

**Central Administrative Tribunal  
Jaipur Bench, Jaipur**

**O.A. No. 103/2021  
M.A. No. 282/2021**

Reserved on:09.07.2021  
Pronounced on:13.07.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)  
Hon'ble Mrs.Hina P. Shah, Member (J)**

Narendra Shrivastav S/oLate Sh. Rambabu Shrivastav, aged about 44 years, R/o Central Spine, Vidhyadhar Nagar, Jaipur-302035. presently working as Stenographer Grade-II in the office of Weaver Service Centre, Jaipur Mob.9680228366 (Group 'C' service).

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India through its Secretary, Ministry of Textiles, New Delhi-110001.
2. Director, North Zone, Office of Development Commissioner for Handlooms, Weavers Service Centre, Bharat Nagar, Delhi-110052.
3. Dy.Director, Weavers Service Centre, Kamdhenu commercial complex, civil lines, Ajmer Road, Jaipur.302006.

...Respondents.

(By Advocate: Shri Anand Sharma)

**ORDER**

**Per: Dinesh Sharma, Member (A):**

In this OA, the applicant has prayed for quashing the orders dated 11/12.02.2021 and 15.02.2021 and for directing the respondents to allow the applicant to continue at his present place of posting on the post of Stenographer

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Gr.II. The applicant states that by these impugned orders, promotion to the post of Stenographer Grade I has been enforced upon him and he stands relieved despite the fact that the applicant has forgone the promotion. The applicant is an appointee in the grade of Stenographer Grade II since the year 1998. He is taking care of his four sisters after his father's death in 2001. His eight year old son is suffering from heart related diseases and is under regular medical observation in Jaipur. He cannot take care of his sisters and his minor disabled son from outside Jaipur. One of his sisters is having divorce litigation at Ajmer and she is also the applicant's responsibility. For these reasons, he has compromised his bright future and forgone promotions offered to him in the year 2016 and 2018. His prayer for the same in 2020 was rejected. However, he was allowed time to join at the transferred place by 31.03.2021 (by order dated 25/28.09.2020 at Annexure A/6). The applicant has also been denied financial upgradation since he has voluntarily forgone his promotion. The applicant has also argued that promotion is not an incidence of service and there is no provision in the service rules that an employee must accept the promotion and it can be enforced upon him. The applicant is entitled to discharge function as Stenographer Gr.II, and therefore the impugned orders enforcing promotion and relieving him should be quashed.

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2. On 23.03.2021, the Tribunal stayed the operation of the impugned order till the next date of hearing and sought reply from the respondents within two weeks. The I.R. was extended at the next date of hearing since no reply was filed. The respondents have now filed a reply denying the claims of the applicant. It is stated that the applicant was appointed at Indian Institute of Handloom Technology (IIHT) through Staff Selection Commission and one of the conditions of appointment was that he could be posted at any WSC (Weaver Service Centre) under North Zone (Point 3 of Annexure R/1). The Department has twice accepted his request for forgoing promotion on compassionate grounds. Despite the department having the authority to post him anywhere in the Zone he has been allowed to stay at the same post and he has completed a tenure of more than 13 years at WSC Jaipur. The post at IIHT Varanasi is lying vacant since 01.12.2016 and is likely to be abolished if remaining unfilled for more than 5 years. No other Stenographer Grade II will be eligible for promotion till 2023 and hence it is being offered to the applicant since 2016. The Department has already lost a number of posts due to not being able to fill them and cannot afford to lose more posts. The applicant has been offered promotion thrice since 2016. He is taking advantage of the position that he is the

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only eligible candidate for promotion. There are sufficient medical facilities available at Varanasi. The respondents have also quoted from the DoPT OM No 22034/3/81-Estt(D) dated 01.10.1981 (Annexure R/16) that promotion can be enforced on an officer if the officer refuses to be promoted even when his refusal of promotion is not found acceptable by the concerned authority.

3. The respondents have also filed an MA requesting for vacating the IR stating that they have already filed a detailed reply. There is no legal force in the arguments taken by the applicant in the OA, and the post of Stenographer Grade II in Jaipur has already been filled up on 10.3.2021 and as such there is no vacant post of Stenographer Grade II at Jaipur.

4. The matter was listed for directions on the IR on 06.07.2021 and adjourned to 09.07.2021 at the request of the learned counsel for the applicant. On 09.07.2021, the matter was finally heard with the consent of both the learned counsels of the parties. The learned counsel for the applicant argued that promotion cannot be enforced on anyone as it is not part of the conditions of service. The applicant has real personal problems which make him feel he will not be able to discharge the higher responsibilities of Stenographer Grade I. He cannot be forced to do that since

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his incapacity perform at that level may lead to disciplinary action against him. The learned counsel also argued that the fear of abolition of posts cannot be cited as a reason for enforcing promotion on him as these two are totally unconnected matters. The learned counsel for the respondents brought our attention to the DoPT Circular dated 01.10.1981(Annexure R/16) cited in their reply which clearly points out to the possibility of enforcing promotion under circumstances where the request for forgoing promotion is not accepted. He also repeated the other arguments mentioned in their detailed reply and stated that the applicant has no legal right to continue at the same place of posting for ever. The OA should be dismissed and the Interim order vacated since there is already another person posted in place of the applicant (who is not a party to this OA).

5. We have gone through the pleadings and heard the arguments of the learned counsels of both the sides. The only issue that we have to decide is whether a person can be forced to go on a transfer to a promotion post in spite of his having forgone promotion and the alternative benefits of financial upgradation. Though the learned counsel for the applicant has very vehemently argued that the promotion is not a necessary condition of service, it cannot be denied that every employee is liable to do the work assigned to him/her

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at any place of posting where his/her services are required. If the employer considers a person to be capable of doing a work carrying higher pay and responsibility, it is normally considered a reward. There may be times when a person is not willing to take that reward and the employer is able to get the work done by someone else while superseding the person who volunteers to take a back-seat for his/her own reasons. However, there might be situations when there is no one else eligible to take that work as it is stated to be the case by the respondents in the present case. Denying the request for forgoing promotion, in such a situation, cannot be called unreasonable by any stretch of imagination. We find that in the present case, the respondents have accommodated the request of the applicant not once, but thrice (though for a short time on the third occasion). Claiming a right to work at a position to which a person is initially appointed, just because it is nowhere expressly stated in the conditions of appointment that there could be promotions in future, is, in our considered humble opinion, stretching an argument too far. The OM dated 01.10.1981 (Annexure R/16) cited by the respondents clearly states that there could be circumstances where an employee's request for forgoing promotion can be denied and he can be forced to go on a promoted post. Thus, the action taken against the applicant is not an entirely unforeseen/unexpected or

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unreasonable event as the applicant has tried to make it out to be.

6. So far as the arguments of personal difficulties, e.g. the son's medical condition or the responsibilities towards sisters, are concerned, we find that the respondents have already made sufficient accommodation towards the applicant by accepting his request twice in the last four years and also giving him further time on his third request. An employer has to balance the organization's interest and the employee's interest. We do not think there has been any arbitrariness or unreasonableness in the action of the respondents and therefore see no reason to interfere with the impugned orders.

7. For the aforementioned reasons, we do not find the OA sustainable and it is therefore dismissed. The interim order of stay stands vacated. MA No.282/2021 for vacation of interim order is disposed of accordingly. No costs.

(Hina P. Shah)  
Member (J)

(Dinesh Sharma)  
Member (A)

/kdr/