

AHMEDABAD BENCH

Dated this the 09th day of July, 2021.

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

- VS

- (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 applicant seeking following reliefs:-

“(A) Quashing and setting aside the impugned orders (1) No. STA.54/LSG Posting/RMS/2020 dated 28-10-2020 (Annexure-A/1), (2) No.B.8/3[B]/LSG-NB/2020 dated 29-10-2020 (Annexure-A/2), (3) STA18-41/RMS/2019 dated 25-01-2021 (Annexure-A/3) & (4) B8/3(B)/LSG-NB/2020 dated Nil-01-2021 (Annexure-A/4) qua the applicant;

(B) Restraining the respondents from relieving the applicant from his present cadre and place of posting; and

(C) Passing any other appropriate order.”

2. Vide Memo No.STA/54/LSG Posting/RMS 2020 dated 28.10.2020 (Annex.A/1), the applicant while working as Sorting Assistant in the RMS Division, Rajkot, was promoted to LSG (NB) RMS General Line Cadre in the grade of level 5 of 7th CPC matrix and re-allotted to the RMS Division, Rajkot. Vide Memo No.B8/3[B] LSG-NB/2020 dated 29.10.2020(Annex.A/2), he was transferred to Junagadh (STG/1). The applicant declined the promotion vide his declination dated 12.11.2020 as vide his submission dated 12.11.2020 (Annex.A/6) on the ground of his medical complications and COVID situation. Vide letter No.STA/18-41/RMS/2019 dated 25.01.2020 (Annex.A/3) his declination was rejected for the reason that it was not strong enough and he was directed to join the promotional post within 15 days i.e., by 10.02.2021 (Annex.A/4).
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 applicant was directed to join the promotion post within the stipulated time. Thereupon, the applicant filed the rejoinder reiterating his request. The learned counsel for the applicant

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. She also argued that the applicant had declined his promotion on earlier occasion too.
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 applicant, while working as Sorting Assistant at RMS Division, Rajkot got allotted to Rajkot on promotion to the grade of LSG (NB) RMS-General Line, vide respondent's order dated 28.10.2020 (Annex.A/1). Para 6 of this communication (Annex.A/1) reads as under:-

“In case, an official is not willing to accept his/her promotion, his/her declination letter in writing duly forwarded by the Divisional head should reach Circle office within 30 days from receipt of this order. Non-assumption of charge after 30 days, without any valid reason, will attract appropriate action against the official, viz, deemed declination of promotion.”

Para 9 of this order rendered them ineligible for next promotion subsequent to such refusal. Vide order dated 29.10.2020, the applicant was posted to Junagadh. Again, the third para below the table, in the Memo dated 29.10.2020 (Annex.A/2) reads as under:-

“The official refusing the LSG promotion being granted to him may also note that he will not remain eligible for further promotion to HSG-II & HSG-I subsequent to such refusal the declination if any should be submitted on or before 15.11.2020.”

- 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. We also see that in contrast, the paras 6, 7, 8 and 9 of the Memo dated 28.10.2020 clearly laid down how to deal with refusal to promotion. Para 9 lists out the consequences of not accepting the promotion.
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 are contained in para 9 of the respondents' Memo dated 28.10.2020 (Annex.A/1). 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, reading the extant instructions as they are, and relying on the subsequent letter's succedent force of instruction, 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.STA.54/LSG Posting/RMS/2020 dated

28.10.2020 (Annex.A/1), the memo No.B8/3[B]/ LSG/N.B./2020 dated 29.10.2020 (Annex.A/2), the letter No.STA/18-41/RMS/2019 dated 25.01.2020 (Annex.A/3) and letter No.B8/3(B)-LSG-Nb-2020 dated January 2021 (Annex.A/4) qua the applicant. We further order that as a result of setting aside Annexure A-1, qua the applicant, the applicant 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. No Cost.

(A.K.Dubey)
Administrative Member

(Jayesh V.Bhairavia)
Judicial Member

SKV