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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **DECIDED ON: 03.12.2014**

+ W.P. (C) 8412/2014

NATIONAL HIGHWAYS AUTHORITY OF INDIA ..... Petitioner  
Through: Ms. Aayushi Kiran with Ms. Tanupriya  
Gupta and Mr. Mukesh Verma, Advocates.

versus

ASHOK KUMAR GUPTA ..... Respondent  
Through: Mr. S.K. Gupta, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**S.RAVINDRA BHAT, J. (OPEN COURT)**

1. Issue notice to the respondent. Mr. S.K. Gupta, Advocate accepts notice on behalf of respondent. With consent, matter has been taken up for disposal.
2. The petitioner feels aggrieved by an order of the Central Administrative Tribunal (hereafter referred to as 'CAT') dated 11.09.2014 passed in OA 1418/2014. By that order, the NHAI has been directed to reconsider the respondent/applicant's case for absorption.
3. The facts are that the applicant joined the National Highways Authority of India (hereafter referred to as 'NHAI') as Manager (Technical) on deputation. He is a permanent officer of the Public

Works Department, Rajasthan, holding lien in the cadre of the Assistant Engineer (AE). His deputation was continued by the NHAI; this arrangement was not objected to by the Rajasthan Government. On 25.04.2007, the applicant was appointed as DGM (Technical). This was for a period of four years. At that time, the Rajasthan Government had extended its no-objection through a certificate issued on 7.3.2009. The applicant's deputation was further extended up to 31.10.2010 with approval of the Ministry controlling the NHAI. It was not intended thereafter. The respondent responded to a Circular dated 1.11.2012 - inviting applications from those working as DGM (Technical) on deputation, for absorption. This application was considered, but on the basis of the perceived poor record of the petitioner/applicant, the NHAI refused to accept his request for absorption. The applicant was aggrieved because, while his reporting officer had apparently strongly recommended his case for absorption, however, the competent authority thought otherwise. The applicant approached the CAT complaining of arbitrary rejection of his request because, in the meanwhile on 31.5.2013, there was an improvement recorded in his performance for the relevant period. On the basis of these materials the CAT directed NHAI to reconsider the issue.

4. An important event had occurred in the meanwhile, in that, the applicant had been repatriated to his parent department in Rajasthan on 29.7.2013, because on 21.1.2013, the Government of Rajasthan had refused to extend the period of his deputation and sought for his repatriation. Consequently, the Central Government had written to the NHAI on 10.04.2013 to take the necessary action. This led to his

repatriation.

5. Even though the CAT was apprised of all these events, it chose to divert the reconsideration of the applicant's record - effective as on 31.5.2013, and communicate to him the outcome of such reconsideration vide order dated 6.11.2013. NHAI was directed to reconsider the matter afresh in the light of the changed circumstances, i.e., the improved record of the applicant.

6. The NHAI complied with this direction and by order/letter of 17.1.2014, rejected it by a speaking order. The relevant extract of the speaking order made on the basis of the review selection committee's recommendations (a body comprised of 5 senior officials of the NHAI) is as follows: -

*“9. Whereas, the Review Selection Committee after examining the Assessment Reports of Sh. Ashok Kumar Gupta has stated that, in both the Assessment Reports of Sh. Ashok Kumar Gupta, it has been mentioned that, Sh. Gupta was associated with procurement and implementation of four projects in the State of Odisha. The Committee assessed the status of the progress of these four projects as in November, 2012 and as in May, 2013. The Committee noted that, out of four projects, the status of two projects was not satisfactory in November, 2012 and these two projects were still languishing in May, 2013. Though, Sh. Gupta is not solely involved in implementation of these projects, however, by his performance, he could have contributed in better progress of these 2 projects.*

*10. Whereas, the Review Selection Committee considering the above and decided not to recommend Sh. Ashok Kumar Gupta for absorption to the post of Deputy General Manager (Tech) in NHAI.”*

7. The applicant felt aggrieved and approached the CAT yet again in OA 1418/2014; this time too, the CAT allowed the application. This was based upon his assessment as recorded in the Minutes of the Review Selection Committee. The CAT felt that the Committee was asked to assess the applicant's suitability for absorption based upon his ACR grading as well as recommendations of his controlling officer, and it was not within their competence to record their own assessment about him. On the basis of this understanding, the CAT quashed the speaking order and once again directed the NHAI to reconsider the matter.

8. It was argued on behalf of the NHAI that the intervention of the CAT is essentially into what is a policy decision - whether to absorb an employee whose deputation has ended, and whose parent employer has refused to extend the deputation. It is argued that having regard to the overall record of the respondent, the CAT ought not to have interfered with the administrative decision of the petitioner. It is argued that the deputationist's right to continue, much less seek absorption, after the end of the deputation tenure is so tenuous, as to be called non-existent. Barring manifestly perverse or arbitrary orders, the third party employer, i.e., the borrowing organisation cannot be compelled to continue with the employment a deputationist, much less absorb him. He submits that the respondent was aware of his tenure and conscious of the terms of engagement.

9. The applicant, on the other hand, urged through his counsel that the impugned order should not be interfered with. It was contended that regardless of the view expressed by the parent organisation in

January, 2013, the important circumstance was the subsequent development on 31.5.2013 - whereby the applicant's superior officer within the NHAI upgraded his records. This had to be considered objectively and in a fair manner. The NHAI's attempt to stonewall the applicant's repeated request to continue within that organisation was plainly arbitrary. Learned counsel submitted that according to the prevailing instructions within the Central Government and its establishment office, in such circumstances, irrespective of the wishes of the parent employer - if the employee or deputationist is willing to resign his lien and forgo the benefit of past employment with the parent public employer, the borrowing organisation can absorb him or her.

10. It can be seen from the above discussion that the applicant continued on deputation in the NHAI from 2004. His tenure of deputation was extended last in 2011. On 21.1.2013, his parent department, i.e., the PWD, Rajasthan refused to extend his lien and ordered him back. His request for permanent absorption within the NHAI was also rejected. No doubt, subsequently his record was upgraded on 31.5.2013. However, that did not in any way alter the demand of the parent employer, based upon which, on 10.4.2013 the Central Government even directed his repatriation along with other employees. In these circumstances, this Court is of the opinion that the CAT ought not to have ignored the important circumstance of his repatriation being directed by the Central Government, which the NHAI was bound to execute. Although this was apparently brought to the notice of the CAT, it went ahead to pass directions in the first

round of litigation on 6.11.2013 - to the NHAI to reconsider the matter. The reconsideration by the NHAI has unfortunately been set aside but again by the CAT in the impugned order.

11. The choice of the public employer – whether, or not, to absorb the individual, is entirely based upon its discretion and its perception about the utility, competence and efficiency of the deputationists. As mentioned earlier, barring procedural failure in regard to the fair consideration of the request for absorption - which necessarily has to manifest from the records - the subject would be hardly one for judicial review. If Courts or Tribunals were to intervene routinely in such matters - as the CAT unfortunately did not once but twice over in the present case, the efficiency and functioning of public organisation would seriously be undermined. On the other hand, the parent employer has repeatedly insisted that the applicant should return to his duties. Not only has that organisation continued his lien, but would have undoubtedly made arrangements in his absence on a stop gap basis, and make do without a permanent officer. A direction of the kind that the CAT has given in the impugned order amounts to needlessly interfering with the discretion which otherwise needs to be exercised judiciously after taken into consideration all relevant factors. The manner in which the CAT went about intervening repeatedly in this manner is rather unfortunate; we cannot help but express this, and regret that such a situation has come to pass.

12. For the forgoing reasons, the impugned order of the CAT is hereby set aside. The writ petition is allowed, but, without any order

as to costs. A copy of this order shall be communicated to the relevant Bench of the CAT through its Principal Registrar.

**S. RAVINDRA BHAT  
(JUDGE)**

**VIPIN SANGHI  
(JUDGE)**

**DECEMBER 03, 2014**  
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