

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2892 OF 2014
New Delhi, this the 16th October,2015

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

.....

1. Anuj Kumar Singh,
S/o Shri Faqir Chand Azad,
Aged about 30 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Rudrapur, Uttarakhand.
2. Anant Lal,
s/o Shri Kameshwar Prasad,
aged about 32 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Jalpaiguri, W.B.
3. Varun Chari,
s/o Shri S.K.Chari,
aged about 25 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Bareilly, Uttar Pradesh
4. Yogesh Tilak,
s/o Shri Ram Kumar Tilak,
aged about 30 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Gorakhpur, U.P.
5. Bipin Madhu,

s/o Shri V.Madhusoodhan,
aged about 29 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Cochin, Kerala

6. Utkarsh Shukla,
s/o Shri Diwakar Shukla,
aged about 25 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Raibareli, U.P.
7. Raju Kumar,
s/o late Atal Bihari Bajpai,
aged about 26 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Malda, West Bengal
8. M.S.Chaitanya,
s/o Shri M.Thejendranath,
aged about 31 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Ananthpur, Andhra Pradesh
9. Dhiraj Kumar Bharti,
s/o Shri Ram Pariksha Ram,
aged about 28 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Kharagpur, West Bengal
10. Narendra Singh,
s/o Shri Birbal Singh,
aged about 25 years,
posted as Deputy Manager (Technical),
at Project Implementation Unit (PIU),
Allahabad, U.P.

(By Advocate: Shri Rajeev Manglik)

Vs.

1. Union of India,
through the Secretary,
Department of Road Transport & Highways,
Ministry of Road Transport & Highways,
Government of India, New Delhi.

2. National Highways Authority of India,
through its Chairman,
G-5 & 6, Dwarka,
New Delhi 110075

(By Advocate: Shri Ramesh Kumar)

ORDER

RAJ VIR SHARMA, MEMBER(J):

The applicants have filed the present Original Application seeking the following reliefs:

5(a) Quash the advertisement dated 15.03.2014 issued by the National Highways Authority of India;

- (b) Quash the O.M. No.11041/113/2014-Admn.III dated 10.06.2014 issued by the DGM (HR-III) of the National Highways Authority of India;
- (c) Direct the National Highways Authority of India not to appoint Manager(Technical) by way of direct recruitment;
- (d) Direct the National Highways Authority of India to frame a scheme for promotion in the department in respect of those persons who are directly recruited to the post of Deputy Manager (Technical);
- (e) Direct the National Highways Authority of India to define a cadre structure with indication of promotional avenues of the various posts in the Respondents No.2 & 3;
- (f) Pass such further order and orders as it may deem fit and facts and circumstances of the case.ö

2. The respondents have filed a counter reply opposing the O.A., and the applicants have filed a rejoinder reply.

3. We have perused the records, and have heard Shri Rajeev Manglik, learned counsel appearing for the applicants, and Shri Ramesh Kumar, learned counsel appearing for the respondents.

4. The brief facts of the case, which are not disputed by either side, are as follows:

4.1 National Highways Authority of India (for short, «NHAI») was established under the National Highways Authority of India Act, 1988. NHAI framed NHAI (Recruitment, Seniority & Promotion) Regulations, 1996 (hereinafter referred to as «1996 Regulations»). Under the 1996

Regulations, all posts in NHAI were classified as Group A, Group B, Group C and Group D, and the posts of General Manager (Technical), Deputy General Manager (Technical), and Manager (Technical), which were classified as Group A posts, and the post of Assistant Manager (Technical), which was classified as Group B post, were in the hierarchical structure of the technical cadre in NHAI.

4.2 By the NHAI (Recruitment, Seniority & Promotion) Third Amendment Regulations, 2012 (hereinafter referred to as "2012 Amendment Regulations"), which came into force with effect from 24.8.2012, the 1996 Regulations were amended, and sixty (60) posts of Deputy Manager (Technical) in PB-3 (Rs.15600-39100) with Grade Pay of Rs.5400/-, classified as Group A post, were created and/or added to the technical cadre in NHAI.

4.3 NHAI, vide its Advertisement dated 18.9.2012 (Annexure A/5), intended to fill up 20 vacancies in the post of Deputy Manager (Technical) on direct recruitment basis from amongst those who had qualified in the written examination for Indian Engineering Services (IES) Examination conducted by Union Public Service Commission (UPSC) during the year 2011 and had not been finally selected or those who had declined the offer of UPSC, after selection. Accordingly, applications in the prescribed form were invited from eligible persons for selection and appointment to the post of Deputy Manager (Technical) on direct recruitment basis. In response to the Advertisement (Annexure A/5), the applicants apparently made

applications. Upon their selection and appointment, the applicants joined as Deputy Managers (Technical) on different dates during January to April, 2013. On completion of the period of probation, they were confirmed as Deputy Managers (Technical) in NHAI with effect from various dates during January to April, 2014, vide office order dated 19.6.2014 (Annexure A/7).

4.4 NHAI, vide Advertisement dated 15.3.2014 (Annexure A/1), invited applications from officers under the State/Central Government Department/Autonomous Bodies/Public Sector Undertakings for selection and appointment against 50 vacancies in the post of Manager (Technical). In the Advertisement, the eligibility criteria for the post of Manager (Technical) were stipulated as follows:

oEligibility criteria for the post of Manager (Tech.)

Col.(7)	Col.(8)
<u>Educational Qualification:</u> <u>Essential</u> Degree in Civil Engineering from a reputed Institution of Technology or a recognized University. <u>Desirable</u> Post Graduate Degree in Civil Engineering in the field(s) relating to Highway Engineering and/or Post Graduate Degree in Management/MBA from an Institute of repute. <u>Experience</u> Should have put in at least 03 years service in a responsible senior position	By Deputation/Transfer from candidates already on the panel of Under Secretary in the Govt. of India and possessing the educational qualifications stipulated in Col. (7) or from candidates holding analogous posts in a Central/State Government Departments, Autonomous Body/Public Sector Undertaking or with 03 years regular service in the pay scale of Rs.2200-4000 (PB- Rs.15600-39100/- with GP Rs.5400/-) or equivalent or six years in the pay scale of Rs.2000-3500 (PB-2 Rs.9300-34800/- with GP

<p>in a Government Department/ Public Sector Undertaking/Commercial organization of repute and should be working in an analogous post or the post next below or equivalent for at least 03 years.</p> <p><u>Desirable</u></p> <p>Should be well versed in the field of highway/bridge engineering/dealing with planning, pre-qualification of consultants and contractors; financial appraisal of projects, detailed designing, techno financial reviews, evaluation of tenders, contract managements, monitoring liaison with major construction agencies/Govt. bodies; performance appraisal of major highway/bridge projects.</p>	<p>Rs.4600).</p>
---	------------------

4.5 Applicant no.1 made representation dated 10.4.2014 (Annexure A/6) questioning the said Advertisement (Annexure A/1), and requesting respondent no.3 to stop the recruitment process immediately. In the said representation, applicant no.1 raised the following points:

- o(1) What is the need of recruitment of Manager, when at most of the PIUs Dy. Managers are working in equivalent capacity to Manager. They are holding charge on projects individually & performing all roles and responsibilities of Manager.
- (2) If the Organization needs Manager then why they are not recruiting Dy.Managers in spite of Manager as both possess same roles & responsibilities & it will be beneficial all Dy.Manager, Managers, etc.
- (3) Recruitment at all levels on need basis at regular post will definitely cause stagnation to lower levels

& will create dissatisfaction & frustration for at lower levels.

(4) I would like to quote a small example to show that what situation it will create for us in organization. Candidates selected through ESE-11 were the cream minds in Engineering sector of their time. They not only qualify ESE conducted by UPSC but also remained topper of State PWD examination, worked in prestigious PSUs like ONGC, IOCL, NPCIL, GAIL, NTPC, RITES with 1 or 2 years experience while their other colleagues who were inferior in knowledge & ranks are working in PWDs or other PSUs. How due to the Advertisement they will be able to apply for the post of Manager as they have completed 3 year duration & may be recruited and become our seniors while on the other hand we will not be able to even apply for the post just because we have opted for NHAI 1 or 2 years before and in turn will have to work under our those colleagues who were always much behind us in all fields of competition.

viii) This action of NHAI is highly de-motivating for Deputy Managers who are doing their assigned jobs with utmost sincerity and complete dedication in equivalent capacity to managers.

ix) This action will block our promotion from Manager onward rank and we would never become GM and CGM after 10 & 17 years of service as promised by every Honourable Member of NHAI.

x) Having a bleak future prospect not only de-motivates us but also forces us to look for other job opportunities as these action shows that NHAI management does not care about its own permanent cadre.

xi) In a judgment of a case in the High Court of Delhi will petition no. W.P. (C) 5348/2001 INDIAN FOREIGN SERVICE OF (B) GAZETTED OFFICERS ASSOCIATION, MEA, NEW DELHI ORS vs. UNION OF INDIA AND ORS. The High Court directed the concerned authorities to avoid lateral entry in a service causing stagnation in the already serving people. The same is going to happen in case of Deputy Managers also as it would stagnate them at a particular level for quite long time.

xii) The Vth pay commission had also taken up the matter of lateral entry albeit for some other post and had advised Govt. to stop lateral entry.ö

4.6 NHAI, vide its letter dated 10.6.2014 (Annexure A/2), informed applicant no.1 that his representation dated 10.4.2014 (Annexure A/6) was rejected as being devoid of any merit. Hence, the present O.A. has been filed by applicant no.1, along with 10 other Deputy Managers (Technical), praying for the reliefs, as aforesaid.

5. In the above backdrop, the applicants have contended that the representation dated 10.4.2014, *ibid*, has been rejected by NHAO in an absolutely mechanical manner. The absence of avenue of promotion would make them stagnate in the post held by them. By not framing appropriate scheme providing promotional avenue for them and also by rejecting their representations, the respondents have failed to act in a fair, just, equitable, and transparent manner. The rejection of the representation amounts to infringement of their fundamental right to be considered for promotion, and also runs counter to the recommendation of the 5th CPC for not making lateral recruitment to a higher grade in the cadre. In support of their contentions, the applicants have relied on the decisions of the Hon'ble Supreme Court in **Council of Scientific & Industrial Research v. K.G.S.Bhatt**, (1989) 4 SCC 635; **Dr.(Ms.) O.Z.Hussain v. Union of India**, 1990 Supp.SCC 688; and **Food Corporation of India v. Parshotam Das Bansal and others**, (2008)5 SCC 100.

5.1 In Council of Scientific & Industrial Research v.

K.G.S.Bhatt (supra), respondent No. 1 in the appeal was a Civil Engineer-A in the Central Food and Technological Research Institute, Mysore, which was one of the national institutes under the Council of Scientific and Industrial Research. He was not considered for any kind of promotion for nearly two decades. He approached the Central Administrative Tribunal, Bangalore Bench, making that grievance and asking for relief. The Tribunal, by its judgment dated August 7, 1987, allowed his claim. The said judgment of the Tribunal was challenged in the appeal before the Hon'ble Supreme Court. Dismissing the appeal, the Hon'ble Apex Court observed thus:

„It is often said and indeed, adroitly, an organization public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. (See: Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward. „The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both no managerial employees and their supervisors". (See: Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, manpower development, management development, etc. which is not related to a system of promotions. (See: Management of Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap. 12 p. 128). The appellant appears to have overlooked this basic requirement of management so far as respondent no.1 was concerned till N.R. & A.S. was introduced.„

5.2 **In Dr.(Ms.) O.Z.Hussain v. Union of India** (supra), the petitioner, a Group 'A' Scientist, belonging to the non-medical wing of the Directorate General of Health Services, filed a writ petition before the Hon'ble Supreme Court, seeking parity in pay scale and allowances with her counterpart in the medical wing. It was contended that Group 'A' Scientists were treated discriminately vis-a-vis their counterparts in other Ministries, because the former were not given any promotional benefits while the latter were provided with avenue of promotion. Allowing the writ petition, the Hon'ble Apex Court observed thus:

“...This Court has, on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate...”

5.3 **In Food Corporation of India v. Parshotam Das Bansal & others** (supra), the respondents were appointed as Engineers in the Engineering Section of Food Corporation of India. Although Food Corporation of India was not an engineering oriented organization, services of Engineers were

necessary for maintenance of its godowns and other structures. They constituted about one per cent of its total workforce. Admittedly, respondents stagnated, and there was no promotional avenue for them. Appellant-Food Corporation of India itself had approached the Union of India for creation of promotional avenue and formulating scheme providing for Assured Career Promotion. Admittedly, several other categories of employees filed writ applications praying for a direction upon the appellant to formulate suitable schemes of organizational structure. Indisputably, a recommendation in that behalf was also made by the Fifth Central Pay Commission. As the recommendations contained in the report of the Pay Commission were not implemented, a writ petition was filed by some of the employees. In the said writ petition, a contention was raised that such a scheme had already been introduced for Medical Officers working in the appellant's organization pursuant to or in furtherance of a judgment rendered by the Hon'ble High Court of Judicature at Andhra Pradesh. Accordingly, the writ petition filed by the respondents seeking direction to the appellant-Food Corporation of India to create promotional avenue for them was allowed by the learned Single Judge. The view taken by the learned Single Judge was affirmed by the Division Bench. Dismissing the appeal preferred by the appellant-Food Corporation of India, the Hon'ble Supreme Court observed thus:

“Appellant is a 'State' within the meaning of Article 12 of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered

therefor. What is necessary is to provide an opportunity of advancement; promotion being a normal incidence of service.ö

6. *Per contra*, it has been contended by the respondents that the representation made by applicant no.1 was frivolous, baseless and devoid of any merit or substance. The applicants were not discharging the duties and responsibilities attached to the post of Manager (Technical). The selection process for direct recruitment to the post of Managers (Technical) initiated in March 2014, vide Advertisement dated 15.3.2014, would in no way block the promotional avenue for the applicants who joined as Deputy Manager (Technical) on different dates during January to April 2013. When they were not eligible to be considered for promotion to the post of Manager (Technical) either as on 15.3.2014, i.e., the date of Advertisement, or as on 16.4.2014, i.e., the closing date for receipt of applications, the question of infringing their fundamental right to be considered for promotion did not arise. The representation dated 10.4.2014 (Annexure A/6) was made by applicant no.1 with a *mala fide* intention of stalling the process of recruitment to the grade of Manager (Technical). Thus, the order dated 10.6.2014 (Annexure A/2) issued by NHAI rejecting applicant no.1& representation dated 22.4.2014 (Annexure A/6) did not suffer from any infirmity. In view of the above, the respondents pray for dismissal of the O.A.

7. We have given our anxious consideration to the facts and circumstances of the case, and the rival contentions of the parties.

8. We have found no substance in the grievance of the applicants against the Advertisement dated 15.3.2014 (Annexure A/1) issued by NHAI for filling up 50 vacancies in the post of Manager (Technical) in PB-3 (Rs.15,600-39,100) with Grade Pay of Rs.6,600/-. As noted in paragraph 4.4 of this order, besides possessing the essential and desirable educational qualifications, a candidate should have put in at least three years of service in a responsible senior position in a Government Department/Public Sector Undertaking/Commercial organization of repute, and should be working in an analogous post or the post next below or equivalent for at least 3 years. Admittedly, all the applicants joined NHAI as Deputy Managers (Technical) in PB-3 (Rs.15,600-29,100) with Grade Pay of Rs.5400/-, i.e., the next below the post of Manager (Technical), on different dates during January to April, 2013. Therefore, they cannot be said to be eligible for being considered for appointment to the post of Manager (Technical) either as on 15.3.2014, i.e., the date of Advertisement, or as on 16.4.2014, i.e., the closing date for receipt of applications. As per the 1996 Regulations, the post of Manager (Technical) is borne on the technical cadre in NHAI. NHAI is under obligation to fill up the vacancies in the post of Manager (Technical) in accordance with the 1996 Regulations. Therefore, the applicants, who were working as Deputy Managers (Technical), being not eligible for selection and appointment to the post of Manager (Technical) either by way of direct recruitment or by way of promotion as on 15.3.2014, i.e., the date of Advertisement, or as on 16.4.2014, i.e., the closing date for

receipt of applications, can hardly be said to have any grievance against the Advertisement dated 15.3.2014 (Annexure A/1). The applicants' plea of lateral recruitment to the grade of Manager (Technical) in the technical cadre, as being opposed to the recommendation of the 5th C.P.C., is untenable, because the post of Manager (Technical) is borne on the technical cadre in NHAI, and further because despite the post of Assistant Manager (Technical) being already borne on the technical cadre, the post of Deputy Manager (Technical) was created and/or added to the technical cadre in NHAI by way of 2012 Amendment Regulations, and the applicants themselves were directly recruited to the said post of Deputy Manager (Technical) in the year 2013 and their such appointment as Deputy Manager (Technical) was also by way of lateral recruitment to the technical cadre. Thus, they cannot be allowed to question the recruitment to the post of Manager (Technical) on the ground of the purported lateral recruitment to the technical cadre. Therefore, applicant no.1's representation dated 10.4.2014 requesting the Member (Administration), NHAI, to stop the selection process initiated on the basis of the Advertisement dated 15.3.2014 (Annexure A/1) has rightly been rejected by NHAI, vide O.M. No.11041/113/2014-Admn.III, dated 10.6.2014. In the above view of the matter, the reliefs sought by applicants, vide paragraph 8(a), (b) and (c) of the O.A., viz., to quash the advertisement dated 15.3.2014; to quash O.M. No.11041/113/2014-Admn.III, dated 10.6.2014; and to direct NHAI not to

appoint Manager (Technical) by way of direct recruitment, cannot be granted by the Tribunal.

9. We have also found no merit in the prayers made by the applicants, vide paragraph 8(d) and (e) of the O.A., viz., to direct NHAI to frame a scheme for promotion in the Department in respect of those persons who are directly recruited to the post of Deputy Manager (Technical); and to direct NHAI to define a cadre structure with indication of promotional avenues of the various posts available under it. As noted earlier, the applicants only joined NHAI as Deputy Managers (Technical) on different dates during January to April, 2013, and were confirmed as Deputy Managers (Technical) with effect from different dates during January to April 2014, vide order dated 19.6.2014 (Annexure A/7). After going through the 1996 Regulations, as it stood after the 2012 Amendment Regulations, we do not find any substance in the contention of the applicants that there is no prospect of career advancement for them in NHAI. As discussed in paragraphs 5.1 to 5.3 of this order, the facts and circumstances of the cases cited by the applicants in support of their claim are different from that of the present case, and thus, the said decisions do not come to the aid of the applicants. Be that as it may, if at all the applicants felt that there is no promotional avenue available for them or that the promotional avenue available for them is insufficient, they should have approached NHAI or the appropriate Government in the matter, and it is for the NHAI and/or the appropriate Government to consider the matter and take a policy decision

and frame appropriate Regulations/Rules in that behalf. In the instant case, we do not find any such approach to have been made by the applicants in the matter. On the facts and in the circumstances of the case, we refrain ourselves from issuing any direction to NHAI to frame a scheme for promotion in respect of the officers, like the applicants, who were directly recruited to the post of Deputy Manager (Technical).

10. **In Asif Hameed & others v. State of J&K and others**, 1989 SCC Suppl. (2) 364, the Hon'ble Supreme Court has held that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution, and if not, the Court must strike down the action. While doing so, the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a coordinate Branch of the Government. While exercising power of judicial review of administrative action, the Court is not appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.

11. **In Mallikarjuna Rao v. State of A.P.**, (1990) 2 SCC 707, the Hon'ble Supreme Court has held that Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The

Courts cannot assume to itself a supervisory role over the rule-making power of the executive under Article 309 of the Constitution of India.

12. It has been held by the Hon'ble Supreme Court in **Technical Executive (Anti-Pollution) Welfare Association v. Commissioner of Transport Department and another**, (1997) 9 SCC 38, that it would be for the appropriate Government to take policy decision. The Tribunal is not competent to give any direction to the Government to lay down any policy. Such a direction would amount to entrenching upon area of policy-making which is exclusively within the purview of the Government.

13. In **P.U.Joshi and others, etc. vs. The Accountant General, Ahmedabad and others**, etc., (2003) 2 SCC 532, the Hon'ble Supreme Court has held thus:

“Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenue of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and after or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more

and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.ö

14. In the light of our above discussions, we hold that the O.A., being devoid of merit, is liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER