

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00880/2016

Jabalpur, this Thursday, the 26th day of September, 2019

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

Avadh Kishore Pureha, Date of Birth : 01.01.1960, S/o Late Shri Gangaram Pureha, presently working as Manager (Tech.), National Highways Authority of India Project Implementation Unit, Narsinghpur, R/o 247, Kalpana Nagar, Raisen Road, Bhopal – 462021 (M.P.) -Applicant

(By Advocate – Smt. Shobha Menon, Sr. Advocate, assisted by Shri Rahul Choubey)

V e r s u s

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. General Manager (HR-II), National Highways Authority of India (Ministry of Road Transport and Highways) G-5-6, Sector 10, Dwarka, New Delhi – 110075.
4. Principal Secretary, Ministry of Water Resource Department, Vallabh Bhawan, Bhopal – 462001 (M.P.).
5. The Engineering-in-Chief Water Resource Department, Jal Sansadhan Bhawan, Tulsi Nagar, Bhopal – 462003 (M.P.).

-Respondents

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

(Date of reserving order : 22.07.2019)

ORDER
By Navin Tandon, AM.

The applicant is aggrieved by his repatriation from National Highway Authority of India (for brevity 'NHAI') to his parent department in State of MP, non-grant of No Objection Certificate (for brevity 'NOC') by his parent department and not being posted as Dy. General Manager (Technical) [for brevity 'DGM (T)'] in NHAI.

2. This Original Application with five official respondents listed above was filed in the Tribunal on 01.09.2016. Notices were issued on 02.09.2016 with instructions to the respondents to maintain status quo as on that date, so far as continuance of the applicant in his present place of posting is concerned.

2.1 Respondents Nos.1 to 3 filed their reply on 03.10.2016 along with the prayer for vacating the ad-interim order dated 02.09.2016.

2.2 Applicant filed MA No.856/2016 on 04.10.2016 to implead four private respondents as respondent no.6, 7, 8 and 9, as well as adding challenge to order dated 23.08.2016 (Annexure A-10) and adding paras 4.11A, 4.11B, 4.11C, 4.11D, 5.11, 5.12, 5.13 and 8.2A.

2.3 The said MA was rejected by this Tribunal on 01.05.2019, and listed the case on ‘Top of Hearing’ on 08.07.2019.

2.4 The said rejection of amendment application was challenged by the applicant in Hon’ble High Court of Madhya Pradesh in MP 3171-2019. Hon’ble High Court considered the argument of all the parties and passed orders on 02.07.2019, the operative part of which reads as under:-

“12. In view of aforesaid analysis and stand of the parties, the impugned order dated 01.05.2019, passed by the Tribunal is partly set aside. The amendment application to the extent allegations of malafide were made and persons eo nomine were intended to be impleaded is disallowed. Rest of the amendment application is allowed. The petitioner shall forthwith incorporate the said amendment in the OA. As per the stand of the respondents, no reply is required to be filed of the amendment application. In view of joint request of the parties, the Tribunal is requested to hear the matter on the date so fixed i.e., 08.07.2019 and decide it finally in accordance with law.”

2.5 Accordingly, necessary amendments were carried out in the O.A.

2.6 Perusal of newly added paragraphs added in “Para 4 Facts of the Case” and “Para 5 Grounds for relief with legal provisions” indicate that major portion is regarding private

respondent no.6 and 7. In compliance of the orders dated 02.07.2019 of Hon'ble High Court, no cognizance is taken of these portions.

3. The applicant has made the following submission in this Original Application :-

3.1 He joined the then Irrigation Department as Sub Engineer on 14.05.1980, and continued to get promotion as Assistant Engineer and further upgradation in the respondent no.4 and 5 Department.

3.2 He applied for the post of Manager (Technical) on deputation against the notification issued by NHAI. He was selected for the same vide letter dated 16.12.2010 (Annexure A/1) on deputation basis for a period of 3 years.

3.3 This deputation period was extended to 5 years by NHAI with the approval of the Competent Authority vide office order dated 10.07.2014 (Annexure A-2) i.e. upto 30.06.2016.

3.4 NHAI had issued notification in the month of August 2015 for the post of Dy. General Manager (Technical). Since the applicant was having the eligibility for the said post, he applied for it and was found suitable.

Accordingly, NHAI vide letter dated 01.02.2016 (Annexure A-3) requested office of respondent No.5 for ACRs of 5 years, Vigilance clearance and NOC. This was followed up by another letter dated 16.03.2016 (Annexure A-5).

3.5 Respondent No.5 issued office order dated 17.05.2016 to get the applicant repatriated to the parent department and posted him at Tikamgarh.

3.6 Respondent No.5 against wrote to NHAI on 02.08.2016 (Annexure A-7) to repatriate the applicant quickly as the parent department is facing acute shortage of engineers.

3.7 NHAI vide order dated 23.08.2016 (Annexure A-10) repatriated the applicant to his parent department.

3.8 While respondent No.5 is seeking repatriation of the applicant, one Assistant Engineer Shri V.P. Tentwal of the same department is continuing in NHAI for more than 5 years.

3.9 While the NOC of the applicant has not been sent by respondent No.5, the same for another engineer Shri B.P. Gupta has been sent for the post of DGM (T) in NHAI.

4. The applicant has prayed for following relief:-

“8. RELIEF (S) SOUGHT:

In these circumstances, this Hon'ble Tribunal be pleased to grant the following reliefs:-

8.1 summon the entire record pertaining to instant subject matter from the possession of the respondents;

8.2 set aside the impugned orders dated 17.05.2016 (Annexure A-6) and 02.08.2016 (Annexure A-7) in the interest of justice;

*8.2-A Quash and set aside the order dated 23.08.2016 (Annexure-A/10).

8.3 Direct the respondents No.4 and 5 to issue ACRs for last 5 years, vigilance clearance, NOC/TPC, verified pay scales and service details of the applicant as sought by the respondents No.1 to 3 in terms of letter dated 01.02.2016 so that the applicant could be appointed on the post of Deputy General Manager (Technical), NHAI;

8.4 The respondents No.1 to 3 may also be directed to appoint the applicant on the post of Deputy General Manager (Technical) with all consequential benefits as he has already found suitable for the post of Deputy General Manager (Technical).

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

8.6 Cost of litigation be also awarded to the applicant in the interest of justice.”

*Para 8.2-A has been added as an amendment on 05.07.2019.

5. Respondents Nos.1 to 3 – NHAI filed their reply on

03.10.2016 wherein they have submitted as under:-

5.1 The terms of deputation of the applicant, which was earlier 3 years was changed to 5 years vide order dated 10.07.2014 and was till 30.06.2016.

5.2 The applicant had applied for the post of Dy. General Manager (Technical) on deputation basis against the advertisement dated 14.08.2015. He was provisionally found eligible. Accordingly, parent department was requested for NOC for the purpose. However, now the process initiated for filling up the post of DGM (T) on deputation has been concluded. Now the applicant's case cannot be considered for the post of DGM (T).

5.3 The office order dated 23.08.2016 has been issued repatriating the applicant to the parent department.

5.4 It has also been stated that repatriation orders for Shri V.P. Tentwal have been issued on 01.09.2016.

5.5 They have prayed for dismissing the O.A.

6. Respondents Nos.4 and 5 – Water Resources Department (for brevity 'WRD') of State of M.P filed their reply on 27.08.2018 where they have made following submissions:-

6.1 Deputation is not the right of the applicant and it is for the department to take the decision on deputation on

administrative ground. Selection of the applicant for any post under NHAI is not a ground for extension of deputation or grant of NOC.

6.2 The applicant cannot claim to continue on deputation merely because some other Engineers are working on deputation in different departments.

6.3 Also, merely because documents of some of the employees have been sent to NHAI cannot give any legal grounds to the applicant.

7. The applicant has filed rejoinder wherein he has questioned the right of respondent No.5 to prematurely call the applicant back without taking the consent of the applicant. It has also been alleged that on one hand the parent department is claiming acute shortage of Assistant Engineers, on the other hand a large number of Assistant Engineers have been sent on deputation during 2015 to 2018 (copies of orders at Annexure RJ-1).

7.1 Respondents-NHAI have filed additional reply reiterating the point that deputationist has no right to continue on deputation without the consent of the parent department as well as the borrowing department.

8. Heard the argument of all the parties and perused the pleadings available on record.

9. Learned counsel for the applicant vehemently argued about respondent No.5 exceeding his brief while calling the applicant back to the department vide order dated 17.05.2016 (Annexure A-6). She placed reliance on the copy of letter dated 31.07.1995 of Finance Department of M.P. Govt. which states that deputation of gazetted officers can be considered only by Administrative Department. The initial approval of deputation of the applicant was made on 28.06.2011 by the Ministry. Therefore, the Engineer-in-Chief (respondent No.5) was not competent to ask for premature repatriation of the applicant.

9.1 Further, she drew our attention to several office orders (colly. Annexure RJ-1), where large number Engineers of the Department have been sent on deputation. This goes to prove that there is no shortage of Engineers in the parent department.

9.2 Grant of NOC to Shri B.P. Gupta but not to the applicant is clear case of discrimination.

9.3 Learned counsel for the applicant places reliance on the following decision of Hon'ble Apex Court to show that

Government decision should not be arbitrary but based on reasons:

- (i) **Union of India vs. V. Ramakrishnan**, (2005) 8 SCC 394, para 32.
- (ii) **State of Orissa vs. Mamata Mohanty**, (2011) 3 SCC 436, para 59.
- (iii) **Asha Sharma vs. Chandigarh Admn.**, (2011) 10 SCC 86, para 12, 13 &14.
- (iv) **Union of India vs. Mohan Singh Rathore**, AIR 1997 SC 2328, para 6 & 7.

10. Learned counsel for the respondents-NHAI submitted that multiple reliefs have been sought in the O.A. While on one hand, the applicant is praying for setting aside the repatriation order, on the other hand, he is seeking appointment as DGM (T) in NHAI. These reliefs are not consequential to each other and, therefore, plural remedies are not allowed as per Rule 10 of the CAT (Procedure) Rules, 1987.

10.1 He submitted that DoPT's O.M dated 16.05.2013 (Document no.1) clearly state that no extension of deputation beyond the fifth year is allowed. The deputationist is deemed to be relieved on the date of expiry period.

10.2 He placed reliance on the judgment of Hon'ble Apex Court in **Kunal Nanda vs. Union of India and others** (2000) 5 SCC 362 as well as orders of Hon'ble High Court of Madhya Pradesh dated 27.11.2014 in WA No.885/2014 and order dated 11.05.2015 in WP No.2804/2015 (**Pradeep Kumar Chaturvedi vs. State of MP & others**) to demonstrate that deputationist has no right to continue.

10.3 He emphasised that the deputation terms of five years was over on 30.06.2016 and he has been repatriated on 23.08.2016. There is no irregularity in this action.

10.4 Further, the selection of DGM (T) has already been concluded and now the name of the applicant cannot be considered.

11. Learned counsel for respondents-WRD averred that there is no discrimination against the applicant. The respondents have the right to take a decision about deputation in the interest of the parent department. The applicant has already completed more than five (5) years of deputation with NHAI.

FINDINGS

12. Perusal of Annexure A/1, A/2 and A/6 clearly indicate that the initial deputation was for 3 years which was extended to

5 years upto 30.06.2016. The applicant has approached this Tribunal on 01.09.2016 raising a hue and cry about orders of premature repatriation by respondent No.5 vide letter dated 17.05.2016 (Annexure A-6), whereas the authorised deputation period was already over 2 months earlier.

13. Perusal of order dated 17.05.2016 (Annexure A-5) indicates that the applicant was initially sent on deputation for a period of 3 years vide Govt. order dated 28.06.2011. Order of NHAI dated 10.07.2014 (Annexure A-2) speaks of approval of Competent Authority, but there is no mention of consent of lending department to extend the deputation period from 3 to 5 years. It is not clear from the documents available on record that extension was with the consent of lending department.

14. Order dated 17.05.2016 (Annexure A-5) does not talk of premature repatriation. It is to be seen that this is issued just 6 weeks prior to the end of 5 years deputation period on 30.06.2016. Through this order, the applicant was called on administrative ground and was posted at Tikamgarh.

15. Apart from this, the ground that NHAI is having shortage of officers is neither the concern of the applicant nor of lending department. The WRD department has stated that they are

having shortage of Engineers. Since the deputation period got over on 30.06.2016, the respondents-NHAI have issued repatriation orders on 23.08.2016.

16. Hon'ble High Court of Madhya Pradesh in WA No.885/2014 has held as under:-

*"The learned Writ Court went into all these aspects in detail and after taking note of various judgments of Supreme Court in the case of **Jawaharlal Nehru University Vs. Dr. K. S. Jaswantkar and others** – AIR 1989 SC 1577; **State of Punjab and others Vs. Inder Singh and others** – (1997) 8 SCC 372; **Kunal Nanda Vs. Union of India and another** – (2000) 5 SCC 362; **Managing Director, U.P. Rajkiya Nirman Nigam Vs. P. K. Bhatnagar and others** – (2007) 14 SCC 498 and **State of Bihar and another Vs. Sunny Prakash and others** – (2013) 3 SCC 559, came to the conclusion that a deputationist does not have any right to continue on the deputed post. He can be repatriated back to his parent department and it was held that no legally enforceable right accrues to the deputationist to continue on the deputed post. After having held so, the learned Court found that the petitioner has been rightly repatriated and even if there is some procedural error in the matter, once it is found that he is not entitled for continue on the deputed post learned Writ Court refused to interfere into the matter.*

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As far as procedural irregularity is concerned, once it is found that the appellant does not have any legal right to continue on the deputation, even if there are some procedural error, the same cannot be a ground for interference. Once it is held that appellant has continued

on a deputed post for more than 10 years and now looking to the administrative exigency he is being called back by his parent department.

As far as the ground of discrimination is concerned, once the appellant is found to be not having any legal right, negative equality cannot be applied for granting benefit. If the appellant feels that he has been discriminated, he may challenge the continuation of some employees by raising objection before the State Government and it would be for the State Government to consider all these objections and take a decision in the matter but on such consideration, once we find that appellant has no right to continue on deputation, no interference can be made.”

17. Hon’ble High Court of Madhya Pradesh in W.P. No.2804/2015 has held:

“The deputationist cannot claim continuance as a matter of right. The Apex Court in the case of Kunal Nanda v. Union of India and another, (2000) 5 SCC 363 has opined as under:-

“A deputationist can always and at any time be repatriated to his parent department, at the instance of either borrowing department or parent department.”

Considering the aforesaid, no case is made out for interference in discretionary jurisdiction by this Court in this petitioner. Interference is declined. Petition is dismissed.”

18. From various judicial pronouncements as brought out above as well as facts of the case that the deputation period of 5

years is over, it is clear that the applicant has not been able to make out any case for continuation on deputation, as sought in para 8.2 and 8.2-A where setting aside of orders dated 17.05.2016, 02.08.2016 and 23.08.2016 have been prayed for.

19. Further, the assertion of the applicant that several Engineers have been sent on deputation during 2015-2018, hence denial of NOC to him is discrimination does not cut much ice. After all, the applicant has also been on deputation for a period of 5 years from 2011 to 2016. It is the discretion of the parent department to take a call on the issuance of NOC. Further, as highlighted by Hon'ble High Court in WA 885/2014 (supra), negative equality cannot be applied for granting benefit. If required, he can represent to the State Government.

20. The cases cited by learned counsel for the applicant (para 9.3 above) are regarding arbitrariness in decision. This is not disputed by any party. However, the applicant has not been able to demonstrate arbitrariness in the instant case because the applicant has already completed five years on deputation and he cannot seek an NOC for further deputation as a matter of right.

21. The respondents-NHAI have clearly stated that the said selection for the post of DGM (T) has already concluded. The

name of the applicant could not be selected for want of NOC of parent department.

22. Thus, none of the relief prayed for in the O.A can be granted.

23. We are in agreement with the learned counsel for the respondents-NHAI that plural reliefs have been prayed for in the O.A., which is against Rule 10 of CAT (Procedure) Rules, 1987.

24. From the above, we do not find any merit in this Original Application. Accordingly, the O.A is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-