



GAHC010234682022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7373/2022

GO 3006M SRI RAM ASRA KHURAL
S/O. SRI CHURA RAM,
EXECUTIVE ENGINEER (CIVIL) AND PRESENTLY POSTED AND WORKING
AS GM (TECH)/PD, PIU SHIMLA,
HOUSE NO. 1, RISHIKESH SADAN,
SHANTI KUTIA,
UPPER CHAKKAR,
SHIMLA DISTRICT,
HIMACHAL PRADESH- 171005.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE DEFENCE SECRETARY,
MINISTRY OF DEFENCE,
101-A, SOUTH BLOCK,
NEW DELHI- 110001.

2:JOINT SECRETARY (BORDER ROADS)
MINISTRY OF DEFENCE (EARLIER DESIGNATED AS SECRETARY (BRDB))

ROOM NO. 418
B WING 4TH FLOOR

SENA BHAWAN
NEW DELHI- 110010.

3:DIRECTOR GENERAL
BORDER ROADS ORGANISATION

SEEMA SADAK BHAWAN



RING ROAD
DELHI CANTT.

NEW DELHI- 110010.

4: ADDITIONAL DIRECTOR GENERAL (EAST)
BORDER ROADS ORGANISATION

HQ ADGBR (EAST)
JALUKBARI

LANKESWAR
GUWAHATI

ASSAM
PIN- 781014.

5: THE CHAIRMAN
NATIONAL HIGHWAY AUTHORITY OF INDIA

MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS

G-5 AND 6
SECTOR- 10

DWARKA
NEW DELHI- 110075.

6: CHIEF GENERAL MANAGER (HR/ ADMN)
NATIONAL HIGHWAYS AUTHORITY OF INDIA

MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS

G-5 AND 6
SECTOR-10
DWARKA

NEW DELHI- 110075

Advocate for the Petitioner : MR. D BORAH

Advocate for the Respondent : D.Y.S.G.I.



BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. D. Borah. Advocate.

For the Respondents : Ms. R. Devi, CGC
Respondent Nos.1 to 4.
Mr. C. Baruah,
Standing Counsel, NHAI
Respondent Nos. 5 and 6.

Date of Hearing : 14.12.2023

Date of Judgment : 12.02.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. D. Borah, learned counsel for the petitioner. Also heard Ms. R. Devi, learned CGC appearing on behalf of the respondent Nos. 1, 2, 3 and 4 and Mr. C. Baruah, learned Standing Counsel representing the respondent Nos. 5 and 6.
2. The present writ petition is filed assailing the initiation of departmental proceeding including the Memorandum of Charge bearing File No. 5(9)/2022-D (Lab) dated 29.09.2022.
3. The background facts of the present case can be summarised as follows:-
 - I. The petitioner while serving as Executive Engineer (Civil) under the Border Roads Organization applied for the post of General Manager (Technical) in National Highways Authority of India



(hereinafter referred to as NHAI) pursuant to advertisement issued by the NHAI on 21.01.2020.

II. The petitioner participated in the selection process and was also selected. However, his employer i.e. Border Roads Organization (BRO) denied him an NOC in terms of an offer of an appointment dated 09.06.2020.

III. Being aggrieved, the petitioner approached this Court by filing WP(C) No. 2804/2020. This Court under its Judgment and Order (CAV) dated 19.07.2021 allowed the aforesaid writ petition. Certain important determination made in the aforesaid judgment by this Court, which are necessary for determination of the present writ petition is recorded herein below:-

- a. The requirement of NOC was not a part of the advertisement dated 21.01.2020 but a requirement which was informed by communication dated 09.06.2020.
- b. Therefore, the contention of the respondent that NOC was rejected by order dated 19.02.2020 is not sustainable as such rejection is much prior to the need of such an NOC.
- c. The order of rejection dated 19.02.2020 was never communicated to the petitioner which is an admitted fact.
- d. The rejection of NOC dated 19.02.2020 is inconsistent with the letter dated 07.02.2020, whereby the application of the petitioner was forwarded and such participation in the selection process is



permitted only on fulfillment of the requirements forwarding the application by the employer but also enclosing copies of ACRs/APARs by the authorities.

- e. The rejection of NOC dated 19.02.2020 is superfluous and artificial inasmuch as NOCs were granted to 15 numbers of similarly situated officers, 10 numbers of which were not even selected.
 - f. There are contemporaneous materials to indicate that such permission was all along granted by the authorities.
 - g. The entire action of rejection of the permission for deputation was set aside and the employer BRO was directed to accord necessary permission and NOC to the petitioner.
- IV. The respondent employer BRO being aggrieved by the decision of the Coordinate Bench, approached the Hon'ble Division Bench by way of filing WA No. 188/2021.
- V. The Hon'ble Division Bench under its order dated 02.09.2021 affirmed the decision of the learned coordinate Bench.
- VI. The certain important findings of the Hon'ble Division Bench are recorded herein below:-
- a. There was no specific denial by the employer regarding seeking permission by the petitioner.
 - b. The action of the respondent authorities in granting permission to

similarly situated persons and not granting the NOC to the petitioner, only shows the bias against the writ petitioner.

- c. Accordingly, the writ appeal was dismissed with a direction to the BRO to/private respondent within a period of 15 days from the receipt of the certified copies.

VII. Thereafter, the petitioner was granted NOC, who joined the service at NHAI. However, subsequently, the petitioner was repatriated to the parent department vide order dated 24.04.2023, during the pendency of this writ petition. Such fact has been provided by Mr. C. Baruah, learned Standing Counsel for the NHAI.

VIII. In the meantime, by a Memorandum dated 29.11.2022, while the petitioner was in deputation at NHAI, it was informed that BRO is proposing to take action against the petitioner under Rule 16 of CCS (CCA) Rules, 1965 and along with the aforesaid memorandum, statement of the imputations of misconduct or misbehavior was annexed. The relevant portion of the statement of imputations is quoted herein below:-

“3... Subsequently, the said Sh. Ram Asra Khural, EE (Civ) (Go-30006M) had attended an online interview on 29 May 2020 without obtaining NOC and without any prior permission from HQ, DGBR/ Ministry of Defence (BR) for attending the interview. It stands proved that the officer had sent an advance copy of his application to the NHAI, thereby contravening the provisions contained in Para 2 (i) of HQ DGBR policy letter No. 13401/Policy/Depu/DGBR/61/EIA dated 22 Feb 2018 which clearly stipulate that no advance copy will be sent to the borrowing department, as the same will not have any legality for processing and no action will be taken at HQ DGBR on such advance copies. The ibid acts of commission



and omissions on the part of the said Sh. Ram Asra Khural, EE (Civ) (GO-3006M) was come to the notice of the department when an offer of his appointment for the post of General Manager (Technical) on deputation basis in NHAI was received by HQ DGBR vide National Highway Authority of India letter No. 11012/427/2018-Admn (Pt.II)/153263 dated 09 Jun 2020, though the department has not given any permission or issued NOC to the officer for deputation with NHAI. NHAI authorities had also requested to forward "No Objection Certificate" along with other documents with regard to appointment of Sh. Ram Asra Khural, EE (Civ) (GO-3006M) to the post of General Manager (Tech) on deputation basis in NHAI vide their above letter.

4.... The case of the officer was not recommended for deputation to NHAI in the organizational interest as he was due for High Altitude Area posting. However, the said Sh. Ram Asra Khural, EE (Civ) (GO-3006M) had filed a Writ Petition(C) 2804/2020 Versus Union of India and four others before the Hon'ble High Court of Gauhati at Guwahati for issue of NOC/relieving on deputation to NHAI for the post of General Manager(Technical) which has been finally disposed off by the Hon'ble High Court in favour of the petitioner.

5... Accordingly, HQ ADGBR (East) was directed to seek an explanation from the officer vide HQ DGBR letter No. 13422/Depu/EE(Civ)/DGBR/47/EIA dated 08 Apr 2021. He accordingly, submitted his explanation dated 30 Apr 2021 contents of which were not convincing. It has been stated by the officer that he was not aware of the non recommendation of his deputation case at the time of interview which was held on 29 May 2020 and claimed that till receipt of HQ ADGBR (East) letter dated 09 Jun 2020 under which HQ DGBR letter regarding non recommendation of his case was intimated, he was not aware of the non recommendation. The said Sh. Ram Asra Khural, EE (Civ) (GO-3006M), had liaised with Jt Dir (Admn) Rajesh Kumar Khare and deceitfully obtained a copy of HQ DGBR Note dated 19 Feb 2020 under covering letter dt 09 Jun 2020. The officer had presented the same as an evidence before the Hon'ble Court

misrepresenting the facts and got a judgment in his favour for proceeding on deputation. In case the officer had not received any intimation regarding non recommendation of the case in time, he should have approached HQ DGBR for knowing status of his deputation case. He should have also sought permission for attending the interview. If No objection Certificate (NOC) was awaited from MoD (BR) as argued/claimed by him, but he did not do so. Thus, the said Sh. Ram Asra Khural, EE (Civ) (GO-3006M) attended the interview for deputation without the explicit approval of the competent authority, which tantamount to misconduct on his part”.

- IX. By the aforesaid communication dated 29.11.2022, the petitioner was also given an opportunity to file representation.
- X. Being aggrieved with initiation of such proceeding without replying to the show cause, the present writ petition has been filed, primarily on the ground that in view of the determination made by this Court in the earlier litigations and read with the allegation, it is apparently clear that the charges alleged read with the imputation, no case of misconduct or misbehavior is made out and such charges are contrary to the determination made by this Court inasmuch as such proceeding is vitiated by bias and malafide exercise of power. Therefore, according to Mr. Borah, the learned counsel for the petitioner, the proceeding should be interfered with by this Court in exercise of power of judicial review.
4. In support of his contention Mr. Borah, learned counsel for the petitioner, relies on the decision of the Hon’ble Apex Court in the case of **State of Punjab –Vs- V. K. Khanna and Ors** reported in **(2001) 2 SCC 330**.
5. Per contra, Ms. R. Devi, learned CGC submits that there is no nexus

between the earlier proceedings and the departmental proceeding now has been initiated. The policy decision dated 11.12.2018, mandates that the necessary approval/permission for deputation cases must be obtained from the competent officers to attend interview, failing which, such type of deputation cases will be rejected and also the concerned officers, who in violation of such Policy, applies for Deputation shall be liable for disciplinary action.

6. According to Ms. R. Devi, learned CGC, there were two requirements, firstly, seeking a permission even before filing of the application in terms of the policy decision dated 11.12.2018 and therefore, the determination made by this Court as well as Hon'ble Division Bench in earlier proceeding do not relate to a permission, which is required to be taken in terms of the policy decision. According to her, this Court dealt with the requirement of NOC in terms of the advertisement and not with the requirement of the NOC in terms of the policy of the employer dated 11.12.2018 and therefore, at this stage, this Court should not interfere with the departmental proceeding inasmuch as the petitioner shall have all right to make reply to the charges made. The petitioner shall be given fair opportunity to defend his case. Therefore, in exercise of its judicial power, this Court should not interfere with the entire proceeding at this initial stage. In support of her contention, she relies on the decision of the Hon'ble Apex Court in the case of **Union of India and Others –Vs- Upendra Singh** reported in **(1994) 3 SCC 357**.
7. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available

on record.

8. The statement of imputations and the memorandum of the charge clearly reveals that the basic edifice based on which the departmental proceeding is proposed, is non issuance of NOC to the petitioner before filing the application seeking deputation in NHAI. According to the respondent employer, the petitioner has not sought for any permission/NOC from the employer before applying for deputation to NHAI. The further reason of initiation of the departmental proceeding as discernable from the statement of imputation is that that the petitioner has obtained a copy of Note dated 19.02.2020 and used the said as evidence before the High Court in the earlier Writ proceeding inasmuch as he ought to have approached the Head Quarter for knowing the status of the decision on NOC, if he had not received any intimation regarding non recommendation for deputation by the employer. Accordingly, it was concluded that the petitioner attended the interview for deputation without obtaining approval of the competent authority which tantamount to misconduct on his part.
9. In the considered opinion of this Court, in the backdrop of the decision of the Coordinate Bench passed in WP(C) No. 2804/2020 and the determination made by the Hon'ble Division Bench in WA No. 188/2021, in its order dated 02.09.2021, whole edifice of issuing the show cause notice falls flat more so, for the reason that such basis contention/allegation raised in the statement of imputation and charge memo has already been dealt with in the aforesaid two proceeding by this Court and negated such contentions in the said proceedings as discussed and summarized hereinabove.



10. The learned Coordinate Bench in its Judgment and Order dated 19.07.2021 categorically held that the NOC was not a part of the advertisement dated 21.01.2020. Such findings had in the meantime attained finality. That being so, at this stage, the employer cannot raise an issue that the petitioner has not obtained any NOC and therefore, committed misconduct.
11. It is apposite to record here that the learned Coordinate Bench in no unambiguous term, held that such requirement of NOC was only informed by communication dated 09.06.2020 and the rejection of NOC by the employer by its order dated 19.02.2020 is not sustainable. It was further held that the rejection of NOC is superfluous and artificial.
12. It was also held by the learned Coordinate Bench that there are contemporaneous materials to indicate that the permission was all along been granted by the authorities. Such order had attained finality and therefore, in the considered opinion of this Court, the contention that employer has not granted any permission and issued NOC to the petitioner for deputation with NHAI, cannot sustain in view of the determination made by the learned Single Judge as aforesaid and reaffirmed by the Hon'ble Division Bench.
13. The Hon'ble Division Bench further held that non grant of NOC to the petitioner shows bias and therefore, a specific direction was issued by the Division Bench to the respondent authorities to issue NOC to the writ petitioner within a period of 15 days from the receipt of a certified copy. Thus, even if, there was any lacuna in seeking permission, the Hon'ble Division Bench has specifically directed for issuance of NOC in favour of the



petitioner and accordingly, in compliance of such Judgment and Order of the Hon'ble Division Bench, the respondent employer had issued the NOC though subsequently the petitioner was repatriated to his parent department under an order dated 24.04.2023.

14. In the aforesaid factual backdrop and legal determination, it is too late in the day to raise once again an issue and initiate a departmental proceeding alleging misconduct on the part of the petitioner for the reason of applying for deputation without NOC from the employer.
15. The issue that the petitioner has deceitfully obtained a copy of HQ DGBR Note dated 19 Feb 2020 under covering letter dt 09 Jun 2020 and presented the same as an evidence before the Hon'ble Court misrepresenting the facts and got a judgement in his favour for proceeding on deputation, can not also be a misconduct in the given facts of the present case, more particularly, when such document was duly considered by the coordinate bench and the Hon'ble Division Bench while determining the previous writ proceedings and no such objection was raised by the respondents. The allegation that the earlier judgement was obtained by misrepresentation of fact itself amounts to labelling the judgements passed earlier to be incorrect. And a determination is sought to be made to that effect in a departmental proceeding. As recorded hereinabove, the learned Co-ordinate Bench in the earlier proceeding in no unambiguous term held that permission was all along granted by the authorities. Therefore, such Course of action is not permissible under law inasmuch if the respondent are still confident that the judgements were obtained by misrepresentation, they are still having their remedy.



16. If the impugned proceeding is allowed to be proceeded, same will amount to allowing a proceeding, where the employer shall be permitted to revisit and re-determine the issue which is already been settled by the Coordinate Bench in its Judgment and Order dated 19.07.2021 and affirmed by the Hon'ble Division Bench in its Judgment and Order dated 02.09.2021.
17. An employee cannot be allowed to face such departmental proceedings which is ex facie illegal and there is no cause of action to initiate such departmental proceedings.
18. Now so far coming to the argument of the learned counsel for the respondents/employer that the petitioner ought to have applied for NOC prior to filing application from the department and the issue involved in the writ petition was regarding the NOC for joining after selection and therefore, the employer is within its jurisdiction to initiate a departmental proceeding also do not find favour of this Court.
19. The whole edifice of initiation of the impugned departmental proceeding, according to the learned counsel for the respondents/employer is the policy decision dated 11.12.2018.
20. The policy decision dated 11.12.2018 goes to show that necessary approval/permission is required from the employer when an employee seeks deputation and such permission is required to attend an interview. Failure on the part of seeking such approval/permission, the authorities were empowered to reject such deputation and the employer is also made liable for departmental proceedings.
21. There is no doubt that the employer under the policy decision dated

11.12.2018, is having power to insist on the employees to seek permission before seeking deputation or appearing for interview and employer is also empowered to initiate departmental proceeding on failure of an employee to seek such prior permission and even to reject the deputation. Having power is one thing and exercise of such power is another. As discussed hereinabove, from the materials available on record including the two judgments rendered relating to the same selection process for deputation, it is clear that the employer had already exercised its power under the policy decision by non issuing NOC to the petitioner, however, such action of the respondents have not only been interfered by this Court but also directed the employer to issue such NOC and even held that the employer is bias against the petitioner and their action of rejection itself is illegal.

22. That being so, even if it is held that there are two parts of seeking NOC, (i) prior to filing application and other (ii) after a selection is made for deputation, then also, when a Constitutional Court has already held that the rejection of NOC after selection itself was illegal and their action is biased towards the petitioner and that application was duly forwarded, the employer cannot be permitted at this stage, to once again raise another issue of not taking permission in derogation of policy decision dated 11.12.2018 prior to filing an application for deputation in respect of the same selection process.
23. Therefore, in the considered opinion of this Court, in the given facts of the present case and the legal determination made, the petitioner cannot be proceeded for alleged misconduct only on the basis of the fact that he has allegedly not sought permission before applying for deputation to NHAI



pursuant to advertisement dated 21.01.2020.

24. For the reasons detailed herein above, the present writ petition stands allowed by setting aside and quashing the initiation of departmental proceedings including the Memorandum of Charge bearing File No. 5(9)/2022-D (Lab) dated 29.09.2022.
25. This Court is constrained to observe from the conduct of the respondents/employer that they are hellbent to take departmental action involving the non grant of NOC for Deputation against the petitioner, even by disregarding the determination made by the learned Coordinate Bench and by the Hon'ble Division Bench and their conduct reaffirms that they are biased against the petitioner. They have failed to act as a model employer and in the process, have invited unnecessary litigation like the present one. Such type of conduct is not expected from the State litigant and therefore, in the considered opinion of this Court, a cost should be imposed upon the respondent/employer for this unnecessary litigation
26. Accordingly, the respondents are imposed with a cost of Rs. 50,000/- (Fifty Thousand only). Same be deposited before the Gauhati High Court Legal Aid Committee within a period of 4 (four) weeks from the delivery of this judgment. Registry shall communicate this order to the respondent authorities.

JUDGE

Comparing Assistant