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

+ **Date of Decision: 23.12.2014**

% **W.P.(C) 9264/2014 & C.M. Nos.20999-21000/2014**

NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Petitioner

Through: Mr. Jos Chiramel and Ms. Iti Johri,
Advocates

versus

P. SIVASHANKAR & ORS Respondents

Through: Mr. Rajiv Manglik, Adv for R-1
Ms. Jyoti Singh, Sr. Adv. with Mr.
Gupta, Ms. Tinu Bajwa and Mr.
Sameer Sharma, Advocates
Mr. Rakesh Munjal, Sr. Adv. with
Md. Ehraz Zafar and Ms. Yashita
Munjal, Advocates for R-14
Mr. Rajesh Gogna, CGSC with Mr.
Arnab, Adv for R-24/UOI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

S. RAVINDRA BHAT, J. (OPEN COURT)

1. Issue notice. Learned counsel for the respondents accepts notice.
2. The petitioner/NHAI is aggrieved by an order of the Central Administrative Tribunal (CAT/ Tribunal) dated 22.08.2014 in O.A. No.2795/2014. The question urged before the CAT was with regard to

proper sequencing of entry of personnel through different channels, i.e. direct recruitment/deputation on the one hand, and promotion on the other hand within the organisation, in the cadre of DGM (Technical).

3. The NHAI is a statutory corporation created under the provisions of the National Highways Authority of India Act, 1988. To streamline the process of recruitment of various cadres, the existing regulations were amended by the NHAI (Recruitment Seniority and Promotion) 3rd Amendment Regulation, 2009. Regulation 13, which deals with absorption of candidates entering the authority/corporation on deputation and other such arrangement reads as follows:

“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.

(2) The officers serving on deputation may be considered for absorption at the level of General Manager and below.

(3) Appointment by absorption, direct recruitment and direct recruitment through lateral entry, including existing cadre of NHAI officers / employees, does not exceed 50% of the sanctioned posts at the level of General Manager and below at any point of time and the absorption, direct recruitment and direct recruitment through lateral entry shall be undertaken in a phased manner enhancing the recruitment from 25% to 50% in the coming recruitment years.

(4) The process of recruitment for increasing the permanent cadre strength shall be in the order of promotion, absorption and lateral entry, i.e. if eligible candidates are not available for promotion, absorption will be undertaken and, once the eligible candidates for absorption are exhausted, lateral entry shall be undertaken. While increasing the permanent cadre strength, the feeder cadres may be enhanced first and higher

cadres subsequently, so that career progression opportunities are not blocked for the lower cadres.

(5) The criteria for absorption shall be as follows:

- (a) Need for retention of the officer in the Authority.*
 - (b) At least two years continuous service on deputation basis in the Authority for the posts at the level of General Manager and below.*
 - (c) Willingness of the officer.*
 - (d) Consent of the cadre controlling authority in parent department.*
 - (e) Observance of statutory reservations as prescribed in the roster points.*
 - (f) Performance and achievements of the officer during his tenure in the Authority.*
 - (g) The officer should be less than 56 years of age as on 1st day of January of the year in which the officer is being considered for absorption.*
 - (h) Vigilance clearance from the Authority and parent department. The officer should not have been awarded any punishment under any departmental enquiry.*
- (6) Absorption of officers is to be decided by the Selection Committee, as prescribed in the NHAI (Recruitment, Seniority and Promotion) Regulations, 1996. (as amended from time to time).*
- (7) The power to relax any of the provisions of these guidelines will remain with the Authority."*

4. The position, vis-a-vis the total cadre strength of DGM (Technical) is 193. In terms of Regulation 13(3), consequently, the direct recruit/deputation channel cannot exceed 50% sanctioned posts. On

15.03.2013, 30 posts were advertised to be filled by the NHAI on direct recruitment/deputation basis. It is further not in dispute that at that point of time, 84 deputationists were in the cadre of DGM (Technical). In addition, 10 deputationists had been absorbed and were deemed to be part of the regular cadre, in the 50% quota falling to the share of direct recruit/lateral entry candidates. The respondent/applicants complained that the advertisement was likely to adversely affect their chances for promotion. The said applicants were holding positions in the cadre below Manager (Technical) on absorption basis. The same constitutes the feeder cadre for promotion to the post of DGM (Tech).

5. The Tribunal, after considering the submissions of the parties, was of the opinion that the phraseology adopted by Regulation 13(4) had to be considered while interpreting Regulation 13(3). It, therefore, concluded as follows:

“7. We have considered the submissions made by the learned counsel for the parties. The entire Regulation No.13 deals with absorption. The NHAI being a comparatively new organization, most of the employees have been initially appointed on deputation basis. Therefore, its endeavor is to form their own permanent cadre strength in due course. Therefore, in terms of clause 1 of regulation 13, provision for absorption has been given. According to the said clause, officers who fulfill the prescribed eligibility criteria for the post at the time of deputation are considered for permanent absorption. However, according to sub-clause 2 of the said Regulation, absorption of deputationists has been limited to the level of General Manager. Again, clause 3 of the said regulation, as extracted above, says that appointment by absorption, direct recruitment and direct recruitment through lateral entry, including existing

cadre of NHAI officer/employees, does not exceed 50% of the sanctioned posts at the level of General Manager and below at any point of time and the absorption, direct recruitment and direct recruitment through lateral entry shall be undertaken in a phased manner enhancing the recruitment from 25% to 50% in the coming recruitment years. According to clause 4 of the regulation 13, in order to achieve that end, the process of recruitment has been prescribed in the order of promotion followed by absorption and then by lateral entry as stated above.

8. *In the above facts and circumstances of the case, we are convinced that without resorting to the first method of recruitment, namely, promotion, the respondents could not have issued the advertisement for appointing persons on deputation basis/direct recruitment basis. Therefore, the impugned advertisement is against the aforesaid Regulation of the respondent. Consequently, the said advertisement is liable to be quashed and set aside. However, we have considered the submission of the learned counsel for the Respondent that in terms of the aforesaid advertisement, the written examination is scheduled to be held on 23.08.2014 and any order quashing the impugned advertisement at this stage will cause great hardships to large number of candidates who have already prepared to appear in the said examination.*

9. *In the above facts and circumstances of the case, with the consent of the learned counsel for appearing for both parties, we dispose of this OA with the direction to the respondents to ensure that the appointment through the method of promotion of the existing eligible officers shall be undertaken as expeditiously as possible but in any case prior to the pronouncement of the results of the selection based on the impugned advertisement. We further direct the Respondent that the result of the examination being conducted, pursuant to the*

impugned order shall not be published before the process of promotion is completed and the applicants are informed of the position. With the aforesaid directions this OA is disposed of”.

6. The NHAI argues in the present proceedings that Regulation 13(4) cannot be considered as an imperative provision, but merely an enabling and directory one. Learned counsel stresses that given the fact that there are 84 deputationists in the cadre of DGM (Technical) – who do not form part of the cadre and have no lien on the posts occupied by them as deputationists, the fear expressed by the applicants was farfetched, as there are sufficient number of posts which would, in due course, have been filled on the basis of promotion. It was contended, therefore, that NHAI’s discretion in inducting talent on lateral entry basis – whether through direct recruitment, or through deputation, had to be preserved.

7. Learned counsel for the respondents appearing on advance notice urged that para 9 of the reasoning extracted above is a clear pointer to the fact that NHAI accepted the CAT’s decision – which was passed by consent, and it had even sought for the manner of its implementation. In support of this contention, the applicant promotees also relied upon the reply given by the NHAI in another proceedings i.e. O.A. No.3696/2014 (which was disposed of on 11.11.2014 by the CAT), especially para 11, which reads as follows:

“11. It is submitted that after the passing of the consent order dated 22.08.2014 in O.A. No.2795 of 2014, NHAI in all earnestness with a view to comply with the directions contained therein, immediately undertook the task of scrutinising the case of each of the 56 personnel working as Manager (Tech) on

absorption basis, and the Screening Committee constituted by it vide minutes of meeting held on 10.09.2014 (copy marked Annexure R-8 at Pg.51 to 56 hereto) drew up a list of the aforesaid candidates with regard to their eligibility for consideration for promotion to the post of DGM (Tech) and it was placed before the Competent Authority of NHAI who took the decision based on the said recommendations vide Internal Notes dated 22.09.2014 (copy marked Annexure R-9 at Pg.57 to 59 hereto) and 09.10.2014 (copy marked Annexure R-10 at Pg.60 to 61 hereto), and thereafter issued the circular dated 13.10.2014 (Annexure A-1 at Pg.32) giving therein the list of eligible candidates from among Manager (Tech) on absorption basis working in NHAI, as per the existing NHAI Recruitment Regulations. The said list is legal and valid, and the Applicants are bound by the same. Even otherwise the Applicants have not pointed out any defect in the same in the present OA. Hence the OA filed by the Applicant is devoid of any merit or substance, and the same is liable to be rejected outright”.

8. We may refer to the minutes of meeting of a Screening Committee of the NHAI held on 10.09.2014, which read as follows:

“A Screening Committee comprising of the following officers was constituted to recommend the eligibility of the Manager (Tech) for promotion to the post of DGM Tech in the Scale of Pay 15600-39100+GP 7600/-

- (i) Sh. B. S. Yadav, CM (HR/Admn.)-II,*
- (ii) Sh. Adarsh Kumar, DGM (HR/Admn.)-II*
- (iii) Sh. M.K.Sinho, DGM (HR/Admn.)-II.*
- (iv) Sh. Adil Singh, DGM (Tech).*

2. *The Screening Committee met on 10.09.2014 and*

considered the details of 59 Manager (Tech) permanently absorbed in NHAI in view of the Recruitment Rules for the post of DGM (Tech).

3. As per Recruitment Rules for the post of DGM (Tech), the criteria for promotion is as under.

"By promotion from candidates holding the post of Manager (Technical) on a regular basis for a period of at least 4 years and possessing the educational qualifications and experience stipulated".

4. Eligibility of the Manager (Technical) has been examined from the date they have joined in NHAI on absorption basis or from the date they have got the same or (equivalent grade in their parent department and the recommendations of the Screening Committee are enclosed in the statement containing 4 pages. The recommendations of the committee are as follows:-

1. Eligible Manager (Technical) are at Sr. No, 01, 02, 03, 07, 10, 13, 14, 18, 20 and 38 (Total 10 nos.).

2 Some of the Manager (Technical) from the Government of Andhra Pradesh and from other States are holding the pay scale of Rs. 19050- 45850/- equivalent to GP of Rs. 6600/- . They are holding the scale on time scale basis. They are mentioned at Sr. No. 04, 05, 06, 08, 09, 12, 15, 21 31 &32 (Total 10 nos.).

3. Manager (Tech) at Sr. No. 17.19 & 22 have been allowed ACP in their parent department in the GP of Rs. 6600/-.

4. Admn. Division may take a view whether the Manager (Tech) mentioned in paras 2 &3 above fulfill the criteria prescribed in para 3 above for the post of DGM (Tech).

5. Not eligible Manager (Technical) are at Sr. No. 11, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 36, 37, 39, 40, 41, 42, 43, 44, 45,

46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58 & 59 (Total 33 Nos).”

9. In the same context, we may refer to a subsequent meeting of the Screening Committee held on 22.09.2014. Relevant extract of the minutes of the said meeting read as follows:

“3.2 In the meantime, 23 Manager (T) working in NHAI had filed a case in Hon’ble CAT, Principal Bench, New Delhi. Hon’ble CAT vide its judgment dated 22.08.2014 has directed that the NHAI should ensure that the appointment through method of promotion of the existing eligible officers shall be undertaken as expeditiously as possible but in any case prior to the announcement of the results of the selection.

3.3 In order to comply the directions of the Hon'ble CAT and to consider all eligible Manager (T) working in NHAI on regular basis for promotion to the post of DGM (T), a fresh screening committee was constituted with the approval of Competent Authority, comprising of the following officers:

- i. Sh. B. S. Yadav, GM (HR-II)*
- ii. Sh. Adarsh Kumar, DGM (HR-II)*
- iii. Sh. M.K. Sinha, DGM (HR-II)*
- iv. Sh. Adil Singh, DGM (T)*

3.4 Now, the above mentioned fresh Screening Committee vide its minutes dated 10.09.2014 has submitted its recommendations. Screening Committee has considered the criteria prescribed for promotion under RRs for the post of DGM (T), which as under:

“By Promotion from candidates holding the post of Manager (Tech) on a regular basis for a period

of at least 4 years and possessing the educational qualifications and experience stipulated as per col. 7.”

3.5 Based on the above criteria, the committee has scrutinised the details of 56 Manager (T) working in NHAI on regular basis. The committee has assessed their eligibility from the date they have joined in NHAI on absorption basis or from the date they have got the same or equivalent grade in their parent department and the recommendations of the Screening Committee are as per below:

i. candidates at Sr. No, 01, 02, 03, 07, 10, 13, 14, 18, 20 and 38 (Total 10 nos.) are clearly eligible Managers for the post of DGM (T) under promotion quota.

ii. candidates at Sr. No, 04, 05, 06, 08, 09, 12, 15, 21, 31 & 32 (Total 10 nos.) from the Government of Andhra Pradesh and from other State Government who are holding the pay scale of Rs. 19050- 45850/- equivalent to GP of Rs.6600/- on time scale basis.

iii. candidates at Sr. No, 17, 19 & 22 (total 3) who have been allowed ACP in their parent department in the GP of Rs. 6600/.

iv. Committee submitted that candidates at Sr. No. 11, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58 & 59 (Total 33 Nos) are not eligible for the post of DGM (T) under promotion quota.

4. Screening Committee has further submitted that Admn. Division may take a view whether the Manager (Tech) mentioned in para 3.5 (ii) & (iii) above, fulfill the criteria prescribed under RR for promotion to the post of DGM (T).

5. As regards. Manager (T) mentioned at 3.5 (ii) above, it is submitted that 8 Manager (T) are working from Government of Andhra Pradesh and they are holding the scale of pay of Rs.19050-45850 equivalent to Grade Pay of Rs. 6600/- on time scale basis for more than four years. Other two candidates, namely, Sh. P.K. Jain, from PHED, MP and Sh. C.M Diwedi. from UP Bridge Corporation are getting the pay scale in GP of Rs. 6600/- for more than four years, However, Screening Committee in the statement annexed with its minutes has submitted that it may be verified from their parent department whether they have got GP of Rs.6600/- on promotion basis. In NHAI, the officers holding the GP Rs.6600/- on time scale basis are being appointed from Govt. of Andhra Pradesh based on a certification from Engineer-in-Chief (R&B) that the scale of pay Rs. 19050-45850 is equivalent to Grade Pay of Rs. 6600/-.

6. As regards. 3 Manager (T) mentioned in para 3.5 (iii) above, screening committee have submitted that Sh. Ram Prit Paswan and Sh. Alok Kumar have got ACP in the GP of Rs. 6600/- and another Manager (T) Sh. Mohd. Saify has even got the ACP in the GP of Rs.7600/-w.e.f. 10.07.2011.

7. The matter was discussed with Member (Admn) on 8.10.2014 in the presence of CGM (LA) & GM (HR-II) Member (Admn) perused the recommendations of the Screening Committee in details and has observed that all the Manager (T) working in NHAI have been absorbed in the years 2012 & 2013.

8. In view of the fact that the officers holding the scale of pay equivalent to GP of Rs.6600/- on time scale basis from Government of Andhra Pradesh are being appointed in NHAI and in view of the fact that some of the Manager (T) have already put in more than ten years of service, it would be appropriate that all the Manager (T) holding the scale of pay

equivalent to Manager (T) i.e. GP of Rs.6600/- for four years may be considered for promotion.

9. *In case the above course of action is approved, total 23 Manager (T) as mentioned in para 5 (i), (ii) & (iii) above will become eligible and may be considered for promotion by the Selection Committee”.*

10. A plain reading of Regulation 13 – particularly, juxtaposing Regulation 13 (3) with Regulation 13(4) reveals that the concern of NHAI was to ensure that talent was attracted, while, at the same time protecting the aspirations and interests of those working in the NHAI. The Authority in its infancy had to largely draw upon the experience and expertise gained by personnel working in other organisations by resorting to deputation. By the amendment, brought into in 2009, the process of streamlining the recruitment policies took place. Realising the need to give shape to the aspirations of existing employees, a cap was introduced by Regulation 13(3) upon the channels of direct recruitment/lateral entry at the level of General Manager and above. The latter part of this Regulation itself mentions the phased manner of enhancing the recruitment from 25% to 50% in the “coming recruitment years”. *Ipsa facto*, this is a clue to the fact that the rule/regulation making intention, that wholesale direct recruitment/lateral entry in the cadre even upto the limit of 50% was not envisioned. Keeping this in mind, the sequencing indicated in Regulation 13(4) becomes important. It provides, in no uncertain terms, that the process of recruitment for increasing the permanent cadre strength “*shall be in the order of promotion, absorption and lateral entry*”, and further clarifies that if eligible candidates are not available for promotion, absorption would be undertaken

and once eligible candidates for absorption are exhausted, lateral entry shall be undertaken.

11. Keeping in mind the clear mandate of Regulation 13(4), this Court has no doubt that the Authority intended to first explore the avenues of promotion, and thereafter proceed to undertake the process of absorption of existing deputationists, and then proceed to initiate the process of lateral entry of direct recruits.

12. In this view of the matter, this Court finds no fault with the reasoning of the CAT. Furthermore, the NHAI, in the opinion of the Court, should not have approached this Court claiming to be aggrieved by the order of the CAT, having once accepted the decision and even proceeded – as is evident from the minutes of meeting dated 10.09.2014 and 22.09.2014, to give effect to the impugned order. The writ petition is, consequently, dismissed as meritless.

S. RAVINDRA BHAT, J

VIPIN SANGHI, J

DECEMBER 23, 2014

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