

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA No.1851/2018**

Reserved on:10.05.2018  
Pronounced on:16.05.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)  
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Shri Ashutosh Srivastava, Appointment,  
Aged about 35 years,  
S/o Shri R.K. Srivastava,  
R/o Flat No.04/A-10,  
Shiv Bhawan Apartment,  
Sector-73, Behind A Square Mall,  
Sarfabad, Noida, UP-201301. ....Applicant

(By Advocate: Mr. M.K. Bhardwaj)

Versus

1. National Building Construction Corporation  
Through Chairman-cum-Managing Director,  
NBCC Bhawan, Lodhi Road,  
New Delhi.
2. The Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.
3. National Highway Authority of India,  
Through Managing Director,  
G-5 & G-6, Sector-10, Dwarka,  
New Delhi. ....Respondents

(By Advocate: Shri R.K. Sharma for Shri K.K. Sharma for R-1 & 2)

**ORDER ON INTERIM RELIEF**

**Hon'ble Ms. Nita Chowdhury, Member (A):**

Heard Shri M.K. Bhardwaj, learned counsel for the applicant and perused the pleadings.

2. Shri R.K. Sharma for Shri K.K. Sharma, learned counsel for respondent No.1 & 2 appeared on receipt of advance notice.
3. This Original Application (OA) has been filed by the applicant claiming the following main reliefs and interim relief:-

**“Reliefs**

- (i) To quash and set aside the impugned letter No.38(6759)/12-Estt./1999 dated 30.01.2018 direct the respondents to forward the application of the applicant from duties to enable him to join as Manager (T) in NHAI.
- (ii) To declare the action of respondents in not sending the application of applicant for consideration for appointment as Manager (T) in NHAI, as illegal, arbitrary and unconstitutional and issue appropriate directions for consideration of applicant's candidature for appointment to the post of Manager (T) and appoint him on the aforesaid post as per his merit in the selection to be finalized by competent authority.
- (iii) To quash and set aside clause No.1.1 of Circular No.33(121)/16-Estt.,/4630 dated 27.12.2016 being ultra vires to Constitution of India.
- (iv) To allow the OA with cost.
- (v) To pass any further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

**Interim Relief**

Pending final adjudication of the OA, it is most humbly prayed that this Hon'ble Tribunal may be pleased to issue appropriate directions to the respondent No.1 & 2 for forwarding the applicant's application dated February, 2017 for appointment to the post of Manager (T) as done by Hon'ble High Court of Delhi vide order dated 3.108.2016 in Writ Petition ( C) No.7715/2016".

4. The facts, in brief, are that applicant is a Civil Engineer and after acquiring EMBA in Operation Management from ISMA College, he got appointed on the post of Sr. Project Executive (Civil) in National Building Construction Corporation Ltd. (NBCC) in the year 2012 and got promoted as Deputy Manager (Civil) Group 'A' and has completed nearly about six years of service in NBCC. While he was working in the said department, respondent no.2 issued an advertisement in January, 2018 for appointment to the post of Manager (Technical) and various other posts in NHAI. He sent application dated 19.01.2018 through proper channel to forward the same to the concerned department, but respondent No.1 did not forward the same and when applicant insisted, they submitted that "application for outside employment will be forwarded only for permanent absorption basis and not on deputation basis for regular employees only" vide Annexure A-1 letter dated 30.01.2018.

5. He has further submitted that in cases of certain other persons of the same department, their applications have been

forwarded but he has been deprived of the same benefit due to personal grudge. He has also relied on the conditions contained in Circular dated 27.12.2016 which are contrary to DOP&T instructions and violative of Articles 14 and 16.

6. Applicant has further submitted that he was called for interview on 20.02.2018. He appeared and performed well but was not selected. Thereafter, he again requested the respondent No.2 to forward his application vide Circular dated 27.12.2016 but in vain. He has next submitted that his application for consideration of his claim for appointment to the post of Manager (Technical) in NHAI, Ministry of Road Transport on deputation has not been forwarded only with mala fide intention and not for any other justified grounds. He has thus prayed that, as an interim measure, his application dated February, 2017 (page 27 of the OA) for appointment to the post of Manager (T) be forwarded to NHAI in view of the judgment passed by the Hon'ble Punjab and Haryana in

**CWP No.19215/2015 - Ankit Vs. District Industries Central, UT Chandigarh and Others** decided on 02.08.2016.

7. Heard both the sides and perused the record.

8. First of all, we may mention the plea raised by the learned counsel for the respondents that they have received a copy of this OA only on 10.05.2018 whereas the same has been filed on 07.05.2018 so they have no instructions in the matter and would

like to consult the department and can only argue the matter thereafter. This, according to us, is very fair on the part of the respondents that they are not aware about the facts of this case and hence need time to argue the matter.

9. We may further mention that as per Guidelines issued vide Circular dated 27.12.2016 issued by NBCC, it has been clearly held as under:-

“1.1 Applications for outside employment will be forwarded only for appointment on permanent absorption basis and not on deputation basis for regular employees only”.

From the above, it is amply clear that applications for outside employment will be forwarded on permanent absorption basis and not on deputation basis.

10. The applicant has orally submitted that in respect of Group ‘C’ and ‘D’ and SC/ST/PWD categories there are no restrictions for forwarding of their applications but in case of Group ‘A’ and ‘B’ the restriction is there. The respondents have framed Guidelines after taking various factors into account. It is the prerogative of the department to frame guidelines/policy according to their convenience and the Hon’ble Apex Court in this regard in the case of **Directorate of Film Festivals v. Gaurav Ashwin Jain [2007 (4) SCC 737]** has held as under:

**"Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate.....".**

Hence, the plea raised by the applicant for immediate relief cannot be accepted at this stage without detailed examination of the above NBCC guidelines/rules.

11. The next plea raised by the applicant is that he had sent an advance copy of his application to NHAI in anticipation of the approval of the parent organisation, i.e., the respondent-NBCC. However, in the papers filed by him at Annexure A-I, it is clearly stated by the respondents as under:-

“

Dated: 30.01.2018

Subject: Forwarding of application for outside employment.

Dear Sir,

Reference to your application dated 19.01.2018 on the subject “Application for the post of Manager Technical on Deputation”.

As per Clause 1.1 of circular no.33(129)/16-Estt/4630, dated 27.12.2016 **“Application for outside employment will be forwarded only for appointment on permanent absorption basis and not on Deputation basis for regular employees only”**. (copy enclosed).

Hence, your application for the post of Manager (Technical) in National Highway Authority of India on DEPUTATION BASIS cannot be forwarded and is returned herewith”.

From the above, it is clear that the respondents had given their reply to his request to his application dated 19.01.2018 on 30.01.2018, i.e., well before the date of walk-in interview which was on 20.02.2018. Therefore, if he needed any urgent relief it could have only been at that stage.

12. Hence, at this stage, asking for a direction to force the respondents to forward his application after the last date fixed for the same has, in fact, become meaningless.

13. The respondents have already framed detailed guidelines with regard to forwarding of applications for different levels and the Circular, as enclosed by the applicant, reads as under:-

“1.2 In respect of Group ‘A’ & ‘B’ employees including JEs, **two applications in a calendar year shall be forwarded subject to completion of 3 years service in the Company including training period**, if any, and clearance of probation on appointed. Further, in case of promoted post, no application will be forwarded until the employee completes one year after confirmation in the promoted post”.

From the above, it is fully clear that the respondents are forwarding a limited number of applications for deputation but non-forwarding of the application of the applicant has to be adjudicated as part of the OA finally. Hence, the plea for interim relief raised by the applicant is rejected on this score also.

14. We will be failing in our duty if we do not consider the judgment relied upon by the applicant in the case of **Ankit** (supra).

That was a case of Stenographer and has no relevance to the present case and is, therefore, of no help to the applicant's case.

15. Thus seen from any angle, applicant is not entitled for the interim relief prayed for.

16. The respondents are directed to file their reply within 4 weeks and thereafter, applicant is allowed 2 weeks to file rejoinder. List the matter before the Registrar's court on 09.07.2018 for completion of pleadings.

**(NITA CHOWDHURY)**  
**Member (A)**

**(V. AJAY KUMAR)**  
**Member (J)**

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