

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**
Original Application No.442 of 2020

Dated this the 24th day of March, 2021

Reserved on: 02.03.2021
Pronouncement on: 24.03.2021

CORAM :

HON'BLE SHRI JAYESH V BHAIRAVIA, MEMBER (J)
HONBLE DR A K DUBEY, MEMBER (A)

1. Vajubhai Gagjibhai Desai,
Age:48 years,
Resi:AT PO:Panchasar,
Tal: Sankheshwar, Dist: Patan
PIN: 384246.
2. Bharatbhai Khatraji Kharadi
Age: 46 years,
Resi: 60-A, Jivrajpark Society,
Canal Road, Patan: 384 265.
3. Shyambhai Dhanabhai Nadoda,
Age:47 years,
Resi:15, Shakuntal Royal,
Chanasma High Way,
Patan: 384 265.
4. Bhavanbhai Somabhai Solanki,
Age:51 years,
Resi:Vallabhnagar Society,
Nr.Gayatri Mandir,
AT PO: Radhanpur
Dist:Patan - 385340

Applicants

(By Advocates Shri Joy Mathew &
Shri V.R.Shah)

V/s

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, – 380 004.
4. The Supdt. of Post Offices,
Patan Division,
Patan– 384 265.Respondents

(By Advocate Ms.R.R. Patel)

ORDER

Per Dr. A. K. Dubey, Member (A)

1. Aggrieved by rejection of the option submitted by the applicants i.e., “unwillingness/declination” to accept the promotion, the applicants have filed the present OA under Section 19 of the A.T.Act, 1985. The applicants have sought the following reliefs:-

- “8(A) *Quashing and setting aside the impugned order No.B2/08/LSG Promotion-Tfr order/2020 dated 06-08-2020 and STA/18-41/2020/II dated 26-10-2020 qua the applicants;*
- (B) *Restraining the respondents from relieving the applicants from their present cadre and place of posting; and*
- (C) *Passing any other appropriate order”.*

2. The facts as stated by the applicants are in brief as under:-

While the applicants were working as Postal Assistant in the Patan division, the respondent No.4 vide order No.B2-08/LSG-Tfr/2020 dated 06.08.2020 issued regular promotion order in respect of officials of PA cadre upon their promotion to the cadre of LSG (PA General line) on regular basis, wherein the names of the applicants are also placed. Accordingly, applicants have been promoted from the post of Postal Assistant, to the Post of PA (LSG) and transferred and posted. In the said order, in the column of remarks it is stated “interest of service”. However, in case of the 2nd applicant, the remarks are: interest of service, against vacant post.

- 2.1 In para 2 and 3 of the said promotion cum transfer order, it is stated as under:-

“2.The declination, if any received from the officials, should be submitted in single lot by concerned post master/sub post master to this office on 15.08.2020 for onward submission to RO, Ahmedabad. The officials declining the promotion will forfeit the seniority vis-a-vis their juniors promoted to LSG-earlier and they will be considered for promotion only after one year from the date of declination or on availability of next vacancy whichever is later, subject to all other conditions prescribed.

3. If the promoted officials refuse the regular promotion before becoming entitled to financial upgradation, no financial upgradation under MACP shall be allowed as such he/she has not been stagnated due to lack of opportunities. If however, financial upgradation has been allowed due to stagnation and they subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He/She shall however not be eligible to be considered for further financial upgradation under MACPs, till they agreed to be considered for promotion again and the second and the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal.”

2.2 Pursuant to the Memorandum No.Staff/2-13/2020 dated 24.07.2020, the Memorandum No.B2/08/LSG Promotion-Ifr Order/2020 dated 3.11.2020 (Annex. R1) was issued, listing out the officials who had declined promotion and directing their relief arrangement.

3. The office of Chief Postmaster General of Gujarat Circle, Ahmedabad vide its communication No.STA/18-41/2020/II dated 26.10.2020 (Annex.A/2) directed the Post Masters General of various regions including Ahmedabad HQ region to inform the officials mentioned in ‘Annexure A’ of the said letter whose request for declination of promotion LSG (PO General Line) Cadre had been considered and rejected, and to direct them to join their promotional post within 15 days i.e., 10.11.2020 from the date of issue of the said letter.

3.1 Applicants preferred the MA No.417/2020 for joint application which was allowed by the Tribunal on 09.11.2020.

4 Pursuance to the said direction, the Superintendent of Post Office, Patan division issued the Memorandum No.B2/08/LSG Promotion-Tfr Order dated 03.11.2020 (Annex.R/1) whereby the applicants were informed that the impugned transfer cum promotion order dated 06.08.2020 had to be implemented as the request of the applicant for declination of promotion had been rejected and the applicants were required to join the promotional post latest by 10.11.2020.

- 5 Respondents filed their reply. They have contended that while the applicants were working in Postal Assistant Cadre in Patan division, they were offered promotion in LSG (NB) cadre vide the impugned order dated 06.08.2020 (Annex.A1). However, the applicants declined the promotion and submitted their unwillingness to the authorities; vide letter No.STA/18-41/2020/II dated 26.10.2020 (Annex.A/2) applicants' declination of promotion was considered and rejected and they were directed to join their promotional posts within 15 days i.e., by 10.11.2020.
- 5.1 Their issue of acceptance of declination was also urged by the Joint Council of Group C Cadre Gujarat Circle with joint memorandum dated 29.10.2020 (Annex.A/3).
- 5.2 Respondents have contended that a total of 684 officials were selected for promotion to the LSG Grade in Gujarat Circle. They have denied that more than 300 employees' declination was accepted; there were only 133 officials who had been allotted to the division other than their parent division and the competent authority had accepted their declination for promotion. In the instant case, the officials were not posted outside the parent division. To that extent, the matter was different from the case of 133 officials. Respondents mentioned that 32 officials had approached this Tribunal on similar grounds. All of them were allotted to their parent division. They have declined their promotion without any valid reason. Quoting the memo dated 1.10.1981 (Annex.R/2) the respondents have contended that in case the refusal of promotion was not accepted by the appointing authority, then they should enforce the promotion on the officer and in case the officer still refused, then disciplinary action could be taken against them for refusing to obey their orders. Respondents have further contended that LSG (PA post) was an important post and had to be filled up for ensuring better services to the public. They also stated that once they had availed the MACP upgradation, it was their duty to shoulder the responsibilities as and when interested with. Respondents also mentioned that they had invited application from the promoted officials with a view to accommodate them at a place of their choice to the extent possible, keeping administrative exigencies in mind.

5.3 The applicants have filed their rejoinder to the reply, reiterating most of the points in OA. Respondents have filed sur rejoinder reemphasizing the points in their reply.

6. Counsel for the applicants mainly submitted as under:-

6.1 After providing for expression of willingness, the declination was rejected without any valid reason. At any rate, declination of those who were transferred outside circle was accepted. The policy on this issue i.e., consequences of refusal to promotion is clear from what has been provided in para 2 of the Order No.B2-08/LSG Promotion-Tfr order/2020 dated 06.08.2020 (Annex.A/1), which should be read along with OM dated 22.11.1975 (Annex.A/4). Further, the provision contained in para 4.1 (vi) of the letter dated 10.11.2017 (Annex.S5) clearly states that it is not practical to prescribe the norms for other restructured LSG posts. Even otherwise in most LSG grade officials' cases, it is a non-functional grade and hence entertaining their request should not create any problem.

6.2 It was further submitted that the course of promoting the next person was always open if any one refused his promotion. It was argued that promotion could not be by force and here, there were examples of acceptance of declination by some and punishing some others who declined the promotion; this was discriminatory and violative of Articles 14 & 16 of the Constitution. Para 4.3 of the letter No.15-04/2012-PE-I (Vol).II dated 10.11.2017 (Annex.S5) clearly mentions that to minimise inconveniences to the staff, circle would allot officials to regions who, in turn would allot them to divisions, in case of LSG official. The counsel for the applicants quoted judgment of the Ernakulam Bench of this Tribunal in OA 146/2013 in V.K.Lekshmanan vs. UOI & Ors. and argued that if an employee was called upon to accept or decline the promotion, provision of Rule 11 of CCS (CCL) Rules cannot be invoked for disciplinary action against such refusal.

6.3 The counsel for the applicants relied on the judgment of the Jodhpur Bench of this Tribunal in OA No.329/2017 dated 10.02.2014 in which in a similar matter, Hon'ble Tribunal quashed the rejection by competent authority of the declination of promotion. Further, quoting the judgment of Madras Bench of this Tribunal in OA No.1034/2017, he contended that in that case, refusal

was held valid after about 5 years of initially accepting the promotion, whereas this particular case was far simpler than that. He also submitted that judgment of one bench binds other benches too.

7. Learned Standing Counsel for the respondents Ms.Roopal Patel submitted that the respondents had acted only as per rules. She stated that out of promotion of 684 officials, declination by 133 was accepted being interdivisional transfer on promotion. In another 184 cases, the declination was rejected. She submitted that para 4 of the OM dated 01.10.1981 (Annex.R2) made it clear that promotion could be enforced if reasons for its refusal were not accepted by the appointing authority.
- 8 Heard both the parties' counsel and perused the documents, papers and records in this case. What emerges from the records and documents brought before us and the arguments of the counsel is briefly indicated as under:-
 - 8.1 Vide impugned order dated 06.08.2020 (Annex.A/1), the applicants on promotion of LSG (PO General Line) cadre, were posted in Patan division in the interest of service. Para 2 of the order dated 24.07.2020 (Annex.R/1) read that:-

“The officials declining the promotion will forfeit seniority vis-a-vis their juniors promoted to LSG-earlier and they will be considered for promotion only after one year from the date of declination or on availability of next vacancy whichever is later, subject to all other conditions prescribed.”
 - 8.2 Respondent's letter dated 26.10.2020 (Annex.A/2), intimated the Post Masters General of the regions within the circle that out of 317 officials' request to decline promotion, 184 was rejected and they should be directed to join the promotional post.
 - 8.3 Vide para 4 of OM dated 01-10-1981 (Annex.R/3), if their refusal to promotion was not accepted, promotion could be enforced and if the promotion was still refused, even disciplinary action could be taken against him. In contrast, the para 2 of the impugned Memorandum dated 6.8.2020 (Annex.A/1) clearly stipulates what to do if promotion is refused.

9. Declination by those who were transferred to other regions upon such promotion was accepted. But, declination by those who were transferred within the region was not accepted. The basis of this distinction is not clear.
10. 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. Pursuant to this, a few officials declined their promotion and their declination was accepted. Consequences that follow from such declination of promotion are contained in para 2 of the respondents' impugned Memo dated 06.08.2020 (Annex.A/1). We are constrained to observe that if the respondents 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 and communicated. 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 applicants.
11. In our opinion, applicants have been able to make out a valid case for themselves. As a result, the OA succeeds and therefore, we quash the impugned letter No.B2-08/LSG-Promotion-Tfr//2020 dated 06.08.2020 (Annex.A/1), and the letter STA/18-41/2020/II dated 26.10.2020 (Annex.A/2) qua the applicants. We further order that as a result of quashing Annex.A1, the applicants shall not be disturbed from the present place of posting in which they have been there prior to the declination of their promotion, till their tenure there as per rules. The OA is disposed of accordingly.

A.K.Dubey
(Administrative Member)

Jayesh V. Bhairavia
(Judicial Member)