

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**ORIGINAL APPLICATION NO.200/00930/2016**

Jabalpur, this Friday, the 26th day of July, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Rajesh Bhandari, Date of Birth: 05.07.1959, S/o Late B.S.Bhandari,
Working as Manager (Technical) National Highways Authority of
India(NHAI) R/o 74/1, Malviya Nagar, New Market,
Bhopal-462003

- APPLICANT

(By Advocate – Shri Vijay Tripathi)

Versus

1. National Highways Authority of India (Ministry of Road Transport and Highways) through its Chairman, G-5-6, Sector 10, Dwarka, New Delhi-110075

2. Chief General Manager (HR/Legal) National Highways Authority of India (Ministry of Road Transport and Highways) G-5-6, Sector 10, Dwarka, New Delhi-110075

3. The Manager (HR/Administration) National Highways Authority of India (Ministry of Road Transport and Highways) G-5-6, Sector 10, Dwarka, New Delhi-110075

4. The Principal Secretary, Ministry of Public Health Engineering, Department of Public Health Engineering, Vallabh Bhawan, Bhopal-462001 (M.P.)

5. The Engineering-in-Chief, Public Health Engineering Satpura Bhawan, Bhopal-462001 (M.P.)

- RESPONDENTS

(By Advocate – Shri K.N.Pethia for respondents 1 to 3 & Shri Aditya Narayan Shukla proxy counsel of Shri Akash Choudhary for respondents Nos.4 & 5)

(Date of reserving the order:09.07.2019)

ORDER

By Navin Tandon, AM.-

The applicant is mainly aggrieved by his non-absorption in National Highways Authority of India (for brevity 'NHAI').

2. The brief facts as submitted by the applicant are as under:-

2.1 He was appointed on 30.11.1979 as Sub Engineer in Public Health Engineering Department at Indore.

2.2 He was sent on deputation to NHAI as Manager (Technical) vide order dated 12.03.2010(Annexure A-2). In May 2012 he was posted in the Regional Office of NHAI, Bhopal.

2.3 While on deputation, he was promoted as Assistant Engineer on 31.12.2012 in his parent department.

2.4 NHAI sought willingness of Managers working on deputation for their permanent absorption. The applicant also submitted his willingness.

2.4 Vide letter dated 18.03.2015 (Annexure A-2) the NHAI sought for No Objection Certificate and Vigilance Clearance of three Managers, namely, Vijay Kumar Agarwal, Rajesh Bhandari (applicant) and Ramarao Dadhe, from the Engineer-in-Chief, Public Health Engineering Department (for brevity '**PHED**').

2.5 The respondents Nos.4 & 5 (PHED) had given NOC and Vigilance clearance for absorption only in respect of Shri Ramarao Dadhe vide order dated 12.10.2015 (Annexure A-4). However, no action had been taken to send NOC and Vigilance Clearance in respect of the applicant and Shri Vijay Kumar Agarwal.

2.6 Vide order dated 03.03.2016 (Annexure A-6) issued by the Government of Madhya Pradesh the services of the applicant and said Shri Vijay Kumar Agarwal were taken back and they were posted in the offices of PHE at Ujjain and Shivpuri respectively.

2.7 The claim of the applicant is that sanction strength of Assistant Engineers in PHED is 241 and all the posts are occupied whereas the post of Sub Engineer is lying vacant in the office of the respondents Nos.4&5. Shri Ramarao Dhade was working in the parent department as Sub Engineer, therefore, in spite of the insufficient Sub Engineers, the NOC has been issued in favour of Shri Ramarao Dhade.

2.8 The further claim of the applicant is that near about 395 posts of Managers are sanctioned for NHAI in the year 2015. Out of 395 posts, 30 posts of Manager were reduced and it was added with the post of Assistant Manager. Out of 365 posts of Manager, only 135 persons are working as Manager in the NHAI. The NHAI is facing shortage of Manager and, therefore, the work of NHAI is badly affected.

2.9 The parent department of the applicant had issued an order dated 18.12.2015 (Annexure A/5) to withdraw his services from NHAI. He was posted at Ujjain vide orders of PHED dated 03.03.2016 (Annexure A-5). Since he was not relieved by the NHAI, he could not carry out the order dated 03.03.2016

2.10 NHAI vide letter dated 14.03.2016 (Annexure A-6) intimated the Principal Secretary, PHED that due to shortage of Managers, it is not possible to relieve the applicant.

2.11 However, ignoring the letter dated 14.03.2016, vide order dated 13.07.2016 (Annexure A-7, the State Government of Madhya Pradesh suspended the applicant on account of his failure to implement the order dated 03.03.2016.

2.12 Feeling aggrieved with the above order dated 13.07.2016, he filed another Original Application No.730/2016 before this Tribunal, wherein vide order dated 20.07.2016 (Annexure A-8) the Tribunal has directed to maintain status quo.

3. The applicant has, therefore, sought for the following reliefs in this Original Application:

“(8.1) Summon the entire record pertaining to instant subject matter from the possession of the respondents;

(8.2) direct the respondent No.1 to 3 to absorb the applicant on permanent basis as Manager with all consequential benefits.

(8.3) Any other order/direction this Hon’ble Tribunal may deem fit, be also issued in favour of the applicant;

(8.4) Costs of litigation be also awarded to the applicant in the interest of justice”.

4. The respondents-NHAI in their reply have submitted as under:-

4.1 The applicant was sent on deputation to NHAI, however, since respondents Nos.4 & 5 have sought for repatriation of the applicant, the respondent-NHAI is ready to relieve the applicant at earliest. However, in the past due to certain important pending administrative work (at the relevant time) and to make the new person acquainted with the work, the respondent-NHAI had expressed their inability to relieve the applicant.

4.2 The NHAI vide letter dated 16.10.2015 has stopped any absorption after October, 2015 in view of non-receipt of NOC from parent Department.

4.3 The parent department vide letter dated 18.12.2015 and subsequent letter dated 03.03.2016 has already sought for repatriation of applicant and has asked the applicant to join respondent No.5. In view thereof, the applicant is required to be repatriated to the parent department.

4.4 The applicant cannot be considered for absorption as he did not fulfil the precondition of submission of NOC from his parent department and, therefore, they are willing to relieve the applicant at the earliest in order to enable him to join his parent department.

4.5 The parent department has already sought for repatriation and has asked the applicant to join respondent no.5-department i.e. they expressed their unwillingness to give consent for consideration of applicant's

absorption with NHAI. Thus, the instant Original Application has become infructuous.

5. In his rejoinder the applicant has submitted that respondent-NHAI vide their letter dated 07.09.2017 (Annexure RJ-1) addressed to respondent-State of MP have submitted that services of the applicant are required for monitoring pending work of NHAI and, therefore, they have again asked the respondent-State of M.P. for issuance of NOC in favour of the applicant.

6. The respondents Nos.4 & 5 (PHED) have filed their reply and submitted that no relief have been sought from answering respondents. It has been stated that owing to administrative requirement of the applicant in the department, grant of NOC has been declined by the parent department. They have refuted the averment of the applicant that all the posts of Assistant Engineers are filled up. There are large vacancies in the cadre of Assistant Engineers. The case of Sri Rama Rao Dadhe is different from the applicant as the applicant is Assistant Engineer whereas Sri Dadhe is Sub Engineer.

7. The applicant has filed rejoinder to the reply of respondents (PHED) and reiterated that the parent department could have issued the NOC.

8. Heard the learned counsel for the parties and carefully perused the pleadings of the respective parties and the documents annexed therewith. The arguments of the counsels were along the same lines as written in their pleadings.

FINDINGS

9. It is seen that the main relief of the applicant is at Para 8.2 of the O.A namely; “direct the respondent No.1 to 3 to absorb the applicant on permanent basis as Manager with all consequential benefits”.

10. The respondents (NHAI) have very specifically stated that the absorption can take place as per the prevalent rules. They cannot absorb any deputationist unless the No Objection Certificate is received from the parent department. In this case, the No Objection Certificate and the Vigilance Certificate has not been received from the parent department and, therefore, they are not in a position to absorb the applicant in their organization namely; NHAI.

11. The respondents (PHED) have clearly expressed their inability to issue the NOC in favour of the applicant considering the administrative requirement of the Department.

12. In view of the position spelt out by the NHAI, we find that there is no illegality in the stand taken by them. Therefore, we are unable to direct

the respondents (NHAI) to absorb the applicant in their organization since NOC from parent department has not been received.

13. Accordingly, the Original Application is dismissed being devoid of merits. No costs.

(Ramesh Singh Thakur)
Judicial Member
rkv/am

(Navin Tandon)
Administrative Member