

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3324/2013

**Reserved on:22.09.2015
Pronounced On:28.09.2015**

**HON'BLE MR. G. GEORGE PARACKEN, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

1. Debasish Das, aged 42 years
S/o Shri J.C. Das, [Technical Assistant]
254, Sector-3, Pkt. No.16, Dwarka,
New Delhi-75.
2. Sanjeev Kumar Verma, aged 39 years,
S/o Shri M.K. Verma, [Technical Assistant],
Flat No.830, Block-D, Pkt.3, DDA Flats,
Bindapur, Uttampur, New Delhi-59.
3. Dhiraj Singh, aged 41 years,
S/o Shri Dhan Singh, [Technical Assistant],
H.No.1496, Sector 23A, NIT, Faridabad.
4. Nirmal Kumar, aged 45 years,
S/o Shri Ram Kishan, [Technical Assistant],
H.No.RZH 102A, Gali No.6, Raj Nagar,
Palam Colony,
New Delhi-45.Applicants

By Advocate: Shri V.S. R. Krishna.

Versus

Union of India
Through

1. The Secretary,
Ministry of Road, Transport and Highways,
1, Parliament Street, Transport Bhawan,

New Delhi.

2. The National Highways Authority of India,
Through it's Chairman,
G-5 & 5, Sector 10, Dwarka,
New Delhi-110 075.

3. Shri Kishan Bansal,
[Technical Assistant]
National Highways Authority of India,
Through it's Chairman,
G-5 & 5, Sector 10, Dwarka,
New Delhi-110 075.

4. Shri Purna Chandra Kahili,
[Technical Assistant]
National Highways Authority of India,
Through it's Chairman,
G-5 & 5, Sector 10, Dwarka,
New Delhi-110 075. ... Respondents

(By Advocate: Shri P.P. Khurana, Sr. Counsel with
Shri Mukesh Kumar for Respondents No.1 & 2
Shri A.K. Behera for Respondents No.3 & 4)

O R D E R

G. George Paracken, Member (J)

Applicants have filed this Original Application seeking the following reliefs and interim relief:-

Reliefs

- (i) to call for the records of the case;
- (ii) to quash and set aside the impugned advertisement to the extent that it prescribes 6 years of service in the scale of Rs.9300-34800/- with grade pay of

Rs.4600/- in the case of filing up of the post of Manager (Tech.) by promotion made ;

(iii) to direct the official respondent to consider all the persons with 6 years of service in the scale of Rs.9300-34800/- with grade pay of Rs.4200/- in the case of filing up of post of Manager (Tech.) by promotion mode as has been prescribed and done in the earlier years of advertisement and recruitment;

(iv) to consider the applicants applications for the post of Manager(Tech.) as valid applications and to consider the applicants for promotion to the post of Manager (Tech.) along with all consequential benefits;

(v) or in the alternative this Hon'ble Tribunal may be pleased to declare the action of the official respondents in considering the applications of respondent Nos. 3 and 4 for the post of Manager (Tech.) as valid applications as illegal in law and discriminatory and to set aside their promotions to the post of Manager (Tech.) if any;

(vi) to grant any other relief as may be deemed fit and proper under the circumstances of the case;

(vii) to pass any other order/orders as this Hon'ble Tribunal deem it fit and proper in interest of justice along with the cost of this litigation."

Interim Relief

"Pending disposal of the application, the Applicants respectfully submit that an interim direction may be issued to the official respondents to consider their

applications for the post of Manager (Tech.) as valid applications and process them accordingly and also to direct the official respondents that in the interregnum period the applications of respondent No.3 and 4 may be kept in abeyance".

2. The facts of the case: All the four Applicants in this Original Application and Private Respondents No.3 and 4 have been working as Technical Assistants with the Respondent No.2-National Highways Authority of India ("NHAI" for short). According to the National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996 ("Regulations 1966" for short), their promotional post is Manager (Tech.). The relevant provisions in the said Recruitment Rules are as under:-

Method of Recruitment

Transfer/deputation/promotion/direct recruitment.

Educational and other Qualifications required

"Educational Qualification

Essential

(i) Degree in Civil Engineering from a reputed Institution of Technology or a recognized University.

Desirable

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.

Experience

Should, have put in at least 3 years service in a responsible senior position in a Govt. Deptt./Public Sector Undertaking/Commercial Organisation of repute and should be working in a analogous post or the post next below or equivalent for at least 3 years".

In case of promotion or Deputation/Transfer-Grade from which promotion/Deputation/Transfer is made

"By deputation/transfer from candidates already on the panel of Under Secy. in the Govt. of India and possessing the Educational Qualification stipulated in Col. 7 or from candidates holding analogous post in a Central/State Govt. Deptt/Autonomous Body/Public Sector Undertaking or with 3 years regular service in the scale of Rs.2200-4000 or 6 years in the scale of Rs.2000-3500.

Period of Deputation

Not more than 3 years but may be extended with the approval of Central Govt".

3. The earlier recruitment process was initiated for the post of Manager (Tech.) **vide** advertisement issued in the year 2011 and in accordance with the "Regulations 1996", the prescribed

essential experience was 6 years in the pay scale of PB-2 (Rs.9300-34800 with Grade Pay Rs.4200). The Private Respondents S/Shri Kishan Bansal and Purna Chandra Kahili were qualified for the said post in all respects and they were accordingly promoted. At that time the Applicants could not apply for the said post as they were not having the required qualification of Degree in Civil Engineering as prescribed in the aforesaid Recruitment Rules. Before the impugned advertisement was issued on 21.03.2013, they acquired the aforesaid qualification and became qualified for promotion to the aforesaid post as far as educational qualification was concerned. However, the Respondents in the impugned advertisement, changed the Grade Pay from Rs.4200/- to Rs.4600/- in the same pay scale of Rs.9300-34800 thereby rendering them ineligible for the aforesaid post. They have, therefore, challenged the aforesaid advertisement in this Original Application to the extent that it prescribes Grade Pay of Rs.4600/- instead of Rs.4200/- in violation of the Recruitment Rules and sought a direction to the Respondents to consider them also for promotion to the post of Manager (Tech.) in terms of the Recruitment Rules, as done in the earlier promotion process. In the alternative, they have sought a declaration to the effect that the action of the official Respondents in promoting the Private Respondents No.3 and 4

for the post of Manager (Tech.) as illegal and to set aside their promotion.

4. When interim relief sought in this Original Application was considered on 23.09.2013, the Applicants counsel Shri V.S. R. Krishna submitted that examination for the post of Manager (Tech.) was likely to be held within 2 weeks and without making amendments in the relevant Recruitment Rules, the Applicants were being denied the opportunity to appear in the examination, by arbitrarily prescribing the Grade Pay of Rs.4600/- instead of Rs.4200/-. This Tribunal has, therefore, issued notice to the Respondents on 23.09.2013. On 07.10.2013, Shri P.P. Khurana, Sr. Counsel appeared and submitted that when the Private Respondents No.3 and 4 were earlier appointed in the year 2011 in the post of Manager (Tech.) they were in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/- but they were erroneously considered and promoted as Manager (Tech.). However, the contention of the learned counsel for the Applicants was that their consideration was not erroneous and the Grade Pay should have actually been Rs.4200/-. Finding that the Applicants have a *prima facie* case in their favour, this Tribunal directed the Respondents to consider them also provisionally for the aforesaid post but subject to outcome of this Original Application. The Respondents alleged to have not complied with the aforesaid

direction and did not permit the Applicants to participate in the promotion process and the same is the subject matter of a Contempt Petition filed by the Applicants which is still pending.

5. Today, i.e., 22.09.2015, when the matter was taken up for final argument, the learned counsel for the Applicants Shri V.S.R. Krishna has reiterated the aforesaid submissions made by him earlier. He has also stated that, without carrying out suitable amendment in the Recruitment Rules, the Respondents could not have arbitrarily changed the Grade Pay from Rs.4200/- to Rs.4600/- and issued advertisement accordingly.

6. Shri P.P. Khurana, Sr. Counsel has also reiterated his earlier submission that the promotions of the Private Respondents No.3 and 4 was erroneous as they should have been drawing the Grade Pay of Rs.4600/- in the pay scale of Rs.9300-34800. But by mistake it was mentioned in the earlier advertisement that pay scale was to be of Rs.9300-34800 with Grade Pay of Rs.4200/-. The Applicants have, therefore, been promoted as Assistant Manager (Tech.) in the pay (PB-2) of Rs.9300-34800 with Grade Pay of Rs.4600/- vide separate office orders dated 17.04.2014. He has also submitted that, as per the Ist Schedule of Part-A of Central Civil Service (Revised Pay) Rules, the pre-revised scales of Rs.5000-150-8000, Rs.5500-175-9000, Rs.6500-200-6900, Rs.6500-200-10500, Rs.7450-225-11500, Rs.7500-250-1200 and

Rs.8000-275-13500 have been grouped together in the Pay Band-2 with the corresponding pay scale of Rs.9300-34800 with different grade pays. The pay scale of Rs.5000-8000, Rs.5500-9000 and Rs.6500-9600 were given only the Grade Pay of Rs.4200/- and the Applicants were working as Technical Assistant in the pre-revised scale of Rs.5500-9000. The other pre-revised scales have been given the revised pay scale of Rs.9300-34800 but with the higher different Grade Pay of Rs.4600/-. He has also stated the Ministry of Finance, Department of Expenditure, vide its Office Memorandum dated 13.11.2009 has decided that the post which were in the pre-revised scale of Rs.6500-10500 as on 01.01.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 01.01.2006. It was for the said reason that the Respondents have revised the Pay Band-2 from Grade Pay of Rs.4200/- to Rs.4600/- in this case. The relevant part of the said OM reads as under:-

"3. Consequent upon the Notification of CCS (RP) Rules, 2008, Department of Expenditure has received a large number of references from administrative ministries/departmental proposing upgradation of the posts which were in the pre-revised scale of Rs.6500-10500 as on 01.01.2006 by granting them grade pay of

Rs.4600 in the pay band PB-2. The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 01.01.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 01.01.2006. Further, in terms of the aforementioned provisions of CCS (RP) Rules, 2008, in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.”

7. Shri A.K. Behera appearing on behalf of Private Respondents No.3 and 4 submitted that they have been appointed in accordance with the Recruitment Rules and the Applicants have no reason to implead them in this OA. He has also pleaded that their appointments shall not be adversely affected in any manner due to the outcome of this OA.

8. We have heard the learned counsel for the parties. In our considered view, the impugned advertisement issued by the Respondent No.2-NHAI with respect to the post of Manager (Tech.) is absolutely illegal and contrary to the Recruitment Rules, namely, “The National Highways Authority of India(Recruitment, Seniority and Promotion) Regulations, 1996”, with respect to the aforesaid post. According to the aforesaid

Recruitment Rules, in case of promotion etc., one of the condition for consideration for the aforesaid post is that the candidate should have been in the pre-revised scale of Rs.2000-3500 which has been revised to Rs.5500-9000 w.e.f. 01.01.1996, as per the recommendations of the Fifth Pay Commission. Again the said scale was revised to Rs.9300-34800 with Grade Pay of Rs.4200/- w.e.f. 01.01.2006 on the basis of recommendations of the 6th Pay Commission. Admittedly, the Applicants herein and the Private Respondents were Technical Assistants in the pre-revised pay scales of Rs.2000-3500/Rs.5500-9000 and in the revised scale of Rs.9300-34800 with Grade Pay of Rs.4200/-. It is for the aforesaid reason that in the relevant Recruitment Rules also, the Respondents have prescribed the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/- as the requisite eligibility condition for promotion to the post of Manager (Tech.). The Office Memorandum dated 13.11.2009 has no relevance in this matter. By the said Office Memorandum, only those who have been drawing Rs.6500-10500 as on 01.01.2006 have been given the Grade Pay of Rs.4600/-. Therefore, denial of opportunity to the Applicants to be considered for promotion to the post of Manager (Tech.) in terms of the impugned advertisement dated 21.03.2013 is absolutely illegal and wrong. It is a different matter that during the pendency of this Original Application, the

Applicants were promoted as Assistant Manager (Tech.) on promotion in the scale of pay (PB-2) of Rs.9300-34800 with Grade Pay of Rs.4600.

9. It is well settled that when Recruitment Rules framed under Article 309 of the Constitution of India is holding the field, no appointment can be done de hors those rules. Admittedly, in the existing Recruitment Rules, the prescribed pay scale of Rs.2000-3500 and its replacement scale w.e.f. 01.10.2006 is Rs.9300-34800 (PB-2) with Grade Pay is Rs.4200/- and not Rs.4600/- and the Respondents have so far not made any amendment therein. The settled principle is that so long as the Rule framed under Article 309 of the Constitution is not duly amended, it is binding on the Government (**Bhatnagar Vs. Union of India** 1991 (1) SCC 544). In its judgment in the case of **Union of India through Government of Pondicherry and Others Vs. V. Ramakrishnan and Others** 2005 SCC (L&S) 1150, the Apex Court held that the "valid rules made under proviso appended to Article 309 of the Constitution of India operates so long the said rules are not repealed and replaced".

10. We, in the above facts and circumstances of the case, allow this OA and quash and set aside the impugned advertisement dated 21.03.2013 to the extent prescribing the pay scale of Rs.9300-34800 with Grade Pay of Rs.4600. We further declare

that non-consideration of the Applicants who have been drawing the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/- was absolutely illegal and wrong. We also express our concern in uncertain terms the Respondents have blatantly violated the order of this Tribunal dated 07.10.2013 to consider the Applicants provisionally for promotion to the post of Manager (Tech.) which has already been made. Consequently, we direct the Respondents to reconsider the applications of the Applicants for promotion to the post of Manager (Tech.) strictly in terms of the National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996 and if they are found eligible, they shall be appointed as Manager (Tech.) with all consequential benefits including appointments from the due date. Each of the Applicants shall also be paid cost of litigation at the rate of Rs.15,000/- (Rupees fifteen thousand only). The aforesaid directions shall be complied with, within a period of 2 months from the date of receipt of a copy of this order.

11. There shall be no order as to costs.

**(V.N. GAUR)
MEMBER (A)**

**(G. GEORGE PARACKEN)
MEMBER (J)**

Rakesh