

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/469/2020 & 510/2020

HYDERABAD, this the 23rd day of November, 2020

OA No. 21/469/2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

1. Mohd. Ayyub, S/o. Late Mohd. Yousuf,
Aged about 57 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.
2. A.V. Subba Rao, S/o. A.V. S.N. Murthy,
Aged about 54 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.
3. K.C.S. Phaneendra Kumar, S/o. K.V. Subba Rao,
Aged about 56 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.
4. M. Faiz Pasha, S/o. M.A. Khuddus,
Aged about 45 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.
5. P.V. Ravi Shankar, S/o. P.V. Govindan,
Aged about 50 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.
6. D. Rohini, W/o. Vamshidhar,
Aged about 44 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.
7. K. Ram Mohan Rao, S/o. K. Bujanga Rao,
Aged about 48 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.

8. S. Ravi Kumar, S/o.S. Venkateshwarlu,
Aged about 45 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.

9. M. Chandrasekhar, S/o.Late M. Lingaiah,
Aged about 50 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.

10. B. Shravan Kumar, S/o. B. Krishna Murthy,
Aged about 56 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.

11. G.Y. Venu Gopal, S/o. G. Yellaiah,
Aged about 54 years, Occ: Senior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.

...Applicants

(By Advocate : Dr. A. Raghu Kumar)

Vs.

1. Union of India rep by its
Secretary, Department of Posts,
Dak Bhavan, New Delhi – 110 001.

2. The Member (Personal),
Postal Board, Department of Posts,
Dak Bhavan, New Delhi – 110 001.

3. The Senior Deputy Director General (PAF),
PA Wing, Department of Posts, Dak Bhavan,
New Delhi – 110 001.

4. The Chief Postmaster General,
Telangana Circle, Abids, Hyderabad -1 .

5. The Chief Postmaster General,
AP Circle, Vijayawada – 13.

6. The General Manager (Finance),
Postal Accounts, AP Circle, Vijayawada – 13.

7. The Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.



8. Didigam Somesh, Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
9. Thentu Ravindra,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
10. Sandeep Kumar Yadav,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
11. Ms. Yogitha Sagar,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
12. Marella Srinivas,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
13. Koppaka Uma Shankar,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
14. Ch. Rushikesh,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
15. Smt. A.L. Prasanna,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
16. P. Naganjaneyulu,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
17. M. Soma Sekhara Naidu,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.



18. Smt. G. Yamini Krishna Veni,
Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
19. B. Ravi, Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.
20. K. Nagaraju, Occ: Senior Accountant,
O/o. Director of Accounts (Postal),
Telangana Circle, Hyderabad – 1.

....Respondents

(By Advocate : Smt K. Rajitha, Sr. CGSC)

OA/21/510/2020

1. S. Ramesh, S/o. Jangu,
Aged about 30 years, Occ: Junior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.
2. A. Srinivas, S/o. Late A. Chidananda,
Aged about 48 years, Occ: Junior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.
3. B. Kireeti, S/o. B. Kishan,
Aged about 30 years, Occ: Junior Accountant,
O/o. General Manager (Finance),
Postal Accounts, AP Circle, Stationed at Hyderabad.

...Applicants

(By Advocate : Dr. A. Raghu Kumar)

Vs.

1. Union of India rep by its
Secretary, Department of Posts,
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2. The Member (Personal),
Postal Board, Department of Posts,
Dak Bhavan, New Delhi – 110 001.



3. The Senior Deputy Director General (PAF), PA Wing, Department of Posts, Dak Bhavan, New Delhi – 110 001.
4. The Chief Postmaster General, Telangana Circle, Abids, Hyderabad -1 .
5. The Chief Postmaster General, AP Circle, Vijayawada – 13.
6. The General Manager (Finance), Postal Accounts, AP Circle, Vijayawada – 13.
7. The Director of Accounts (Postal), Telangana Circle, Hyderabad – 1.
8. Didigam Somesh, Occ: Senior Accountant, O/o. Director of Accounts (Postal), Telangana Circle, Hyderabad – 1.
9. Thentu Ravindra, Occ: Senior Accountant, O/o. Director of Accounts (Postal), Telangana Circle, Hyderabad – 1.
10. Sandeep Kumar Yadav, Occ: Senior Accountant, O/o. Director of Accounts (Postal), Telangana Circle, Hyderabad – 1.
11. P. Usha Rani, Occ: Junior Accountant, O/o. Director of Accounts (Postal), Telangana Circle, Hyderabad – 1.
12. Himanshu, Occ: Junior Accountant, O/o. Director of Accounts (Postal), Telangana Circle, Hyderabad – 1.
13. M. Viswanath, Occ: Junior Accountant, O/o. Director of Accounts (Postal), Telangana Circle, Hyderabad – 1.

....Respondents

(By Advocate : Sri T. Sanjay Reddy, representing T. Hanumantha Reddy, Sr. PC for CG)

COMMON ORDER (ORAL)
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through video conferencing:

The issues involved in both the OAs are common involving similar facts and same respondents. Therefore, both the OAs were heard together and a common order is passed.



2. The OAs have been filed in regard to the transfer of the applicants from Hyderabad Postal Accounts Office (for short “PAO”) to Vijayawada PAO consequent to the formation of a new PAO at Vijayawada. For the sake of convenience, references are made to the pleadings in OA No. 469/2020.

3. Brief facts of the case are that the applicants joined the respondents’ organization as Group-D/ LDC/ Junior Accountants. They were promoted as Senior Accountants in the year 2005-2011, with a total length of service of around 20 years and they belong to the age group of 40 to 50 years. Junior Accountants on rendering 3 years of regular service are eligible to be promoted as Senior Accountants and the promotion has to be considered on the 1st of January of each year, as per DOPT memo dt. 08.05.2017. Applicants allege that as per cited DOPT memo, the private respondents are to be promoted on 01.01.2020 as Senior Accountants, whereas they were promoted on 20.3.2020 to enable them to be retained at Hyderabad PAO. The reason is that the official respondents took a decision to bifurcate the composite PAO on 13.11.2017 proposing to form a separate PAO for the residual State of Andhra Pradesh at Vijayawada. Options were called in 2017/2019 to opt for either of the PAOs viz. Hyderabad or Vijayawada and

the applicants opted for Hyderabad PAO. As the situation was unfolding, a DPC was constituted on 17.12.2019 to promote Junior Accountants as Senior Accountants w.e.f. 01.01.2020 as per Office Note dt. 17.12.2019. The private respondents made a representation on 18.12.2019 to consider them for promotions as Senior Accountant for Hyderabad PAO vacancies. The respondents decided to first finalize the bifurcation of staff and then deal with promotion of Junior Accountants as per the minutes circulated on 18.12.2019. Applicants claim that based on the private respondents' representations, the official respondents prepared an Office Note dt. 6.1.2020 (A-16) and decided to postpone their promotions on the ground that they belong to Hyderabad PAO of Telangana Circle, as seniors in the Junior Accountant cadre, ignoring the request of the applicants for Hyderabad PAO. As a result, DPC which was to meet on 28.01.2020 was postponed as per Para 11 of the Minutes. The decision was to consider promotions of the private respondents after the date of bifurcation of the PAO office which was effected on 06.03.2020 and accordingly, DPC met resulting in the promotion of the private respondents as Senior Accountants on 20.03.2020. Had the private respondents been promoted on 1.1.2020 then they would have become juniors to the applicants in the Senior Accountant Cadre and would have to be naturally transferred to Vijayawada. Instead of doing so, respondents have preferred the private respondents by postponing their promotions to a post bifurcation date and thereby eventually forcing the transfer of the applicants to Vijayawada PAO. Aggrieved, OA has been filed.



4. The contentions of the applicants are that the respondents have deliberately conducted DPC for the private respondents after the bifurcation of staff on 06.03.2020 in order to help the private respondents with retention at Hyderabad PAO. The action to delay the DPC is against the rules which prescribe that promotions have to be effected on the first of January of the year. In the past, while bifurcating PAO offices like Ahmedabad, Nagpur, Raipur, Kapurtala, Jammu etc, officials were sent on deputation without extra remuneration till the vacancies in the new offices were filled up through regular appointments. The respondents could have followed the same procedure. DDG Rajesh Kumar who dealt with the issue also recommended the same solution. Respondents, in fact have allotted 67 Junior Accountants who have been regularly selected through SSC to the newly created PAO office on 05.03.2020 and 16.03.2020. Therefore, there was no urgency to allot additional staff immediately to the Vijayawada PAO. Moreover, Postal Directorate vide order dt. 15.11.2019 directed to depute 32 junior most Senior Accounts to Vijayawada on deputation without any deputation allowance for a period of one year and another batch of officials to replace them after one year. The said order has not been withdrawn. The 32 officials who have been deputed honoured the order with a hope that they will come back to Telangana Circle. The applicants represented not to transfer them on the basis of the principle of seniority, but on the basis of options made and that the Postal Directorate also took the same view. Taking representations from the private respondent and promoting them with effect from 20.03.2020 is arbitrary and discriminative. Staff associations represented to effect promotions to all cadres before 31.12.2020 and the Postal Directorate also directed to complete the exercise



of promotions before 01.01.2020 which was uncared for. The Chief Post Masters General, Committee formed in regard to staff distribution consequent to bifurcation of the composite State of A.P, in its meeting on 19.02.2020 decided that the cutoff date for a final bifurcation of staff shall be 01.03.2020 and the respondents promoted the private respondents on 20.03.2020. Respondents directing the applicants to get relieved on 01.06.2020 to report at Vijayawada when the lockdown was prevalent, is harsh as there were no proper facilities in regard to transport, accommodation, food, etc. Issuing transfer orders during severe corona pandemic situation is indicative of the vindictive attitude of the respondents as well as coercive nature of the decision. Basic principles of right to life are violated since during the pandemic crossing the border of a state would entail quarantine for 14 days and consequent hassles. In fact, it would not be farfetched to affirm that the decision to issue transfer orders during the period when Corona was rampant, is penal in nature. The conduct of the 6th respondent in respect of handling the bifurcation issue has been adversely commented by Postal Directorate on many occasions.

When the matter came up for admission on 19.08.2020, as an interim measure, the respondents were directed to allow the applicants in OA 469/2020 to attend to the work of the Accounts Wing of AP Postal Circle from Hyderabad by making appropriate and necessary arrangements as is required to allow smooth work flow in all respects. Similar interim order was also passed in OA No. 510/2020 on 28.08.2020.

5. Respondents in their reply statement state that the Postal Directorate issued an order on 10.05.2019 to create a Postal Accounts Office in the

newly formed Andhra Pradesh Circle at Vijayawada. The norms for staff bifurcation were decided wherein the staff needed would be allotted in order of priority, firstly from those who volunteer from the parent Postal Accounts Office, secondly from those who opt from other PAOs and thirdly by transferring junior most officials in the respective cadre from the parent office in public interest. Based on the order dt. 10.05.2019, Bifurcation Committee was formed and in accordance with the recommendations made, OM dt. 22.08.2019 was issued earmarking the officials to be transferred to Vijayawada PAO and retained at Hyderabad PAO. However, Postal Directorate vide order dt. 26.08.2019 kept the bifurcation order of 22.8.2019 in abeyance. Nevertheless, PAO at Vijayawada started functioning and to meet the acute shortage Postal Directorate directed to depute 32 junior most Senior/ Junior Accountants to PAO Vijayawada to work for one year without any remuneration, which was complied with. Thereafter, CPMGs committee was constituted to formulate the guidelines of bifurcation, which met on 18.12.2019 and recommended proportionate distribution of sanctioned posts, men in position as well as vacancies between the two Circles depending upon the number of Head Post Offices in the respective Circle. Vacant posts were thus accordingly distributed between the 2 Circles. Office of GM(F), Telangana received representations from the senior most Junior Accounts, who were allotted to Telangana Circle as per order dt. 22.08.2019, to be granted promotion in PAO, Hyderabad only. The bifurcation of staff was essential to arrive at the vacancies, for causing promotions and also the category of vacancies in terms of DR, DE, seniority cum fitness, roster points etc. Till the actual bifurcation, surplus staff had to be accommodated at PAO, Hyderabad.



Member (Personnel) held a meeting on 28.01.2020 on the subject, wherein it was decided to conduct DPC based on the proportionate distribution of staff following the bifurcation order issued by the Committee of CPMGs.

After the bifurcation on 6.3.2020, vacancies were arrived at and the DPC constituted thereafter met and recommended promotion of Junior Accountants allotted to PAO Hyderabad to the extent of vacant posts.

Officials promoted took charge accordingly. The vacancies could be decided only after staff bifurcation was effected on 06.03.2020 after taking into consideration relaxations granted in respect of bifurcation to certain categories of staff by the CPMGs Committee constituted on 14.02.2020.

Respondents emphasize that it was not proper to effect promotions w.e.f. 01.01.2020 of private respondents with retrospective effect since it will create seniority issues. Promotion of the Junior Accountants as Senior Accountants was issued on 20.03.2020 with the approval of CPMG, Telangana Circle. Applicants filed OA 284/2020 on the same issue and in response to the directions of the Tribunal, a detailed speaking order was issued on 11.08.2020. The allocation of staff to Vijayawada on temporary basis will disrupt the work as there would be no continuity in the work disposal.

DOPT Memo dt. 08.5.2017 does state that candidates who are eligible as on 01.01.2020 are to be considered by DPC for promotion. The report of Mr. Rajeev Kumar, DDG (F & PAA) was examined in the meeting conducted by Member (P) on 22.01.2020 and alternative arrangements made. Applicants comparing the transfer of officers working in other Departments like AG office and the bifurcation of the PAOs in the past, is not relevant because of the different rules and circumstances determining bifurcation in different offices and at different intervals of



time. There has been no mala fide in promoting the private respondents. Indeed while implementing the bifurcation order dt. 06.03.2020, relaxations were extended in respect of employees who are physically handicapped, single parent, terminal illness, retiring within 2 years, etc. PAO, Vijayawada started working from 17.06.2019 and the claim of the applicants that the pandemic would cause lot of difficulties in relocating themselves on transfer to Vijayawada is incorrect since restrictions have been lifted and transport facilities have been largely restored. Posting of the applicants to Vijayawada PAO of AP Circle is in public interest. The Postal Administrative Circle was bifurcated in 2017 on similar lines.

Applicants filed a rejoinder stating that the bifurcation order dt. 22.08.2019 was kept in abeyance vide order dt. 26.08.2019 by the Postal Directorate. The abeyance order has not been reviewed and no permission was granted to the respondents 4, 5 & 6 to take up further process of allotment of staff. Promotions have to be necessarily effected on 1st of January as per the statutory rules. Therefore, there has been a grave violation of the rules in regard to promotion of the private respondents w.e.f. 20.03.2020. Such action of the local authorities requires approval of the Postal Directorate which they did not obtain. In fact, the Postal Directorate on 10.08.2020 issued a letter directing the 6th respondent, to review the bifurcation order and also the promotions of the private respondents after consulting the Committee of the CPMGs and then arrive at a decision. This order of the Postal Directorate dt.10.08.2020 was ignored. The respondents in order to minimize the grievance, at least should have sent the applicants on deputation as was done in the past in respect of



other PAOs when bifurcation took place. Applicants contend that the action of the respondents is arbitrary, illegal and unreasonable.

Respondents filed MA 370 of 2020 in OA 469/2020 to vacate the interim stay granted and also submitted written submissions wherein the submissions made are mostly those made in the reply stated. We have gone through them carefully and noted the contents.



6. Heard both the counsel and perused the pleadings on record.
7. I. It is not under dispute that the final bifurcation of the Staff pursuant to the decision of bifurcation of the composite PAO was implemented on 6.3.2020. The dispute is that the respondents in particular the local authorities arrayed as respondents from 4 to 7, have created unjustifiable circumstances to postpone the promotion of the private respondents as Senior Accountants to 20.3.2020, a date subsequent to the bifurcation date of 6.3.2020, instead of 1.1.2020 as per rules, to enable them to be retained at Hyderabad PAO. The applicants working as Senior Accountants, are aggrieved that if the private respondents were to be promoted on 1.1.2020 i.e. before the bifurcation of the staff on 6.3.2020, the private respondents would become junior to the applicants in the Senior Accountant cadre and would have to be naturally allotted to Vijayawada PAO as per bifurcation norms and the applicants retained at Hyderabad PAO. More so when the applicants were working as Senior Accountants in the Postal Accounts Office, of the composite PAO of A.P. Postal Circle, with a total length of service of around 20 years.

II. Briefly, to recapitulate the background of the dispute, respondents, consequent to the bifurcation of the composite State of A.P, took a decision to bifurcate the Postal Accounts Office of the composite A.P Postal circle on 13.11.2017 and create a PAO for the newly formed A.P Postal Circle at Vijayawada, to look after the accounts work of the offices located in the successor State of A.P. In pursuance of the said decision the Sr. DDG (PAF), PA wing of the Postal Directorate vide order dated 10.5.2019 directed the process and modalities to be followed for establishment of the two PAOs namely Vijayawada and Telangana with an approximate staff ratio of 61:39 between the two. As per Para 4.3 of the cited order the senior accountant and junior accountant posts in Vijayawada PAO are to be filled up in the following order of priority:

- i. Volunteers from PAO Hyderabad
- ii. Volunteers from other PAOs of the respondents Organization located all over the country,
- iii. Transfer of junior most officials from the respective cadre in public interest.
- iv. Vacant posts and men in position to be apportioned on proportionate basis.

III. A bifurcation committee was formed to implement the bifurcation of the PAO into PAO Hyderabad and PAO Vijayawada. Respondents claim that based on the recommendations of the bifurcation committee an order was issued on 22.8.2019. The letter head of the order dated 22.8.2019 reads as O/o. General Manager (Finance), Postal Accounts Office, Dak Sadan, Hyderabad. The 1st para of the memo dated 22.8.2019 states as under:



As per bifurcation memo of Postal Directorate dated 10.5.2019 there shall be separate Postal Accounts Offices for A.P circle and Telangana Circle called as "Office of the General Manager (Finance), Postal Accounts Office, A.P Circle and Office of the Director of Accounts (Postal), Postal Accounts Office, Telangana Circle, Hyderabad.

Each page of the memo dated 22.8.2019 was signed by the 6th respondent, as General Manager (Finance) Postal Accounts Office, A.P. Circle, Hyderabad and the final page signed as General Manager (Finance) Postal Accounts Office, Dak Sadan, Hyderabad. We rarely come across important orders like bifurcation memos signed with two different designations in the same memo, by the same officer in a Govt. of India Organization. The designation of General Manager (Finance), Postal Accounts Office, Dak Sadan does not exist with the issue of the bifurcation memo on 10.5.2020, which has a statutory backing. Hence, the very authenticity of the memo dated 22.8.2019 is questionable because there is no post of General Manager, Postal Accounts Office, Dak Sadan, Hyderabad and that the memo has been signed by the same person with two different designations, one existing and the other non existing. Hence the document dated 22.8.2019 is legally invalid for reasons stated.

IV. The reason for the 6th respondent signing with 2 designations is found in the note of the Sr. DDG, Postal Accounts Finance, (page 223 of OA) of the Postal Directorate, in regard to the manner of bifurcation of the PAO, as under:

"2. The cadre controlling authority of IP & TAFS had transferred out Sri G. Manohar from Hyderabad to Vijayawada quite some time back but Sri G. Manohar Rao still operates as GM (F) PAO Hyderabad from Hyderabad without allowing DAP Telangana to function properly.

3. xxx No action was taken by the GM (F) PAO Vijayawada till the last week of August, but on insistence Sri Manohar Rao has issued an order as GM (F) Hyderabad by defying the order issued by the cadre controlling authority and executive order issued by DOP, Headquarters to implement the bifurcation process in a peaceful manner. Sri Manohar Rao should

have taken charge as GM (F) PAO Vijayawada long back but avoided to take charge of Vijayawada office and functions as GM (PAF) of both the circles.”

The comments made against the 6th respondent are serious, as he is a senior officer of the respondents' organization. It is shocking to note that the orders of the Postal Directorate in regard to bifurcation order applicable to the 6th respondent has been defied. The 6th respondent was expected to immediately take over as GM, Finance, A.P and set an example for the employees he is administering to follow. Therefore it is paradoxical to note that an officer who does not himself abide by the bifurcation memo issues a bifurcation memo for the staff below to abide by and that too with two designations, of which one does not exist, never heard of in administrative parlance. Nevertheless, the memo dated 22.8.2019 issued by the 6th respondent, was set aside by the Postal Directorate on 26.8.2019 based on the note of the Sr. DDG, PAF of Postal Directorate note cited supra, wherein it was noted as under:

4. It has been reported by the Unions that he has called police to his office on 23.8.2019 after issuing an order on 22.8.2019 by late evening. It has been reported by the unions that Sri Manohar Rao had issued instructions treating the officials as to be deemed relieved with immediate effect and insisted the staff to assume the charge in their charge in their respective PAOs by 23.8.2019 F/N which is practically impossible as the staff allotted to Vijayawada cannot move within the shortest possible time without allowing any movement time/joining time after the issue of the order.

xxx He has terrorized the staff at PAO Hyderabad.

Indeed it is disturbing to note that a sensitive issue like bifurcation was dealt in a most insensitive way by issuing a memo of ordering deemed relief and to take charge within a day though the employees are entitled for joining time. Involving Police in staff matters is taken in exceptional



circumstances where the situation is anticipated to go out of control. Staff cannot be administered by terrorizing them.

While keeping the order of the 6th respondent in abeyance the Postal Directorate in its letter dated 26.8.2019 has directed as follows:



The order issued by Sri G. Manohar Rao as GM (PAF), Hyderabad on 22.8.2019 may be kept in abeyance specifically para 7 and para 10 may not be implemented until further directions from the Hqts.

Para 7 relates to transfer of Senior Accountants, Junior Accountants, LDC, Stenographers etc and para 10 about deemed relief with immediate effect of the staff transferred from Hyderabad PAO to Vijayawada PAO.

V. In the backdrop of the above circumstances, the transfer of the applicants to Vijayawada PAO was done as a part of the bifurcation process vide impugned memos 06.03.2020/29.05.2020. Challenging the transfer order, applicants filed OA 284/2020, which was disposed on 17.6.2020 directing respondents to dispose of the representation. Accordingly, the representations submitted were rejected by issuing an order on 11.8.2020, where in the following comments of the 7th respondent gain significance:

J. xxxx "Promotion of all eligible candidates in PAO Hyderabad and PAO Vijayawada cannot be finalized till the issue of staff bifurcation is settled. Promotion orders will be issued after the matter is discussed with Directorate."

K. It is also relevant here to note that any further promotions/appointments etc in any cadre will change the seniority list and staff bifurcation at later date, might create problem for few, who are sufficiently senior to be allocated to PAO Hyderabad by May 2020 but due to delay in this staff bifurcation, they might get promoted and become junior in their next cadre and as a result of which might get allocated to PAO Vijayawada against his willingness given. It is also felt that temporary staff allocation to PAO Vijayawada might disrupt the continuity of PAO Vijayawada.

L xxx Minutes of the meeting held under the Chairmanship of Member Personal and attended by on 28.01.2020

xxxxxx It was agreed that promotions will be issued after conducting review DPC for respective PAOs, keeping in view proportionate allocation/distribution of staff keeping in view and staff bifurcation orders issued by the Committee of CPMGs.



The first observation at para J, is contrary to Postal Directorate instructions dated 13.12.2019, where in it was directed that the 6th respondent shall process and approve all promotions of both the PAO offices by 25.12.2019. The relevant portion of the letter is extracted hereunder:

GM (F) A.P. at Vijayawada may process and approve all promotion cases of both the offices along with DA (P) Telangana circle, Hyderabad. This mechanism may be adopted by G.M (F), A.P Circle, Vijayawada and DA (P), Telangana Circle, Hyderabad until further orders.

Status report by 25th Dec 2019 may invariably also be submitted to this office.

The direction was clear that the promotions are to be effected by 25.12.2019. It was not mentioned that the promotions would have to be granted after the bifurcation process. Therefore, the contention made that promotions will be issued after discussion with Directorate is misplaced since Directorate has already issued orders to go ahead with the promotions.

VI. Even the staff associations have been agitating about grant of promotion to the Senior Accountant cadre by 1.1.2020 as well as promotion to other cadres vide their letter dated 16.1.2020. The relevant portion is extracted hereunder:

It is to bring to your notice that apart from the above, the promotions to Senior Accountant Cadre for eligible Junior Accountants, for which the crucial date is 1st of January also not given, It is very disappointing that even the MACPs, which are purely personal and no vacancy is required are also not given.

xxx This association expects a positive action from the Administration to grant promotions for MTS to LDC and LDC to JA with effect from 31.12.2019 and JA to SA with effect from 1.1.2020.

It is also to inform that if the promotions are not given by 17.1.2020 this Association would be compelled to jump in to protest action from next week



The crucial aspect raised by the staff unions and the applicants is that the crucial date for promotion is 1st January to effect promotion from Junior Accountant to Senior Accountant. The crucial date for reckoning promotion has been changed to 1st January by DOPT vide memo dated 8.5.2017, which is extracted hereunder:

5. In order to streamline the process of timely convening of DPCs, it has been now decided that henceforth, the following changes may be effected in the DPC procedure in partial modification of this Department OM No. 22011/5/86-Estt.(D) dated 10.4.89, OM No. 22011/9/98-Estt.(D) dated 16.6.2000, OM No. 22011/9/98-Estt.(D) dated 8.9.98 and OM No. 22011/6/2013- Estt.(D) dated 28.5.2014(crucial date of eligibility):-

(i) The vacancy year may be shifted to Calendar Year from the year 2018 onwards, wherever the financial year based vacancy year being followed now.

(ii) The crucial date of eligibility will be 1st of January of the Vacancy year w.e.f. 2019.

(iii) The APARs for five years preceding T-2nd year may be taken as reckoning APARs, i.e. for the vacancy year 2019 (January 2019 to December, 2019), the reckoning APARs shall be 2016-17, 2015-16, 2014-15, 2013-14 and 2012-13.

(iv) The year of 2018 being the transitional year, the vacancy period shall be from 1st April 2018 to 31st December, 2018. The reckoning APARs for this vacancy year shall be 2015-16, 2014-15, 2013-14, 2012-13 and 2011-12. The crucial date of eligibility shall be 1st April, 2018 for the transitional year.

6. Ministries/Departments are requested to give wide circulation to these instructions for guidance in the matter and also to ensure strict adherence to the time-schedule prescribed as per the 'Model Calendar' for DPCs.

The order of DOPT 8.5.2017 was further clarified on 23rd March, 2018 stating that it supersedes all other OMIs issued on the subject and that OM dated 8.5.2017 has to be strictly followed, as under:

2. A reference has been received whether the OM dated 28.1.2015 and the above mentioned OM dated 8.5.2017 will co-exist. The matter has been examined and it has been decided that the OM dated 8.5.2017 will supersede all the instructions issued on the subject of Model Calendar for Departmental Promotion Committees, including the OM dated 28.1.2015. In other words, the instructions issued vide OM dated 8.5.2017 are applicable in all cases, i.e., whether or not it requires DPC to be convened in UPSC or internally within the Departments / Ministries.

VII. The private respondents were eligible to be promoted as Senior Accountants w.e.f. 1.1.2020 whereas they were promoted by the local authorities w.e.f. 20.3.2020 violating the DOPT instructions cited above. Hence cannot be upheld. An order issued in contravention of DOPT instructions lack validity for the reason that DOPT instructions are binding for the respondents and they cannot disregard them, without obtaining any permission from DOPT for any deviation, since it is the nodal Ministry in regard to Personnel Matters as per Government of India (Allocation of Business) Rules, framed in exercise of powers conferred under clause (3) of Article 77 of the Constitution. They are statutory in nature which cannot be violated by local authorities namely the 4th, 5th, 6th and the 7th respondent respectively.

VIII. Against the background of the above developments, the GM, Finance A.P Circle received representations from the private respondents dated 18.12.2019 (A-X), who were senior most Junior Accountants due for promotion as Sr. Accountants requesting to consider promotion to the vacancies that arose in PAO Telangana since they were allotted to the said PAO on 22.8.2019. Primarily the local authorities who are arrayed as respondents from 4th to the 7th in the OA should not have considered the representations of the private respondents since the very order of 22.8.2019 distributing the staff was set aside by the Postal Directorate. The private respondents have no *locus standi* to make a claim that they should have to be considered for vacancies of Telangana PAO when their very allocation to Telangana has been kept in abeyance by the Postal Directorate. Besides, respondents claim that they have received representations on 18.3.2020

from the private respondents before the conduct of the DPC in March 2020, whereas from the records it is seen that they have also received representations even on 18.12.2019 (Annexure XVII), which in a way steered the entire controversy. This finding is substantiated by the fact that the DPC note dated 17.12.2019 (A-IX) processed by the 6th & 7th respondents contains an endorsement that there are 170 vacancies available in the senior accountant cadre relating to the combined AP circle as on 30.12.2019. DPC met and approved 16 junior accountants for promotion to the cadre of Senior Accountants w.e.f. 1.1.2020. The minutes of the meeting were put up to the competent authority where in it was mentioned that Postal Directorate vide letter dated 13.12.2019 directed to process and approve all promotions pertaining to both offices and submit status report by 25th Dec 2019 in variably. However, as per para 11 of minutes of the meeting held on 18.12.2019 in Dak Sadan, Hyderabad Telangana Circle the promotion of Group C cadre it was decided to consider promotions after discussions with Directorate by 31.1.2020. Hence minutes of the DPC dated 31.12.2019 were kept on hold. The CPMGs meeting which was held on 18.12.2019 (A-XI) has recorded that as per Postal Directorate orders of 10.5.2019, two PAOs are created and vacant posts are also distributed to the PAOs of the A.P. and Telangana States proportionately. The promotions were to be issued as per vacancies available in respective State. The bifurcation of the Staff is essential so that eligible candidates may be promoted in clearly defined vacancies in the respective PAOs/Circles. Hence decision in regard to promotion will be taken after discussions with the Postal Directorate.



IX. On one hand, respondents have admitted in the reply statement that the DOPT memo dated 8.5.2017 has instructed that the promotions are to be effected from 1st January and they have recorded in the DPC note that the Postal Directorate has ordered all promotions in different cadres are to be granted and status report submitted by 25.12.2019. On the other hand, they state that as per CPMGs meeting on 18.12.2019, the promotions shall be taken up after discussing with the Postal Directorate. It is difficult to appreciate that when it has been made clear by the Postal Directorate to ensure promotions by 25.12.2019, where was the necessity for the local authorities i.e. respondents 4 to 7, which include the CPMGs to discuss with Postal Directorate. The decision to consult the Postal Directorate cannot be termed as rational, reasonable, objective or was there application of mind to attend to an issue where the Postal Directorate has spelt out as to what should be done and the DOPT memo of 8.5.2017 has clarified as to how it should be done. More so, in the context of the issue burning with Staff associations on the war path in regard to promotions. Rationality, reasonableness and application of mind to take a decision are the prerequisites to take a proper decision as held by the Hon'ble Supreme Court in *Asha Sharma v. Chandigarh Admn.*, (2011) 10 SCC 86 : (2012) 1 SCC (L&S) 354 at page 95

“Rationality, reasonableness, objectivity and application of mind are some of the prerequisites of proper decision making. The concept of transparency in the decision-making process of the State has also become an essential part of our administrative law.”

Therefore, the decision of the respondents to effect promotions of the Private respondents on 20.3.2020 instead of 1.1.2020 is violative of the Postal Directorate instructions and the DOPT orders dated 8.5.2017. Nor

was the decision to approach Postal Directorate in regard to promotions necessary. Therefore the contention submitted as para J of the speaking order dated 11.8.2020 is not maintainable.



X. The second important aspect raised in the speaking order is granting retrospective promotions to the private respondents will create seniority issues and allotting staff to PAO Vijayawada on a temporary basis will cause dislocation of work. The submission made gives an impression that the local authorities are influenced by the misgiving that they are the rule makers and that they can create a rule to suit a situation. Such a misgiving cannot be upheld since the policy laying body for the respondents is the Postal Directorate, which has to follow the instructions of DOPT, the nodal Ministry in Personnel matters as per Govt. of India Business Allocation Rules. The local authorities have no authority in matters of deciding the crucial date for promotion and hence, their action being against Rules is irregular and arbitrary. As per legal principles laid down by Hon'ble Supreme Court in a cornucopia of cases, action in matters covered by rules has to be taken as per rules, as under.

*The Hon'ble Supreme Court in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “Action in respect of matters covered by rules should be regulated by rules”.*

*Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.”*

In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “the court cannot de hors rules”.

Therefore, the action of the local authorities in promoting the private respondents on 20.3.2020 instead of 1.1.2020 is against the legal principles stated supra.

The process to be adopted was to conduct the DPC as per the time schedule fixed by the DOPT and promote those eligible. Promotion of the officials cannot be delayed in the name of the bifurcation since it would adversely affect their future career opportunities. Respondents did not cite any statutory rule which prescribes that promotions have to be delayed because of bifurcation. Promotions and bifurcation are two different issues. They have no correlation what so ever. Respondents have mixed up the same and hence the issue has cropped up. The normal process of promotions was to go ahead as per the schedule dates and promotions granted. Once bifurcation is decided, whenever it may be, then the apt course was to apply the bifurcation formula and distribute the cadres accordingly. The Postal Directorate has directed to conduct the DPC to different cadres and submit status report by 25.12.2019 and the Staff unions were up in arms that the promotions from JA to SA has to w.e.f. 1.1.2020 as referred to in the preceding paras. Yet the local authorities' response was not in accordance with rules or were they complying with the Postal Directorate instructions as was repeatedly stressed in the reply statement.

XI. *Defacto*, in order to ensure proper bifurcation of the Postal Accounts Office, CPMGs committee was constituted by the competent authority. The said committee met on 18.12.2019 and formulated guidelines wherein it was specified that the distribution of sanctioned posts, men in position, existing vacancies will be proportionately distributed with reference to the number of Head Post Offices located in each of the Postal Circle. On the creation of the Postal Accounts Office, vacant posts were



straightaway distributed among the two Postal Circles. The vacant posts numbering 170 were available in the senior accountant cadre in respect of the composite circle for the local authorities to grant promotion as per DPC note cited supra. Member (P) of the Postal Services Board also held a meeting on 25.02.2020 wherein it was decided to conduct review DPC based on the proportionate allocation/ distribution of staff in accordance with the bifurcation order issued keeping in view the recommendations of the committee of the CPMGs. The Member (P) observations were not prohibitive in respect of conduct of DPC for available vacancies as on 1.1.2020, and neither they can be, in view of the DOPT orders cited. Another CPMG Committee constituted by the Postal Directorate on 14.2.2020 met on 19.2.2020 (A- XXVIII) and decided to exempt employees who are physically handicapped, retiring in 2 years, single parent, having terminal illness like cancer, spouse cases, etc from bifurcation. Besides, the Committee made a specific recommendation at para 3 which is reproduced as under:

The committee discussed the various options and decided to take 01.03.2020 as the cut off date to consider the working strength and vacancies for issuing final bifurcation orders. Both the PAOs are instructed to arrive at the statistical information as on 01.03.2020 and put to the committee in the next meeting.

Thus, from the above details it is evident the CPMGs committee wanted only a status report on the statistical report as on 1.3.2020 for issuing final bifurcation orders. Hence, the submission made at para (l) of the Speaking Order dt.11.08.2020 stands invalid. As was observed in the previous paras, bifurcation and promotions are not interdependent. Promotion is an important milestone in an employee's career and if delayed it would have a cascading effect in the remaining part of the career of the applicant. The



local authorities have no right to deny promotions on dates other than the dates prescribed under rules by DOPT. If at all they wanted to grant promotions belatedly to the private respondents, the right course was to approach DOPT through Postal Directorate for relaxation of the crucial date, if required. The local authorities have not made such an effort whatsoever. Hence, it was irregular on part of the respondents 4, 6 & 7 to promote the private respondents w.e.f. 20.3.2020 after the bifurcation of the circle on 6.3.2020. Thus the contention made at para (k) cited above, of the speaking order by the respondents, that any promotion given w.e.f. 1.1.2020 before bifurcation will create issues of seniority is untenable. When a decision is wrong it creates issues and not otherwise. As in the instant case since the respondents have violated the DOPT direction in respect of the date of promotion, the issue has cropped up. Had they followed the DOPT direction the issue would not have arisen at all.

XII. On the contrary, it has given an impression that the private respondents have been helped by considering their promotions on 20.3.2020, which is violative of the DOPT memo dated 8.5.2017. This is not permitted under law. The respondents are to be neutral. They should not take sides. Instead, they should apply the rules strictly and adhere to them as observed by the Hon'ble Apex Court in Supreme Court of India in **S.I. Rooplal & Anr. vs Lt. Governor Through Chief Secretary, Delhi & Ors** on 14 December, 1999 in Appeal (Civil) No. 5363-64 of 1997, as under:

*Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an *amicus curiae* by assisting the judicial forum*



to a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned.



The respondents have given the impression that they are pursuing the cause of the private respondents by trying to defend their action against DOPT order and against Postal Directorate orders, as well as the manner in which they have tried to defy the interim order of this Tribunal issued on 19.8.2020. It is not out place to mention that when the vacancies were available, the private respondents should have been promoted as on 1.1.2020 and allow the bifurcation orders be applied as and when the bifurcation is decided to be implemented. The local authorities are not empowered to imagine an imaginary issue and create an issue on the ground when it was not required. There was no issue as to what date has to be taken as the cut off date for granting promotion to the private respondents as Senior Accountants. The DOPT order 8.5.2017 is crystal clear on this aspect. Vacancies were available in Senior Accountant cadre. It was not for the local authorities to break the rules and protect private respondents interests, by imagining their difficulties, if they were promoted by 1.1.2020. The private respondents did represent to promote them against Telangana PAO vacancies and so too the applicants to retain them in Telangana. Local authorities approach should have been fair and balanced by just adhering to the rules and take a decision which they did not. In the process they have created an issue which did not even exist. Thus the contention to avoid seniority issues made at para (k) of the speaking order

cited, claiming that the private respondents are senior in Junior Accountant cadre and that they have been allotted to PAO, Telangana vide order dated 22.8.2019, is invalid, since allocation order cited was kept in abeyance by Postal Directorate on 26.8.2029 nor is it backed by rules. In other words, private respondents were not part of the Telangana Circle as was attempted to be portrayed by the local authorities and yet considering the said ground, delaying their promotions to the senior accountant grade against rules upto 20.3.2020 i.e. till the bifurcation decision was taken on 6.3.2020, is unacceptable since it is unfair and unreasonable.

XIII. Further, it was also contended that temporary allocation of staff would dislocate work at PAO Vijayawada and would not provide for continuity is not supported by the decisions of the Postal Directorate, who have been taking timely measures to ensure an issue less bifurcation to the extent feasible. Indeed, Postal Directorate has ordered that the junior most from the cadre of Senior Accountants and Junior Accountants, numbering 32 vide letter 15.11.2019 (A-XXV) are to be sent on deputation without any extra remuneration to the newly formed PAO office at Vijayawada, in order to ensure that there is no dislocation of work. The relevant paras read as under:

1. *Necessary action may immediately be initiated to send 32 junior most Sr. Accountants to work at PAO Vijayawada for a period of one year without any extra remuneration/deputation allowance etc. This action needs to be completed within 10 days period with intimating compliance to this office.*
2. *After completion of one year, the Sr. Accountants ordered vide Sr. No.1 shall be repatriated back to residual offices left at Hyderabad and simultaneously, another batch following the same process will be sent to PAO Vijayawada.*
3. *In case during the period, dossiers are received from SSC regular officials will be posted at Vijayawada and appropriate number of officials will be sent back to PAO Hyderabad.*

This order too has not been withdrawn by the Postal Directorate, as is evidenced from the material papers on record. The measure initiated has provided for continuity by directing that after one year another batch should be sent to replace the previous one and that too with no extra remuneration.



It is not explained in the reply statement as to whether this measure was followed or not followed, as the order has not been rescinded. If followed the transfer of applicants would not have arisen. The order indeed states that the said arrangement will continue till the staff required at Vijayawada PAO would be provided through Staff Selection Commission.

In this direction the Postal Directorate has taken steps to allot 67 JAs recruited by SSC to Vijayawada PAO. 23 of them are reported to have joined and to fill up the vacant posts, SSC has been approached and in due course, they would be filled up. Therefore, the claim of the local authorities that the work would be dislocated by temporary measures is not in the realm of reason, since it was for the 6th and 7th respondents to manage work when permission was granted for engaging staff on deputation with no extra remuneration. Instead of following Postal Directorate orders they have created issues which indeed would become the basis for work dislocation because of staff dissatisfaction and tendency to go on leave when the going becomes tough for them. In addition, uncalled for threats of agitations by the staff unions, as seen in the instant case.

XIV. When the 6th respondent issued the order dated 22.8.2019 allocating the staff to both the PAOs, there was an uproar amongst the staff and the issue was examined in Postal Directorate wherein it was decided to

hold the order dated 22.8.2019 and also direct the DDG (F & PAA) to visit the PAOs. The important points dealt in the visit report in regard to the dispute on hand are as under:



2. *xxx All the issues were to be dealt with caution and in a phased and peaceful manner avoiding discontentment and any sort of unrest. In several formal and verbal communications to the head of the erstwhile PAO Hyderabad unit, instructions were not adhered to properly and some time arbitrariness was also observed.*

3. *Even GM (Finance) of the erstwhile PAO has not joined in the new office of Vijayawada in defiance of the DOT's order, declaring immediate shifting of his headquarter, duly vetted by the DOP since two and half months. This is a very serious issue need to be properly addressed. He should be asked to explain this defiance which is liable to disciplinary proceedings. All issues regarding manpower and space can only be addressed when the head of the office is present in Vijayawada,*

4. *xxx It is worthwhile mentioning here that in defiance of DOP's order, all the AAOS asked to be relieved from Hyderabad office for Vijayawada, have not joined there. Transparency in selecting their names had to be exercised in sending them, which is not the case.*

5. (iii) *As per bifurcation order dated 22.8.2019 issued by the GM (F) PAO, Hyderabad, 120 no of SA/JA/LDC/MTS were allotted to PAO Vijayawada. Out of them, 110 no of JA/SA/LDC/MTS have to be moved to Vijayawada. It is proposed that they should be assigned from Telangana DAP, on deputation for Andhra Pradesh DAP without any deputation allowances. Once the strength gets gradually filled by recruitment through SSC on priority basis officers will return back to parent Telangana Office.*

The salient points are that the 6th respondent has not been following the instructions issued properly and that his decisions were arbitrary. There is no transparency in decision making. The 6th respondent who has ordered staff to be deemed to be relieved on 22.8.2019 to Vijayawada PAO consequent to bifurcation, though he himself did not join PAO Vijayawada even after 2 1/2 months of issue of his orders by the competent authority. Ironical to note. To resolve the bifurcation issue, deputation without extra remuneration was suggested which in fact, was the order of the Postal Directorate subsequently. The emphasis was to resolve the issue peacefully

and amicably. The local authorities failed to do so, for reasons best known to them.

XV. The solution to depute staff in cases when offices are bifurcated, till regular staff are appointed, is not new to the respondents organization. It was followed when PAOs were created at Ahmedabad, Kapurtala, Jammu, Nagpur, Raipur etc. The officials from the parent office were deputed to the newly created circle on deputation without any extra remuneration till the vacancies in the new office were filled up on a regular basis. By following the same procedure, the bifurcation would have been completed in a smooth manner even while creating PAO Vijayawada. It is true that when bifurcation of a Circle takes place, there will be number of difficulties and it is for the respondents to overcome them with a balanced approach. The balanced approach was to resolve such difficulties by taking all the stakeholders on board rather than issuing orders which are not in consonance with the statutory norms and create heartburn among a section of the employees. The Postal Directorate did try to follow this mode by constituting CPMGs committee and responding to the ground realities as and when they arose. This is evidenced from the fact that the original order of bifurcation issued by 6th respondent dated 22.8.2019 was kept in abeyance by the 1st respondent and through subsequent measures like deputing 32 junior officials from the Senior Accountant and Junior accountant cadre to Vijayawada PAO with no extra remuneration. Allotting 67 newly recruited candidates by SSC to Vijayawada PAO are some measures of the Postal Directorate to salvage the situation. Postal Directorate has given a specific directions to hold the DPC before the



31.12.2019 and admittedly the Postal Directorate has in response to the direction of the Tribunal in OA 284/2020 dated 17.6.2020 vide letter dt.10.08.2020 directed the 6th and 7th respondents, to review the bifurcation order as well as promotion of the private respondents in consultation with the committee formed by the CPMGs. The direction to the extent relevant is extracted hereunder:



You both are appointing and competent authority in respect of LDC, JA/SA officials and respondent no 6 and 7 of the O.A, therefore you are hereby authorized for taking further necessary action for compliance of judgment dated 17.6.2020 of OA 284/2020 in consultation with CGSC and dispose off the representations by issuing appropriated reply/speaking order in accordance of the judgment dated 17/06/2020 and if required, review of the bifurcation order 6.3.2020 & promotion order dated 20.3.2020 as per extant rules and regulations and in consultation of the Committee constituted with the approval of member (p) for functional and administrative bifurcation under the Chairmanship of CPMG, A.P. An action taken report should also be furnished to all concerned including this office.

It is not explained in the reply statement as to why the order of the Postal Directorate was not followed by the respondents 4 to 7. The local authorities, as is seen from the case details have not been following the Postal Directorate orders or the rules and instead giving their own justifications which are mostly irrational. Therefore, the local authorities to claim that PAO Vijayawada work would get dislocated, if temporary allocation of staff is made will not hold since it was not averred by the local authorities, that the past experience of using the tool of deputation has created problems in discharge of work required to be discharged. True to speak the local authorities have no mandate nor authority to decide and act in a way violating the Postal Directorate orders or rules. The CPMGs Committee has been formed to ensure the smooth implementation of the bifurcation so that there are no allegations of bias in affecting the

bifurcation in staff matters. The CPMGs committee does not have a statutory backing to override the instructions of Postal Directorate or that of the DOPT. Even the committee was only stating that the matter in regard to promotions has to be discussed with the Directorate, albeit the Postal Directorate was time and again directing to complete the exercise of Promotions within the time frame given.



XVI. Interestingly, the respondents organizations has many wings like the Administrative wing, Accounts wing, Operative wing, Civil wing, etc at the circle level. When the administrative wing was bifurcated the Postal Directorate has gone even to the extent to allow the officials to work on attachment basis in the Telangana Circle, till the new staff are recruited in the new A.P Postal Circle, as under:

Postal Directorate in its letter date 7.3.2018 (A-XX) while handling issues related to bifurcation of erstwhile A.P Postal Circle into Telangana and Andhra Pradesh Circle has directed as under:

2 (a) *Andhra Pradesh and Telangana Circle is hereby directed to implement instructions contained in this office order dated 13.2.2017 I letter and spirit which reads as under:*

"All such employees who have been allotted to a circle different from the option exercised by them are retained on attachment basis in the circle of their choice till vacancies become available on account of retirement on cadre restructuring and consequent creation of posts or till further orders, which ever is earlier till such time these employees continue to be in a circle of their choice on attachment basis they will draw salary from circle which they have formally allotted."

xxx

Both the circles are directed to implement the aforesaid decision latest by 22.3.2018 under intimation to this office. Further, both the circle shall resolve the issues with mutual consultation and no further proposal connected to the above for relaxation or otherwise shall be referred to Directorate.

The Postal Directorate policy direction was to ensure that the bifurcation happens in a smooth manner without creating any turbulence in the process and at the same time ensuring that the work is not dislocated. When it came



to accounts wing due to its large size, the methodology of deputation was adopted and in both the cases the goal was to ensure minimum displacement of staff and if required in the interest of service, for a period of one year. Hence when such a clear policy direction was available, the local authorities need to have abided by the said direction. Instead they created an issue of promoting the private respondents as Senior Accountants on 20.3.2020, against rules, after the final bifurcation of the composite PAO on 6.3.2020, which the applicants allege was to enable them to be retained in Hyderabad. True, if the private respondents were to be promoted as Senior Accountants on 1.1.2020 by following the DOPT order, they would have become junior to the applicants in the Senior Accountant cadre and would have been liable to be transferred to Vijayawada PAO. Therefore, there is merit in the contentions of the applicants that injustice has been done to them by forcing them to go over to Vijayawada PAO by delaying the promotions of the private respondents. More so, when there have been Postal Directorate directions, representations from the staff unions as well as staff that the promotions have to be effected before 01.01.2020 and yet, delaying the promotions of the private respondents as Senior Accountants, after receiving representations from them, does give sufficient leeway to the contentions of the applicants that such an action was taken in order to favour private respondents to retain them in Telangana.

XVII. To sum up, we are of the view that the representations of the private respondents were received based on the allocation order dt.22.08.2019, which was kept in abeyance. When the orders were kept in



abeyance, then it is difficult to appreciate as to how a decision could be taken based on an order which is in abeyance. In the meeting under the chairmanship of the Member (P) held on 22.08.2020, it was advised to conduct review DPC based on the proportional allocation/ distribution of staff/ vacancies in pursuance of the recommendations of the CPMG committee. The said CPMGs Committee also recommended that the vacant posts have to be distributed depending on the number of Head Post Offices in the respective Circle. When the clear vacancies were available, respondents could have conducted the promotions and thereafter decided to transfer the staff of the respective cadre based on bifurcation guidelines. The very assumption that PAO-wise vacancies are to be known for promotions to be effected is wrong. Assuming for a moment, if the bifurcation were not to be effected for another 5 to 10 years, can the local authorities afford the luxury to sit over the issue by taking the stand that staff have not been bifurcated. They would not, since promotions and bifurcation have no correlation. Promotions have to be effected as per time schedule prescribed by the nodal Ministry i.e. DOPT. No other authority in the Postal Directorate or below have any discretion to modify DOPT orders on the subject, without the latter's consent. Moreover, there is no order/rule preventing the respondents from effecting promotions before the bifurcation took place. Any delay in granting promotion will mar career of the employees. Often we find employees demanding anti-dating of the promotions but never to postpone the promotions. Antedating promotions will give the benefit of seniority for further promotions to the next cadre and also in pension fixation. The local authorities promoting the private

respondents belatedly against DOPT order cited brands the decision as irregular, biased and illegal.

XVIII. To conclude, we find that the local authorities i.e. respondents 4 to 7, have not acted as per DOPT memo dated 8.5.2017 by not promoting the private respondents as Senior Accountants as on 01.01.2020 though eligible in all respects, instead of 20.3.2020. They were under clear instructions from the Postal Directorate to effect promotions to different cadres before 01.01.2020, but was not done. The Postal Directorate in its letter dt. 10.08.2020 ordered to review the promotion of the private respondents as well as bifurcation in consultation with the CPMGs committee, which was also not followed. Reply statement does not give reasons as to why the direction of the Postal Directorate was not followed. The local authorities have neither the competency nor the authority to act against the Postal Directorate orders. Local authorities receiving representations from the private respondents and postponing the promotions in order to favour one section of employees by circumventing rules is bad in law. Following the past precedent is a common practice in order to ensure that things happen smoothly. When other PAOs of the respondents organization were bifurcated in the past, the method of sending officials on deputation without extra remuneration was adopted and the same could have been done by the local authorities, particularly in the context of the Postal Directorate having not withdrawn the order dated 15.11.2019 of deputing 32 officials without extra remuneration to PAO Vijayawada. There was a recommendation of Sri Rajeev Kumar, DDG (F & PAA) to adopt the deputation method. The local authorities could have





simply adopted it and avoided the hardship to the employees and dislocation of work. The local authorities claiming that effecting promotions with retrospective effect will create issues of seniority, is off the mark, since the promotions were to be effected on the first of January of the year as per rules. If this statutory rule were to be followed, the question of difficulties in seniority would not have arisen. This appears to be lame excuse given by the local authorities. It is also to be noted that 23 officials selected by the SSC have joined the new PAO at Vijayawada. Therefore, the position has improved and it could have been managed by ordering deputation as ordered by the Postal Directorate, in tune with the previous practice followed at the time of bifurcation of similar other PAOs in the past. Bifurcation issues within the same organization would be the same and not different as claimed by the local authorities. All the more when Corona was rampant, the local authorities need to be considerate in moving staff. Ground realities are to be taken into consideration and not in a way of uprooting staff by issuing a deemed transfer order. Rules are to be equally and fairly applied to the officers and the one administered by them. Power has to be exercised with great restraint and responsibility. Extraordinary situations require extraordinary solutions. The extraordinary solutions were given by Postal Directorate in as many ways as they could. Unfortunately, the local authorities i.e. respondents 4 to 7 have not followed the guidelines of the Postal Directorate or that of the DOPT in attending to issues relating to the staff. CPMGs of A.P. & Telangana, being senior officers from the HAG grade, could have easily anticipated the issues and guided the subordinate formations to come to an amicable solution within the ambit of the rules, particularly when the conduct of the

6th respondent has been found to be wanting by the Postal Directorate while handling the staff issues relating to bifurcation.

XIX. Thus, in view of the aforesaid circumstances, we find that the transfer of the applicants to Vijayawada is not tenable since it is in violation of the rules, arbitrary, illegal and displays colorable exercise of power. Applicants were discriminated by the action of the local authorities in a manner which favoured the private respondents and forced their transfer to PAO Vijayawada PAO. Therefore, the impugned orders dt. 11.08.2020 and 29.05.2020 in so far as the applicants in OA No. 469/2020 and impugned order dt. 21.08.2020 in respect of the applicants in OA No. 510/2020 are quashed and set aside. Applicants shall be allowed to continue at Hyderabad PAO. The respondents 1 to 3 may examine and reiterate its direction for deputation of staff to resolve the deficiency of staff at PAO Vijayawada, without extra remuneration for strict compliance. Regarding the promotion of the private respondents w.e.f. 1.1.2020, it is left open to the respondents 1 to 3 to give suitable directions to the local authorities to regulate the same as per DOPT Rule cited by having a review DPC, so that their future promotions are not adversely impacted.

XX. With the above directions, the OAs are allowed. Consequently, MA No. 370/2020 stands closed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/