

**Central Administrative Tribunal
Principal Bench**

OA No. 3716/2013

Order reserved on: 26.04.2016

Order pronounced on: 31.05.2016

Hon'ble Mr. V. N. Gaur, Member (A)

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

Ashok Kumar Jha
Aged about 51 years,
S/o Late Sh. ShrikantJha,
R/o Flat No.1012,
Rajnigandha Apartments,
Sector-10, Dwarka,
New Delhi-110075.

- Applicant

(By Advocate: Sh. Rajat Rathi)

Versus

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

- Respondents

(By Advocate: Sh. Mukesh Kumar with Sh. Anil Kumar)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The applicant is an officer in Mumbai Port Trust, who came on deputation to National Highways Authority of India (NHAI) on deputation basis on 21.07.2004 initially for a period of six

months. After a couple of extensions when the respondent no.2 again requested the Mumbai Port Trust for extension of deputation of the applicant from 20.07.2008 to 20.07.2009 vide letter dated 18.07.2008, the Mumbai Port Trust by letter dated 11.08.2008 declined to give their consent. The respondent no.2, however, did not relieve the officer to join back his parent department and continued to pressurise the Mumbai Port Trust to extend his tenure. By letter dated 14.10.2010 the Mumbai Port Trust again declined the request of respondent no.2 and asked for immediate repatriation of the applicant. On 29.03.2010 the applicant was also informed by the parent department to join back within 15 days failing which disciplinary action will be taken against the applicant for the misconduct. The letter also stated that the period of absence of the applicant from 21.07.2008 till the date of joining back was treated as dies non. The respondent no.2 again took up the matter with the Mumbai Port Trust stating that the applicant was dealing with some crucial projects, he could not be relieved by NHAI and that the continuation of his deputation was on the basis of extensions sought from time to time, and therefore, the period beyond 21.07.2008 should not be treated as dies non. It was further requested that the parent department may agree with the extension of deputation period till August 2010 since the process of absorption was in progress and if the applicant was not absorbed by that time he would be

repatriated. This request was also not accepted by the parent department of the applicant and vide letter dated 09.04.2010 the applicant was directed to join the duties immediately. By letter dated 15.09.2010 the parent department sent the memorandum of charges framed against the applicant. The respondent no.2 in response to this letter and also letters dated 25.06.2010 and 23.09.2010 of the applicant whereby he had requested for repatriation and relieving him for joining back his parent department, decided to relieve the applicant vide office order dated 03.11.2010 and he was formally relieved from NHAI on 31.01.2011.

2. In the meantime, the applicant had applied for absorption in NHAI in response to a process started in the year 2009. The NHAI had received 300 applications and 121 applications were found eligible for the purpose of interview in terms of the NHAI Regulations 1996 read with the Amendment Regulations 2009. The applicant also appeared in the interview on 15.03.2010 conducted by a Selection Committee constituted in terms of Rule 11 (3) of the Regulations 1996 headed by the Chairman, NHAI. The selection process was a matter of challenge in **OA No.2756/2009** and batch, which was disposed of by this Tribunal on 25.03.2010 with a direction that the exercise of absorbing the officers in accordance with the existing rules shall be completed within a period of 6 weeks and the two candidates

who had already been relieved by that time would also be considered. The present applicant was not a party in that OA. The applicant filed an **OA No.3835/2010** challenging the order of his repatriation which was disposed of by this Tribunal on 08.07.2011 along with OA No.4168/2010 and OA No.412/2011. This Tribunal while extending the benefit of the order dated 25.03.2010 observed that:

“In OA No.3835/2009, the applicant (the applicant in the present OA) has already been repatriated. In his case, therefore, there will be no interim arrangement and his fate will depend upon the final order that may be passed by the respondents.”

3. In **WPC No. 3822/2012** Hon'ble High Court of Delhi while considering the order of this Tribunal in OA No.3114/2009 along with OA 3835/2009 and batch, by order dated 09.07.2012 stayed the order of this Tribunal to the extent it directed that the petitioner need not wait for no objection from the parties while considering the absorption of the applicants in those OAs. The applicant made a representation to the respondent no.2 on 04.08.2012 for considering his candidature for permanent absorption in NHAI as he had already appeared before the Selection Board in March 2010. He made an appeal to his parent department to issue requisite NOC/clearances which was also received by the NHAI but was not acted upon. The NHAI Regulations were again amended in the year 2012 and fresh applications were invited from the eligible candidates for filling up

the posts on the basis of deputation/absorption. All these applications including those received in 2009 were placed before the Selection Committee and finally 30 candidates were selected and out of the selected candidates those who had already been repatriated there was a specific remark against their name. The applicant's name appeared at Sl. No.27 with the remark that he has been repatriated on 31.01.2011. The respondents, however, did not consider the case of the applicant for absorption as he had already been relieved from NHAI.

4. Learned counsel for the applicant argued that applicant had applied for absorption in NHAI as he was eligible in 2009 in accordance with the NHAI Regulations of 1996 which were amended in 2009. These Regulations were again amended in 2012. However, the conditions of amended Regulations that only an officer currently on deputation will be considered for absorption, could not have been applied to the applicant because his case should have been considered in accordance with the Regulations of 2009. There is no dispute that he fulfilled other eligibility conditions. The process of absorption initiated in the year 2009 could not be completed before the applicant was repatriated. The respondents took 3 years to declare the result and ultimately the applicant's case was rejected without considering that he had served NHAI for 6½ years and NHAI itself had been writing letters to Mumbai Port Trust for extension of his

deputation due to his excellent performance. The applicant had been selected by the Selection Committee headed by the Chairman, NHAI in 2010 and its recommendations were final and binding and placing the case of the applicant again in 2012 before another Selection Committee headed by an officer subordinate to Chairman, NHAI could have not overruled the conclusion arrived at by the first Committee. The constitution of second Selection Committee was also not in accordance with the Regulations. Learned counsel relied on the decision of this Tribunal in OA No.901/2013 and batch dated 28.04.2014.

5. Learned counsel for the respondents confirming the sequence of events as narrated earlier submitted that after the repatriation of the applicant on 31.01.2011 he had no case for being considered for absorption. Though the selection process was initiated in 2009 for absorption of deputationists, the same could not be completed. The process for absorption was again taken up in 2012 and by the time it was completed the applicant had already been repatriated. According to the Regulations only an officer serving with NHAI was eligible for absorption. It was further submitted that the applicant as a deputationist also had no legal right to be absorbed on the post to which he was deputed as held in **Kunal Nanda vs. Union of India & Anr.**, (2000) 5 SC 362, **Bahadur sinh Lakhubhai Gohil vs. Jagdishbhai M. Kamalia & ors.**, (2004) 2 SCC 65, **State of Punjab vs. Inder**

Singh, (1997) 8 SCC 372 and in a catena of cases as well. According to the Regulation 1996 as amended in 2009, the age of the officer should be less than 55 years on the first day of January of that year and should have at least 5 years of residual service. After 2012 amendment, the officers with 10 or more years of remaining service are to be considered for absorption, if otherwise are appropriate for NHAI. Furthermore, only the officers serving with the NHAI were eligible for absorption. The applicant did not fulfil the conditions laid down in the amended Regulations since he was not on deputation to NHAI on the first day of January of the year (2012) in which he was considered for absorption.

6. We have heard the learned counsels and perused the record. The applicant's main contention is that he had applied for absorption in NHAI in the year 2009 and was recommended by a Selection Committee headed by the Chairman, NHAI, constituted in terms of the Regulations. Therefore, even though he was repatriated on 31.01.2011, his case for absorption has to be considered by the respondent no.2 in terms of the Regulations as it existed in 2009. We find some merit in the arguments of the applicant with regard to the applicability of the Regulations. He had applied for absorption in response to the circular issued by the respondents in the year 2009. It is a settled law that for any type of recruitment the applicable rules will be the one that

existed when the vacancies arose. In this case the vacancies were notified in 2009, and therefore, all the candidates must fulfil the eligibility conditions as laid down in the Regulations of 2009. The applicant did fulfil the eligibility conditions except the fact that the parent department of the applicant did not give the NOC for his absorption. Though the selection process could not be completed at that time, it is relevant to note here that it was not a case where the NOC from the parent department was getting delayed and the case could have been covered under 'deemed NOC' at least till the concept was stayed by the Hon'ble High Court; instead there was explicit refusal to extend his deputation beyond 2008 while the absorption process was initiated only in 2009 and interview conducted in 2010. The Mumbai Port Trust refused to extend deputation even after being informed by the NHAI that a process to consider absorption of deputationists was underway. The intention of the parent department was more than apparent when the applicant was served with a charge memo for not reporting back to the parent department. In such a scenario one of the essential ingredients of process of absorption namely, the consent of the parent department was missing. The applicant therefore, cannot get any solace from the fact that the first Selection Committee that interviewed him on 15.03.2010 had shortlisted him for absorption. The questions as to which Regulations, 2009 or 2012, would be applicable, or whether the

composition of the Selection Committee of 2012 was according to the provisions of the Regulations, are of no relevance.

7. Another important aspect to be considered at present is the fact that the applicant has already been repatriated to his parent organisation on 31.01.2011. In WPC No.8412/2014, **NHAI vs. Ashok Kumar Gupta**, Hon'ble High Court of Delhi in its order dated 03.12.2014 had set aside the order of this Tribunal in OA No.1418/2014 by which the NHAI was directed to reconsider the case of the applicant in that OA, who had already been repatriated, for absorption. The Hon'ble High Court further viewed that it is the choice of the public employer whether or not to absorb the individual, is entirely based upon its discretion and its perception about the utility, competence and efficiency of the deputationists. Further, it was also necessary to seek the acceptance of the parent department. In that case also the parent department of the applicant i.e. PWD Rajasthan had refused to extend his lien. In the present OA, the parent department of the applicant had not only refused to extend the deputation beyond 2008 despite repeated requests of NHAI but also initiated disciplinary action against the applicant for unauthorised absence. In such a situation, applicant will not get any benefit even if his case is considered in terms of the Regulations of 2009 as held in OA No.901/2013 (supra). The applicant who has already been repatriated is not eligible for consideration for

appointment in the category of deputation/absorption. In the order dated 22.12.2015 in **OA No.3203/2015** also, this Tribunal has taken a similar view.

8. After repatriation the applicant cannot agitate his case for absorption as an enforceable right. It is an established law that a deputationist does not have right to absorption and the same has been reiterated in **Kunal Nanda, Bahadur sinh Lakhubhai Gohil, Inder Singh**, (all supra) and **Ratilal B. Soni & Ors vs State Of Gujarat & Ors**, 1990 SCR (1) 414.

9. In the light of the above discussion and aforesaid reasons, the OA is found to be devoid of merit and the same is dismissed.

No costs.

(Raj Vir Sharma)
Member (J)

(V.N. Gaur)
Member (A)

‘sd’