

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD
Original Application No.440 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)

1. Sukhdevsinh Dhirubha Gohil
Age:50 years,
Resi:Plot 3, "shivam' Virbhadr Soc
Nilambaug Circle,
Bhavnagar – 364 001.
2. Maukubhai Pragjibhai Mori,
Age:51 years,
Resi: Plot No.11A, Parmeshwar Park
Talaja Road, Bhavnagar – 364 002.
3. Vinodbhai Naranbhai Bambhaniya
Age:50 years,
Resi: 11/B, Parmeshwar park,
Bhavnagar – 364 002.
4. Kanjibhai Tapubhai Bariya
Age: 50 years,
Resi:'madhuvan', OM Park,
Heena Sales Adhevada Road,
Bhavnagar – 364 002.
5. Vastabhai Boghabhai Makwana,
Age:49 years,
Resi:A-1, Parmeshwar Park,
Plot 12/B, Nr. Top-3 Circle,
Bhavnagar – 364 002.
6. Hakabhai Savjibhai Sarvaiya,
Age: 48 years,
Sankalp Society, Plot No.74,
Ghogha Road, Bhavnagar – 364 001.
7. Umeshbhai Sondabhai Kuvadiya,
Age: 43 years,
Resi: Plot 100/C, Rekha Society,
Sdisar Road, Bhavnagar – 364 002.

8. Dilubhai Jerambhai Baraiya,
Age: 49 years,
Resi:26, Chandra Darshan Park,
Chitra Bank Colony,
Bhavnagar 364 004.
9. Sanjaykumar Shivilal Parmar
Age:46 years,
Resi:Plot 20, Navjivan Society,
Bhavnagar – 364 001.
10. Kum Shamim Yusufbhai Sidi,
Age: 44 years,
Resi: Wadva Bapesara Kuva,
Malivalo Khancho, Bhavnagar -1.
11. Narendrakumar Balvantray Dave,
Age: 50 years,
Resi:Shiv Shakti Plot,
New Virdi Road,
Gariyadhar – 364 504.
12. Vishnubhai Mangalaji Tejot,
Age: 44 years,
Resi:131, Muninagar,
Mahuva, Pin- 364 290.
13. Iqubal Sadubha Malek,
Age:51 years,
Resi:Khodiyar Nagar -1,
Nr.Harbhole Park,
NR.Railway Station,
Botad – 364 710.
14. Chitharbhai Lakhabhai Bhaliya,
Age: 45 years,
Resi:25/E, Shiv Sagar 1,
Bhavnagar – 364 002.

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,
Rajkot Region,
Rajkot – 360 001.

4. The Supdt. of Post Offices,
Bhavnagar Division,
Bhavnagar – 364 001.

....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 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:-

- “A. Quashing and setting aside the impugned order No.B2/27/LSG-(PO)/2020 dated 27-10-2020 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 applicants are in brief as under:-

While the applicants were working as Postal Assistant at Bhavnagar division, the respondents vide order No.B2/27/LSG(PO)/2020 dated 27.10.2020 (Annex.A1) issued promotion/transfer/posting order in respect of officials of PA cadre to the cadre of LSG (PA General line) on regular basis, after rejecting their declination of promotion wherein the names of the applicants are also placed.

2.1 The 2nd respondent issued the regular promotion/transfer/allotment and posting order No.STA/18-41/2020 dated 16.07.2020 (Annex.R4) in its para 7 to 9, is stated as under:-

- “7. *In case, an official is not willing to accept his/her promotion, his/her declination letter in writing dully forwarded by the Divisional Heads/Regional Head should reach this 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*”
8. *The declination, if any received from the officials, should be sent in single lot by Divisional Heads to respective Regional Heads and Regional Heads will sent in one lot to this office. The officials declining the promotion will forfeit seniority vis-avis 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.*
9. *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 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.”*

On similar lines, Memorandum No.STA.54/LSG Posting/2020 dated 17.07.2020 was also issued by the third respondent (Annex.R5)

- 2.2 Pursuant to the promotion cum transfer order dated 17.07.2020 (Annex. /R5), the letter No.B27/LSG(PO)/2020 dated 27.10.2020 (Annex. A1) was issued listing out the officials whose declination of promotion was considered and rejected.
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 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.
4. Pursuance to the said direction, the Superintendent of Post Office, Bhavnagar division issued impugned order dated 27.10.2020 (Annex.A/1) whereby the applicants were required to be informed that their request for

declination of promotion dated 04.08.2020 had been considered and 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 Bhavnagar division, they were offered promotion in LSG PO(GL)) cadre vide office memo dated 17.07.2020 (Annex.R5) and allotted to Rajkot region. However, the applicants declined the promotion and submitted their unwillingness which was submitted to the Ahmedabad Circle authorities. 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 (Annex.A/2).
- 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. Earlier too, in 2018 they had declined the promotion. Quoting the memo dated 1.10.1981 (Annex.S3) 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 emphasizing their averments and contentions.

5.4 Applicants also filed MA No.415/2020 for joint application which was allowed on 09.06.2020.

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 7 to 9 of the Memorandum No.STA/18-41/2020 dated 16.07.2020 (Annex.R4), 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.S3) 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 As mentioned above in para 2.1, vide impugned order dated 27.10.2020 (Annex.A/1), the applicants on promotion to the LSG (PO General Line) cadre, were posted in Bhavnagar division. However, Para 8 of the order dated 16.07.2020 (Annex.R/4), as mentioned in para 2.1 above, stipulated 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. Accordingly, vide letter dated 27.10.2020, it was intimated that the applicant's declination of promotion had been

considered and rejected and they were required to join by 10.11.2020 (Annex.A/1).

- 8.3 Vide para 4 of OM dated 01-10-1981 (Annex.S/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 8 of the Memorandum dated 16.07.2020 (Annex.R/4) clearly stipulates what to do if promotion is refused. As indicated earlier, para 7 to 9 of the order dated 16.07.2020 (Annex.R/4, ibidem) lists out consequences of not accepting the promotion.
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 7 to 9 of the respondents' Memo dated 16.07.2020 (Annex.R/4). 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 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.B2/27/LSG(PO)/2020 dated 27.10.2020 (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)

SKV