

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO.200/00730/2016

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)

O R D E R

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-4) 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 had given NOC and Vigilance clearance for absorption only in respect of Shri Ramarao Dadhe vide order dated 12.10.2015 (Annexure A-5). 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 suo moto and they were posted in the offices of PHE at Ujjain and Shivpuri respectively.

2.7 The claim of the applicant is that since he was not relieved by the NHAI, he could not carry out the order dated 03.03.2016 (Annexure A-6).

2.8 NHAI vide letter dated 14.03.2016 (Annexure A-7) intimated the Principal Secretary, PHED that due to shortage of Managers, it is not possible to relieve the applicant.

2.9 However, vide impugned order dated 13.07.2016 (Annexure A-1), the State Government of Madhya Pradesh suspended the applicant and Shri Vijay Kumar Agrawal on account of their failure to implement the order dated 03.03.2016 (Annexure A-6).

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) command the respondents No.4 and 5 to issue No Objection Certificate and Vigilance clearance in favour of the applicant so that he could be absorbed in the NHAI on permanent basis.

(8.3) set aside the suspension order dated 13.07.2016 (Annexure A-7) and all consequential benefits be granted to the applicant in the interest of justice.

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

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

(8.6) Set aside the order dated 05.07.2018 with further directions to hand over the charge of Manager (Tech) to the applicant".

[Para (8.6) added as per amendment allowed on 28.08.2018]

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

4.1 At the time when the relieving was sought by the parent department, the session of Vidhan Sabha and Lok Sabha was going on and also due to less number of managers available at the regional office, NHAI was not in a position to relieve the applicant at the relevant time.

4.2 The NHAI vide letter dated 16.10.2015 (Annexure R-1) has stopped any absorption after October, 2015 in view of non-receipt of NOC.

4.3 The averments in the Original Application claiming equity on the basis that the NHAI did not relieve the applicant, may only be relevant to the extent that the suspension order issued against him on account of non-relieving by NHAI may be revoked in accordance with law. However, no equity can be claimed by the applicant to claim absorption in NHAI on the basis of issuance of letter dated 14.03.2016 (Annexure A-7).

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 to the extent that the prayer for seeking direction to respondents Nos. 4 & 5 for issuing NOC and Vigilance Clearance, has become infructuous.

4.6 Since no relief whatsoever has been sought by the applicant against respondent-NHAI, the instant Original Application is liable to be dismissed qua respondent-NHAI.

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.

5.1 During the pendency of this Original Application, vide order dated 05.07.2018 the NHAI, without assigning any reasons, directed the applicant to hand over his work to Shri R.K.Gupta, DGM(Tech) till further orders.

6. The respondents Nos. 4 & 5 (PHED) in their reply dated 31.08.2018 have submitted as under:-

6.1 So far as the relief relating to NOC is concerned, it is entirely the privilege of the department looking to the administrative exigency and the applicant can not claim this relief for issuance of NOC as a measure of right.

6.2 After the applicant's deputation was cancelled vide order dated 18.12.2015, he was posted in the office of Sub-Division Ujjain, which clearly shows that now the applicant has to work with the respondent-State as his lien is continued in the department. To remain on deputation is not the right of an employee.

6.3 There are administrative requirement of the applicant in the department and, therefore, the respondent-State has cancelled the deputation. The proposal of NHAI for giving NOC for absorption of the services of the applicant has already been considered and turned down by the competent authority.

6.4 Since the applicant has not obeyed the order of the department, he was placed under suspension. Against the order of suspension, the applicant may approach the higher authorities.

6.5 As regards the contention of the applicant that one Ramarao Dhade has been given NOC, the respondents have submitted that the applicant is Assistant Engineer, whereas the said Ramarao was Sub-Engineer. Hence, there is no parity in the case of the applicant and said Ramarao.

7. The applicant has filed rejoinder to the reply of respondent-PHED and has questioned the argument of the respondents regarding large vacancies in Assistant Engineers, but grant of NOC to another person who was a Sub Engineer. He submits there are large vacancies of Sub Engineers also.

8. Heard the arguments of learned counsel of all the parties and carefully perused the pleadings available on record.

9. Learned counsel for the applicant submits that even though NHAI in their reply have submitted that the process of absorption was closed on 16.10.2015 (Annexure R-1) for all those where the parent department's NOC could not be received, the fact is that NHAI has been writing to State Government as late as on 14.10.2017 (Annexure RJ-4) for reconsidering the decision to issue NOC in favour of the applicant. Further on 16.01.2018 (Annexure RJ-5) further vacancies of 92 Managers (Technical) have been floated for filling up on deputation basis.

9.1 He also submitted that the State Government has discriminated against the applicant by not issuing the NOC whereas the same has been issued to Shri Ramarao Dadhe. He argued that the post of Assistant Engineer could also have been filled up from Sub Engineers. Therefore, if one Sub Engineer can be given NOC it could also be issued to the applicant.

10. Learned counsel for the respondent-NHAI submitted that none of the original relief prayed for are related to them.

11. Learned counsel for the respondent-State of MP submitted that it is the prerogative of the lending department whether to send somebody on deputation or not as also to have him repatriated back either prematurely or at the completion of the tenure as per the administrative exigencies. In this case the tenure has already been completed and, therefore, the Government of Madhya Pradesh was well within their rights to ask for the repatriation of the applicant, who has also been posted at Ujjain vide order dated 16.03.2016 (Annexure A-6).

F I N D I N G S

12. The Hon'ble Supreme Court in the matters of **Kunal Nanda Vs. Union of India**, (2000) 5 SCC 362 has held thus:-

“(6). *It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation....”*

12.1 Thus, in view of the above settled legal position it is clear that unless an employee on deputation has already been absorbed in the borrower department, he can always be recalled or repatriated to the parent department, and further that an employee on deputation has no vested right to get absorbed in the borrower department.

13. We do not find any merit in the argument of the applicant that he has been discriminated against. Since the posts of Sub Engineer and Assistant Engineer are separate, no case can be made out of discrimination. Also, the respondents-PHED have specifically stated that there are large numbers of vacancies in the cadre of Assistant Engineer.

14. Accordingly, we do not find any merit in the relief sought for by the applicant asking for direction to the State Government to issue the NOC and Vigilance Clearance certificate.

15. As far as the order of suspension is concerned, it has been clearly demonstrated that the respondent-NHAI did not release the applicant on

completion of the normal deputation period. Therefore, the applicant could not have joined the parent department without his release from the borrowing department i.e. NHAI. Therefore, the State of Madhya Pradesh may reconsider the order of suspension and regularise the intervening period as period spent on deputation.

16. In the result, the Original Application is dismissed with the observations as contained in the preceding paragraph. The respondent NHAI is directed to relieve the applicant immediately to enable him to join the parent department. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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