

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Original Application No.16/2021

With MA No. 20/2021

Dated this the 09th day of July, 2021.

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

1. Jashawantkumar Senghal,
S/o. Shri Parashottamdas Senghal,
Aged: 54 years,
Resi: F- 177, Kalpataru Millennium Park Society, Zundal,
Dist: Gandhinagar, pin – 382421.
2. Dineshkumar Patel,
S/o Vadilal Patel,
Aged: 48 years,
Resi: A -404, Parmeshwar –IV,
Nr. Godhrej Garden City,
Jagatpur, Ahmedabad – 382470.
3. Satishkumar Vaghela,
S/o. Shri Shambhubhai Vaghela,
Aged: 54 years,
Resi: 04/508, Keshav Apartment,
Chandkheda, Ahmedabad – 382 424.

...Applicants

(By Advocate Mr. Joy Mathew)

vs.

1. Union of India,
Notice to be served through the Secretary,
Ministry of Communications & IT,
Department of Posts, Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
2. The Chief Postmaster General,
Gujarat Circle, Khanpur, Ahmedabad – 380 001.
3. The Postmaster General,
Ahmedabad Region, Shahibag, Ahmedabad – 380 004.
4. The Postmaster General,
South Gujarat Region, Vadodara – 390 002.
5. The Sr. Superintendent of Post Offices,
City Division, Ahmedabad – 9.

6. The Sr. Postmaster, Ahmedabad GPO,
Ahmedabad – 380 001.

7. The Assistant Accounts Officer,
ICO SB, 1st Floor MMS Bldg,
Ahmedabad GPO Campus,
Ahmedabad – 380 001.

...Respondents

(By Advocate Ms. R R Patel)

ORDER (ORAL)

PER: Hon'ble Dr.A.K.Dubey, Member (A)

1. This OA has been filed by the applicants seeking following reliefs:-

- “(A) Quashing and setting aside the impugned orders dated 12.10.2020 and 26.10.2020 at Annexure A/1 and A/2 issued pursuant to orders dated 6-10-2020 Annexure-A/3 qua the applicants whereby applicants are ordered to be promoted and posted at various places;*
- (B) Quashing and setting aside the orders date 29-12-2020 and 28-12-2020, at Annexure A/4 and A/5, whereby the department has rejected the request for declination of their promotion to LSG (norm-based) Supervisor SBCO cadre.*
- (C) Quashing and setting aside the order dated 13/1601-2021, Annexure A/6, whereby applicants are directed to join at their promotional post within 15 days i.e., by 28.01.2021,*
- (D) Restraining the respondents from relieving the applicants from their present cadre and place of posting; and*
- (E) Passing any other appropriate order.”*

2. Vide Memo No.STA/18-41/2020 dated 06/10/2020 (Annex.A/3) the applicants were issued with transfer/allotment order on promotion to the cadre of LSG (NB) Supervisor SBCO in level 5 of the CPC matrix. Pursuant to, vide Memo No.Staff/2-24/2020 dated 12.10.2020 (Annex.A/1), the 3rd applicant while working as Postal Assistant was promoted to LSG (NB) Supervisor SBCO in level 5 of 7th CPC matrix on regular basis and allotted to/posted as LSG Supervisor, SBCO, Palanpur. Similarly, first and the second applicants were promoted

too vide Memo No.STA/2-11/17 dated 26.10.2020 to the cadre of LSG (NB) Supervisor SBCO in level 5 of 7th CPC matrix, and allotted to Bardoli and Navasari HO respectively. The applicants declined the promotion. Vide the submission dated 29.12.2020 (Annex.A/8), the first Applicant declined the promotion on the ground of medical complications of his own and wife and problems of daughters' education etc. Vide Memo No.STA/2-11/17 dated 28.12.2020 (Annex.A/5), the first and the second applicants were intimated about the rejection of their declination and were directed to join their promotional post within 7 days. Vide letter No.Staff/2-24/2020 dated 29.12.2020 (Annex.A/4) declinations of three applicants (and some others) were rejected and they were directed to join the promotion post within 7 days. A fresh letter dated 13/18.01.2021 (Annex.A/6) reiterated these instructions.

3. The respondents have filed their reply stating that declination of promotion was not accepted by them, which was well within their powers, and the applicants were directed to join the promotion post within the stipulated time. Thereupon, the first applicant filed the rejoinder reiterating his request. The learned counsel for the applicants contends that the facts and circumstances in his cases are similar to those in OA No.439/2020 and argues for similar relief.
4. Per contra, the learned counsel for the respondents argued that transfer was intrinsic to and integral part of the service and declining it in routine manner created avoidable administrative inconvenience.
5. Heard the counsel for both the parties and perused the materials and records brought before us.

6. What emerged from the grounds and documents brought before us and the arguments of the counsel, are briefly indicated as under:-
 - 6.1 The applicants while working as Postal Assistant got promotion to the grade of LSG (NB) Supervisor SBCO, vide respondent's order Order No.STA/18-41/2020 dated 06.10.2020 (Annex.A/3). Subsequently, applicants were transferred out. The counsel for the applicants argued that Vide OM dated 22.11.1975, declination of promotion was an option which the applicant had exercised. Then their declinations have been rejected by the respondents. The learned counsel argued that the declination entailed certain consequences. These have been referred to and deliberated upon in detail in this Tribunal's order in OA 439/2020 and also the order in OA 28/2020.
 - 6.2 Per contra, respondents have contended that vide para 4 of OM dated 01/10/1981 (Annex.R/1), if refusal to promotion was not accepted, promotion could be enforced and if the promotion was still refused, even disciplinary action could be taken against the officials. Accordingly, respondents have issued orders, the counsel for respondents argued.
7. It is clear from the above that notwithstanding the order regarding enforcing promotion dated 01.11.1981, subsequent communication has given to the employees/officials an opportunity to decline the promotion. Consequences that follow from such declination of promotion have also been clearly stipulated. We are constrained to observe that if the respondents expressly allow officials to decline their promotion, there cannot 'be a course of action' like forcibly promoting the officials after such declination, particularly when consequences of refusal to promotion have been stipulated. Under

these circumstances, we do not find any justification in 'forcible promotion' once it has been declined or refused by the applicant under an express provision by the respondents.

8. In our opinion, this matter is squarely covered in the OA No.439/2020 in which the order was passed on 24.03.2021. The applicant has been able to show that this case is substantially similar to the case in OA 439/2020, and hence he has made out the case for himself for seeking the reliefs asked for. As a result, OA succeeds. We quash the impugned Memo No.Staff/2-24/2020 dated 12.10.2020 (Annex.A/1), the Memo No.STA/2-11/17 dated 26.10.2020 (Annex.A/2), the Memo No.STA/18-41/2020 dated 06.10.2020 (Annex.A/3), the letter No.Staff/2-24/2020 dated 29.12.2020 (Annex.A/4), the Memo No.STA/2-11/17 dated 28.12.2020 (Annex.A/5) and letter No.Staff/18-41/2020 dated 13/18.01.2021 qua the applicants. We further order that as a result of setting aside these impugned orders Annexures A-1 to A-5 qua the applicants, the applicants shall not be disturbed from the present place of posting i.e., the posting in which he has been there prior to the declination of his promotion. M.A No.20/2021 is also disposed of. No Cost.

(A.K.Dubey)
Administrative Member

(Jayesh V.Bhairavia)
Judicial Member