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Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1385/97

New Delhi this the 31st day of August, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

Y.S. Rawat
S/o Shri Chander Singh Rawat
R/o A/M-7, Indrapuram,
Agra (U.P.)

...Applicant

(By Advocate: Mr.A.K.Behra)

Versus

1. Union of India
through the Secretary
Department of Culture,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi-110001.
2. The Director General
Archaeological Survey of India
Janpath,
New Delhi-110001.

...Respondents

(By Advocate: Shri S.M.Arif)

ORDER (Oral)

By Mr. Justice V. Rajagopala Reddy, VC (J)

The applicant seeks to assail an order dated 22.1.97 by which his promotion has been cancelled.

2. The brief facts are as follows:- The applicant has been working as Works Assistant Grade-III in the office of Chief Horticulturist, Agra. He was promoted as Works Assistant Grade-II and posted to the Head office at Delhi by order dated 15.11.96 with effect from the date of his actual joining to duties at HQrs. office. Thereafter, the applicant had made a representation dated 26.12.96 stating that as the academic session

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was going on and his children were studying, he would be permitted to avail the joining time till April 1997. To this, there was no response from the respondents. It is also brought to our notice that Dr. D.B. Guha, Chief Horticulturist has requested the Headquarters Office to post the applicant as Works Assistant at Mehtab Bagh, Agra. Failing to receive any reply from the respondents, the applicant requested the Head of the Unit by his letter dated 1.1.97 to relieve him and also to give him T.A. etc. He was, however, not relieved. Meanwhile the impugned order was passed on 22.1.97 cancelling the promotion on the ground that he had not accepted the promotion.

3. Learned counsel for the applicant submits that he could not immediately join at Headquarters as the children were studying and he, therefore, requested for joining time till April 1997. It is also submitted that since the applicant was not relieved by the Head of the Unit, he could not go and join without relieving orders. It is, however, stated by learned counsel for the respondents that he was obliged to join duty in the promoted post in accordance with the orders of promotion, failing which his promotion was liable to be cancelled and, therefore, there is no infirmity in the order.

4. This case appears to be ~~a very hard case.~~ ^{in my opinion.} The facts do not indicate that the applicant was negligent in compliance of the order of promotion. He could not immediately join at Headquarters in the promoted post in view of the studies of his

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children. His request, therefore, for retention till the end of the academic year cannot be said to be unjustified. It is seen from the proceedings of Dr. D.B. Guha that he was also handling the cash in the Garden branch Hqrs office of Chief Horticulturist, ASI, Agra and that he was attending to the budget estimates, audit paras and other important works assigned to him by the head of office and there was no suitable hand to reallocate the work. In the absence of the relieving order, it cannot be said that the applicant had not deliberately accepted the promotion order. The applicant was to join on 5.1.97, and on 1.1.97 he ~~had allowed~~ requested to relieve him, which was not ~~accepted~~. The facts of the case do not go to show that the applicant had deliberately rejected the promotion. In the circumstances, it has to held that the impugned order is arbitrary and violative of Article 14 and 16 of the Constitution of India.

5. In the result, the OA succeeds and the impugned order dated 22.1.1997 (Annexure-A-I) is quashed. The respondents are directed to promote the applicant to the post of Works Assistant Grade-II and fix his pay in the higher grade with effect from ~~15.1.96~~ ^{01.01.97}. Cost of Rs.3000/- (Rs.Three thousand only) shall also be paid by the respondents to the applicant.

Govindan S. Tampi
Member (A)
cc.

One day go on land
(V. Rajagopala Reddy)
Vice-Chairman (J)