

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 28TH DAY OF AUGUST, 2003

Original Application No. 1271 of 1997

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

Rohitesh Singh, a/a 57 years,
Son of Late Shri Ajai Singh
presently working as Upper Division
Clerk and is posted at Records, the Sikh
Light Infantry, Fatehgarh, district
Farrukhabad.

.. Applicant

(By Adv: Shri Rakesh Verma)

Versus

1. Union of India through the
Secretary, Ministry of Defence
New Delhi.
2. The Additional Directorate General
Org/Org 8(1 of R), Adjutant General's
~~xxxx~~ Branch, Army headquarters
West Block-III, R.K.Puram,
New Delhi-110066
3. Shri J.S.Yadav, a/a 47 years,
Son of not known, presently
working as Office Superintendent
Grade II(newly posted) at Refcords,
The Sikh Light Infantry, Fatehgarh
District Farrukhabad.

.. Respondents

(By Adv: Shri Ganga Ram Gupta)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has prayed
to quash promotion cum posting order dated 22.8.1997
issued in favour of respondent no.2/ to the post of Office
Superintendent Grade II.

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The facts of the case giving rise to this dispute are that applicant was serving as civilian clerk in Army Record office. The applicant was, at the relevant time, serving in Sikh Light Infantry as UDC. The applicant was promoted as Office Superintendent grade II by order dated 15.7.1996. The applicant however, refused to accept promotion on account of his domestic difficulties. The refusal was given by applicant on 16.8.1996 which was accepted by the Competent Authority on 4.9.1996. As the rule position exists on account of ^{his} refusal, applicant could not be offered fresh promotional appointment for a period of one year. The next promotion panel was prepared on 13.8.1997 in which also applicant was selected. However, he was asked to join in Mahay^{an} Regiment on the ground that upto 3.9.1997 he could not be promoted on account of his refusal to earlier promotion. The respondent no.3 was given promotion in SITU and applicant was asked to join in Mahay^{an} Regiment. The applicant has challenged the order posting respondent no.3 in Sikh Light Infantry.

The submission of the counsel for the applicant is that applicant was senior and under rule he was entitled for SITU posting on promotion as Office Superintendent grade II but it was illegally offered to respondent no.3 by the impugned order and it is liable to be quashed. It is also submitted that applicant has given his refusal on 16.8.1996 and thus the period of one year expired on 15.8.1997 and the respondents were not correct to say that applicant could not be offered promotion upto 3.9.1997.

Shri G.R.Gupta counsel for respondents, on the other hand, submitted that the refusal tendered by the applicant

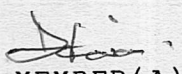


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was accepted on 4.9.1996, thus period of one year will be computed from the date of acceptance and one year period was completed on 3.9.1997. Therefore applicant was rightly not offered promotion till that date. He was asked to join in [^]Mahar Regiment w.e.f. 4.9.1997. From the aforesaid facts it is clear that the controversy between the parties is about the date, from which the period of one year will be calculated, for giving effect to the rule that no fresh offer of appointment on promotion shall be made, [^]~~In~~ such cases for a period of one year. [^]According to counsel for applicant it should be from the date of refusal, whereas, according to respondents it should be from the date of acceptance.

We have carefully considered the submissions. However, in our opinion, the submissions made by counsel for respondents has force and it appears to be justified. As the rule position is that the tender of refusal to accept promotion [^]is not sufficient, [^]it is subject to acceptance by the Competent Authority. Thus, the date of refusal will be on the date when it is accepted by the authority. The action of refusal is not unilateral but it is bilateral [^]and refusal of applicant shall be effective only after [^]it was accepted. In the circumstances, the applicant was rightly not offered appointment upto 3.9.1997. As he had not joined though promotion was offered from 4.9.1997 he is not found entitled for any relief.

The OA has no merit and is accordingly dismissed. No order as to costs.


MEMBER (A)


VICE CHAIRMAN

Dated: 28th August, 2003

Uv/