



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 21.02.2024***

+ W.P.(C) 5598/2022, CM APPL. 16607/2022 (additional documents)
& CM APPL. 16608/2022 (stay)

NEETA MAHALA AND ORS.

..... Petitioners

Through: Ms.Nandadevi Deka, Mr.Rohan
Chandra, Ms.K.S.Jaggi & Mr.Zain Haider, Adv.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

..... Respondent

Through: Mr.Nirvikar Verma, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 03.03.2022 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No.2211/2020. Vide the impugned order, the learned Tribunal has rejected the claim of the petitioners for antedating their promotion to the post of Manager (Technical), which was granted to them w.e.f. 01.01.2020, to 01.01.2019.

2. The brief factual matrix emerging from the record shows that the petitioners were appointed to the post of Deputy Manager (Technical) on 10.08.2015 and were placed on probation for a period of one year, which probation they successfully completed on 09.08.2016. When the petitioners joined service, they were governed by the NHAI (Recruitment, Seniority



and Promotion) Regulations, 1996, (hereinafter '1996 Regulations'), according to which three years regular service in the feeder cadre of Deputy Manager (Technical) was prescribed as the eligibility condition for promotion to the post of Manager (Technical). This criteria for promotion to the post of Manager (Technical) was, however, amended by Regulations dated 16.05.2016 (hereinafter 2016 Regulations), vide which an employee was now required to complete four years service in the feeder cadre of Deputy Manager (Technical) as a condition for promotion to the post of Manager (Technical). On 12.10.2017, the Executive Committee of the respondent/NHAI took a considered decision to apply the 1996 Regulations to all such employees who were holding the feeder post of Deputy Manager (Technical) on regular basis on the date of the notification of the 2016 Regulations, vide which the criteria of service in feeder cadre was increased from three years to four years. Based on this decision by the Executive Committee, an order was passed by the respondent on 04.01.2018 directing that employees who were holding the feeder cadre post of Deputy Manager (Technical) on 16.05.2016 would be considered for promotion on the basis of the 1996 Regulations.

3. Since the petitioners were not considered for promotions despite completing three years of service on 10.08.2018, they made representations to the respondent *inter alia* stating therein that as they were holding the feeder cadre post on 16.05.2016, when the 2016 regulations came into force, they be considered for promotion to the post of Manager (Technical) on the basis of the 1996 Regulations. The respondents, however, rejected these representations on the ground that the petitioners, who were on probation as on the date of the promulgation of the amended Regulations, 2016, could not



be presumed to be holding the post of Deputy Manager (Technical) on regular basis on 16.05.2016. The petitioners were, therefore, informed that they were not entitled to the benefit of the decision of the Executive Committee dated 12.10.2017 or the order dated 04.01.2018.

4. Being aggrieved, the petitioners approached the learned Tribunal seeking promotion to the post of Manager (Technical) under the 1996 Regulations. The Learned Tribunal has, however, rejected the petitioners' original application by accepting the respondent's plea that since the petitioners were on probation till 10.08.2016, they could not be treated as holding the post of Manager (Technical) on regular basis on 16.05.2016, when the 2016 Regulations come into force. It is in these circumstances that the petitioners have approached this Court by way of the present petition.

5. Learned counsel for the petitioners submits that the impugned order is wholly perverse as the learned Tribunal has proceeded to pass the impugned order on the basis of an erroneous presumption that the petitioners, being probationers on 16.05.2016, could not be treated to be holding the post of Deputy Manager (Technical) on a regular basis when the 2016 Regulations came into force. She submits that learned Tribunal has failed to appreciate that merely because the petitioners were on probation, it could not be said that they were not holding the post on a regular basis. Furthermore, while considering the petitioners for promotion under the 2016 Regulations, the respondents have themselves taken into account their service from 10.08.2015, when they were still under probation, as a regular service. She, therefore, prays that the writ petition be allowed and the impugned order be set aside.

6. On the other hand, learned counsel for the respondent supports the



impugned order by contending that the learned Tribunal was correct in holding that the petitioners' service during probation period could not be treated as a regular service. He contends that once it was found that the petitioners were not holding the post of Deputy Manager (Technical) on regular basis 16.05.2016, they were rightly not considered under the 1996 Regulations. He, therefore, prays that the writ petition be dismissed.

7. In order to appreciate the rival submissions of the learned counsel for the parties, it would be apposite to, at the outset, refer to the relevant extracts of the impugned order, which read as under:-

“8. Perusal of the pleadings reveal that though the applicants, joined on 10.08.2015, they remained on probation for a period of one year, i.e. till 10.08.2016 by which time new RRs had come into force, i.e. on 16.05.2016. Hence, candidates promoted thereafter will be governed by new RRs. We, accordingly, find no fault with the action of the respondents. Therefore, we find no merit in the OA.”

8. Since the entire case of the petitioners hinges on the recommendations made by the Executive Committee of the respondent qua agenda item 320.11 in its 320th meeting held on 12.10.2017, which recommendation culminated in an order dated 04.01.2018 passed by the respondents, we may herein below note the respondent's order dated 04.01.2018 in its entirety. The same reads as under-

“ORDER

In terms of Regulation 22 of National Highways Authority of India (Recruitment, Seniority & Promotion}, Regulation 1996 (Residuary matters), it has been decided to adopt the following guidelines mentioned as 3.1.3 under heading RETENTION OF EXISTING SERVICE at Annexure to DoP&T OM No.AB/14017/48/2010-Estt.(RR) dated



31.12.2010:-

"Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with guidelines issues by this Department) and the change-is likely to affect adversely some persons holding the feeder grade posts on the regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules".

2. This order is made effect from 28.12.2017 (i.e. the date of approval of Chairman) for the purpose of future promotions, wherever applicable."

9. From a perusal of the aforesaid, it is evident that on account of the prejudice which was likely to be caused to the existing employees as a result of enhancement of the period of service in the feeder cadre required as a condition for promotion to the post of Manager (Technical), the respondents took a considered decision to apply the 1996 Regulations to all existing employees holding the post of Deputy Manager on the date when the 2016 regulations came into effect. Learned counsel for the respondent has not denied that this decision to apply the 1996 Regulations was applicable to all employees who were holding the post of Deputy Manager (Technical) on 16.05.2016. His plea, however, is that this decision was applicable only to those Deputy Managers who were holding the post on a regular basis, which he urges, the petitioners were not holding on 16.05.2016 as they were still probationers.

10. Thus, what emerges is that the only objection of the respondents, to consider the petitioners promotion under the 1996 Regulations, is that they were on 16.05 2016 not holding the post of Deputy Manager on regular



basis as they were still on probation. We are, however, unable to agree with the respondent, as we find that it is an admitted position that the petitioners, even while on probation, were working against sanctioned posts of Deputy Manager on which they were appointed as per the laid down process. In the light of this factual position, we fail to appreciate as to why the services of the petitioners, when they were on probation should not be treated as regular service. We are, therefore, of the considered view that the petitioners while working as probationers were rendering regular service as Deputy Manager (Technical).

11. We also find merit in the petitioners' plea that once the respondent itself has taken into account the petitioners' service for the period between 10.08.2015 and 10.08.2016 i.e the period of their probation, towards the qualifying period of four years, for promotion under the 2016 Regulations, they cannot be permitted to urge that the petitioners service as Deputy Manager (Technical) from 10.08.2015 was not regular service.

12. For the aforesaid reasons, we are of the considered view that the petitioners were, on 16.05.2016, holding the post of Deputy Manager (Technical) on regular basis. We find that the learned Tribunal has failed to appreciate that merely because an employee is working as a probationer, it would not imply that he is not holding the post on a regular basis. The impugned order is, therefore, unsustainable and is, accordingly, set aside.

13. Taking into account that the respondent had already promoted the petitioners w.e.f 01.01.2020 and therefore their suitability for promotion is not in doubt, we allow the writ petition by directing the respondent to promote the petitioners under the 1996 Regulations by antedating their promotion as Manager (Technical) w.e.f 01.01.2019, as against 01.01.2020,



from which date they were promoted under the 2016 Regulations.

14. We, however, make it clear that except for enhanced wages for the period between 01.01.2019 to 01.01.2020, the petitioners will be entitled to all other consequential benefits.

15. The writ petition stands disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 21, 2024/kk