

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD
Original Application No.439 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 BHAIKAVIA, MEMBER (J)
HONBLE DR A K DUBEY, MEMBER (A)

Budhabhai Punabhai Parmar

Age: 46 years,

Resi:Chamundanagar,

B/H Ochvane Hospital,

Chotila, Pin – 363 520.

....

Applicant

(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,
Rajkot Region,
Rajkot – 360 001.
4. The Supdt. Of Post Offices,
Surendranagar Division,
Surendranagar – 363 001.

....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 applicant i.e., “unwillingness/declination” to accept the promotion, the applicant has filed the present OA under Section 19 of the A.T.Act, 1985. The applicant has sought the following reliefs:-

- “A. Quashing and setting aside the impugned order No.B2/17/LSG/2020 dated 28/29-10-2020 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 applicant are in brief as under:-

While the applicant was working as Postal Assistant at Surendranagar, the respondent vide order dated 31.07.2020 (Annex.A/3) issued promotion order to the cadre of LSG (PA General line) on regular basis, wherein the name of the applicant is placed at Srl. No.6 and applicant has been promoted from the post of Postal Assistant, Sayla Sub Office to the Post of LSG, SPM, Mayurnagar SO. In the said order in the column of remarks it is stated “interest of service”.

- 2.1 In the said promotion cum transfer order in para 7 it is stated as under:-

“In case an official is not willing to accept his/her promotion his/her declination letter in writing duly forwarded by concerned PM/SPM should reach this office within 30 days in one lot. The officials declining the promotion will forfeit the seniority vis-a-vis their junior 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. Accordingly, 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 Rajkot region to inform the officials mentioned in Annex.A1 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.

4. Pursuance to the said direction, the Superintendent of Post Office, Surendranagar division issued impugned order dated 28/29.10.2020 (Annex.A/1) whereby the applicant was informed that his request for declination of promotion dated 04.08.2020 had been considered and rejected and the applicant was further directed to join the promotional post latest by 10.11.2020.
5. Respondents filed their reply. They have contended that the applicant was earlier offered promotion and was allotted to Rajkot region vide memo dated 22.6.2018 (Annex.R1). Pursuant to it, he was further allotted to Surendranagar division (his parent one) vide memo dated 25.06.2018 (Annex.R2). The applicant was promoted to LSG grade (PO General) and posted in the same office vide memo dated 26.06.2018 (Annex.R3). However, the applicant declined the promotion vide his application dated 03.07.2018 (Annex.R4). His declination was accepted by the competent authority vide memo dated 20.09.2018 (Annex.R/5). As a consequence, the applicant was debarred from promotion for one year from the date of declination. Again the applicant was offered promotion vide memo dated 16.07.2020 (Annex.A/6) and allotted to his parent division namely, Surendranagar (Annex.A/7). All officials were directed to give their willingness vide letter dated 20.07.2020 (Annex.A/8). The applicant requested to be accommodated at Chotila SO or Thangath SO (Annex.R/9). This request could not be acceded to because regular employees were already positioned there.
 - 5.1 The applicant filed his rejoinder to the reply, reiterating most of the points in OA. Respondents have filed sur rejoinder emphasizing their averments and contentions.
 - 5.2 Applicant has been working at Sayla SO w.e.f. 11.06.2020. On promotion, he was posted as PO(GL) in LSG at Mayurnagar SO in the existing vacancy. Since there was no post of LSG PO (GL) in Sayla SO, the applicant was not accommodated there. The applicant against declined the promotion vide his application dated 4.08.2020 (Anex.A/10). His declination was rejected vide

memo dated 26.10.2020 (Annex.A/2), he was instructed vide letter dated 29.10.2020 (Annex A/1) to join his promotion post.

5.3 Respondents have stated that there were only 133 officials who were allotted divisions other than their parent divisions and their declination of promotion had been duly accepted. However, in the applicant's case, he was posted within his present sub division. Further, his declination did not have any valid or sufficient reasons, respondents contended. Respondents have quoted the directorate Memo No.22034/3/81-Estt(D) dated 01/10/81 (Annex.R/3) which mandates the appointing authority to enforce promotion if declination of promotion was not acceptable to it and if the officials still prefers, he could even be subjected to the disciplinary procedure. Hence, the action of the respondents cannot be faulted as they are based on rules and instruction. Respondents have also placed on record the cadre restructure letter dated 22.06.2018 (Annex.R/1) which shows the number of posts in different grades after cadre restructure in the circle.

6. Counsel for the applicant 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 9 of the Memo dated 25.06.2018 (Annex.R/2), which should be read along with OM dated 22.11.1975 (Annex.A/5). Further, the provision contained in para 4.1 (vi) of the letter dated 10.11.2017 (Annex.S3) 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 is 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 others who refused 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.S3) 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 applicant 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 applicant 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 184 cases, the declination was rejected. She submitted that para 4 of the OM dated 01.10.1981 (Annex.R13) makes it clear that promotion can be enforced if reasons for its refusal are not accepted by the appointing authority. Referring to the letter by the applicant dated 20.07.2020 (Annex.R/9) indicating consideration or acceptance of promotion, she argued that giving a conditional option would not mean that it would always be accepted and also, a conditional acceptance per se may not be interpreted as a valid reason for declination of promotion. Referring to para 5.4 and 5.11 of the OA, she stated that the reasons mentioned in the applicant's averments there were not referred to in the letter that he gave refusing the promotion. She stated that the applicant had refused the promotion the second time but the administrative exigencies required people to be promoted and posted against vacancies. She also argued that the employees ought to know the policy regarding enforcing promotion and its ignorance could not be used as a valid excuse.

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 respondents order dated 31.07.2020 (Annex.A/3), the applicant on promotion of LSG (PO General Line) cadre, was posted to Mayurnagar SO in the interest of service. Para 7 of this order read as under:-

“The officials declining the promotion will forfeit the seniority vis-a-vis their junior 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 Pursuant to the provision in para 7 quoted above, the applicant first gave a letter dated 20.07.2020 (Annex.R/9) stating that if he got LSG promotion at Chotila SO or Thangadh SO as LSG PA then, then he was willing to accept promotion. Later, vide letter dated 04.08.2020 (Annex.R/10), he unconditionally declined the promotion to CSG (PO) General cadre.

8.3 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. Accordingly, vide letter dated 29.10.2020, it was intimated that the applicant's declination of promotion had been rejected (Annex.A/1).

8.4 Vide para 4 of OM dated 01/10/1981 (Annex.R/13), 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 paras 7, 8, and 9 of the Memo dated 16.07.2020 (marked as Annex.R/6) clearly laid down how to deal with refusal to promotion. Para 9 lists out the consequences of not accepting the promotion.

8.5 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.

9. 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 9 of the respondents' Memo dated 16.07.2020 (Annex.R/3). 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.
10. In our opinion, applicant has been able to make out a valid case for himself. As a result, OA succeeds and therefore, we quash the impugned letter No.B2/17/LSG/2020 dated 28/29-10-2020 (Annex.A/1), and the letter STA/18-41/2020/II dated 26.10.2020 (Annex.A/2) qua the applicant. We further order that as a result of quashing Annex.A1, the applicant shall not be disturbed from the present place of posting in which he has been there prior to the declination of his promotion, till his tenure there as per rules. The OA is disposed of accordingly.

A.K.Dubey
(Administrative Member)

Jayesh V. Bhairavia
(Judicial Member)