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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI

R.A. 14/88 in
OA 861/1986.

August 16, 1988

Shri N.N. Chaudhary

... Applicant

Vs.

Union of India & Ors

... Respondents

Coram

Hon'ble Shri Justice K. Madhava Reddy, Chairman
Hon'ble Shri Kaushal Kumar, Member

For the Applicant in OA 861/1986

.. Shri N.N. Chaudhary
applicant.

For the respondents

.. Shri T.A. Ramaswamy,
counsel.

(Judgement of the Bench delivered by Hon'ble
Shri Justice K. Madhava Reddy, Chairman.)

This is an application by the respondents to review our judgment in OA 861/1986 dated 12.11.1987 by which we allowed the application and declared that the applicant therein would be deemed to have been promoted to SAG Level-I with effect from 30.12.1984 and that he would also be entitled to all consequential benefits.

The primary submission made in this Review Application is that since the applicant had himself refused promotion, in view of D.P&AR's Office Memorandum No. 22034/3/81-Estt(D) dated the 1st October, 1981 he was not entitled to be appointed on promotion until the expiry of one year. That Office Memorandum in so far as it is relevant for our present purpose reads as under:

" Decision: Enforcement of promotion to a higher grade. - It was observed that in many cases persons refuse promotion purely to gain monetary benefit

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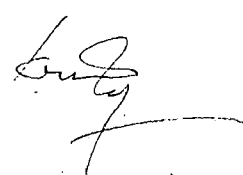
especially in cases where the increment of the officer is due in the lower grade shortly. This it was felt causes considerable hardship to many Government employees or officers down the line and awaiting promotion. In order to discourage such refusal of promotion, the Government issued orders laying down that those officers who refuse promotion should not be issued any fresh offer of promotion for a period of six months from the date of such refusal.

2. Government have recently taken a decision to further liberalise the formula of fixation of pay, in order to avoid anomalies in the matter of fixation of pay.

3. In view of the fact that Government have decided to further liberalise the procedure of fixation of pay of officers, and also to reduce cases of refusal of promotion to the barest minimum which adversely affects the promotion prospects of officers working down the line, it has now been decided to modify the provisions contained in O.M. No.1/3/68-Estt.(D), dated the 22nd November, 1975 to the effect that from the date of issue of this order, refusal of promotion by an officer should entail that no fresh offer of promotion would be issued to him for a period of one year, instead of six months as provided for in the earlier instructions.

4. It is further clarified that in cases where the reasons adduced by the officer for his refusal of promotion are not acceptable to the appointing authority, then he should enforce the promotion of the officer and in case the officer still refuses to be promoted, then even disciplinary action can be taken against him for refusing to obey his orders.

[D.P.&A.R. O.M. No. 22024/3/81-Estt.(D),
dated the 1st October, 1981]



It would be seen that this O.M. applies only to cases where after a promotion order is issued, the officer concerned refuses promotion. In the instant case, the applicant never refused promotion after any order of promotion was issued. In fact, his grievance is that the approval of the Appointments Committee of the Cabinet to his promotion should have been implemented within 15 days but was not implemented. The ACC had accorded approval to a proposal made by the Additional Controller General of Accounts for appointment of the Applicant to the post of Chief Controller of Accounts, Ministry of Home Affairs in the scale of Rs.2500-125/2-2750, a cadre post of Indian Civil Accounts Service in Level-I. The post was specified and the name of the person to be appointed viz. the applicant was also recommended on the basis of the D.P.C. proceedings presided over by the Chairman of the U.P.S.C. It is this recommendation that was approved. The order of appointment should, therefore, have been issued as discussed in our judgment, within 15 days of the O.M. of D.P. & A.R. dated 12.12.1984. Even assuming that it was not obligatory for the authorities concerned to implement the order of the A.C.C. within 15 days, it should have been implemented

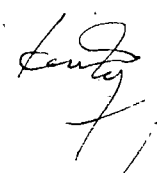


expeditiously. In this case the appointment approved by the ACC was not implemented at all. Only if an appointment was given and the applicant had refused promotion that O.M. of October, 1981 would have applied. His request for deferment of appointment till 30.12.1984 could not be construed as refusal of promotion. The applicant having never refused promotion, Office Memorandum relied upon by the Review Applicant in any event would not apply and the original applicant could not be denied promotion.


It was next contended that there was no post of Chief Controller of Accounts, Sr. Administrative Grade Level I in the Ministry of Home Affairs. Senior Administrative Grade Level II post was yet to be upgraded. Even in the Review Application, it is admitted by the respondents that it was decided in May, 1984 with the approval of Secretary, Department of Expenditure and Secretary, Personnel to operate eight posts of Senior Administrative Grade in Level I instead of the existing seven posts. Under Rule 4 of the I.C.A.S. Group 'A' Recruitment Rules, the Cadre Controlling Authority of these posts is the Ministry of Finance and not the Ministry of Home Affairs and when the approval of the Ministry of Finance was taken as early as in May, 1984, the contention that Level I post was not available in December, 1984 cannot be accepted.

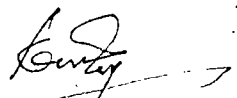


It was next argued that in view of the subsequent approval of the A.C.C. to his being posted to Bombay and the applicant having waived his right, he could not now claim to be appointed w.e.f. 30.12.1984 and no relief could be granted to him. We are unable to accept this contention of the Review Applicant. The question to be considered in the Original Application was whether the failure of the respondents to implement the approval of the ACC for appointment of the applicant to Level I post from 30.12.1984 was valid. If the approval of the ACC had to be implemented and if a post was available, the respondents clearly committed an error in not appointing the applicant and again resubmitting his case to the ACC as if his appointment was not approved earlier. Only because the post was available and the approval of the ACC was already given for the appointment of ^{the} applicant as Chief Controller of Accounts, Ministry of Home Affairs, the subsequent proposal to post him at Bombay was required to be submitted to the ACC. Whether he should have been posted at Bombay is a matter with which we were not really concerned in that application. What was to be considered in the Original Application was whether the applicant was justifiably aggrieved by the respondents' failure to post him as Chief Controller of Accounts, Level I post after the ACC had approved the proposal. As discussed in the judgment, since



he was entitled to be appointed to that post as per the approval of the ACC and since the respondents had failed to appoint him, a direction was rightly given. The subsequent refusal of the applicant to be appointed at Bombay cannot be construed as a waiver of his right to be appointed to Level I as originally approved by the ACC. We find no merit in this Review Application. It is accordingly rejected.


(Kaushal Kumar)
Member
16.8.1988


(K. Madhava Reddy)
Chairman
16.8.1988