

(2024) 12 SC CK 0008

Supreme Court Of India

Case No: Civil Appeal No. 14100 Of 2024 [@ Special Leave Petition (Civil) No.18349 Of 2023]

National Highway Authority Of
India

APPELLANT

Vs

G Athipathi And Others

RESPONDENT

Date of Decision: Dec. 9, 2024

Hon'ble Judges: Sudhanshu Dhulia, J;Ahsanuddin Amanullah, J

Bench: Division Bench

Advocate: Santosh Kumar, Vijay Shankar, Balaji Subramanian, Akash Kundu, A.
Lakshminarayanan

Final Decision: Allowed

Judgement

Ahsanuddin Amanullah, J.

1. Leave granted.

2. Heard Mr. Santosh Kumar, learned counsel for the appellant and Mr. A. Lakshminarayanan, learned counsel for the respondent no.1.

3. The present appeal arises from the Final Judgment and Order dated 01.03.2023 (hereinafter referred to as the "Impugned Order"), passed by

the Division Bench of the High Court of Judicature at Madras (hereinafter referred to as the "High Court") in W.P. No.11060 of 2021, whereby

the appeal filed by the appellant was dismissed and the judgment dated 30.12.2020 rendered by the Central Administrative Tribunal, Chennai Bench

(hereinafter referred to as the "CAT") in O.A. No.310/01633/2020 was upheld.

THE FACTUAL SETTING:

4. The respondent no.1 was initially working as an Assistant Engineer in the service of the Government of Tamil Nadu. The appellant, by an order dated 27.05.2008, appointed him on deputation basis as Manager (Technical) with effect from 21.05.2008, initially for a period of three years. He worked continuously for a period of six years till 13.06.2014, when he was repatriated to the parent department viz. the Highways & Minor Ports Department, Government of Tamil Nadu. In the meantime, an advertisement dated 15.03.2014 had been issued by the appellant inviting applications for recruitment to the post of Manager (Technical) on direct recruitment basis. The respondent no.1, on 11.04.2014, had applied for the said post after receiving approval from the parent department. Subsequent to his repatriation, he appeared in the written examination on 23.08.2014 and was selected as Manager (Technical) vide order dated 11.09.2014 by the appellant. On 26.08.2015, the respondent no.1 joined as Manager (Technical). The order of appointment of respondent no.1 was passed by the appellant on 02.09.2015 with effect from 26.08.2015.

5. The post of Manager (Technical) is the feeding cadre for promotion to the post of Deputy General Manager (Technical). As per the Schedule appended to the National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996 (hereinafter referred to as the "Recruitment Regulations"), promotion to the post of Deputy General Manager (Technical) may be made from candidates holding the post of Manager (Technical) for a period of at least 4 years. As such, a Circular was issued by the appellant on 22.05.2017 (hereinafter referred to as the "Circular") inviting applications from all eligible Managers (Technical) for promotion to the post of Deputy General Manager (Technical). Clause 6 of the said Circular is extracted hereunder:

6. It has also 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).â€

6. The issue of considering deputation service as regular service for promotion to the post of Deputy General Manager (Technical) was deliberated on in a Meeting of the Executive Committee of the appellant held on 12.10.2017. The decision thereon, as recorded in the Minutes of Meeting dated 20.10.2017, is reproduced hereunder:

â€œ(c) As a strict one time measure and a special case, the deputation service (including period of absence from NHA I for fulfilling administrative formalities e.g. submission/ acceptance of technical resignation / retirement etc.) will be treated as regular service for the purpose of reckoning eligibility for the promotion to the post of DGM (Tech.), in respect of Managers (Tech.) who have subsequently been appointed in NHA I on Direct Recruitment basis as Manager (Tech.). This will also end prolonged litigation and ensure fairness and justice to the candidates who chose to face competition by going for direct recruitment.â€

7. The respondent no.1 applied for promotion to the post of Deputy General Manager (Technical). The Screening Committee of the appellant declared him â€˜not eligibleâ€™™. Accordingly, a promotion order dated 26. 09.2017 was passed by the appellant in respect of thirty-nine Managers (Technical) to the posts of Deputy General Managers (Technical). Thereafter, the respondent no.1 sent Representations dated 18.06.2018, 22.11.2018 and 24.04.2019 to the appellant to consider his candidature. As no decision was taken on the same, he approached the CAT by way of O.A.

No.310/00992/2019, which was disposed of vide order dated 26.07.2019. The CAT directed the appellant to consider the representations supra in light of the Circular and pass a speaking order within four months.

8. After considering the Representations of respondent no.1, the appellant vide order dated 05.11.2019 observed that his case may not be treated as similar to that of three other officers, since, those officers had appeared in the direct recruitment examination of Manager (Technical) while working in the appellant whereas respondent no.1 had taken the examination after his repatriation and was working in his parent department. Aggrieved, the

respondent no.1 again approached the CAT by filing O.A. No.310/01633/2020 and praying:

“To call for the records pertaining to the impugned Office Order No. 11041/242/2017-Adm.II (Pt) dated 05.11.2019 of the 4th Respondent and quash the same

and direct the Respondents to count the applicant’s deputation service from 21.05.2008 to 13.06.2014 for promotion as Deputy General Manager (T) and to

promote the applicant as Deputy General Manager as was done in respect of three similarly placed officers on and with effect from 27.10.2017 and as General

Manager (T) with effect from 27.04.2018 along with all other services and monetary benefits including pay fixation, seniority, etc., and pass such further or other

orders as the Hon'ble Tribunal may be deem fit proper under the facts and circumstances of the case and thus render justice.”

9. The CAT, after hearing parties and considering the material on record, vide order dated 30.12.2020 allowed the Original Application filed by the

respondent no.1. It directed the appellant to count the respondent no.1’s deputation service period from 21.05.2008 to 13.06.2014 for promotion to

the post of Deputy General Manager (Technical) and to promote him as Deputy General Manager (Technical) with effect from 27.10.2017 with all

consequential benefits. The appellant was further directed to consider his case for promotion to the post of General Manager (Technical) as per rules.

In compliance of the CAT’s order, respondent no.1 was promoted to the post of Deputy General Manager (Technical) on 07.06.2021. The

appellant challenged the CAT order dated 30.12.2020 in the High Court through W.P. No. 11060 of 2021, which has been dismissed by the High

Court vide the Impugned Order dated 01.03.2023.

SUBMISSIONS BY THE APPELLANT:

10. It was submitted by the learned counsel that the High Court failed to consider that as per the Schedule to the Recruitment Regulations, promotion

to the post of Deputy General Manager (Technical) inter alia, could be made by promoting candidates continuously holding the post of Manager

(Technical) for a period of at least four years. It was pointed out that the respondent no.1 joined the appellant on deputation basis and worked till

13.06.2014, when he was repatriated to his parent department. Thereafter, the respondent no.1 re-joined the appellant on direct recruitment basis to the post of Manager (Technical) on 26. 08.2015 i.e., after a gap of 1 year and 2 months. It was argued that the service rendered by the respondent no.1 on deputation basis could not be considered due to this gap and in view of the same, he could be eligible for promotion to the post of Deputy General Manager (Technical) only after four years of service from the date of appointment on direct recruitment basis i.e., 26.08.2015. Thus, the respondent no.1 was ineligible for promotion as on 27.07.2017 i.e., the date from which the CAT has directed the appellant to promote the respondent no.1 to the post of Deputy General Manager (Technical).

11. Learned counsel contended that the respondent no.1 and other candidates on deputation service on the post of Manager (Technical) cannot be considered equally for promotion to the post of Deputy General Manager (Technical) as, on the date of direct recruitment examination, i.e., 23.08.2014, the respondent no.1 was not incumbent as a Manager (Technical) as he was already repatriated to his parent department. Whereas, the three other candidates, with whom respondent no.1 claims parity, were continuing in the service of the appellant as on the date of the written examination for the post of Manager (Technical).

12. It was next submitted that the High Court failed to consider that neither the Recruitment Regulations nor the decision of the 320th Executive Committee meeting dated 12.10.2017, regularize any extended period of absence and rather, had only condoned a period for administrative reasons which is only 20 days in the case of the respondent no.1. It was submitted that this period of 20 days has been regularized by the appellant, however, the period from 13.06.2014 to 26.08.2015 wherein the respondent no.1 was under the administrative control of his parent department cannot be considered for promotion to the post of Deputy General Manager (Technical) as per the Recruitment Regulations. In view of the same, the Screening Committee had rejected the application of respondent no.1.

13. It was further submitted that the Circular was issued on the basis of the decision of the Delhi High Court in W.P. (Civil) No.9227 of 2014 titled

National Highways Authority of India v Sanjeev Kumar Sharm2a0 16 SCC OnLine Del 2698. In the aforementioned case, the

Delhi High Court vide order dated 05.04.2016 had observed that the petitioners therein had no gap in service. Thus, the Circular did not contemplate the regularization of any gap in the service.

14. Next, it was submitted that promotion was through a selection process and not based on seniority. Regulation 12(2) of the Recruitment Regulations

provides that, on receipt of applications, the Screening Committee shall screen the applications with respect to the eligibility criteria prescribed for the

post, and recommend the eligible candidates for consideration of the Selection Committee for final selection on the basis of written test or interview or

as decided by the Selection Committee. It was pointed out that 93 applications were received for the post in question, out of which only 64 candidates

were declared eligible and 29 candidates, including the respondent no.1 were declared ineligible. Thereafter, interview was conducted of the eligible

candidates and promotion order dated 26.09.2017 was issued whereby out of the 64 candidates, only 39 were promoted to the posts of Deputy

General Manager (Technical). Thus, it was submitted, that even if it is assumed that the respondent no.1 was fulfilling the eligibility criteria, the CAT

in the order dated 30.12.2020 and the High Court in the Impugned Order could not have issued directions for appointment of the respondent no.1 as

Deputy General Manager (Technical). It was submitted that directions could only have been issued for considering the respondent no.1 for promotion

to the post in question. Prayer was, accordingly, made to allow this appeal.

SUBMISSIONS BY RESPONDENT NO.1:

15. Per contra, learned counsel for the respondent no.1 (sole contesting respondent) submitted that the CAT has held that there was no requirement in

the Recruitment Regulations or the Circular that a candidate who had finished the qualifying service of four years must fulfill the additional

requirement of being absorbed into the appellant without any break. It was submitted that this order of CAT has been upheld by the Impugned Order,

observing that the Circular was clear and unambiguous that deputation service was to be considered and did not provide that the person must continue

to be on deputation or be absorbed for that service to be considered.

16. It was further submitted that the appellant had failed to make any case for interference with the well-reasoned orders of the CAT and the High Court. Admittedly, the respondent no.1 had served on deputation basis for six years without a break, which is well beyond the requirement of four years. It was submitted that he had to return to the parent department as the maximum period of deputation was over but returned to the appellant at the earliest opportunity on direct recruitment basis after clearing the examination. It was submitted that his compliance with the service rules governing his deputation at the relevant time should not be held against him.

17. Learned counsel contended that if the appellant's submissions are accepted, then even persons who joined the appellant in 2013 but just happened to be in service on the date of the Circular would be eligible for promotion, but the respondent no.1 would not be despite having joined in 2008. This would be manifestly arbitrary and unfair. Further, as noted by CAT, the appellant granted the benefit of the Circular to three other candidates but only in the respondent no.1's case, the Circular and the Executive Committee decision has not been applied, which is discriminatory. It was pointed out that even these three other candidates are junior to the respondent no.1 and have joined in 2010-11.

18. Next, it was submitted that the concept of "break in service" is inapplicable in the instant case as the qualifying service of four years has admittedly been met. As noted by the CAT and High Court, the appellant's contention amounts to inserting an additional requirement into the Circular, which is not supported by the plain language of the Recruitment Regulations, Circular or the Executive Committee decision. It was further submitted that the decision in Sanjeev Kumar Sharma (supra) relied on by the appellants would not help their case, as the question of "break in service" or "absorption" was not an issue before the Delhi High Court. For these reasons, learned counsel sought dismissal of the appeal.

ANALYSIS, REASONING & CONCLUSION:

19. Having given our anxious thought, we find that two basic issues need to be addressed before arriving at a final conclusion.

20. Firstly, and most importantly, as to what would be the criteria for considering such one-time promotion to the post of Deputy General Manager

(Technical) in terms of the Circular dated 22.05.2017, and; secondly, as to whether the respondent no.1 fulfils such criteria on the relevant date.

21. In the Circular, the language of Clause 6 is very clear and stipulates that a person's deputation service, if any, rendered on the post of

Manager (Technical) in the appellant shall be treated as regular service for the purposes of promotion to the post of Deputy General Manager

(Technical) and such promotion would be notional with effect from the date he fulfils the eligibility criteria of promotion but not before the date of

absorption of applicants in OA Nos.3696/2014 and 3762/2014 orders dated 29.12.2014, subject to recommendations of the Selection Committee.

22. From the above, it is clear that the period of deputation is also to be considered while considering such promotion but the question lies in the fact

that whether a person, who before coming into effect of Clause 6, stood repatriated to his parent department and was no more in the service of the

appellant can take advantage of the said Clause.

23. In the present case, respondent no.1 was initially appointed as Manager (Technical) on deputation by order dated 27.05.2008 and worked as such

till 13.06.2014. Thereafter, he was repatriated to his parent department namely the Highways & Minor Ports Department, Government of Tamil

Nadu. Thus, it is clear that the repatriation of respondent no.1 from 13.06.2014 was back to a Government Department in the State of Tamil Nadu on

a full-time basis since it was the parent department of the respondent no.1 and unconnected with the appellant. The respondent no.1 later on joined in

the service of the appellant on direct recruitment basis to the post of Manager (Technical) for which he was selected on 26.08.2015 and finally

appointed on

2. 09.2015 albeit with effect from 26.08.2015. Thus, for all practical purposes, it meant direct and fresh entry on a permanent basis of the respondent

no.1 into the appellant. As he had been repatriated to his parent department more than a year prior to such permanent appointment, it cannot be

termed "absorption" which finds mention in the aforesaid Clause 6. Thus, respondent no.1 was a fresh and new recruit into the service of the

appellant directly to the post of Manager (Technical). This was totally unrelated/unconnected to his previous service with the NHAI from 27.05.2008

till 13.06.2014 which transaction was complete and reached finality when the respondent no.1 was repatriated to his parent department.

24. The respondent no.1 thus does not stand in the same queue in which the other three persons were, the difference being that the other persons

were working with/in the appellant at the relevant point(s) in time. In this view of the matter, there can be no other meaning given to the benefit being

extended to persons, who were on deputation service and as such had put in more than four years on such post. The respondent no.1 clearly on

22.05.2017 had not completed 4 years as that in law has to be counted afresh from 26.08.2015 and not from a previous date. This is for the reason

that had the respondent no.1 not applied for and taken part in the selection process as a direct recruit, being selected, his claim would not have arisen

for any promotion under Clause 6 of the Circular. The persons already working with the appellant on the day of consideration and having completed

more than four years of service on the post of Manager (Technical) were only required to be considered. Here, we may clarify that the only object of

Clause 6 was to obliterate the difference between a person working on deputation on the post of Manager (Technical) and a person regularly working

on the post of Manager (Technical) under the service of the appellant. This also was done as a "one-time measure". Thus, the legal issue to be

decided is as to whether respondent no.1 has to be treated as a fresh entrant without the benefit of his past service on deputation from 21.05.2008 till

13.06.2014 or he has to be treated as a fresh appointee, in which case the clock would, to say so, start ticking only from 26.08.2015.

25. The contention of the learned counsel for the appellant is correct that if the interpretation advanced by the respondent no.1 is given to Clause 6,

then it would cover all persons who, at any point of time, may have worked with the appellant for four years, getting the benefit, even with gaps in

service in the appellant. A person on deputation was given a one-time benefit for being considered for promotion to the post of Deputy General

Manager (Technical) by the appellant for ending prolonged litigation and for ensuring fairness and justice to the candidates who chose to face

competition by going for direct recruitment as would be clear from the Minutes dated 20.10.2017 quoted above of the Executive Committee's

Meeting held on 12.10.2017. The said Minutes leave a window open for people who may have been absent from service in the appellant for certain period, but with the caveat that such period of absence was restricted to the purposes of fulfilling administrative formalities e.g. submission/acceptance of technical resignation/retirement etc.

26. In the present case, respondent no.1 was absent from the service of the appellant not for any of the above specific purposes, but on a permanent basis i.e., being sent back to his parent department. Unfortunately, to our mind, the "etc." in "fulfilling administrative formalities e.g.

submission/ acceptance of technical resignation / retirement etc." would not cover situation of respondent no.1. Obviously, respondent no.1

cannot take advantage of a saving provision for such deputationists who, for some period, had to go back but for the purposes of returning to the appellant, which have been incorporated in the Minutes supra.

27. For reasons aforesaid, we find that the appellant has made out a case for interference and the decision taken by the appellant not to grant

promotion to the respondent no.1 needs to be upheld. The other three persons had been granted promotion for the reason that those three persons

were very much working in/with the appellant on the date of consideration and had completed more than four years of minimum required service

whereas the respondent no.1 had not completed four years of minimum required service. Hence, he could not have been considered for promotion

from 23.07.2017 as per the direction of the CAT since he had not completed four years on the post of the Manager (Technical) after having joined

pursuant to direct recruitment on such post, on which service could only be reckoned from 26.08.2015. Even otherwise, "past services can be

taken into consideration only when the Rules permit the same or where a special situation exists, which would entitle the employee to obtain

such benefit of past service." Indu Shekhar Singh v State of Uttar Pradesh, (2006) 8 SCC 129. The instant case, as projected by respondent

no.1 is not covered under the Circular or the Minutes dated 20.10.2017 of the Meeting dated 12.10.2017.

28. Further, Circular dated 25.05.2017 itself was the outcome of the order of a Division Bench of the Delhi High Court in Sanjeev Kumar Sharma

(supra), wherein it was observed that the petitioners therein be considered for promotion as there was no gap in service. In the case at hand, upon

repatriation, there was no subsequent deputation of respondent no.1 to the appellant. Only after more than one year pursuant to taking part in a

process for direct and regular recruitment to the post of Manager (Technical), respondent no.1 was appointed, with effect from 26. 08.2015.Â

Therefore,Â weÂ haveÂ noÂ doubtÂ thatÂ theÂ CircularÂ dated 22. 05.2017 would not confer any legal right on the respondent no.1 for

consideration for promotion to the post of Deputy General Manager (Technical) with effect from 27.07.2017.

29. Accordingly, the Impugned Order dated 01.03.2023 as also CATâ€™s order dated 30.12.2020 in O. A. No.310/01633/2020 cannot be sustained

and are set aside. Resultantly, the said Original Application filed by the respondent no.1 shall stand dismissed. Respondent no.1 shall be considered for

promotion(s) in terms of the Recruitment Regulations and the Circular and the discussions made in this order and all consequential benefits of service

(including pension etc., if and as applicable) shall be reckoned treating his date of entry into service of the appellant as

26. 08.2015. However, no recovery/adjustment shall be made of excess payment(s) made to the respondent no.1, if any.

30. The appeal is allowed.

31. No order as to cost.