



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: July 27, 2023

+ W.P.(C) 3737/2015

UNION OF INDIA

..... Petitioner

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Sagar Mehlawat and
Mr. Alexander Mathai Paikaday,
Advs. for UOI

versus

ASHWANI KUMAR

..... Respondent

Through: Mr. R.K. Saini and Ms. Sunita
Shukla, Advs. for R-1
Mr. Aishwary Bajpai and
Mr. Soumyajit Pani, Advs. for
R-2 to R-5

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This writ petition has been filed by the Union of India challenging the order dated November 28, 2014, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.4273/2013 ('OA', for short) whereby the Tribunal has allowed the OA filed by the respondent herein by stating as under:



“20. Based on the aforesaid reasons and in the light of the judgments, referred to above, we are of the view that the OA is fit to be allowed. The services rendered by the applicant on deputation basis as JDD (IA) from 04.10.2004 to 30.04.2007 shall be counted for the purpose of qualifying service for the next promotional post of Deputy Director (IA) as per the reliefs sought by the applicant in this OA. The impugned order dated 13.11.2013, therefore not being fit to be sustained is accordingly quashed and set aside.”

2. The challenge before the Tribunal was to a memorandum dated November 13, 2013 passed by the petitioner herein rejecting the representation made by the respondent herein for counting the respondent's deputation period as Joint Deputy Director (IA) [‘JDD (IA)’, for short] between October 4, 2004 to April 30, 2007, for the purpose of eligibility for promotion to the post of Deputy Director (IA) (‘DD (IA)’, for short).

3. The facts as noted from the record are that the respondent was serving in the Indian Army and came on deputation with the petitioner as JDD (IA) w.e.f. October 4, 2004, initially for a period of two years which was later extended by one more year till October 3, 2007. In the meantime, the petitioner made a request for premature retirement from the Army. The request was allowed and he was relieved from service w.e.f April 30, 2007. In the meantime, the respondent had applied for re-employment on the post of JDD (IA) or any suitable post under the petitioner vide his application dated February 12/22, 2007. The respondent was offered a lower post of Assistant Director (IA) (‘AD (IA)’, in the



pay scale of ₹10000-15200/- vide Memorandum dated April 20, 2007. The respondent continued to work as AD (IA) on probation with the petitioner for two years and his services were confirmed w.e.f. April 01, 2009. He was also promoted to the post of JDD (IA) w.e.f. April 1, 2012.

4. The next promotional post for the petitioner is the post of DD (IA). The recruitment rules contemplate the essential requirements for promotion from JDD (IA) to the post of DD (IA), is as under:

“(a) He should have served in scale of Rs.15500-39100 plus grade Rs.7600 with 5 years of regular service in the grade.

(b) Ninety percent by promotion failing which by deputation/absorption/reemployment, (Ten percent by deputation /absorption/reemployment).”

5. The respondent's case before the petitioner was that, he would be completing five years of regular service in July 2014, by taking his past service of two years and seven months into account when he was on deputation with the petitioner i.e., between October 4, 2004 to April 30, 2007, which is the eligibility criteria for promotion to the post of DD (IA). The respondent submitted his representation for counting the deputation period for the purpose of eligibility for promotion. The petitioner rejected the said representation vide memorandum dated November 13, 2013.

6. The case of the petitioner before the Tribunal was that, as per OM's dated May 29, 1986 and March 27, 2001 of the DoP&T, in cases where a person has been initially taken on deputation and



later absorbed in consonance with the recruitment rules, his seniority in the grade in which he has been absorbed would normally be counted from the date of his absorption and also a person holding the same or equivalent grade on regular basis in the parent department is being absorbed, such regular service in the grade shall be taken into account in fixing his seniority subject to the stipulated conditions. The Tribunal decided the issue by stating in paragraphs 7 to 17 as under:

“7. Applicant's Counsel has filed written synopsis also on the behalf of the applicant. It was firstly argued that a perusal of the Recruitment Rules shows that requirement of qualifying regular service for promotion of DD (IA) is 5 years. The word 'Yegular service' is not further qualified by any such word as 'continuous' or 'uninterrupted' service of 5 years. In so far as the recruitment to the post of JDD (IA) is concerned, the source of recruitment is shown as 90% by promotion, failing which by deputation/absorption or reemployment as well as 10% by deputation/absorption or reemployment. Thus deputation is one of the sources for recruitment for the post of JDD (IA). Similar identical provisions exist even for promotion for the post of DD (IA) where also the same percentage and mode of recruitment are prescribed. Even the post of Assistant Director (IA) has identical requirements. It was argued that when the applicant joined as DD (IA) on 04.10.2004 on deputation basis, it was in consonance with the rules. Even his subsequent joining as Assistant Director (IA) on 01.05.2007 on re-employment was also as per rules. His promotion later as JDD (IA) w.e.f. 01.04.2012 has also been in accordance with rules. It was argued that in effect, the entire service of the applicant with the respondents has been in accordance with the relevant rules. Now when the applicant has



sought for counting of his said service on deputation towards qualifying service for consideration for promotion to the post of DD (IA), the respondents have dealt with his request on the basis of the provisions regarding seniority which was uncalled for and have wrongly rejected the applicant's representation. The concept of "regular service" for the purpose of qualifying service for promotion was different and distinct from "regular service" for the purpose of counting seniority. The two cannot be mixed up. The following judgments have been cited by the learned counsel for the applicant during arguments:-

i) UOI & Ors. Vs. K.B. Rajoria (2000) 3 see 562 (Paras 9 to 13);

ii) Punjab State Electricity Board & Ors. Vs. Jagjiwan Ram & Ors. (2009) 3 SCC 661 (Para 17);

iii) Renu Mullick (Smt.) Vs. UOI & Anr. (1994) 1 SCC 373 (Para 10);

iv) Scientific Advisor to Raksha Mantri & Anr. Vs. V.M. Josepii (1998) 5 SCC 305, (Para 6); and

v) K.Madhvan & Anr. Vs. UOI & Ors. (1987) 4 SCC 566 (Para 10).

8. Learned counsel for the respondents Shri Rajesh Katyal was heard who has also filed written submissions. It was argued that the Recruitment Rules for promotion from the post of DD (IA) to the post of JDD (IA) provides for five years of regular service in the grade as eligibility for consideration for promotion. The tenure of the service of the applicant 04.10.2004 to 30.04.2007 cannot be considered as regular because the applicant was regularly appointed as JDD (IA) w.e.f. 01.04.2012. Shri Katyal argued that since the Recruitment Rules provided for deputation/absorption or by re-employment to the post of DD (IA), hence



deputation/absorption and re-employment are altogether different in terms of service jurisprudence. It was further argued that the words 'regular service' as per statutory recruitment rules framed under Article 309 of the Constitution of India have to be read in its strict sense and cannot be misinterpreted by inclusion of tenure of service rendered on deputation and if it is so done, the purpose of mentioning the words 'regular service' in the rules would be defeated. The applicant's argument to include his period of deputation from 04.10.2004 to 30.04.2007 to be viewed as regular service was misplaced and was not sustainable in law. Shri Katyal further referred to DOP&T OM dated 27.03.2001 (pages 12-13 of the counter reply) the benefit of seniority would be given only if the deputation is followed and culminates into absorption in the same post. The provision of re-employment have been provided in OM dated 16.06.1980 (pages 17-18 of the counter reply) where an officer is re-employed after his retirement/discharge from defence or civil employment, his appointment to civil post under the provisions of the recruitments applicable to direct recruits be treated as direct recruits. According to him in the case of re-employment, the earlier service of the employee comes to an end and only thereafter does he have the right to be re-employed. The applicant in the present case was on the rolls of the Indian Army till 30.04.2007 and he came on the rolls of ARC w.e.f. 01.05.2007 on re-employment. His earlier tenure from 04.10.2004 to 30.04.2007 cannot be counted for the purposes of qualifying service and if it is so done, he would be getting the benefits from two different organizations for the same period which is not permissible in law. Referring to the arguments of the applicant's side that OM dated 16.06.1980 was applicable only for seniority and not qualifying service, it was submitted that the said argument is not sustainable in law. The OM dated 16.06.1980 cannot be restricted to seniority alone but



*has to be counted for all purposes. The judgment of the Hon'ble High Court of Delhi in the case of **Diwan Singh Bisht Vs. Union of India** (2005 (2) AD (Delhi) 407 was cited. It was also submitted during arguments that the applicant was on deputation on a lower post as compared to Lt. Col., and the re-employment was on a yet lower post and, therefore, he was not entitled to the benefit of judgment in **K. Madhavan's case (supra)** as he did not come to the ARC office on the same or equivalent post.*

9. We have perused the pleading documents in detail and have also considered the arguments made on behalf of both parties.

10. The issue for consideration is whether or not 'continuous' and 'uninterrupted service' as JDD (IA) is necessary for being counted for computing qualifying service for promotion to the post of DD (IA) as prescribed under the Recruitment Rules. According to the Recruitment Rules, the specific provision is that "Joint Deputy Director (IA) in pay band-3 Rs. 15600-39100/- plus grade pay of Rs. 7600/- with five years of regular service in the grade and possessing following educational qualifications....." would be considered. Thus 5 years of regular service along with required educational qualification is a pre-requisite for promotion -from JDD (IA) to the post of DD (IA). In the present case, according to the applicant, he had worked on deputation from 04.10.2004 to 30.04.2007 as JDD (IA) which he seeks to be counted against the qualifying period for promotion to the post of DD (IA). By doing so, he would be eligible for consideration to the post of DD (IA) because he has rendered service as JDD (IA) w.e.f. 01.04.2012 till date. On the other hand, the respondents do not agree with the claim of the applicant for the reason that possess the required qualifying period of five years for promotion. On both the occasions when the applicant worked as JDD (IA) i.e.



on deputation as well as on the re-employment, the applicant had rendered regular service, which is not in dispute. In view of above, what is, therefore, to be examined is whether continuous regular service is required or not in terms of the Recruitment Rules to fulfill the qualifying period.

*11. Applicant's counsel cited the judgment of the Hon'ble Supreme Court in the matter of **K.B. Rajoria (supra)**. In this judgment in paragraphs 9,10, 11 and 12, the Hon'ble Supreme Court held as under:-*

9. Third, the High Court erred in construing the words 'regular service in the grade' as actual physical service. If that were so, then an ad hoc appointee who actually serves in the post could also claim to be qualified to be considered for the post of Director General. The High Court itself held that "ad hoc service rendered by any of the parties would not count towards eligibility".

10. Finally, while considering the definition of the word 'regular' in the Concise Oxford Dictionary, Ninth Edition, the High Court noted that it meant:

"(1) conforming to a rule or principle, systematic; (2) harmonious, symmetrical; (3) acting or done or recurring uniformly or calculably in time or manner, habitual, constant, orderly; (4) conforming to a standard of etiquette or procedure, correct, according to convention; (5) properly constituted or qualified, not defective or amateur, pursuing an occupation as one's main pursuit".



11. The word "regular" therefore does not mean "actual" and the first question the High Court should have considered was whether the appointment of Krishnamoorti was regular and in accordance with the Rules or was it irregular in the sense that it was contrary to any principle of law.

12. The decision which is somewhat apposite is the case of K. Madhavan V. Union of India, (1987) 4 SCC 566 : (AIR 1987 SC 2291 : 1988 Lab IC 26) where the eligibility requirement was eight years in the grade 'on a regular basis'. In that case it was held: (SCC p.575, para 10)

"In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or or purely temporary basis."

Further, in paragraph 20, the view taken by the Hon'ble Apex Court is reproduced below:-

"20. In the context of this case, the High Court erred in equating the words 'regular service' with 'actual experience' relying on the decision in Union of India V.M. Bhaskar, (1996) 4 SCC 416. In that case the eligibility criteria expressly were of 'completion of 2 years' experience in Grade

II." The case is therefore entirely distinguishable.

It is clear from the aforementioned that what the Hon'ble Supreme Court held was that the expression 'on regular basis' would mean the appointment to the post on a regular basis and not appointment an ad hoc or stopgap or purely temporary basis. It is noticed that the



applicant in the present case on both the occasions was appointed on regular basis.

*12. Another judgment cited was in the matter of **Punjab State Electricity Board (Supra)**. Learned counsel drew specific attention to paragraph 17 of the judgment which is reproduced below*

"17. This Court reversed the judgment of the High court and held:

"Coming to the circular dated 02.06.1989, issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department, it appears that the aforesaid circular had been issued for removal of anomalies in the pay scale of Doctors, Deputy Superintendents and Engineers, and so far as Engineers are concerned, which are in Class I and II, it was unequivocally indicated that the revised pay scale of Rs. 3000 to Rs. 4500 can be given after completion of 5 years of regular service and Rs. 4100 to Rs. 5300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another circular dated 16.05.1990, in view of certain demands made by officers of different departments. The aforesaid circular was issued after reconsideration by the Government modifying to some extent the earlier circular of 02.06.1989, and even in this circular it was categorically indicated that so far as Engineers are concerned, they would get Rs. 3000 to Rs.4500 after 5 years of regular and satisfactory service and selection grade in the scale of pay of Rs. 4100 to Rs. 5300, which is limited to the extent of 20% of the cadre post should be given after 12 years of regular and satisfactory service. The aforesaid two circulars are



unambiguous and unequivocally indicate that a government servant would be entitled to the higher scale indicated therein only on completion of 5 years of 12 years of regular service and further the number of Persons to be entitled to get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of the period of 12 years indicated in the circular. The majority judgment of the High Court committed serious error by equating expression "regular service" with "continuous service". In our considered opinion under the terms and conditions of the circulars dated 2.06.1989 and 16.05.1990, the respondent Rakesh Kumar would be entitled 'for being considered to have the selection grade on completion of 12 years from 29.01.1982 on which date he was duly appointed against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained."

(emphasis added)

It is clear from above that equating the expression 'regular service' with 'continuous service' was held as erroneous. "Regular service" would not therefore imply "continuous service".

*13. Paragraph 10 of the judgment in **Renu Mullick's case (supra)**, referred to by the learned counsel for the applicant, reads as under:-*



"10 We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former Collectorate for the purpose of seniority in the new charge. The later part of that para an not be read differently. The transferee is to be treated as a new entrant in the Collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in 2 years' service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per R. 4 aforesaid. Her seniority in the previous Collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under R. 4 which is a statutory rule. The eligibility for promotion has to be determined with reference to R. 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open it challenge on the ground of arbitrariness."

(emphasis added)

By holding that the previous service of the petitioner in that matter rendered in a different Collectorate could not be ignored for the purposes of determining her eligibility, the Hon'ble Apex Court has thus laid down the principle that services rendered on the same post but



in a different unit are to be counted for the purpose of determining eligibility.

*In the case of applicant in the present OA, the claim for counting the services of the applicant when he had come on deputation against that post, along with his service later on when he came on re-employment, both relate to the same organization and the same office. The applicant's claim is to be seen in the light of what has been held by the Hon'ble Supreme Court in the matter of **Renu Mullick (supra)**.*

14. In Scientific Advisor to Raksha Mantri's case (supra), in paragraph 6 of the judgment while drawing the distinction in "eligibility" for promotion with "seniority" since the two are different factors, it was held by the Hon'ble Apex Court that even on transfer the "service" rendered against a particular post by a permanent employee cannot be excluded from consideration for determining his eligibility for promotion. In the case of the applicant, the services rendered by him on a regular basis on deputation, and later on re-employment against the same post in the same organization could therefore not be excluded for determining his eligibility for promotion. Paragraph 6 of the aforementioned judgment is reproduced below:-

"6. From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Store Keeper on the ground that he had completed 3 years of regular service as store Keeper on 7th June, 1980 and, therefore, he could not be promoted earlier than 1980. In coming to this conclusion, the appellants excluded the period of service rendered by the respondent in the Central Ordnance Depot, Pune, as a Store Keeper for the period from 27th April, 1971 to 6th June, 1977. The appellants contended that, since the respondent had been transferred on



compassionate ground, on his own request to the post of Store Keeper at, Cochin and was placed at the bottom of the seniority list, the period of 3 years of regular service can be treated to commence only from the date on which he was transferred to Cochin. This is obviously fallacious inasmuch as the respondent had already acquired the status of a permanent employee at Pune where he had rendered more than 3 years of service as a Store Keeper. Even if an employee is transferred at his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors."

(emphasis added)

15. The last judgment cited on behalf of the applicant during arguments was **K.Madhavan (supra)** wherein the Hon'ble Supreme Court drew distinction between appointment 'on regular basis' viz-a-viz stopgap and purely temporary basis.

16. On the other hand, the arguments of the respondents all relate to non-acceptance of "service" rendered from 04.10.2004 to 30.04.2007 for calculating the qualifying period for promotion. As a matter of fact, the instructions of the DOP&T which have been relied upon namely, OM dated 29.05.1986, relate to fixation of seniority as distinct from determination of qualifying service. The OM dated 29.05.1986 relates to fixation of seniority of a person taken on deputation and later on absorbed. The OM dated 27.03.2001 relates to fixation



*of seniority of absorbees. It would appear from the very heading of OM dated 27.03.2001 (Annexure R1) which is "Seniority of Absorbees" concerns seniority. Even the OM dated 16.06.1980 of DOPT (Annexure R3) relates to determination of seniority. We are, therefore, not inclined to rely on these instructions since they are not concerned with the counting of qualifying service but are only concerned with seniority. As has been held by the Hon'ble Supreme Court in **Punjab State Electricity Board (Supra)**, the expression 'regular service' cannot be equated with 'continuous service'. The judgment of Hon'ble High Court of Delhi in **Diwan Singh Bishti's case (supra)** which has been referred to during arguments by the counsel for respondents also concerns seniority. The issue to be determined in that case was whether the petitioner in that matter was holding an equivalent post or not while on deputation which could be reckoned for service in his parent department. This is apparent from paragraph 11 and 12 of the judgment which is reproduced below:-*

"10. The core issue that arises for consideration is whether petitioner was holding the equivalent post to that of Security Assistant in IB in his parent organization and whether he was entitled to the antedating of his seniority by reckoning his service in the BSF and while on deputation in IB till absorption on the analogy of Ram Singh Rawat or under the mandate of Supreme Court judgment in Madhavan's case.

11. The equivalence of the two posts is determinable on consideration of several factors like nature and duties of these posts, the responsibilities and powers attached to these, the minimum qualifications prescribed for recruitment to the posts and salary attached to these posts. Nowhere has petitioner set up any case that the post of Constable in BSF equivalent



to that of Security Assistant in BSF with or without these factors. His whole case revolves round the benefit given to Ram Singh Rawat and the clarificatory memorandum issued by respondents dated 21.01.1986.

12. In our view, neither the Supreme court judgment in Rawat's case nor the memorandum (supra) advances the petitioner's case. Because the Supreme Court was not dealing with equivalence of two posts in Rawat's case. The Court in this had asked respondents to produce a letter addressed to Rawat assuring him that his case for reckoning for his service was being examined and because of their default in this had directed them to protect his seniority."

*17. In the present case of the applicant, there is no equivalence of posts to be determined for calculation of qualifying period and hence the judgment in **Diwan Singh Bisht's case (supra)** would not be applicable."*

7. The submission of Mr. Harish Vaidyanathan Shankar, learned CGSC appearing for the Union of India is that the period when the petitioner was on deputation i.e., between October 4, 2004 to April 30, 2007, cannot be counted for the purpose of eligibility for promotion to the post of DD(IA), when the respondent's service on deputation as JDD (IA) was not a regular service as promotion to the post of DD (IA) contemplates a person having continuous regular service of 5 year as JDD (IA).

8. According to him, during the said period, the petitioner was a regular employee of the Army and the deputation period of the respondent to the petitioner organization could not have been



counted for any purpose including eligibility for promotion. He states that the concept of deputation as propounded by the Supreme Court is a service outside the cadre or outside the parent department, i.e., deputation is deputing or transferring an employee to a post outside his cadre to another department on temporary basis. After the completion of period of deputation, the employee has to come back to his parent department.

9. Similarly, he has relied upon the judgments of the Supreme Court in *State of Punjab and Ors. v. Inder Singh and Ors., (1997) 8 SCC 372* and *Punjab State Electricity Board and Ors. v. Jagjiwan Ram and Ors., (2009) 3 SCC 661*, to contend that, a regular service necessarily mean that, it is a service rendered by an employee after regular appointment and not otherwise.

10. According to Mr. Shankar, the period served on deputation by the respondent can neither be construed as regular service nor counted for the purpose of eligibility to a higher post. He submits that, if the interpretation sought by the respondent is accepted, it would have huge repercussion including the respondent marching over many of his seniors in the grade of JDD (IA) by getting accelerated promotion, which is clearly impermissible.

11. He states that the Tribunal by its order dated November 28, 2014 has erred by construing recruitment rules contrary to its intent and its direction to count the period of deputation as service rendered by the respondent i.e., between October 4, 2004 to April 30, 2007 as a regular service for the purpose of eligibility for promotion to higher post, is liable to be set aside.



12. On the other hand, Mr. R.K. Saini, learned counsel for the respondent would contest the submission made by Mr. Shankar by stating that the Tribunal was justified in directing the petitioner to count the period of deputation between October 4, 2004 to April 30, 2007, for the purpose of qualifying service, in view of the recruitment rules.

13. He also states that the deputation being the mode of recruitment on which the petitioner worked for two years and seven months, and the service being regular, should be counted for the purpose of determining eligibility for promotion to the post of DD (IA). Mr. Saini also states that the denial of benefit to the respondent would be contrary to the recruitment rules causing grave prejudice to the respondent. He seeks the dismissal of the writ petition.

14. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the Tribunal was justified in directing to count the period of deputation i.e., between October 4, 2004 to April 30, 2007, for the purpose of eligibility for promotion to the higher post of DD (IA).

15. The facts which are not disputed are that the petitioner while working in Indian Army, had come on deputation to the petitioner organisation as JDD (IA) on October 4, 2004 and in April 30, 2007, the respondent was repatriated back. In the meanwhile, the respondent No.1 had sought a regular appointment in the petitioner organisation and his request in that regard was accepted by the petitioner by issuing an appointment letter. The



appointment letter was for the post of AD (IA), which means the appointment was on a lower post to the post on which the respondent was working on deputation, i.e., JDD (IA). The respondent joined the post of AD (IA) on May 1, 2007 and continued to work on the post of AD (IA) till 2012 and was promoted to the post of JDD (IA) in the year 2012.

16. In that sense, the respondent's service as JDD (IA) on his promotion in the year 2012 was not in continuity with the service put in by him during his period of deputation, which was between October 4, 2004 to April 30, 2007. In fact, the respondent was working for a period of five years as AD (IA) before being promoted to the post of JDD (IA).

17. A perusal of the rule contemplate that the eligibility of five years for the purpose of promotion to the post of DD (IA) necessarily means that, when the Officer is being considered for promotion, he must have five years of service in a particular scale, which is the lower post.

18. The plea of Mr. Saini that the rule does not contemplate such a situation, cannot be accepted. This we say so, for more than one reason, inasmuch as, the rule do not contemplate that the service put in by the respondent no.1 as a deputationist shall be counted for the purpose of eligibility. Secondly, Mr. Shankar is justified in relying upon the judgment of the Supreme Court in the case of *State of Punjab and Ors. (supra)* wherein, the Supreme Court has culled out the concept of deputation, which will clearly demonstrate that the service as a deputationist is a temporary



service outside the cadre / department, as the Officer has come on deputation with an intention to go back. In that sense, the officer does not hold a lien on the deputation post. If he does not have a lien on a deputation post, it cannot be treated as a regular service. In *State of Punjab and Ors. (supra)*, the Supreme Court has in paragraph 18, has held as under:

“18. The concept of “deputation” is well understood in service law and has a recognised meaning. “Deputation” has a different connotation in service law and the dictionary meaning of the word “deputation” is of no help. In simple words “deputation” means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.”

(emphasis supplied)

19. Additionally, if the plea as advanced by Mr. Saini is accepted, it will cause the prejudice to the officers who were senior to the respondent in the grade of JDD (IA), as the respondent



would become eligible for being promoted to the post of DD (IA) over those seniors, much earlier, and shall supersede them. Hence, the Tribunal has clearly erred in construing the rule in the manner as it has done in the impugned order. The interpretation sought to be given is nowhere in the service jurisprudence, wherein, a service put in on deputation shall be treated as a regular service for purpose of eligibility for promotion.

20. Mr. Shankar is justified in relying upon the judgment of the Supreme Court in the case of ***Punjab State Electricity Board and Ors. (supra)***, wherein in paragraph 20, the Supreme Court has held as under:

“20. A reading of the scheme framed by the Board makes it clear that the benefit of time-bound promotional scales was to be given to the employees only on their completing 9/16 years' regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years' regular service. The use of the term “regular service” in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years' service and the service of a temporary, ad hoc or work-charged employee cannot be counted for extending the benefit of time-bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the purpose of grant of time-bound promotional scales or promotional increments, then instead of using the expression “9/16 years' regular service” or “23 years' regular service”, the authority concerned would have used the expression “9/16 years' service” or “23 years' service”.



However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years' regular service or 23 years' regular service as a condition for grant of time-bound promotional scales or promotional increments as the case may be."

(emphasis supplied)

21. The only way to interpret the provision of the recruitment rules is that, it is only the period of regular service as JDD (IA), in the petitioner organisation, of five years can be said to be the eligibility criteria for promotion to the post of DD (IA) and not the manner the Tribunal has held.

22. We are of the view that the Tribunal has clearly erred in giving the direction to treat the period of service of deputation of the respondent between October 4, 2004 to April 30, 2007, as regular service, for the purpose of eligibility for promotion to the post of DD (IA) and as such the order dated November 28, 2014 of the Tribunal is set aside. The writ petition is disposed of. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 27, 2023/aky