

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.10.2012

+ **W.P.(C) 4013/2011**

D.P. MAJHI

... Petitioner

versus

UNION OF INDIA & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sumeet Sharma, Adv. with Mr Ramesh K. Mishra, Adv. for Mr Prashant Bhushan, Adv.
For the Respondents : Mr Rajeeve Mehra, ASG with Ms Avnish Ahlawat, Adv.
Mr Jos Chiramel, Adv. for NHAI

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order dated 22.03.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 3724/2010. The petitioner had challenged the repatriation order dated 12.10.2010 whereby the petitioner was repatriated by the National Highways Authority of India (NHAI) to the petitioner's parent department (Ministry of Health and Family Welfare). Currently he is working as Under Secretary in the Ministry of Human Resource Development. The only point that was

urged by the learned counsel for the petitioner was that the petitioner ought to have been absorbed in NHAI as per NHAI's policy.

2. However, the learned counsel for the respondent drew our attention straightway to an Office Memorandum issued by NHAI on 28.11.2009. The said Office Memorandum reads as under:-

OFFICE MEMORANDUM

The authority in its 74th meeting held on 28.10.09 has approved the absorption of deputationists in order to create a permanent cadre in the Authority. All the deputationists up to the level of General Manager (GM) who are in the service of the NHAI and will complete 2 years of service as on 1.01.2010 are eligible to apply for the same. The applicant should be less than 56 years as on 1st January 2010.

2. The officers who are willing to get absorbed in the NHAI may give their willingness for the same latest by 9.12.09 along with the application as per prescribed format (attached).

Will not confer any right for selection on absorption basis, at present or in the future.

4. The shortlisted candidates will be required to face the Selection Committee. Intimation for the same will be given in due course of time.”

The above OM makes it clear that officers who are willing to get absorbed in the NHAI may give their willingness for the same latest by 9.12.09 along with the application as per prescribed format which was attached to the office memorandum.

3. The learned counsel for the petitioner submitted that the petitioner had given his willingness on 09.12.2009. However, he was not able to show either from the copy of the O.A or from the material on record in the present writ petition that there was any willingness given by the petitioner in writing on or before 09.12.2009. The learned counsel for the petitioner was only able to point out to a letter dated 18.12.2009 a copy of which is at page 48 of the writ petition. The said letter reads as under:-

“18.12.2009

To
The General Manager (HR/Admn)-II
NHAI
New Delhi.

Sub: Applications for the posts of DGM (Admn), DGM (MR)
and MGR (ADMN) on Permanent Absorption – reg.

Sir,

Reference circular no. 11012/155/2009 –Admn-II dated 02.12.2009 on the above subject, being eligible, I enclose herewith advance copy of my application for the posts of permanent absorption basis.

The documentary proof of my work experience and other details are already available with your office vide certified copies of my ACRs (1996-97 to 2003-04) and verification of the data by my parent Department vide my earlier applications for the posts of Manager (MR)/DGM(A). My parent Deptt. Has already given NOC to my permanent absorption/direct (lateral) entry in NHAI vide letter no. A-19015/03/1997-Admn-1 dated 24th Feb. 2009 (copy enclosed).

Regarding ACRs for the year 2004-05 onwards, which are with the DoPT, I am requesting my parent department to forward the same to your office after doing the needful.

It may be seen that I have academic background in Management, Public Policy, and Mass Communications etc. My 18 years long experience in dealing with multifarious works i.e. General Administration, Establishment, Recruitment, Human Resources issues, Parliament matter, Court cases, VIP References, Policy Issues, Training, Officer Administration, House Keeping, Security, Record Management, Store Management, Air Ticketing, Staff Car, Hospitality, Protocol, Media Relations and Advertisement, Counseling, Disaster Management etc. having many initiative with outstanding performance make my candidature suitable for various posts in Administration, Media Relations, HIV/AIDS Cell, Land Acquisition Div, and Road Safety Div. in NHAI. The details of my performance recorded vide my ACRs during the corresponding period may kindly be seen for confirmation.

Thanking you,
Yours faithfully,

(D.P. MAJHI)
MANAGER (ADMN)”

It may be pointed out that according to the learned counsel for the respondent the receipt of this letter is itself in doubt. In any event, the so-called attached application has not been filed by the petitioner. The document which is on record at pages 49-57 is not a complete application and in any event is not in the proper format. The proper format has been set out at pages 196-199 of the paper book. At page 198 after serial No.21 of

the form a person seeking absorption is required to give a declaration to the following effect:-

“DECLARATION

I also hereby solemnly declare and undertake that all information furnished by me are true, correct and complete to the best of my knowledge and belief. I undertake that if at any stage of selection or even after selection, any of the information furnished by me is found to be false, incorrect or misleading, then my candidature/appointment/services will stand cancelled/terminated without assigning any reasons thereof.”

There is no such declaration in the document, a copy of which is annexed at pages 49-57. Furthermore, the verification from the parent department is also missing. In fact, unless and until the verification from the parent is received by NHAI, absorption could not have been even considered. We may also point out that as per the Office Memorandum dated 28.11.2009, the application should have reached NHAI latest by 09.12.2009. The purported application of the petitioner which is at page 48 of the paper book and which we have extracted above is dated 18.12.2009, which is beyond the last date.

4. Although several other points were raised by the learned counsel for the respondent with regard to the difference in the documents filed before the Tribunal and the documents filed by the petitioner before this court in this writ petition, we need not go into those aspects of the matter inasmuch as the petitioner did not, in any event, apply in time and furthermore did not apply in the proper format. The verification from the parent department has

also not been received. The application also ought to have been routed through the proper channel which was not done.

5. In view of this, the writ petition does not have any merit. The same is dismissed. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

OCTOBER 04, 2012

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