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W.P.No.11060 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.11060 of 2021
and
W.M.P.No.11701 of 2021

- 1.The Chairman,
National Highways Authority of India,
G.5 and 6, Sector – 10,
Dwarka, New Delhi 110075.
- 2.The Member (Administration)
National Highways Authority of India
G 5 and 6, Sector – 10,
Dwarka, New Delhi 110075.
- 3.The Chief General Manager (HR) (Admn),
National Highways Authority of India,
G.5 and 6, Sector 10,
Dwarala, New Dehli (HR/Admn)-IIB.
- 4.The Deputy General Manager (HR/Admn)-IIB,
National Highways Authority of India,
G.5 and 6, Sector 10,
Dwarake, New Delhi 110075.

.. Petitioners

Vs.



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1.G.Athipathi

Manager (Technical), Regional Office,
National Highways Authority of India,
Chennai.

2.The Registrar,

Central Administrative Tribunal,
Madras Bench, Chennai-104.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling upon the records of the 2nd Respondent in OA/310/01633/2020 and quash the Order dated 30.12.2020 passed in the aforesaid proceedings.

For Petitioners : Mr.A.Palaniappan

For R1 : Mr.V.Vijayshankar

For R2 : Tribunal

ORDER

(Order of the Court was delivered by V.LAKSHMINARAYANAN, J.)

This petition challenges the proceedings of the 2nd respondent/Central Administrative Tribunal, Madras Bench in O.A.No.310/01633/2020 dated 30.12.2020.



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2. The case of the 1st respondent/applicant before the Central Administrative Tribunal is that he was initially working as a Assistant Engineer in the service of Government of Tamil Nadu. He was taken on deputation as Manager (Technical) by the writ petitioners on 21.05.2008. He worked continuously for a period of six years till 13.06.2014. An advertisement was issued by the writ petitioners on 15.03.2014 calling for direct recruitment to the post of Manager (Technical). The 1st respondent applied for the said post on 11.04.2014. On the request of the State of Tamil Nadu, he was repatriated from the writ petitioners' service to that of the State of Tamil Nadu on 13.06.2014. Subsequently, to the applied post, the 1st respondent undertook a written examination on 23.08.2014 and was selected on 26.08.2015. He joined the service of the writ petitioners on 26.08.2015 as Manager (Technical).

3. The post of Manager (Technical) is the feeding grade for that of Deputy General Manager. This is as per the existing rules of recruitment of the year 2013. The 1st respondent applied for promotion to the post of Deputy General Manager (Technical). This was denied by the writ petitioners on the ground that he had joined service only on 26.08.2015. It was the grievance of the 1st respondent, before the Central



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Administrative Tribunal, that his service previously rendered on deputation from 2008 to 2014 in the post of Manager (Technical) was not considered by the writ petitioners and hence, he gave a representation to the writ petitioners. That was rejected by an order dated 05.11.2019, which he challenged in O.A.No.1633 of 2019.

4. The Tribunal, after issuance of notice and receipt of the counter from the writ petitioners, allowed the original application. It relied upon a circular issued by the writ petitioners that the deputation service rendered in the post of Manager (Technical) should be taken into consideration as regular service for promotion to the post of Deputy General Manager (Technical). It further directed the writ petitioners to promote the applicant as Deputy General Manager (Technical) with effect from 27.10.2017 with all consequential benefits. Challenging the same, the writ petitioners are before this Court.

5. Mr.A.Palaniappan, learned counsel appearing for the writ petitioners had sought to persuade us that the circular issued by the National Highway Authority of India dated 22.05.2017 was inapplicable to the 1st respondent. He wanted us to read “Clause 6” of the said



circular as applicable only to persons who were in service, on deputation, on the date on which the promotion opened and that it would not be applicable to persons who were repatriated from National Highways Authority of India to their parent body. For ready reference, Clause 6 of the said circular is extracted as hereunder:-

“6. It has been decided to treat the deputation service (if any) rendered on the post of Manager (Technical) in NHAI as regular service for the purpose of promotion to the post of DGM (Technical). It has also been decided that the Manager (Technical), when found suitable for promotion, shall be promoted to the post of DGM (Technical) notionally with effect from the date they fulfil the eligibility criteria for the promotion, but not before the date of absorption and the date of promotion of applicants in OA 3696/2014 and 3762/2014 i.e. dated 29.12.2014, subject to recommendations of the Selection Committee. The actual promotion shall take effect from the date of assumption of charge against the post of DGM (Technical).”

6. He would further submit that as per the statutory service rules framed viz., the National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996, in particular Clause No.



15(3), seniority must be taken into consideration, if and only if the person who is “absorbed”, by the authority, it should be their seniority will be determined as in their parent cadre. Clause 15(3) need not detain us more than a minute. It is a red herring argument. It is nobody's case that the 1st respondent was absorbed into service while on deputation from the Government of Tamil Nadu.

7. From the facts narrated above, it is clear that the 1st respondent had applied to the post while he was on deputation but was repatriated to his parent service and had taken the written examination and he was selected, while he was still in the service of Government of Tamil Nadu. It is not a case of being initially appointed on deputation and subsequently, being absorbed while on deputation. Therefore, Clause 15(3) need not detain us any more.

8. Qua the argument on the circular dated 22.05.2017, the circular is clear, categorical and unambiguous. It specifically says that deputation service should be taken into consideration for promotion. It does not read that the person must continue to be on deputation for the purpose of that service should be considered. When the circular is clear and



unambiguous, it is not the duty of the Court to add words to it.

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9. Mr.V.Vijayshankar, learned counsel appearing for the 1st respondent/applicant would point out that the Executive Committee of the National Highways in its 320th meeting held on 12.10.2017 had taken a decision for creation of 30 post of Deputy General Manager (Technical) and had further directed, as an one time measure, the deputation service (including period of absence from National Highways Authority of India for fulfilling administrative formalities examples submissions/acceptance of technical resignation/retirement etc.,) will be treated as regular service for the purpose of reckoning eligibility for promotion to the post of Deputy General Manager (Technical).

10. The circular has been perfectly understood and applied by the writ petitioners. It has also been and also implemented with respect to three other similarly situated persons.

11. This Court, sitting under Article 226 of the Constitution of India, decides on visitorial and supervisory jurisdiction. It is concerned only with the decision-making process of the Central Administrative Tribunal and not to the decision itself. In any event, there is no perversity



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or error in the order nor in the manner of the decision making process.

Hence, it does not require any interference at our hands.

12. The Writ Petition is dismissed. The Writ Petitioners are directed to implement the order of the Central Administrative Tribunal within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

(V.M.V., J) (V.L.N., J)
01.03.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-104.



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V.M.VELUMANI, J.
and
V.LAKSHMINARAYANAN, J.

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