O.A. Nos.1120/2016, 1112/2016 & 1152/2016, which would go to indicate that there is a collusion between the official respondent and the applicants therein.

5.8 The absorptions of the applicants in O.A. Nos.1120/2016, 1112/2016 & 1152/2016 were not delayed because of non-availability of ‘no objections’ from their parent departments but delayed because of the fact that they do not fulfil the condition of 10 years of residual service.

6. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties. Arguments of Mr. Pardeep Dahiya, learned counsel for applicants, Mr. Manish Kumar Bishnoi, learned counsel for respondent No.1 and Mr. S K Gupta, learned counsel for private respondent Nos. 2 to 23 were heard.

7. It is not in dispute that NHAI notified the RRs 1996, which underwent amendment on 23.10.2009. This amendment, *inter alia*,

provided for absorption of deputationists with two years of continuous service at the level of General Manager or below, subject to fulfilment of certain conditions, one of them being that officers should be less than 56 years of age as on 1st January of the year when he is being considered. The amended RRs further stipulate that the Manager (Technical) with four years of regular service could be considered for promotion to the post of DGM (T); which after the 2016 amendment has been increased to five years.

8. The official respondent – NHAI had been having several vacancies at the level of DGM (T) and had realized that such vacancies are required to be filled up from amongst the eligible officers as far as possible.

9. The issue of eligibility in respect of deputationists, absorbed or not absorbed due to non-receipt of ‘no objections’ from the parent departments, has been looked into by this Tribunal in O.A. Nos.1120/2016, 1112/2016 & 1152/2016. It is also an admitted position that the Tribunal, in its *ibid* judgment, has ordained that promotions should not be held unless the seniority list for the post of Manager (Technical) is finalized. The official respondent has made sincere endeavour to finalize the seniority list and accordingly had published the draft seniority list, first on 05.04.2016 and thereafter on 30.01.2017. The NHAI has not been able to publish the seniority list, as it is in the process of attending to the objections received against the draft seniority list published on 30.01.2017.

10. It is also a matter of record that the Tribunal in O.A. Nos.1120/2016, 1112/2016 & 1152/2016 vide judgment dated 19.11.2016 (Mr. P K Sabat and

others) has issued the directions mentioned in paragraph 2.19 (supra). The official respondent – NHAI, in compliance of the *ibid* judgment of the Tribunal, has issued the impugned Annexure A-7 order. The stipulation in paragraph 6 of the Annexure A-7 order, *qua* the deputationists, indicates that the deputationists to the post of Manager (Technical), if found eligible for promotion to the cadre of DGM (T), shall be promoted with effect from the date they fulfil the eligibility criteria but certainly not before the date of their absorption. The official respondent has further indicated the consideration granted to the private respondent Nos. 2 to 23 for promoting them from the post of Manager (Technical) to the post of DGM (T) has arisen on account of two factors, namely, (i) the vacancies against which they have been promoted were existing prior to the new RRs 2016 having been notified on 16.05.2016; and (ii) in terms of law laid down by the Hon'ble Apex Court in **Y.V. Rangaiah's** case (supra), in respect of such vacancies, the old RRs, i.e., RRs 1996 duly amended on 23.10.2009 are to be adopted.

11. We do not find anything amiss in the course adopted by the official respondent in promoting the private respondent Nos. 2 to 23. It is very relevant to mention here that the applicants are certainly not eligible for promotion to the post of Deputy General Manager (Technical), as they have not completed the requisite period of regular service, i.e., four years as per old RRs and five years as per the new RRs.

12. We appreciate the stipulations at paragraph 6 of Annexure A-7 order of official respondent – NHAI wherein it is mentioned that the promotion

to the deputationists shall be granted notionally with effect from the date they fulfil the eligibility criteria for promotion but not before the date of absorption and date of promotion of applicants in O.A. Nos.3696/2014 and 3762/2014, i.e., 29.12.2014. It is also to be noted that after the final seniority list of Manager (Technical) gets finalized, the future promotions to the post of DGM (T) are going to be considered on the basis of the final seniority list in respect of the vacancies that would have arisen from the date of publication of the RRs 2016, i.e., 16.05.2016 as well as for the unfilled vacancies of the previous years.

13. With regard to relief 8 (i) claimed by the applicants seeking quashment and setting aside some of the orders passed by this Tribunal in various O.As., suffice to say that in view of the facts and circumstances of this case, such relief cannot be granted and more particularly in view of the fact that those orders have attained finality.

14. Insofar as the judgments relied upon by the applicants are concerned, we are of the view that those judgments are not applicable to the facts and circumstances of the present case.

15. In these circumstances, we would like to observe that the action of the official respondent – NHAI in promoting private respondent Nos. 2 to 23 was in accordance with law and in the larger interest of NHAI. Their further action in issuing Annexure A-7 order dated 22.05.2017 for promotion to the post of DGM (T) is also perfectly justifiable and is in order.

16. In the conspectus of discussions in the foregoing paragraphs, we do not find any merit in. It is accordingly dismissed. No order as to costs. this O.A

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/sunil/