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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 327 of 1986 198X
~~MAX NOX~~

DATE OF DECISION 02/04/1987

K.Narayan Swami Petitioner

Party in Person Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

J. D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. P. M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

JUDGMENT

OA/327/86

02/04/1987

Per : Hon'ble Mr P H Trivedi : Vice Chairman

The petitioner Mr K Narayan Swami was serving on deputation from the establishment controlled by Comptroller and Auditor General of India (A&E), Rajkot to Gujarat Water Supply and Sewerage Board, Gandhinagar as Financial Adviser and Chief Accounts Officer in the Government of Gujarat. According to him the Board (Gujarat Water Supply and Sewerage Board, Gandhinagar) informed the Accountant General, Rajkot that his absorption in it was being considered. The Comptroller and Auditor General (CAG) sent a OM dated 1-10-1981 that the petitioner would not be considered for promotion for one year.

2. In this case the petitioner expected absorption in the Gujarat Water Supply and Sewerage Board which appears to have been taken for granted at some stage by the Accountant General, Rajkot. However, for absorption to come about the Gujarat Water Supply and Sewerage Board needed to make a decision and that decision does not seem to have come about at any rate in favour of the petitioner. In the meantime on 6th October, 1985 a letter was sent from Accountant General, Rajkot to Gujarat Water Supply and Sewerage Board to relieve the petitioner, and intimating about his promotion as Assistant Accountant General. A copy of this communication was sent to the petitioner for his information and necessary action. Order of promoting him dated 24-10-1985 was issued with a copy to him. In the same order it was stated that he will take over charge as Assistant Accountant General. Senior DAG J. Mandal asked Gujarat Water Supply and Sewerage Board for proposals for the petitioner's absorption in the Board's Services and stated that the petitioner was not interested in accepting promotion to the IA & AS and asked that this position

be confirmed from the petitioner by the Board under which the petitioner was employed. The petitioner replied dated 12-12-1985 that the presumption of the Senior DAG/ not correct. He was informed that the proposal for promotion is liable to be withdrawn unless he took over the charge. The petitioner's case is he could not have done so without being relieved. On 20-02-1986 the petitioner was informed by DAG that as he has not taken charge by 23-12-1985, he will not be considered for promotion to IA & AS for a minimum period of one year in terms of Ministry of Personnel and Administrative Reforms' OM dated 01-10-1981. The petitioner made representations to the C & AG and took up the matter to the Gujarat High Court. It was observed in the orders dated 23-06-1986 that "It appears that the parent department viz. the office of the Accountant General also had cooperated with respondent No.1 by inviting the proposal for permanent absorption of the petitioner. Under the circumstances the parent department of the petitioner viz. the office of the Accountant General would do well to see to it that an officer who has been found competent by both the parent department and respondent No.1 and whose services are badly needed by the parent department, does not suffer on account of the conspiracy of circumstances. This should be more so in view of the fact that the petitioner's deputation with respondent No.1 was extended by the parent department upto 18th March, 1986."

3. The respondent's case is that the petitioner was duly informed about his promotion and that it was conditional on his joining as Assistant Accountant General on 23-12-1985. In view of his expectation that he would be absorbed in the Board, his case was sympathetically considered by the competent authority and he was allowed promotion but he cannot escape the consequences of the delay by having the

effect of losing the seniority by being promoted after one year under the instructions of the Ministry of Personnel. It was legitimate to ask him join by a certain date, failing which he would forego, promotion otherwise each individual officer would keep the position indeterminate.

During the hearing the petitioner stated that he would not pursue his cause regarding transfer from ahmedabad to Rajkot. We therefore have not given any finding on this issue as the petitioner has accepted the transfer.

4. After hearing the advocates and perusing the documents we consider that the petitioner has taken a narrow ground of having been unable to join as Assistant Accountant General within a stipulated date for/ not being relieved by employer Gujarat Water Supply and Sewerage Board and that strictly the proper course might have been for the Accountant General to take steps for having termination of his deputation. We find that Accountant General had informed the petitioner by a copy of his communication to the Board regarding the original promotion accompanied by the condition of his joining by a certain date. This was adequate notice for the petitioner to seek termination of his deputation. He should have at least brought to the notice of the Accountant General that his inability to join by a stipulated date was not of his choice or his fault but due to lack of permission from his employer for which the respondent had to take necessary steps. Instead the petitioner only sent a communications laconically correcting certain presumptions made by the Accountant General. We were informed during the hearing that in his Civil Application to the Gujarat High Court, he had based this case on his falling between two stools viz. promise of absorption in the services of the Board and offer of promotion as DAG as if a choice

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was available to him. When that absorption did not materialise the petitioner had to go back to his cadre and at that stage he found that his promotion also was not available to him. We may have sympathy with the petitioner for the situation in which he was placed but we are unable to say that he himself had not brought it about. The respondent proceeded according to rules and instructions which were applicable to this case. There was nothing malafide in it. The petitioner had at one stage taken the plea that the relevant instructions of the Ministry of Personnel and Administrative Reforms dated 1-10-1981 were not applicable in his case since he has not refused promotion. We do not find that the plea has any weight. Accordingly promotion had to be refused. Later a sympathetic view of the matter was taken and he was allowed promotion but in the circumstances it has to be after one year with consequential loss seniority etc. We do not find any justification for restoring his promotion from an earlier date as that might entail loss of seniority, etc. to others. We do not totally absolve the respondent from responsibility in this case. A more correct course might have been to issue a notice on the applicant to indicate in clear terms if he accepts promotion or not, instead of combining the question of choice of accepting promotion and accepting a posting at a place indicated. Different considerations govern accepting promotion and accepting the place of posting and while the former can be accepted there might be reasons for urging change of instructions regarding the other. The

petitioner has not in clear terms accepted the promotion. He has not made any representation in terms of stating that he accepts the promotion but cannot join within a stipulated date for certain reasons which needed decision by his employer. We, however, observe that the respondent should revise their communication in such cases in future.

5. In the above circumstances we find no merit in the application which fails.

No order as to costs.


(P H TRIVEDI)
VICE CHAIRMAN


(P M JOSHI)
JUDICIAL MEMBER