

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Original Application Nos.20/870/2019,
20/538/2019 with MA 20/659/2019 &
20/194/2018**

Date of Order: 30.10.2019

OA No. 020/870 of 2019

Between:

D. Chandra Sekher Reddy,
S/o. D. Venkata Reddy, aged 55 years, Group A,
Occ: Project Director & Deputy General Manager (Technical),
Project Implementation Unit,
National Highways Authority of India,
Padmavati Nagar, Nandyal, Kurnool district,
Andhra Pradesh – 518 501.

... Applicant

And

1. Union of India, Represented by
The Secretary, Ministry of Road Transport & Highways,
Transport Bhavan,
1, Parliament Street, New Delhi – 110 001.
2. National Highways Authority of India,
Rep. by the Chairman,
(Ministry of Road Transport and Highways),
G-5 & 6, Sector 10,
Dwaraka, New Delhi – 110 075.
3. The Member (Administration),
National Highways Authority of India,
(Ministry of Road Transport and Highways),
G-5 & 6, Sector 10,
Dwaraka, New Delhi – 110 075.
4. The Regional Officer,
National Highways Authority of India,
Rep. by the Chairman,
(Ministry of Road Transport and Highways),
O/o. Regional Officer, Andhra Pradesh Region,
Plot No. 21, Teachers Colony,
Gurunanak Nagar Road,
Vijayawada – 520 008.

5. Sh. Jeevan Lal Meena,
Deputy General Manager (T) & PD,
PIU, Ananthapur, Andhra Pradesh.
... Respondents

Counsel for the Applicant ... Mr.K.R. K.V. Prasad

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC
Mr. S.S.Varma, for NHAI

OA No. 020/00538 of 2019

Between:

D. Chandra Sekher Reddy,
S/o. D. Venkata Reddy, aged 55 years, Group A,
Occ: Project Director & Deputy General Manager (Technical),
National Highways Authority of India,
Padmavati Nagar, Nandyal, Kurnool district,
Andhra Pradesh – 518 501.

... Applicant
And

1. Union of India, Represented by
The Secretary, Ministry of Road Transport & Highways,
Transport Bhavan,
1, Parliament Street, New Delhi – 110 001.
2. National Highways Authority of India,
Rep. by the Chairman,
(Ministry of Road Transport and Highways),
G-5 & 6, Sector 10,
Dwaraka, New Delhi – 110 075.
3. The Member (Administration),
National Highways Authority of India,
(Ministry of Road Transport and Highways),
G-5 & 6, Sector 10,
Dwaraka, New Delhi – 110 075.
4. The Government of Andhra Pradesh,
Rep. by the Special Chief Secretary to Government,
Transport, Road & Buildings (SER) Department,
A.P. Secretariat, Velagapudi, Amaravati, A.P.
5. The Engineer-in-Chief,
Administration & State Road (R&B) Department,
Government of Andhra Pradesh, M.G. Road,

Opp. Indira Gandhi Stadium, Near RTO Office,
Vijayawada, Krishna District, A.P. – 520 001.

... Respondents

Counsel for the Applicant ... Mr.K.R. K.V. Prasad

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC
Mr. S.S.Varma, for NHAI
Mr. M. Balraj, SC for A.P. Govt.

OA No. 020/194 of 2018

Between:

D. Chandra Sekher Reddy,
S/o. D. Venkata Reddy, aged 54 years,
Occ: Project Director & Deputy General Manager (Technical),
National Highways Authority of India,
Padmavati Nagar, Nandyal, Kurnool district,
Andhra Pradesh – 518 501.

... Applicant

And

1. Union of India, Represented by
The Secretary, Ministry of Road Transport & Highways,
Transport Bhavan,
1, Parliament Street, New Delhi – 110 001.
2. National Highways Authority of India,
Rep. by the Chairman,
(Ministry of Road Transport and Highways),
G-5 & 6, Sector 10, Dwaraka, New Delhi – 110 075.
3. The Member (Administration),
National Highways Authority of India,
(Ministry of Road Transport and Highways),
G-5 & 6, Sector 10, Dwaraka, New Delhi – 110 075.
4. The Regional Officer,
National Highways Authority of India,
Plot No. 21, Teachers Colony,
Gurunanak Nagar Road, Vijayawada – 520 008.
5. Varun Chari, Occ: Manager (Technical)
O/o. The Regional Officer,
National Highways Authority of India,
Plot No. 21, Teachers Colony,
Gurunanak Nagar Road, Vijayawada – 520 008.

6. The Government of Andhra Pradesh,
Rep. by the Special Chief Secretary to Government,
Transport, Road & Buildings (SER) Department,
A.P. Secretariat, Velagapudi, Amaravati, A.P.

7. The Engineer-in-Chief,
Administration & State Road (R&B) Department,
Government of Andhra Pradesh, M.G. Road,
Opp. Indira Gandhi Stadium, Near RTO Office,
Vijayawada, Krishna District, A.P. – 520 001.

... Respondents

Counsel for the Applicant ... Mr.K.R. K.V. Prasad

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC
Mr. S.S.Varma, for NHAI
Mr. M. Balraj, SC for A.P. Govt.

CORAM:

Hon'ble Mr. Justice L Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per Hon'ble Mr. Justice L Narasimha Reddy, Chairman}

The applicant is a Dy. Executive Engineer in the Roads & Buildings Department of Government of Andhra Pradesh. He went on deputation to the National Highways Authority of India (for short “NHAI”) as Dy. General Manager (Technical) in the year 2012. Before the period of deputation came to an end, he made an attempt to get absorbed permanently in the NHAI. He states that, the NHAI declared him as eligible for being absorbed vide proceedings dated 03.11.2017 and that the Government of Andhra Pradesh has also extended his deputation till 20.06.2019 vide an Order dt. 02.02.2018.

2. The NHAI issued an order dt. 28.02.2018 repatriating the applicant to parent department i.e. Government of Andhra Pradesh. In the place of the applicant, another employee was posted through order dt. 01.03.2018. OANo.194 of 2018 is filed challenging the order of repatriation dt.28.02.2018.

3. The applicant contends that he was found fit to be absorbed by the NHAI and even before the expiry of the extended period of deputation, he has been repatriated without any basis.

4. Subsequently, the NHAI passed an order dt. 18.06.2019 repatriating the applicant to the parent department on completion of the extended period of deputation i.e. 20.06.2019. For the reasons that are pleaded in the OA 194/2018 and by submitting certain other grounds, the applicant filed OA No. 538/2019 challenging the order of repatriation dt. 18.06.2019.

5. In both the OAs referred to above, interim orders were passed, which necessitated continuation of the applicant as Project Director & Dy. General Manager (Technical), Nandyal, Kurnool District. The respondents through an order dt. 23.09.2019 transferred the applicant from Nandyal to a unit at Jhansi. The order of transfer is challenged in OA 870/2019.

6. The applicant contends that once he was found fit to be absorbed in the NHAI, passing of two orders of repatriation and the one of transfer is absolutely without any basis and that the orders are arbitrary and illegal in nature. It is also stated that several Engineers, who are taken on deputation by the NHAI along with him, were permanently absorbed, whereas, in his case, discrimination is being shown.

7. The respondents contested the OAs and filed separate counter affidavits in OAs 194/2018 and 538/2019 with an application for vacating the interim order in OA 538/2019. They state that the applicant has no right to insist on being absorbed in NHAI and once a decision has been taken not to absorb him, the only course open was to repatriate him to his parent department. It is also stated that the order of transfer had to be issued in the interest of administration and no exception can be taken to it.

8. We heard Mr. K.R.K.V. Prasad, learned counsel for the applicant; Mr. V. Vinod Kumar, learned Sr. Standing Counsel; Mr. S.S. Varma, learned Standing Counsel for the NHAI and Mr. M. Bal Raj, learned Counsel for Govt. of Andhra Pradesh, in detail.

9. In the first two OAs viz., OA Nos.194/2018 and 538/2019, challenge is to the orders of repatriation. The only difference is that the order dated 28.02.2018 was issued even before the expiry of the extended period of deputation, whereas, the order dt. 18.06.2019 was

issued after expiry of such period. The subject matter of the third OA is the order of transfer. All matters depend upon the right of the applicant to be absorbed in the NHAI permanently.

10. It is fairly well settled that the phenomenon of deputation is dependent upon the willingness or otherwise of three entities or persons namely, the employee concerned, the parent department and the borrowing department. It is only when there is unanimity of opinion in all the three, that the deputation or absorption can take place. Even if one of them is unwilling, the whole exercise can be brought to a grinding halt and not a single reason needs to be assigned in this behalf. The entire exercise is in the realm of discretion and none of them owe any answer or explanation to the other.

11. The applicant went on deputation for a period of five years from the Government of Andhra Pradesh to NHAI. It is not uncommon that employees who go on deputation make attempts to get absorbed in the borrowing department. Many a time, it would materialise. Much, however, would depend upon the (a) need of borrowing department; (b) the willingness of the lending department to part with the services of the employee; and (c) the satisfaction of the borrowing department about the performance of the employee while on deputation.

12. The circumstances under which the NHAI is said to have certified the fitness of the applicant for being absorbed are not immediately

before us. However, in the process of absorption, what becomes relevant is, whether or not, the borrowing department has absorbed the employee. Any step which is intermediary in nature in the entire process, would be of no relevance.

13. The record discloses that the NHAI has thought it fit to repatriate the applicant to his parent department even before the extended period of deputation had expired. That should have been a signal for the applicant to understand the unwillingness on the part of the NHAI to absorb him. The order of repatriation dated 28.02.2018 was challenged and one of the grounds was that the period of the deputation was still in force. On its part, NHAI, once again, thought it fit to order for repatriation on expiry of the deputation. That was also challenged.

14. The applicant is not able to bring to our notice any specific executive order or binding precedent, which mandates the absorption of any particular employee, by a borrowing department. As observed by us earlier, it is always in the discretion of the borrowing department and to a certain extent, of the lending department also. There cannot be any hard and fast rule in this behalf nor can any of the players be compelled to act contrary to their interests. It is for the respective departments to decide, whether or not, to permit the absorption.

15. Learned counsel for the applicant placed before us, certain proceedings through which various employees have been absorbed in the

services of the NHAI. As observed by us earlier, the permanent absorptions do take place of many employees, who come on deputation. Much, however, depend upon the need of the borrowing department, willingness of the lending department and the satisfaction of the borrowing department about the performance of the employee.

16. The applicant does not hold any fundamental right to get absorbed in the NHAI. His right, if at all, is only to continue in services by his parent department, which is not at all in jeopardy, as of now. We do not find any merit in the OA Nos. 194/2018 and 538/2019 and therefore, dismiss the said OAs.

17. Once we hold that the applicant has no right to insist on being absorbed and we uphold the orders of repatriation, the order transferring the applicant from Nandyal to Jhansi virtually becomes redundant. OA No. 870/2019 is accordingly dismissed. MA No.659/2019 stands disposed of.

18. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

(Dictated in open court)
Dated, the 30th day of October, 2019

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