



2025:DHC:8384-DB



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

Date of decision: 17.09.2025

+ W.P.(C) 8172/2023 & CM APPL. 31343/2023

NEETU BHAGAT

.....Petitioner

Through: Ms.Shantha Devi Raman and
Ms.Tanisha Gopal, Advs.

versus

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

.....Respondent

Through: Mr.Anil Soni, Senior Advocate
with Mr.Devvrat Yadav,
Mr.Chandan Prajapati, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 16.05.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal') in O.A. No. 471/2023, titled *Neetu Bhagat v. All India Council for Technical Education*, dismissing the O.A. filed by the petitioner herein.

2. The brief facts giving rise to the present petition are that the petitioner was working as Assistant Director in PB-III G.P. Rs.6600/- in the National Institute of Agricultural Marketing (NIAM). She was



appointed on deputation basis as Deputy Director with the respondent on 31.05.2016. By an Order dated 04.12.2020, the petitioner was absorbed to the post of Deputy Director with the respondent w.e.f. 21.12.2020.

3. The petitioner wished to apply for promotion to the post of Director and, accordingly, made a representation in that regard *vide* Letter dated 24.06.2022. The same was rejected by the respondent *vide* Communication dated 18.11.2022. Further representations were made by the petitioner, however, the same also stood rejected by the respondent.

4. Aggrieved thereby, the petitioner filed the above O.A. before the learned Tribunal, praying for the following reliefs:

“(a) Quash and set aside the impugned order dated 18.11.2022 (Annexure A/1) and order (email) dated 02.01.2023 (Annexure A/2) and

(b) direct the respondent to consider and promote the applicant to the post of Director w.e.f. the date the applicant met the eligibility criteria as mandated under the Recruitment Rules.

(c) Accord all consequential benefits including monetary and seniority benefits.

d) Award costs of the proceedings; and

(e) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicant.”

5. The learned Tribunal, by its Impugned Order, has dismissed the O.A. filed by the petitioner, *inter alia*, placing reliance on the DoP&T OM F.No.20011/1/2000-Estt(D) dated 27.03.2001 (hereinafter referred to as ‘OM Dated 27.03.2001’), and holding that when the petitioner was absorbed to the post of Deputy Director with the



respondent, it was with the stipulation that for the purposes of seniority, it is the date of absorption that shall be material and that she shall not be entitled to claim any retrospective seniority.

6. The learned Tribunal further observed that before her appointment on deputation, she was working at the post of Assistant Director with the parent department, that is, NIAM, and, therefore, was not working on an equivalent post for purposes of gaining seniority from retrospective date.

7. The learned Tribunal held that, therefore, the petitioner did not have the requisite regular service of five years in the Grade of Deputy Director for being considered for promotion in terms of the All India Council for Technical Education (Group 'A', 'B' and 'C' posts) Recruitment Regulations, 2007 (hereinafter referred to as 'Recruitment Rules').

8. Aggrieved by the above Order, the petitioner has filed the present petition.

9. The learned counsel for the petitioner, placing reliance on the Judgments of this Court in *National Highways Authority of India v. Sanjeev Kumar Sharma & Ors.*, 2016 SCC OnLine Del 2698; *Union of India & Anr. v. O.P. Gaba*, 2011 SCC OnLine Del 2804; *Dr. Rajendra Kumar & Ors. v. Govt. of National Capital Territory of Delhi*, 2006 SCC OnLine Del 1226; and *Rites Ltd. & Ors. v. Vijai Kishore*, 2025 SCC OnLine Del 529, submits that the learned Tribunal has erred in placing reliance on the DoP&T OM dated 27.03.2001 which merely deals with the issue of seniority. She submits that the



petitioner had been appointed on regular basis and in terms of the Recruitment Rules, though on deputation, at the post of Deputy Director with the respondent w.e.f. 31.05.2016, therefore, the said period of service was entitled to be counted for purposes of promotion to the post of Director in the respondent organization.

10. On the other hand, the learned counsel for the respondent reiterates that at the time of absorption, it was a condition, which was also accepted by the petitioner, that her service rendered while being on deputation will not be counted for purposes of seniority. He further submits that, even in her parent department, she was not working in the same grade, but was working as Assistant Director and, therefore, in terms of DoP&T OM dated 27.03.2001, she was not entitled to counting of the service while on deputation for the purposes of seeking eligibility for promotion.

11. We have considered the submissions made by the learned counsels for the parties.

12. The Recruitment Rules provide for appointment to the post of Deputy Director with 33.33%, that is, two posts, by promotion, failing which by deputation, and 66.67%, that is, four posts, by direct recruitment. Therefore, deputation is a regular mode of appointment to the post of Deputy Director. The petitioner was appointed against the 33.33% post by way of deputation. Her appointment, therefore, was regular and in terms of the Recruitment Rules.

13. The Recruitment Rules, for the post of Director, provide that 50% of the post, that is, five posts, shall be filled by promotion, failing



which by deputation, and 50%, that is, five posts, by deputation. For promotion, the Recruitment Rules provide the following eligibility:

“Promotion:

From amongst Deputy Director/Deputy Secretary with five years service in the grade rendered after appointment thereto on a regular basis.”

14. Therefore, what is required in the Recruitment Rules for the promotion to the post of Director is that the candidate shall be a Deputy Director/Deputy Secretary with five years’ service in the grade, rendered after the appointment thereto on a regular basis. We must herein itself note that the issue of seniority is not relevant here.

15. The distinction between the two concepts, that is service for seniority vis-à-vis service on regular basis, was highlighted by this Court in its Judgment in **Dr. Rajendra Kumar & Ors.** (supra), observing as under:

“14. Ms. Avnish Ahlawat on behalf of the respondent sought to justify the decision of the Tribunal. She submitted that there were no recruitment rules, which would have enabled these appointments on regular basis. Some of these petitioners have been working in posts lower than in the rank of Senior Scientific Officers, such as, Senior Scientific Inspector, Sub-Inspector etc. prior to being taken on deputation as Senior Scientific Officers. Her submission is that in respect of petitioners, who are working at posts lower than that of Senior Scientific Officers, their service in the parent department are not to be taken into consideration. The above plea to our mind is of no avail. The question to be considered is whether the services rendered as Senior Scientific Officer on deputation with the



respondent can be regarded as regular service in the grade/scale. Ms. Ahlawat submits that recruitment rules were framed in 1998 in consultation with UPSC. Accordingly, these petitioners were permanently absorbed on 29th April, 2002 as Senior Scientific Officers. Their service for purposes of promotion to the post of Assistant Director, accordingly, has to be counted from the date of absorption when their appointment stood regularized. She further submitted that these persons could not be considered as regular appointees as they had joined the respondent on deputation and held their lien in other posts held by them prior to their absorption. We have already noted that the appointment of petitioners on deputation was admittedly after following due procedure. The non existence of statutory rules, at the relevant time, cannot convert the service rendered by them as irregular and result in their service being disregarded for being counted for the purposes of eligibility condition. As noticed earlier, each of the petitioners possess the requisite academic qualifications and have the requisite experience to meet the eligibility condition.

15. We find merit in the petitioners' submission, as noted above. Petitioners in view of the decision in K. Madhavan and Ors. v. Union of India (Supra) and K.B. Rajoria v. Union of India and Ors. (Supra) are entitled to have the period of service on deputation with the respondent counted towards the eligibility period for the post of Assistant Director."

16. The above Judgment was followed by this Court in ***O.P. Gaba*** (supra), by observing as under:

"6. O.M. dated 27th March, 2001, as quoted above deals with seniority. It stipulates that for the purpose of inter-se seniority between officers, the date of absorption is the criteria which is determinative. We are not concerned with the inter-se seniority in the



present case. The O.M. cannot be applied for the purpose of computing minimum residency period linked to performance stipulated in Rule 6(2)....”

17. This Court in **Sanjeev Kumar Sharma** (supra), again reiterated that the deputation period has to be counted as regular service unless stipulated to the contrary. It was further held that the OM dated 27.03.2001 is not relevant for determining whether or not a candidate meets the requirement stipulated in the Recruitment Regulations for promotion as far as the stipulation of regular service is concerned. We quote from the Judgment as under:

“11. It is an accepted position that whether on deputation or after absorption, the applicants when posted as Manager (Technical) were in PB-3 (Rs. 15600-39100) with a Grade Pay of Rs. 6600. It is not the case of the NHAI that his requirement or eligibility condition is not fulfilled or satisfied by the applicants. Their contention is that the applicants when on deputation were not on regular service at the post of the Manager (Technical). This contention is predicated on the plea that the period during which the applicants were on deputation, they held a lien in their parent department.

12. The submission, in our opinion, is without merit and has been rightly rejected by the Tribunal. We have quoted the recruitment regulations with regard to appointment to the post of Manager (Technical). One of the modes of appointment is by transfer on deputation. This mode was applied and adopted by the NHAI when they had inducted the applicants as Manager (Technical). The applicants were appointed as Manager (Technical) after a proper selection process. There was no break and the appointment on deputation was followed by absorption without



any time gap. The pay-scale did not undergo any revision, change or upgradation. Nature of duties performed etc. did not change. The Regulation quoted above is not expressly or impliedly to the contrary. It is not stipulated that the deputation period would not be counted as “regular service”. The experience stipulated in clause A.(i) would relate to appointment/recruitment by way of deputation or direct recruitment.

13. *On the issue and meaning of the expression “regular service”, we would like to refer to the ratio in K. Madhavan v. Union of India, (1987) 4 SCC 566. Elucidating on the question of deputation and transfer, the Supreme Court opined that there was not much difference between the two. Deputation may be regarded as a transfer from one government department to another. Pertinently, it was held that it would be against all rules of service jurisprudence if a government servant holding a particular post is transferred to the same or an equivalent post in another government department and the period of his service in the post before transfer, is not taken into consideration for seniority in the transferred post. We are not directly concerned as such with the second aspect in the present case, but the reasoning and ratio would support and affirm our view. It would be irrational and incongruous to hold that the period spent on the post of Manager (Technical) while on deputation would be treated and regarded as irregular or nonest service and which cannot be counted for the purpose of regular service under column 8 of the recruitment regulation for appointment to the post of Deputy General Manager (Technical). Any other interpretation, in the absence of a contrary regulation/rule, would be unfair and unjust. The deputationist would be at a disadvantage in comparison to the candidates appointed to the post of Manager (Technical) on subsequent dates by way of*



direct recruitment or promotion. For direct recruits, the period spent on probation is also counted as experience on the post regularly held.

15. The heading of the said OM itself would indicate that it deals with seniority of persons absorbed after being on deputation. It makes reference to the decision in S.I. Rooplal v. Lt. Governor through Chief Secretary, Delhi, JT (1999) 9 SC 597, wherein the earlier OM dated 29th May, 1986 was partially set aside and declared ultra vires. It is in view of the said overruling by the Supreme Court that OM dated 27th March, 2011 was issued. The said OM prescribes that when recruitment rules provide for transfer on deputation/transfer, the seniority of the person who is absorbed would normally be counted from the date of absorption. However, in case the said person on the date of absorption was holding the same or equivalent grade on a regular basis in the parent department, such regular service in the parent department shall also be taken into account for fixing his seniority. Paragraph 1 of the said OM quotes from the OM dated 29th May, 1986, which was partly struck down in S.I. Rooplal (supra). The OM in paragraph 3 states and clarifies that for determining the equivalent grade in the parent department mentioned in the OM dated 29th May, 1986, the criteria contained in OM dated 7th March, 1984 should be applied. The said OM, according to us, deals with the question of inter se seniority as has been rightly held by the Tribunal. The subject matter or the question addressed and answered in the OM was different. Stray observations, when the issue and question raised and answered was quite different, should not be taken out of context and propounded as the ratio on a divergent issue. This OM does not deal with and answer the present question. Significantly, in SI Rooplal (supra), the Supreme Court had



relied on K. Madhavan (supra). Inter se seniority and experience eligibility are two separate and distinct aspects.

16. *The OM dated 27th March, 2011 as held and elucidated, does not deal with the situation in question. The OM is not relevant for determining whether or not a candidate meets the requirements stipulated in column 8 of the recruitment regulations for promotion to the post of Deputy General Manager (Technical) or similar situation. The contention of the NHAI, relying on the OM dated 27th March, 2011, is rejected.*

17. *The Tribunal in the impugned order has rightly held that methods of computation of seniority may differ according to the manner in which continuous service for the purpose of seniority is to be counted. Regulation 15(3) of NHAI Regulations notified on 11th March, 1996 had stipulated that the seniority of a person initially appointed on deputation and subsequently absorbed in the NHAI would be reckoned from the date of their initial appointment. It was further stipulated that if two or more persons get absorbed on the same date, their inter se seniority shall be determined with reference to their seniority level in their parent cadre. The aforesaid regulation, therefore, treated the date of initial appointment on deputation as the relevant date for computation of seniority inter se the persons appointed on deputation and then subsequently absorbed. Regulation 15(3) of the NHAI Regulations was amended on 24th August, 2012 and it was stipulated that seniority of officers and employees of the NHAI shall be determined on the basis of the instructions and guidelines issued by the Central Government (Department of Personnel & Training), from time to time. Regulation No. 22 was also inserted and is to the effect that in regard to matters not specifically covered by the Regulations made under Section 35 of the Act or general, or*



special orders made or issued thereunder, service conditions of the officers and employees of the NHAI 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.

18. *The applicants in the present case were absorbed after amendment to NHAI Regulation 15(3) with effect from 24th August, 2012. The absorption letter placed on record states that the inter se seniority will be determined as per the Dopt instructions/guidelines in this regard. As far as the recruitment regulations in question are concerned, they specifically stipulate and provide that candidates holding the post of Manager (Technical) on a regular basis for a period of four years would be eligible for consideration and promotion as Deputy General Manager (Technical). The said regulation does not specify whether the period spent on deputation is to be treated as regular service or not. They are silent. In the said situation, general principles applicable to service jurisprudence would apply. If we accept the contention of the NHAI, then the period which the applicants had spent on deputation as Manager (Technical), right from 2004 till October, 2012, will have to be erased and ignored for the purpose of qualifying service for promotion to the post of Deputy General Manager (Technical). The service rendered after October, 2012, would be counted and taken into consideration. We cannot countenance and accept any such stance and be oblivious to unjust and palpably unfair and arbitrary consequences.*

19. *In K. Madhavan case (supra), the Supreme Court had examined the expression 'on a regular basis' used the applicable rules. This expression, it was observed, had created some ambiguity in the eligibility clause giving rise to the controversy. It was held that there could*



not be any doubt that when a person was appointed to a post against a permanent vacancy on probation, his appointment was on a regular basis, but when a person was appointed to a post on a purely temporary or ad hoc basis, the appointment was not on a regular basis. Referring to the expression ‘on a regular basis’, the Supreme Court held that the said expression cannot be interpreted to mean, service rendered as on absorption in the CBI as SP. The general principle was that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of seniority in that post or eligibility for the higher post. Paragraph 10 of the judgment in K. Madhavan (supra) reads:—

“10. The 1975 Rules which are relevant for the purpose do not explain what is meant by the expression “on a regular basis”. The expression has created some ambiguity in the eligibility clause giving rise to this controversy. There can be no doubt that when a person is appointed to a post against a permanent vacancy on probation, his appointment is on a regular basis, but when a person is appointed to a post on a purely temporary or on an ad hoc basis, the appointment is not on a regular basis. The expression “on a regular basis” in the 1975 Rules cannot, in our opinion, be interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the



purpose of seniority or eligibility for the higher post from the date of appointment. In our view, therefore, 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. Respondent 5, in our opinion, satisfied the eligibility test of the 1975 Rules for consideration for the post of DIG. But, it is not disputed by the parties that the petitioners and Respondent 5 have, by the lapse of time during the pendency of this litigation, become eligible for appointment to the posts of DIG. Indeed, they are holding the posts of DIG, may be on ad hoc basis, under the interim orders of this Court and there is no chance of their being reverted to the next lower post of SP. The question, therefore, boils down to the seniority of the petitioners, vis-à-vis Respondent 5 in the post of DIG. That again will depend upon the decision on the question as to the seniority of the petitioners and Respondent 5 in the post of SP.”

20. *In the present case, we are not dealing with the question of seniority but are only concerned with the question as to whether the applicants fulfilled the eligibility requirement for being considered for promotion to the post of Deputy General Manager (Technical). For the aforesaid reasons, we uphold the finding of the Tribunal which accepted the contention of the applicants.*

21. *However, there is an aspect which requires clarification. The learned counsel for the parties accept that in the two OAs, the applicants had prayed that a seniority list of the employees holding the post of Manager (Technical) should be drawn in accordance with the Regulations and law. The Tribunal has not given any such direction. Possibly, the reason was that there were substantial number*



of vacant posts in the post of Deputy General Manager (Technical). Even if we accept the possible reason, it is necessary that the petitioner (i.e. NHAI) should draw and frame a seniority list as per law. This would avoid challenges and ensure transparency. It would possibly curtail disputes in future and would clarify the situation to employees of the NHAI from different sources. Delay in such matters causes suspicion and uncertainty. It results in different categories trying to influence and get favourable opinions. ”

18. In **Rites Ltd.** (supra), this Court again held as under:

“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.”

19. Applying the ratio of the above Judgments to the facts of the present case, appointment of the petitioner to the post of Deputy Director *albeit* on deputation basis, cannot be said to be irregular. The period spent on duty, therefore, was regular service and had to be counted in terms of the Recruitment Regulations for purposes of



considering her case for promotion to the post of Director, which merely requires regular service of five years in the grade from amongst Deputy Director/Deputy Secretary as a qualifying condition for seeking such promotion. Only because the petitioner could not claim seniority for the period that she had worked on deputation basis, would not take away this service for the purposes of considering her eligibility for promotion.

20. In view of the above, the Impugned Order passed by the learned Tribunal cannot be sustained and is, accordingly, set aside.

21. It is held that the petitioner's service, while on deputation, shall also be counted for determining her eligibility for the post of Director with the respondent, however, as stipulated in the absorption order and in terms of the OM dated 27.03.2001, she will not be entitled to claim any retrospective seniority to the post of Deputy Director because of our order.

22. With the above directions, the petition, along with pending application, is disposed of.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 17, 2025/ns/VS