



2025:DHC:566-DB



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

+ W.P.(C) 6464/2015 & CM APPL. 11755/2015

RITES LTD. AND ORS. ....Petitioners

Through: Mr. R.K. Saini, Adv.

versus

VIJAI KISHORE .....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**

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**29.01.2025**

**C. HARI SHANKAR, J.**

1. The respondent was a Group-A officer of the Military Engineering Service under the Ministry of Defence. He joined the petitioner Rail India Technical and Economic Service<sup>1</sup> as General Manager on deputation basis on 22 May 2007. The order appointing him on deputation reads thus:

“No. ESTT/PF,'VF/5328

Dt. 21.06.2007

Office Order No. DP/162/2007

“In terms of RITES LTD's letter No. PERS/9/CIVIL/2007 dated 22.05.2007 and Joint Director (E Coord-I) /Engineer-in-Chief/Mnistry of Defence's Movement Order No. A/63002/SE/VK/E Coord 1 dated 20.06.2007, Shri VIJAI

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<sup>1</sup> RITES



KISHORE. SE of E-in-C Branch/Min. of Defence, has joined RITES as General Manager (Civil) in Grade Rs. 18400-22400/- on 21.06.2007 (AN) on usual terms of deputation and posted under GGM(HW).

He will not draw any deputation pay.”

2. The respondent served as General Manager<sup>2</sup> until 7 May 2010 without break. The respondent aspired for further promotion to the post of Group General Manager<sup>3</sup>. The relevant qualification for the promotion to the grade of GGM, as contained in Memo dated 26 June 2012 of the RITES, reads thus:

“The revised eligible criteria for promotion from GM to GGM will 24 years of Class-I service with a minimum period of 5 years service as GM and/or SAG for regular incumbents in RITES. The eligibility criteria for promotion for deputationists would remain unchanged.”

3. The respondent was not called for interview, which was scheduled for 30 April 2013. The reason, as communicated to him by memo dated 18 April 2013, read thus:

“While checking up the records, it has been noted prior to his permanent absorption in RITES w.e.f 07.05.2010, Shri Vijai Kishore was working in selection grade (equivalent to the post of JGM in RITES) in his parent department of MES. The service put in by him in RITES from 21.06.2007 to 06.05.2010 was on ad hoc basis and therefore cannot be compared with the substantive grade service in SAG. On the basis of above, he has rightly been assigned seniority in SAG w.e.f. 07.05.2010 as a General Manager from the date of his absorption in RITES.”

In view of the details given above, his case for promotion as GGM cannot be considered, till such time, he fulfills the conditions laid down in rules for promotion from the post of GM to GGM.”

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<sup>2</sup> GM

<sup>3</sup> GGM



4. Aggrieved by the aforesaid decision, the respondent approached the Central Administrative Tribunal<sup>4</sup> by way of OA 1546/2013<sup>5</sup>.

5. There is no dispute about the fact that the respondent did have, to his credit, 24 years of Class-I service. The petitioners, however, sought to contend that he did not satisfy the additional requirement of five years' minimum service as GM and/or SAG as a regular incumbent. This contention was predicated on the premise that the period of three years' deputation, undergone by the respondent as GM, prior to his absorption on the said post, was not includible while reckoning the qualifying service of five years as GM.

6. Interestingly, it was not sought to be pleaded by the petitioners, either before the Tribunal or before us, that the service rendered by the respondent, after having been sent on deputation to the RITES, was *ad hoc*. *Ad hoc*, it certainly was not. However, the contention that the period of deputation of the respondent as GM could not be regarded as "regular" service as GM was more formidable.

7. The Tribunal has not agreed with the said contention and has allowed the Original Application on the following reasoning:

"6. Before discussing the eligibility conditions it is important to point out here that we are not examining the question of fixation of seniority which seems to have been taken as synonymous with the eligibility by the respondents. The applicant is not questioning his seniority in the cadre of GM, which has been fixed from the date of

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<sup>4</sup> "the Tribunal", hereinafter

<sup>5</sup> **Vijai Kishore v RITES**



his absorption. Therefore, considering the facts and issues in this case the Apex Court decisions except *K. Madhavan*<sup>6</sup> *supra*, cited by the respondents' counsel are not found to be relevant in the present OA. The recruitment rule while fixing the eligibility conditions distinguishes between the two categories of persons who may be there in the grade of GM; (i) who are regular incumbents and (ii) the others who are deputationists. In this background the issue of the present case marginally differs from the issue in *K. Madhavan (supra)* also because in that case the question was whether the period of deputation can be treated as 'regular' appointment or not.

7. The recruitment rule for the post of GGM mentions two requirements in the context of promotion:

- i) Candidate should be regular employee and
- ii) should have worked for five years as GM.

For deputationists, it mentions that:

“the eligibility criteria for promotion for deputationists would remain unchanged.”

8. The applicant is no doubt a regular employee of the RITES after absorption on 07.05.2010. Therefore, only question left is whether he has worked for 5 years as GM. He worked as GM for 3 years on deputation and two years after absorption. The respondents, on the other hand, would not count the 3 years of deputation for this purpose which is contrary to the requirement of the Recruitment Rule in its present form. The Recruitment Rule does not distinguish for the eligibility purpose between the deputation period and the period served as GM after absorption.

9. Even if we take a restrictive meaning of the phrase "a minimum period of 5 years as GM and/or SAG for regular incumbents in RITES" to mean "5 years regular service as GM", the ratio laid down in *K. Madhavan's* case would apply. The period put on deputation will also be counted toward regular service put in by the applicant,

10. We, therefore, do not find any justification in ignoring the claim of the applicant for consideration for the post of GGM on the ground that he does not fulfill the condition of 05 years service as GM laid down in the recruitment rules. We do not find much force

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<sup>6</sup> *K. Madhavan v UOI*, (1987) 4 SCC 566



in the other ground taken by the respondents for not calling the applicant to the interview that the substantive post held by the applicant in the parent organization before he came on deputation to RITES was two grades lower, This fact is irrelevant at this stage as the RITES must have considered this aspect at the time of his selection for the post of G.M. and satisfied themselves that he fulfilled the conditions of recruitment rules for the post of G.M. Once he has been selected as G.M. and has worked in the post it becomes irrelevant for the limited purpose of counting the period of 05 years of service in the post of G.M. The word “ad hoc” used in the impugned orders also does not support from any document placed on record. Both the offer of appointment and the order of appointment given to the applicant at the time of his joining RITES as GM used the word ‘deputation’ to describe his appointment in RITES.”

10. In view of the foregoing, we do not find any justification for not counting the period of deputation of the applicant in the post of GM towards eligibility for the next higher post. We accordingly quash the impugned order dated 10.04.2013 and direct the respondents to consider the period from 21.06.2007 to 06.05.2010 spent by the applicant on deputation to RITES as GM as qualifying service for counting 5 years service in the post of GM mentioned in the Recruitment Rules and will consider his case for promotion to the post of GGM subject to fulfilling other eligibility conditions, alongwith other eligible candidates. The OA is accordingly allowed. No costs.”

8. Aggrieved thereby, the petitioners have approached this Court by means of the present writ petition.

9. We have heard Mr. R.K. Saini, learned Counsel for the petitioners, at length.

10. Mr. Saini seeks to submit that the respondent was not entitled to count his service on deputation towards the requirement of five years service as GM for the purpose of promotion as GGM. He has placed reliance on the judgment of a Coordinate Bench of this Court in *UOI v*



*Ashwani Kumar*<sup>7</sup>.

11. We regret our inability to agree with Mr. Saini, for more than one reason.

12. Proper interpretation of the eligibility criterion

12.1 The eligibility criterion for promotion as GGM was

- (i) 24 years of Class I service,
- (ii) with a minimum of *5 years service* as GM or SAG, *for regular incumbents* in RITES.

12.2 The criterion did not, therefore, require *5 years' regular service as GM*. For a regular incumbent in the RITES, *5 years service as GM* was required.

12.3 The respondent was, undoubtedly, a regular incumbent in the RITES. He was, therefore, only required to have, to his credit, 24 years of Class I service, with 5 years' minimum service as GM or SAG. The nature of service as GM or SAG was, therefore, irrelevant.

12.4 That the respondent had, to his credit, 24 years of Class I service, is not in dispute.

12.5 Understood as in para 12.2 and 12.3 *supra*, the respondent also had, to his credit, 5 years' service as GM in the RITES.

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<sup>7</sup> 2023 SCC OnLine Del 4572



**12.6** Ergo, the respondent was eligible for promotion as GGM.

**13.** Assuming arguendo that 5 years' regular service as GM was envisaged

**13.1** Even if the eligibility requirement were to be understood as 5 years' regular service as GM or SAG, we are of the view that the outcome would be the same.

**13.2** The eligibility criteria do not contain any further caveat regarding the nature of the appointment of the candidate while being employed as GM.

**13.3** The ambit of the expression "regular service", when stipulated as an eligibility criterion for promotion, came up for consideration before the Supreme Court in *Punjab State Electricity Board v Jagjivan Ram*<sup>8</sup>. In that case, the promotion scheme required the employee to have 9/16/23 years regular service for being entitled to time bound promotional scale, or increments. The Supreme Court was called upon to decide whether service rendered by work-charged employees, prior to their regularization on the same post, would count towards their "regular service", and proceeded to hold thus:

"10. The work-charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated on a par with the employees of regular establishment. They can neither claim

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<sup>8</sup> (2009) 3 SCC 661



regularisation of service as of right nor can they claim pay scales and other financial benefits on a par with regular employees. If the service of a work-charged employee is regularised under any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of regularisation. His service in the work-charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularisation. In other words, if the statute or scheme under which service of work-charged employee is regularised does not provide for counting of past service, the work-charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments, etc.

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14. The ratio of the abovementioned judgments is that work-charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees and further that the work-charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant rules or policy framed by the employer.

15. What to say of work-charged employees, even those appointed on ad hoc basis cannot claim parity with regular employees in the matter of pay fixation, grant of higher scales of pay, promotion, etc. In *State of Haryana v Haryana Veterinary & AHTS Assn.*<sup>9</sup>, a three-Judge Bench considered the question whether service of an employee appointed on ad hoc basis can be equated with that of regular employee for the purpose of grant of selection grade in terms of the policy contained in the Circulars dated 2-6-1989 and 16-5-1990 issued by the Government of Haryana and answered the same in the negative.

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20. A reading of the scheme framed by the Board makes it clear that the benefit of time-bound promotional scales was to be given to the employees only on their completing 9/16 years' regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years' regular service. The use of the term "regular service" in various paragraphs of the scheme shows that service rendered by an employee after regular

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<sup>9</sup> (2000) 8 SCC 4



appointment could only be counted for computation of 9/16/23 years' service and the service of a temporary, ad hoc or work-charged employee cannot be counted for extending the benefit of time-bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees irrespective of their mode of recruitment and status should be counted for the purpose of grant of time-bound promotional scales or promotional increments, then instead of using the expression "9/16 years' regular service" or "23 years' regular service", the authority concerned would have used the expression "9/16 years' service" or "23 years' service". However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years' regular service or 23 years' regular service as a condition for grant of time-bound promotional scales or promotional increments as the case may be.

21. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time-bound promotional scales/promotional increments on a date prior to completion of 9/16/23 years' regular service and the High Court committed serious error by directing the appellants to give them benefit of the scheme by counting their work-charged service."

**13.4** The order dated 21 June 2007, whereby the respondent was appointed as GM, does not use the expression "temporary", "officiating", or "*ad hoc*" or any expression analogous thereto.

**13.5** Service rendered after regular appointment is, *ex facie*, "regular service". The High Court of Allahabad, in *Rajendra Singh v Accountant General*<sup>10</sup>, held thus:

"8. Regular appointment means the appointment made according to rule and procedure. If against a post, a person was appointed in accordance with rules in the procedure prescribed for Government servant, his appointment is regular appointment."

**13.6** The judgment of the Supreme Court in *K. Madhavan supra*, on

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<sup>10</sup> 2002 Lab IC 3302 (All)



which the Tribunal has also placed reliance, places the issue beyond pale of controversy by holding that “the expression ‘on a regular basis’ would mean the appointment to the post on a regular basis *in contradistinction to appointment on ad hoc or stopgap or purely temporary basis*”.

**13.7** The fact that the respondent had, to his credit, five years service with the petitioner as GM cannot be disputed. The only question that arises in these circumstances is whether the respondent was entitled to discount, in this context, the period of three years during which he served on deputation basis.

**13.8** We presume that deputation was one of the modes of recruitment to the post of GM in the RITES. If that is so, there is no reason why the respondent, who was appointed on deputation as GM and continued in the said post uninterruptedly without break till he was absorbed as GM with the petitioner, should not be permitted to count the period of three years’ deputation as GM while reckoning his eligibility for promotion to the post of GGM. At the end of the day, we have to keep in mind the fact that the prescription of five years as GM was obviously with a view to restricting the zone of consideration only to persons who had requisite experience as GM. There can be no doubt that the respondent, in fact, had gained experience of five years as GM with the petitioner before he sought appointment to the post of GGM.

**13.9** In these circumstances, we are of the opinion that the refusal to



include the period of three years during which the respondent served as GM on deputation basis, while reckoning his five years' service for eligibility for promotion as GGM would not only be contrary to the eligibility criterion but would also be perilously in the teeth of Article 16 of the Constitution of India.

#### **14. The decision in *Ashwani Kumar***

**14.1** Insofar as the judgment in *Ashwani Kumar* is concerned, the facts in that case were conspicuously different from those in the present case. This is noted by this Court itself in para 3 of the said judgment, which reads as under:

“3. The facts as noted from the record are that the respondent was serving in the Indian Army and came on deputation with the petitioner as JDD (IA) w.e.f. October 4, 2004, initially for a period of two years which was later extended by one more year till October 3, 2007. In the meantime, the petitioner made a request for premature retirement from the Army. The request was allowed and he was relieved from service w.e.f. April 30, 2007. In the meantime, the respondent had applied for re-employment on the post of JDD (IA) or any suitable post under the petitioner vide his application dated February 12/22, 2007. The respondent was offered a lower post of Assistant Director (IA) ('AD (IA)', in the pay scale of ₹10000-15200/- vide Memorandum dated April 20, 2007. The respondent continued to work as AD (IA) on probation with the petitioner for two years and his services were confirmed w.e.f. April 01, 2009. He was also promoted to the post of JDD (IA) w.e.f. April 1, 2012.”

**14.2** While addressing itself to the merits of the matter, this Court has specifically reiterated these facts in paras 15 to 17 of the judgment which may also be reproduced thus:

“15. The facts which are not disputed are that the petitioner while



working in Indian Army, had come on deputation to the petitioner organisation as JDD (IA) on October 4, 2004 and in April 30, 2007, the respondent was repatriated back. In the meanwhile, the respondent No.1 had sought a regular appointment in the petitioner organisation and his request in that regard was accepted by the petitioner by issuing an appointment letter. The appointment letter was for the post of AD (IA), which means the appointment was on a lower post to the post on which the respondent was working on deputation, i.e., JDD (IA). The respondent joined the post of AD (IA) on May 1, 2007 and continued to work on the post of AD (IA) till 2012 and was promoted to the post of JDD (IA) in the year 2012.

16. In that sense, the respondent's service as JDD (IA) on his promotion in the year 2012 was not in continuity with the service put in by him during his period of deputation, which was between October 4, 2004 to April 30, 2007. In fact, the respondent was working for a period of five years as AD (IA) before being promoted to the post of JDD (IA).

17. A perusal of the rule contemplates that the eligibility of five years for the purpose of promotion to the post of DD (IA) necessarily means that, when the Officer is being considered for promotion, he must have five years of service in a particular scale, which is the lower post.”

**15.** Though Mr. Saini sought to place reliance on paras 18 and 19 of the judgment which seem to contain a legal statement of the law to the effect that service rendered on deputation cannot be regarded as regular service, we are inclined to treat the said statement as having been rendered in view of the peculiar facts which were before this Court. Ashwani Kumar, the respondent in that case, was, after serving on deputation for three years while retaining his lien in the Indian Army, *repatriated to the Indian Army*, whereafter *he agreed to come back on deputation on a lower post* after which he was promoted to the post of JDD (IA). What the respondent sought in that case was a cumulative addition of the earlier period of three years' deputation which he had served as JDD (IA) and the subsequent service as JDD



(IA) consequent to his promotion after being brought back to the service of the petitioner. This Court, therefore, correctly held that the respondent did not have, to his credit, five years' continuous service as JDD (IA), especially as he had gone back to his parent cadre and accepted reappointment on a lower post.

16. The said decision, therefore, turns on its own facts and cannot be treated as a precedent for this case. In *Sreenivasa General Traders v State of A.P.*<sup>11</sup>, it was held:

“With utmost respect, these observations of the learned Judge are not to be read as Euclid’s theorems, nor as provisions of a statute. These observations must be read in the context in which they appear.”

This exordium was, subsequently, extrapolated to the law in general in a litany of apex pronouncements, including *Amar Nath Om Prakash v State of Punjab*<sup>12</sup> and *BGS SGS Soma JV v NHPC Ltd*<sup>13</sup>.

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17. On an overall conspectus of the case, therefore, we are of the opinion that the Tribunal was correct in its view that the respondent would be entitled to count the period of deputation as GM while reckoning the period of 5 years' experience as GM for promotion as GGM.

18. We see no reason to interfere with the impugned judgment,

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<sup>11</sup> (1983) 4 SCC 353

<sup>12</sup> (1985) 1 SCC 345

<sup>13</sup> (2020) 4 SCC 234



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which is accordingly upheld in its entirety.

**19.** The writ petition stands dismissed, with no order as to costs.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**JANUARY 29, 2025**

*dsn/AS*

*Click here to check corrigendum, if any*