

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/586/2018

Date of decision: 1.5.2019

(Reserved on 09.4.2019)

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Prashant Kumar Sinha S/o Sh. Chandra Bhushan Sinha, aged 38 years, R/o B-404, Sushma Elite Cross, Old Ambala Road, Zirakpur, presently working as Manager (Technical) in the office of National Highways Authority of India, Panchkula (Group A).

... APPLICANT

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, North Block, Central Secretariat, New Delhi-110001.
2. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through its Chairman.
3. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through its General Manager- (Admn.HR).
4. National Highway Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through Executive Committee.
5. Shri Keshav Vitthalrao Ghodke (Seniority No.143)
6. Shri Ram Chandra Tejwani (Seniority No.145)
7. Shri Suresh Kumar (Seniority No.96)
8. Shri Sumesh Banzal (Seniority No.95)
9. Shri Rajesh Chandra Gupta (Seniority No.127)
10. Shri Anil Kumar Jain (Seniority No.124)
11. Shri Pradeep Kumar Srivastava (Seniority No.106)
12. Shri Amrendra Singh (Seniority No.136)
13. Shri Dharmendra Singh Chaudhary (Seniority No.93)
14. Shri Rajiv Narayan (Seniority No.137)
15. Shri Vishnu Kant Kankane (Seniority No.123)
16. Shri Ravindra Gupta (Seniority No.146)
17. Shri Sanjay Kumar Gupta (Seniority No.97)
18. Shri Sanjay Shivaji Kadam (Seniority No.109)
19. Shri Rajendra Kumar Gupta (Seniority No.126)
20. Shri Sunil Kumar Jain (Seniority No.117)
21. Shri Prashant Dadarao Mendhe (Seniority No.110)
22. Shri Sahi Ram (Seniority No.129)
23. Shri Pawas Pradeep Singh (Seniority No.98)

24. Shri Sunil Sharma (Seniority No.116)
25. Shri Arjun Prabhakar Sarodaya (Seniority No.131)
26. Shri Nirmal Manohar Zade (Seniority No.139)
27. Shri Krishna Murari Sharma (Seniority No.132)
28. Shri Amrish Manikrao Mankar (Seniority No.135)
29. Shri Ajay Prabhakar Gadekar (Seniority No.118)
30. Shri C.O.P. Furtado (Seniority No.113)
31. Ms. Akta Kumari (Seniority No.128)
32. Shri Ashutosh Shyamkant Pimple (Seniority No.108)
33. Shri Shashidhar Singh (Seniority No.119)
34. Shri Mudit Garg (Seniority No.133)
35. Shri Krishna Pal Singh Chauhan (Seniority No.111)
(Respondents No.5 to 35 (promoted vide office order dated 26.9.2017
(Annexure A-2) to be served through Respondent No.3)
36. Shri Yashpal Singh Jadon (Seniority No.102)
37. Shri Yogeshwar Atmaram Raut (Seniority No.130)
38. Shri H.S. Linge Gowda (Seniority No.105)
39. Shri Dhanu Shripati Zodge (Seniority No.134)
40. Shri Braham Prakash Pathak (Seniority No.115)
41. Shri Mohd. Khalid (Seniority No.138)
42. Shri Vasant Dattatray Pandarkar (Seniority No.120)
43. Shri Neeraj Gupta (Seniority No.142)
44. Shri Prafulla Bhaichandra (Seniority No.122)
45. Shri Shivaji Vasant Pawar (Seniority No.104)
46. Shri Sudhi Ranjan Bhattacharjee (Seniority No.103)
47. Shri Srikant Damodar Potdar (Seniority No.121)
48. Shri Jeevan Lal Meena (Seniority No.3)
49. Shri R.B. Pekam (Seniority No.114)
50. Shri S. Shirish Gangadhar (Seniority No.141)
51. Shri Prabhat Ranjan Pandey (Seniority No.107)
52. Shri Aman Kumar Rohilla (Seniority No.99)
53. Shri Krishan Lal Sachdeva (Seniority No.112)
54. Shri Ajay Ram Ratan Yadav (Seniority No.84)
55. Shri Rakesh G. Jawade (Seniority No.89)
56. Shri Ashvini Kumar Rai (Seniority No.82)

(Respondents No.36 to 56 (promoted vide office order dated 27.10.2017 (Annexure A-3) to be served through Respondent no.3).

... RESPONDENTS

PRESENT: Sh. Yogesh Putney, counsel for the applicant.

Mr. Vinod K. Arya, Advocate for Respondents No.1 to 4.

Mr. Vikram Anand, Advocate for private Respondents No.5, 7 to 10, 13 to 16, 18 to 20, 23 to 27, 32, 35, 36, 38, 40 to 44, 46, 47, 49, 50, 53 to 55.

Other respondents have been proceeded Ex-parte vide order dated 8.2.2019.

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant assails order dated 24/26.4.2018 (Annexure A-1), rejecting his representation which was ordered to be decided by this Tribunal, order dated 26.9.2017 (Annexure A-2) vide which respondents no.5 to 35, who are junior to the applicant have been promoted to the post of Deputy General Manager (Tech.) on regular basis, order dated 27.10.2017 (Annexure A-3), whereby respondents no.36 to 56, who are also junior to the applicant, have been promoted to the post of Deputy General Manager (Tech.) on regular basis. He also seeks quashing of further promotion of respondents no.54 to 56, who are admittedly junior to applicant as per panel seniority list and for issuance of further direction to the respondents to consider service rendered by the applicant with Indian Oil Corporation from 21.5.2012 to 25.11.2014 towards eligibility/seniority for promotion to the post of Deputy General Manager (Tech.) at par with the case of Shri Savyasachi Chaudhary, with further direction to the respondents to consider him eligible and promote to the post of Deputy General Manager from the date when persons junior to him were so promoted in accordance with OM dated 25.3.1996 which was further clarified vide OM dated 24.9.1997 and reiterated vide Para 3.1.2, Part III of the Guidelines on Framing/Amendment/ Relaxation of Recruitment Rules issued vide OM 31.12.2010 and promote him as Deputy General Manager (Tech.) from the date when persons junior to him were so promoted with all consequential benefits.
2. Facts are not in dispute.

3. Applicant who is B.Sc. Engineering (Civil) entered into service with Indian Oil Corporation (IOC for short), which is a Public Sector Undertaking as Project Engineer (Civil) on 26.9.2008, and was promoted to the posts of Senior Project Engineer (C) on 21.5.2012 in the pay scale of Rs.29100-54500. National Highway Authority of India (NHA for short) i.e. respondent no.2 issued an advertisement for filling up 50 post of Manager (Tech) and Selected 37 candidates (17 for General, 11 for OBC, 7 for SC and 2 for ST) in the pay band of Rs.15600-39100+GP Rs.6600 and 30 posts of Deputy General Manager (Tech.) in the pay band of Rs.15600+39100+ GP 7600/-. Applicant being eligible for the above two posts applied in response the above advertisement. His applications were forwarded by his earlier employer IOC on 15.4.2014. The candidates who had applied for the said post were subjected to written examination conducted by GATE I.I.T. Delhi on 23.8.2014. When respondents declared result, applicant's name found mention at serial no.17. The recommendations of the GATE I.I.T., Delhi, were accepted and name of applicant was approved for appointment to the post of Manager (Tech.) in the pay band of Rs.15600-39100+ GP 6600 (PB-3) vide letter dated 11.9.2014. Applicant was relieved by IOC on 24.11.2014 and he joined NHA on 25.11.2014. It would not be out of place to mention here that since applicant was getting higher pay in present office than the present post, therefore, his pay was protected. On 30.1.2017, respondents notified the draft seniority list of Manager (Tech.) where name of the applicant is mentioned at serial no.79 (Annexure A-14).

4. The next channel of promotion from post of Manager (Technical) is to the post of Deputy General Manager (Tech.) in the pay band of Rs.15600+39100+ GP 7600/-, which is to be filled up by promotion/deputation/direct recruitment. As per Recruitment Rules governing the field, in column no.7, a regular Manager (Tech.) having four years service is eligible. The respondents vide circular dated 22.5.2017 invited application for consideration for promotion to the posts of DGM (T) on regular basis. Applicant being eligible applied vide application dated 29.5.2017 with a request to consider him also for promotion but, official respondents did not consider him eligible as his name did not appear in the eligibility list dated 28.7.2017. Since, respondents have considered and included names of those persons who were on deputation and later on absorbed as eligible, one such person being Shri Savyasachi Chaudhary, to whom they have given benefit of service rendered by him with Airport Authority of India, therefore, applicant submitted representation to give him also similar treatment, as has been given to those persons who were on deputation with NHAI, as their service on deputation has been considered for eligibility, therefore, his service rendered with IOC may be considered towards eligibility for the post in question. He submitted representation dated 2.8.2017 praying therein that his case for promotion as DGM (T) may be considered in terms of DoPT OM dated 25.3.1996, which provides that where juniors, who have completed their qualifying/eligibility service, are being considered for promotion, their seniors would also be considered provided they are not short of the requisite/qualifying service by more than half of such qualifying/eligibility service of two

years, whichever is less and have successfully completed their probation period as applicant had completed probation period when his junior had completed requisite service. Respondent no.3 issued circular intimating that they should be holding Selection Committee Meeting on 17.8.2017 and 18.8.2017 vide circular dated 4.8.2017. It has been informed that non-eligible candidates will also be conveyed decision of their eligibility. Applicant vide e-mail dated 5.8.2017 sought clarification from respondent no.3 as to whether non-eligible candidates are also included in the term "all the concerned" candidate so that they can also attend interview, which was not replied. Persons who appeared and were interviewed on 17.8.2017, are admittedly junior to the applicant. Competent authority vide communication dated 26.9.2017 (Annexure A-2) approved their promotion. Similar order was passed on 12.10.2017 where respondents no.5 to 56 were also promoted as DGMT. Aggrieved against the action of the respondents, applicant submitted representation dated 3.11.2017 requesting them to consider his case for promotion being eligible in terms of OM dated 25.3.1996 as persons junior to him have been promoted as DGM. Applicant has also submitted that in the 320th Meeting of Executive Committee held on 12.10.2017 vide agenda item no.320.06, 30 posts of DGMT were created and it was decided to fill up same on promotion by applying the old Recruitment Rules for the offices, who had applied against circular dated 22.5.2017 (Annexure A-15) and it was made clear that this decision is a one time measure as a special case for the deputationists by reckoning their absence from NHAI for fulfilling administrative formalities etc. In Regulation No.22 of the

National Highways Authority of India (Recruitment, Seniority & Promotion) Third Amendment, Regulation 2012, which was made applicable for the service condition of the employees of NHAI, it has been clarified that if rules are silent then instructions issued by Govt. of India in general will be applicable to the employees of NHAI. When respondents did not answer query and did not consider his claim for promotion, then applicant approached this Tribunal by filing O.A. No.60/101/2018, which was disposed of on preliminary hearing on 29.1.2018 by directing respondents to consider and decide his representations by passing a reasoned and speaking order. When respondents did not comply with the order, applicant filed Contempt Petition no.60/54/2018 which came up for hearing on 23.4.2018 and after notice and in order to avoid contempt proceedings, respondents have passed impugned order rejecting his representations. Hence the O.A.

5. Applicant has taken various grounds against action of the respondents in declaring him ineligible and promoting persons junior to him. It has been submitted that in terms of OM dated 25.3.1996 (Annexure A-4), Nodal Ministry DoPT has issued revised guidelines for framing/amendment/regulation relaxation of recruitment rules of for considering seniors where juniors are considered. In terms of clause 2 Nodal Ministry has clarified that where juniors, who have completed their qualifying/eligibility service, are being considered for promotion, their seniors would also be considered, provided they are not short of the requisite/qualifying service by more than half of such qualifying/eligibility service or two years, whichever is less and have successfully completed their probation period. It has been

submitted that since applicant has already completed probation and rendered more than two years service, therefore, his case ought to have been considered for promotion along with persons junior to them have been considered for promotion to the post of DGMT as the applicant as on cut of date of 22.5.2017, completed two years, seven months, and 1 days service. It has further been submitted therein that the plea raised by the respondents that DoPT instructions are not applicable is false as, clause 22 of regulation 2012 makes it clear that if rules are silent, then instructions issued by Govt. of India will be applicable. Therefore, it has been submitted that action of the respondents may be invalidated and they may be directed to promote the applicant. Lastly, it has been submitted that admittedly persons junior to applicant, who entered into service, as Manager (T) with the applicant, have been promoted, whereas he has been left out, therefore also in terms of DOPT circular, he be promoted, by treating him eligible.

6. Respondents have resisted claim of the applicant by filing a detailed written statement, wherein they do not dispute factual accuracy. Further, they have submitted, as noticed above, that instructions issued by DOPT will not be applicable as they have not been adopted by NHAI, thus, no benefit can be extended even when juniors to him have been promoted. It has not been denied that persons junior to the applicant, as per penal seniority, have been considered and promoted to the post of DGM (T), and applicant has been declared ineligible being short of requisite experience. Respondents have not clarified why service rendered by the applicant, with earlier employer i.e. IOC was not considered towards his eligibility despite

the fact that he was getting higher pay in present office than the post in the respondent department and was discharging similar duties and responsibilities. Respondents have heavily relied upon decision by Principal Bench in the case of **Abdullah Javed Azmi & Ors. vs. NHA I & Ors.** O.A. No.2120/2017 decided on 5.4.2018 and have submitted that once similar claim has already been turned down, therefore, this petition be also dismissed.

7. Some of the private respondents have filed written statement wherein they have not disputed about factual accuracy of the matter and have also repeated what has been submitted by official respondents.
8. We have heard learned counsel for the parties.
9. Sh. Yogesh Putney, learned counsel for the applicant vehemently argued that the impugned orders declaring applicant ineligible and promoting persons junior to him illegally and arbitrarily and against rule formation, are liable to be set aside. He firstly argued that in terms of regulation 15 of 2012 Regulations, seniority of officers or employees, by direct recruitment through lateral entry, is to be fixed in the order of their names recommended by Selection Committee. He submitted that since applicant had joined respondent department on 25.11.2014, as Manager (T), and his seniority was fixed at serial no 17 and persons junior to him namely Ashvini Kumar Rai at Sr. no.25, Ajay Ramratan Yadav at serial no.26 and Rakesh Giridhar Jawade at serial no.33, have been considered eligible for promotion, though they are junior to applicant in the cadre of Manager (T), which is feeder cadre for promotion to the post of DGM (T), therefore, a step motherly treatment has been given to applicant by

declaring him ineligible. He also submitted that once persons junior to him have been considered eligible and stand promoted, then in terms of OM dated 25.3.1996, he too ought to have been considered for promotion because he is having two years and seven months service to his credit and in terms of the said OM, service put in by him is to be considered towards eligibility for promotion to the post of DGM (T). He also submitted that OM dated 25.3.1996, has already been interpreted by Principal Bench of the Tribunal in the case **Pankaj Nayan & Ors. vs. UOI & Ors.** (O.A. No. O.A.No.3405/2014) decided on 12.5.2016, wherein it has been held that in absence of any rule governing field, instructions issued by Govt. of India will be applicable. He also argued that in terms of regulations 22 of 2012 regulation, the respondents are themselves bound to follow OM dated 20.3.1996. Therefore, he submitted that the impugned order be quashed and set aside and respondents may be directed to consider his case for promotion from the date persons junior to him were so promoted. He also submitted that judgment relied upon by the respondents in the case of Abdullah Javed (supra) is not applicable to the facts of the case as in that case Bench has not considered OM dated 25.3.1996 and regulation 22 of 2012 regulations, thus, it will not help the respondents.

10. Per contra, Sh. V.K. Arya reiterated what has been stated in the written statement and is not in a position to cite any law contrary to what has been cited by counsel for the applicant. He has not disputed that persons who are on deputation with NHAI, have been considered eligible despite being short of experience.

11. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with able assistance of learned counsel for the parties.
12. As noticed above, facts broadly are not in dispute. Admittedly, applicant, was earlier an employee of IOC, which is a public sector undertaking, as Senior Project Engineer (C). Pursuant to invitation issued by NHA I for filling up 50 posts of Manager (T) and 30 posts of DGM (T), applied through proper channel. He was declared successful and was offered appointment as Manager (T) in the pay band of Rs15600+39100 +6600 (GP) and since he was getting higher pay in present office (IOC), he was given pay protection. He joined as such on 25.11.2014.
13. The seniority in the NHA I is governed under Rule 15 of 2012 regulations which reads as under:

“15. Seniority-

 - (1) Xxx
 - (2) In case of selection of officers or employees by direct recruitment/through lateral entry, their seniority shall be in the order in which they are recommended by the Selection Committee. For the rest proviso (3) below will apply.”

A perusal of the above extracted clause makes it clear that seniority of direct recruits through lateral entry, is to be fixed in terms of recommendation made by the Selection Committee and as per recommendation made by selection committee when applicant was appointed as Manager (T) in NHA I, his name was at serial no.17 (Annexure A-10). Next promotional post is DGM (T), for which, as per recruitment rules, Manager (T) working on regular basis having four year service to his credit and possessing required qualification is eligible for consideration for promotion. This has also been circulated by

respondents vide circular dated 22.5.2017 when they have invited applications for promotion to the post of DGM (T) from Manager (T) on regular basis.

14. The eligibility clause, in the case of promotion/deputation/direct recruitment in column no.8, reads as under:-

"In case of Promotion//Deputation/Direct Recruitment:

By promotion from candidates holding the post of Manager (Technical) on a regular basis for a period of at least 4 years and possessing the educational qualifications and experience stipulated as per col.7.

OR

By deputation/direct recruitment from candidates having the educational qualification stipulated in Col.7 and holding analogous post in a Central/State/Govt. Deptt./Autonomous Body/Public Sector Undertaking or with 3 years regular service in the scale of PB-3 (Rs.15600-39100) with Grade Pay Rs.6600 (in CDA pattern) and possessing educational qualifications and experience as per col.7 or equivalent in that organization."

This leaves no doubt in our mind that a regular Manager (T) having four years service to his credit and possessing eligibility qualification as mentioned in column 7 having degree in Civil Engineering is eligible for promotion to the said post. Applicant who was having two years, seven months, and one day service to his credit as on 22.5.2017, when circular was issued for filling up post on promotional basis, applied being eligible in terms of DoPT OM and was declared ineligible on the ground that he has not put in four years service to his credit. Against that, applicant approached this Court and direction was issued to decide his representation, which was based on OM dated 25.3.1996 and regulation governing the field. Specific allegation by the applicant is that persons who were appointed with him as Manager (T) and placed lower in seniority list, admittedly junior to him, have been considered and promoted to the post of DGMT whereas applicant who was at no.17 was declared ineligible. Be

that as it may, the fact is that applicant while challenging their promotion has sought direction from this Court in terms of OM dated 25.3.1996 issued by DoPT which mandates as under:-

"where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite/qualifying service by more than half of such qualifying/eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service."

In terms of above, if a senior is short of eligibility, but has completed probation period or half of the eligibility criteria, is eligible for consideration for promotion from the date when juniors were so considered and promoted. In the case of the applicant he has already completed probation period and is having more than two years, seven months, of service to his credit so, in terms of above provision, he ought to have been considered eligible for promotion to the post of DGMT when person junior to him were considered. The respondents have denied that OM is not applicable, but we are afraid, that this argument is not available to them because regulation 22 of 2012 Regulations makes it clear that in absence of any rule governing field, instructions issued by Govt. of India will be applicable. This has also been accepted by the respondents by issuing notification dated 13.2.2017 while amending Recruitment Rules 22nd Amendment (Annexure A-29), where at page 367 at the bottom of Rule, they have notified that where juniors, who have completed their qualifying/eligibility service, are being considered for promotion, their seniors would also be considered provided they are not short of the requisite/qualifying service by more than half of such qualifying/eligibility service or two years, whichever is less and have successfully completed

their probation period as applicant had completed probation period when his juniors had completed requisite service. Thus, it does not lie in the mouth of the respondents to say that OM dated 25.3.1996 is not applicable. In view of this, we are of the considered view that decision taken by the respondents declaring applicant ineligible on the ground of being short of experience is contrary to rules and OM dated 25.3.1996, therefore, their action and impugned orders in declaring the applicant as ineligible is quashed and set aside and respondents are directed to treat him eligible and consider his case for promotion as DGM (T) from the date when persons junior to him were so promoted, and if found eligible, he be given relief with all consequential benefits arising out of it, within a period of two months from the date of receipt of a certified copy of this order.

15. The O.A. is allowed in the above terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date:

Place: Chandigarh.

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