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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 05.07.2021

+ **W.P.(C) 6075/2021**

RAM BABU JHA

..... Petitioner

Through **Mr.S.K.Gupta, Adv.**

versus

UNION OF INDIA AND ANR

..... Respondents

Through **Mr.Rajesh Kumar, SPC, with
Mr.Abhishek Khanna, Adv. for
UOI.**

**Mr.Ankur Chhibber, Adv. with
Mr.Himanshu, Shekhar Tiwari,
Mr.Anshuman Mehrotra,
Mr.Harsh Dhankar &
Mr.Nikunj Arora, Adv. for
NHAI.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The hearing has been conducted through video conferencing.

CMs 19239-40/2021 (Exemption)

Allowed, subject to all just exceptions.

Accordingly, the applications are disposed of.

Signature Not Verified

Digitally Signed
By:SHALGO BATRA

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WP(C) 6075/2021 & CM 19238/2021

1. This petition has been filed by the petitioner challenging the order dated 14.06.2021 passed by the learned Central Administrative Tribunal, Principal Bench (hereinafter referred to as the 'CAT') in O.A. No.897/2021 dismissing the said O.A. of the petitioner, however, allowing the petitioner herein, who was the petitioner in the O.A. as well, to pursue his remedies to go back to his parent organization that is the State of Arunachal Pradesh, in case he so desires, while directing the National Highway Authority of India (NHAI), respondent no. 2 herein, to extend all its cooperation for the same.

2. The petitioner was working as an Extension Officer in the pay scale of Rs.2000-3500/- (revised) Rs.8000-13500/- in the Rural Development Department, Government of Arunachal Pradesh. Pursuant to an Advertisement in the year 2011 issued by the respondent no.2, the petitioner vide letter dated 30.01.2015 was appointed to the post of Manager (Technical) by the respondent no.2 on deputation basis with effect from 09.02.2015. Later, pursuant to the circular dated 18.08.2017 and vide letter dated 12.09.2018 issued by the respondent no.2, the petitioner was offered appointment on absorption basis to the said post with effect from 10.10.2018.

3. By an Office Memorandum dated 01.03.2021, the respondent no.2, however, observed that in view of petitioner's Engineering degree obtained from JRN Rajasthan Vidyapeeth being declared invalid by the Supreme Court in its judgment dated 03.11.2017 passed

in Civil Appeal Nos.17869-17870/2017, *Orissa Lift Irrigation Corporation Ltd. vs. Rabi Sankar Patro & Ors.*, the petitioner be offered the post of Technical Assistant in the respondent no.2 in pay scale-6 without recovery of any monetary advantages earned till date. It was this Office Memorandum that was challenged by the petitioner in the above-mentioned O.A. No.897/2021 before the learned CAT.

4. The learned counsel for the petitioner submits that the learned CAT has erred in observing that in terms of the National Highway Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996, (hereinafter referred to as the 'Recruitment Regulations') while the method of appointment of the post is by way of promotion, deputation or transfer, it is essential that a candidate must hold a B.Tech (Civil) degree. The learned counsel for the petitioner submits that the degree in Civil Engineering is required and is essential only where the candidate is on the panel of Under Secretary in the Government of India. For a candidate holding analogous post in a Central/State Government Department/Autonomous Body/Public Sector Undertaking or for a candidate with 3 years regular service in the pay scale of Rs.2200-4000/- or 6 years in pay scale of Rs.2000-3500/-, the requirement of possessing a degree in Civil Engineering is not essential.

5. He further submits that as the petitioner had been appointed to the post of Manager (Technical) in level-11 by the respondent no.2 on the basis of him holding an analogous post in the State Government Department and his experience in the required pay scale, the

possession of a degree in Civil Engineering was not an essential requirement/qualification for the petitioner and accordingly the cancellation of his degree in terms of the above referred judgment of the Supreme Court had no effect on his appointment or absorption to the post of Manager (Technical).

6. He further submits that in terms of Regulation 13 of the Recruitment Regulations, an officer who fulfils the prescribed qualification and eligibility criteria for the post at the time of appointment on deputation is entitled to be considered for permanent absorption. He submits that as the requirement of possessing a degree in Civil Engineering was not essential for the petitioner, the petitioner was rightly considered for absorption and duly absorbed as Manager (Technical) by the respondent no.2.

7. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

8. The relevant Recruitment Rules for the post of Manager (Technical) in the respondent no.2 is as under:

“Educational Qualification:

Essential:

(i) Degree in Civil Engineering from a reputed Institution of Technology or a recognized University.

Desirable:

Post Graduate Degree in Civil Engineering in the field's relating to Highway Engineering and/or Post Graduate Degree in Management/MBA from an Institute of repute.

Experience:

Should have put in at least 3 years service in a responsible senior position in a Govt. Deptt/Public Sector Undertaking/ Commercial Organization of repute and should be working in an analogous post or the post next below or equivalent for at least 3 years.

Desirable:

Should be well versed in the field of Highway/Bridge Engineering dealing with Planning, Pre-qualification of Consultants and Contractors, Financial Appraisal of Projects, Detailed Designing, Techno-financial reviews, Evaluation of Tenders Contract Management, Monitoring Liaison with major construction agencies/Govt. Bodies; Performance Appraisal of Major Highways/Bridge Projects.

Method of Recruitment:

By deputation/transfer from candidates already on the panel of Under Secy. In the Govt. of India and possessing the Educational qualifications stipulated in Col. 7 or from candidates holding analogous post in a Central/State Govt. Deptt./Autonomous Body/Public Sector Undertaking or with 3 years regular service in the scale of Rs.2200-4000 or 6 years in the scale of Rs.2000-3500.

Period of Deputation:

Not more than 3 years but may be extended with the approval of Central Govt."

9. The respondent no.2, in its counter affidavit filed before the learned CAT, had pleaded as under:

"4. That pursuant thereof, the answering Respondent issued an advertisement inviting applications from officers under the Central /State Governments Department/Autonomous

bodies/Public Sector Undertakings for appointment on deputation basis to the post of Manager (Technical) on fulfillment of educational as well as experience conditions mentioned in such advertisement. The chief condition laid down by the answering Respondent through such advertisement was that all those candidates who were applying for such post, were to have a degree in civil engineering from a reputed institute of technology or a recognized university.

Accordingly, the Applicant on acquiring the aforesaid degree, applied for the post of Manager (Technical) in the NHAI on deputation and was ultimately appointed as Manager (Technical) w.e.f. 09.02.2015.

Further, the answering Respondent vide their order dated 18.08.2017 even invited applications from those eligible candidates who were on deputation at that relevant time and were willing to get absorbed in the NHAI in the post of Manager (Technical). The Applicant applied for the same, and consequent to the release of the Applicant from his parent organization and vide office order dated 25.03.2019, the Applicant was appointed as Manager (Technical) on absorption basis w.e.f. 10.10.2018.

Here, it would be relevant to mention that the basis for appointment to the post of Manager (Technical) on deputation as well on absorption is same as laid down in the advertisement by the answering Respondent."

(Emphasis supplied)

10. A reading of the above would clearly show that the minimum educational qualification required for appointment to the post of Manager (Technical) on deputation basis was the degree in Civil Engineering. The petitioner, in its rejoinder filed before the learned CAT, did not refute the above assertion of the respondent no.2.

11. Regulation 13(1) of the Recruitment Regulations prescribes as under:

"13. Absorption: (1) Only those officers / employees shall be considered for permanent absorption who fulfill the prescribed qualifications and eligibility criteria for the post at the time of appointment on deputation."

12. A reading of Regulation 13(1) would show that only those officers /employees shall be considered for permanent absorption who fulfill the prescribed qualifications and eligibility criteria for the post at the time of appointment on deputation. The absorption of the petitioner to the post of Manager (Technical) was, therefore, improper; his degree having already been cancelled by the Supreme Court in its above-referred judgment, paragraph 48 of which is quoted herein below:

"48. As regards the students who were admitted after the ex-post-facto approval granted in favour of such Deemed to be Universities, in our view, there was no sanction whatsoever for their admission. The Policy Statements as well as warnings issued from time to time were absolutely clear. The students were admitted on the strength either provisional recognition or on the strength of interim orders passed by the High Court. We therefore, declare that in respect of students admitted after the academic sessions of 2001-2005, the degrees in Engineering awarded by the concerned Deemed to be Universities through Distance Education Mode shall stand recalled and be treated as cancelled. Any benefit which a candidate has secured as a result of such degrees in Engineering in the

nature of promotion or advancement in career shall also stand recalled. However, if any monetary benefit was derived by such candidates that monetary benefit or advantage will not be recovered by the concerned departments or employers. We, further direct that the entire amount paid by such students to the concerned Deemed to be Universities towards tuition fee and all other expenditure for such courses through distance education learning shall be returned by the concerned Deemed to be Universities to the respective students. This direction shall be complied with by the concerned Deemed to be Universities scrupulously and the amounts shall be returned by 31st of May, 2018 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter."

13. In view of the above, we find no infirmity in the order passed by the learned CAT. The petition is accordingly, dismissed. There shall be no order as to costs.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

JULY 5, 2021

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