

Before G.S. Sandhawalia & Vikas Suri, JJ.

**NATIONAL HIGHWAY AUTHORITY OF INDIA AND
OTHERS—Appellants**

versus

PRASHANT KUMAR SINHA AND OTHERS—Respondents

CWP No. 1596 of 2021

May 7, 2022

Constitution of India, 1950—Arts. 226 and 227—Service Rules—Consideration for the post of deputy General Manager (Technical) along with all consequential benefits —Experience required for the post is 4 years—Circular dated 25.03.1996 provided that when juniors are being considered for promotion having completed the qualifying/eligibility service, seniors are also liable to be considered provided that they are not short of requisite qualified service by more than half of such qualifying/eligibility service or 2 years whichever is less—Once the authority has taken an action on the said circular, they cannot have any grievance and are estopped from taking a stand that it is not applicable to the present petitioner—Further no amendment to the service rules had been done—Petition dismissed—Order of Tribunal affirmed.

Held that a perusal of the above would go on to show that the authority as such is bound by the instructions issued by the Central Government and have apparently in pursuance of the same acted upon it at a subsequent point of time for certain posts but left out certain posts.

(Para 13)

Further held that we are of the considered opinion that no clarification has come forth as such was taken for selective implementation of the said circular whereby, the amendment of Service Rules had to be done by incorporating necessary “Note”. The same has not been done in spite of the fact that the circular was issued way back in the year 1996 and, thus, no fault can be found in the order of the Tribunal directing consideration on the strength of the circular which would thus be binding upon the Authority.

(Para 14)

Pankaj Gupta, Advocate, *for the petitioners.*

Rajesh Garg, Sr. Advocate, with Arun Sharma, Advocate,
for Respondent No.1.

G.S. SANDHAWALIA, J. (Oral)

(1) The challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the order dated 01.05.2019 (Annexure P-4) passed by Central Administrative Tribunal, Chandigarh Bench (in short 'the Tribunal') wherein, directions have been issued to consider the private respondent No.1 for the post of Deputy General Manager (Technical) from the date his juniors were promoted and if found eligible, to give him the relief with all consequential benefits arising out of it within a period of two months from the date of receipt of certified copy of the order.

(2) The reasoning which weighed with the Tribunal to allow the original application in favour of the private respondent was that though he did not have the requisite 4 years' experience as a Manager (Technical) to be promoted to the post in question i.e. Deputy General Manager (Technical), but there was a circular in his favour dated 25.03.1996 (Annexure A-4), on the strength of which, he had preferred the original application.

(3) The said circular specifically provided that when juniors are being considered for promotion having completed the qualifying /eligibility service, the seniors are also liable to be considered provided that they are not short of requisite qualifying service by more than half of such qualifying/eligibility service or two years, whichever is less, and having successfully completed their probation period for promotion to the next higher grade alongwith their juniors. Reliance was also placed upon Regulation 22 of The National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996 (as amended on 24.08.2012) (hereinafter referred as 'Regulations') wherein, it has been provided that in regard to the matters not specifically covered by the Regulations made under Section 35 of the Act or any general, or special orders made or issued thereunder, the service conditions of the officers and employees of the Authority shall be governed by the Rules applicable to the Central Government employees in general and instructions issued by the Central Government from time to time. It was also noticed that necessary notification had been issued on 13.02.2017 and reference was also made to the notification wherein, amendment in the Recruitment Rules had been made to that extent to incorporate the said instructions issued by the Government in the

Regulations concerned.

(4) Mr. Pankaj Gupta, counsel for the petitioner-Authority has vehemently submitted that the Regulations would have the binding force as such and, therefore, the Tribunal as such was in error in allowing the original application once the private respondent was not having the requisite qualifying service on the post of the Manager (Technical). Mr. Gupta has further submitted that necessary amendments were made qua other posts and not for the posts of Deputy General Manager and, therefore, in the absence of the same being provided in the Regulations and in the absence of any challenge to the circular dated 22.05.2017 whereby applications had been invited, the Tribunal was in error, as such. Reliance is also placed upon the judgment passed in *O.A. No. 2120 of 2017, Abdulla Javed Azmi and others versus National Highway Authority of India* whereby, the Principal Bench of the Tribunal had decided the case on 05.04.2018 wherein, the issue was the eligibility of persons to the posts of Deputy General Manager (Technical) who had not completed the requisite period of regular service.

(5) Mr. Rajesh Garg, Sr. Advocate, on the other hand, has supported the order of the Tribunal to submit that the cause of action arose to him when the juniors were promoted and on the basis of the said instructions dated 25.03.1996, he had filed the original application seeking the benefit of the same and the Tribunal has rightly allowed the same.

(6) For the reasons recorded in the impugned judgment, we are of the considered opinion that the same cannot be faulted with and rather the Authority as such was bound by the circular issued by the Government of India. It is not disputed that respondent No.1 joined as a Manager (Technical) on 25.11.2014 as a direct recruit on the basis of the written examination held as per the offer of appointment given on 11.09.2014. The applications for the post of the Deputy General Manager (Technical) were invited by the authority vide circular dated 22.05.2017 and the cut off date was 02.06.2017. For the purpose of promotion, the qualifying service of 4 years' was fixed as per the circular issued itself. The same reads thus:-

“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 as per col.7.”

(7) It is not disputed that promotions were made on 26.09.2017 of 39 persons to the post of Deputy General Manager (Technical) on regular basis on 27.10.2017 and of another 25 persons (total 64 persons). Keeping in view the earlier order passed by the Tribunal on 29.01.2018, the case was considered by the respondents and the representations dated 02.08.2017 and 03.11.2017 filed by the respondent were rejected on 24/26.04.2018 on the ground that his case was not similar to three other officers who had been promoted by counting their earlier deputation service as regular service.

(8) Resultantly, on the strength of the circular dated 25.03.1996, the original application was filed specifically taking the plea in ground 5 that he was entitled for the benefits of the same. The circular in question which has been issued by the Government of India, Ministry of Personnel, P.T. & Pensioners reads thus:-

“No. AB/14017/12/37-Estt (RR)

Government of India

Min. Of Personnel, P.G. & Pensioners (Department of
Personnel & Training)

**New Delhi, THE 25th March, 96 OFFICE
MEMORANDUM**

***Subject:-Revision of guidelines for framing/amendment/
relaxation of recruitment rules – consideration of seniors
in cases where juniors are considered.***

The undersigned is directed to refer to para 3.1.2 of Part III in this Department O.M. No.AB/14017/12/87-Estt.(RR) dated 18th March, 1988 wherein it was suggested that a suitable “Note” may be inserted in the Recruitment Rules to the effect that seniors who have completed the probation period may also be considered for promotion when their juniors who have completed the requisite service are being considered.

2. In the light of the Supreme Court judgment in B. Prabha Devi and others versus Government of India and others in Civil Appeals Nos.2040-42 of 1981 decided on March 8, 1988 on the judgment and order dated Feb. 11, 1986 of the Central Administrative Tribunal, New Delhi

and in continuation of O.M. of even No. dated 23.10.1989 Government have decided to amend para 3.1.2. of Part III of this Department's O.M. No. AB/14017/12/37-Estt (RR) dated 18th March, 1988. Accordingly, the last sentence of para 3.1.2 will stand amended to read as under:-

“To avoid such a situation the following note may be inserted below the relevant service rules/column in the schedule in the Recruitment Rules.

Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service.”

3. Consequently, para 2.1.2 of this Department's O.M. No. AB/14017/12/37-Estt (RR) dated the 18th March, 1988 will also be amended with the addition of the following sentence after 3rd sentence of para 2.1.2 *ibid*.

“The administrative Ministers/Departments are also empowered to amend all the service rules/recruitment rules to incorporate the “Note” as amended above.”

Sd/- xxxx
(T.O. Thomas)

Under Secretary to the Government of India

To

All Ministers/Depts. Of Government of India

Copy to :-

1. Comptroller and Auditor General of India, 10, Bahadar Shah Zafar Marg, New Delhi.
2. Union Public Service Commission, Dholpur House, Shah Jahan Road, New Delhi, w.r.t. their No.F.1/1/93-S.II dated 27th Nov., 1995. The Above decision has been taken with the approval

Of the competent authority.

Sd/- xxxx

(T.O. Thomas)

Under Secretary to the Government of India”

(9) It was pleaded that the applicant was having more than 2 years' service on the relevant date and was fully eligible for consideration on the said post on the strength of the circular which was being constantly followed.

(10) In the written statement of the Authority before the Tribunal, it did not specifically deny the applicability as such of the circular in para No.5 apart from the bald averment, that the original paragraphs of the original applications are wrong and denied.

(11) A perusal of the paper book would go on to show that vide the notification dated 14.02.2013, the Authority as such for the posts of Chief General Manager (Planning and Statistics), Chief General Manager (Standardization, Research, Development and Quality) and Hindi Officer have incorporated the necessary “Note” which had been directed by the Union of India in its Regulations. It is, thus, apparent that they acted upon the said circular qua certain other posts but have not acted qua the post in question i.e. Deputy General Manager (Technical). It is apparently, in such circumstances in the written statement, there has been no specific denial qua the applicability of the said circular.

(12) A perusal of the notification would, thus, go on to show that the Authority had taken action on the said circular and, therefore, now it cannot turn around and say or have any grievance that the said circular is not applicable and thus are estopped from taking such a stand. It is also to be noticed that in the amendment made on 24.08.2012, Regulation 22 was inserted, which reads thus:-

“22. Residuary matters - In regard to matters not specifically covered by Regulations made under Section 35 of the Act or any general, or special orders made or issued thereunder, the service conditions of the officers and employees of Authority shall be governed by the rules applicable to the employees of the Central Government in general and instructions issued by the Central Government, from time to time.”

(13) A perusal of the above would go on to show that the

authority as such is bound by the instructions issued by the Central Government and have apparently in pursuance of the same acted upon it at a subsequent point of time for certain posts but left out certain posts, as noticed above.

(14) In such circumstances, we are of the considered opinion that no clarification has come forth as such was taken for selective implementation of the said circular whereby, the amendment of Service Rules had to be done by incorporating necessary “Note”. The same has not been done in spite of the fact that the circular was issued way back in the year 1996 and, thus, no fault can be found in the order of the Tribunal directing consideration on the strength of the circular which would thus be binding upon the Authority.

(15) The argument, as such, thus raised that the Rules did not provide so is totally bereft of any merit on account of the inaction of the Authority to incorporate the necessary amendment. Similarly, the argument raised that there was no objection to the invitation for the applications which prescribed the 4 years' period is also without any basis. The respondent had applied in pursuance of the same and was considered not eligible. His juniors were duly promoted, as noticed on 26.09.2017 and 27.10.2017. A cause of action had accrued to him at that point of time on the strength of the said circular. He had applied for the said benefit but his case was rejected on 24/26.04.2018, which was the subject matter of challenge before the Tribunal. Therefore, the argument raised by Mr. Gupta that there should have been necessary challenge to the said circular is without any basis.

(16) The judgment as such referred to in *Abdulla Javed Azmi (supra)* of the Principal Bench also would be of no help. We have gone through the same. The said circular was never a subject matter of discussion and, therefore, the same would have no applicability to distinguish the case, as has been contended by Mr. Gupta.

(17) In such circumstances, we are of the considered opinion that the order of the Tribunal is well founded and does not suffer from any illegality or infirmity and is passed on the basis of a right which is enforceable as per Regulation 22 and on the fact that the Government of India instructions would be binding upon the Authority.

(18) Accordingly, the present writ petition stands dismissed.

Dr. Payel Mehta