

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.268 OF 1998  
Cuttack, this the 21st day of July, 1998

Sri B.P.Mohanty ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
21.7.98

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL).

...

Sri B.P.Mohanty, aged about 51 years,  
son of Sri Jugal Kishore Mohanty,  
at present working as Assistant Audit Officer,  
P& T Audit Office, Cuttack .....Applicant

By the Advocates - M/s G.Rath  
S.N.Misra  
A.K.Panda  
S.Mohanty &  
T.K.Prahraj.

Vrs.

1. Union of India, represented by the  
Comptroller & Auditor General of India,  
No.10, Bahadursaha Zafar Marg,  
New Delhi-2.
2. The Director General of Audit P & T,  
Civil Lines,  
Delhi-110 054.
3. The Senior Audit Officer-in-charge,  
P & T Audit Office,  
Cuttack-753 008 ....

Respondents

By the Advocate - Mr.S.Ch.Samantray  
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has  
prayed for a direction to respondent no.2 not to  
insist on promotion of the applicant in view of his  
unwillingness and to allow him to continue in his  
substantive post/cadre of Assistant Audit Officer, P &  
T Audit Office, Cuttack. Facts of this case fall

within a small compass and can be briefly stated.

2. The applicant joined the office of Deputy Director of Audit & Accounts, P & T, Cuttack, as Auditor on 24.9.1971. This office was changed to P & T Audit Office, Cuttack, from 1.4.1976. He was promoted in the same office as Section Officer on 21.7.1983 and as Assistant Audit Officer on 1.1.1985. It is stated that cadre of Section Officer and Assistant Audit Officer in P & T Department is a localised cadre. He was promoted to the post of Audit Officer and was posted in P & T Audit Office, Calcutta (wrongly mentioned as "Cuttack" in the application), in order dated 13.1.1995 (Annexure-1). Because of some domestic problem, he refused promotion and accordingly, he was not promoted to the post of Audit Officer and continued at Cuttack. He was again promoted in February 1996 and posted to P & T Audit Office, Calcutta, in the order at Annexure-2. At that time also he declined to accept the promotion and continued as Assistant Audit Officer and his juniors in the panel were promoted as Audit Officers. Again in order dated 6.3.1998 at Annexure-3 he was promoted to the post of Audit Officer and posted to P & T Audit Office, Calcutta. He again refused his promotion because of his continuing domestic difficulties. This representation is at Annexure-4. The applicant further states that he reliably understood that respondent no.2 had over telephone directed respondent no.3 to relieve the applicant from his present office immediately, but he has not yet been relieved. The applicant states that his old parents are above 75 years of age and are ailing. They are wholly dependent

upon the applicant and unable to move out of Cuttack, and in case the applicant moves out of Cuttack, there would be no male member to take care of his ailing parents. His children are also studying at graduate and under-graduate levels with Oriya and he cannot also take them outside the State. The applicant submitted a representation 16.3.1998 to respondent no.2 praying not to promote him for at least one year more so that he can continue at Cuttack. But no orders have been passed on this representation which is at Annexure-A/4. He apprehends that he is going to be relieved shortly. The applicant states that in the P & T Audit Department during last two decades there has been no instance of compelling any Section Officer or Assistant Audit Officer to accept the promotion and in the context of the above facts, he has come up with the prayers referred to earlier. On the date of admission of this application, on 18.5.1998, it was noted by us that a Government servant can legally refuse promotion, but such refusal of promotion must be unconditional and for all times to come. A Government servant cannot refuse promotion keeping in mind the future promotional vacancies which are likely to arise at places which are convenient to him. Learned counsel for the petitioner had <sup>then</sup> submitted that the petitioner would in course of that day submit a representation unconditionally forgoing promotion to the post of Audit Officer for the rest of his service career. On such submission, it was ordered that if he files such a representation unconditionally forgoing promotion for the rest of his service career, his

*J. J. M.*

transfer order and the relief order would stand stayed for a period of fourteen days till 3.6.1998, or till the departmental authorities pass final orders on his representation, whichever is earlier. On 3.6.1998 when the matter came up again, it was submitted that his representation unconditionally forgoing promotion for all times to come has been rejected in order dated 2.6.1998 by Deputy Director (Headquarters) in the office of Director-General, P & T Audit, Delhi. It is submitted that the grounds on which his representation has been rejected are factually incorrect and are not legally sustainable.

3. Respondents intheir counter have not disputed the factual aspects averred by the petitioner. They have pointed out that P & T Audit Organisation has got 16 Branch Audit Offices located in different States. According to the departmental instructions, Senior Audit Officers and Audit Officers are liable to be transferred from one office to another within P & T Audit Organisation. Therefore, on his promotion to the rank of Audit Officer, the applicant is liable to be transferred anywhere in the P & T Audit Organisation and this is in accordance with the rules. The respondents have taken the stand that the grounds urged for declining transfer are vague and general, and this could be the grievance of every officer and does not warrant any special treatment for consideration. They have stated that in the absence of any justifiable or valid ground for refusal of promotion, the right to refuse promotion is not an absolute right and is subject to exigency of service and public interest. Refusal of promotion by the applicant would be to the detriment of the

interest of the organisation. The respondents have relied on Government of India circular dated 1.10.1981 (Annexure-R/1) in which it has been laid down that where reasons put forth by the officer for refusal of promotion are not acceptable to the appointing authority, then the promotion could be enforced on the officer, and on his refusal, disciplinary action can be taken against him for refusing promotion. It is further submitted that if the applicant's refusal of promotion is accepted, then it will block the promotion of the officers in the feeder cadre and this will adversely affect the working of the Department. The respondents have stated that the applicant filed a representation on 18.5.1998 refusing his promotion for all times to come. This representation was considered by respondent no.2 and was rejected by issuing a speaking order, which has been annexed to the rejoinder. The grounds on which his representation unconditionally forgoing promotion for all times to come has been rejected are two-fold. Firstly, it has been held that refusal of promotion by the petitioner would block the promotion possibilities, until his superannuation, of officials in the feeder grade in the Branch Audit Office and this will open the floodgate of similar representations from Assistant Audit Officers in the entire P & T Audit Organisation, which will adversely affect the functions entrusted to the Organisation. On the above grounds, the respondents have opposed the prayer of the applicant.

4. In the Rejoinder filed by the applicant, he has submitted that his representation has been rejected arbitrarily and whimsically in order

J. J. M.

dated 2.6.1998. The grounds urged by him are genuine and in spite of the direction of the Tribunal to give a speaking order, the grounds urged by him have not been taken into consideration. It is also submitted that two other persons K.P.Mohanty and Iswar Chandra Rout were also promoted vide Annexure-3 and the representations of these two officers refusing promotion have been accepted by respondent no.2, but the representation of the applicant has been rejected. Both Shri Mohanty and Shri Rout are continuing at Cuttack. It is also submitted that Shri Rout is refusing promotion continuously since 1995 and by allowing their requests refusing promotion and by rejecting his representation, the petitioner has been subjected to discriminatory treatment. Learned Additional Standing Counsel for the respondents submitted that the rejoinder has been filed on the date of hearing on 15.7.1998 and copy thereof has been given to him on that very day. Therefore, it has not been possible for him to obtain instructions on this point and he has urged that the new facts, particularly the cases of Shri K.P.Mohanty and Shri Iswar Chandra Rout should not be taken into consideration by the Tribunal.

*J. Jim*  
5. We have heard Shri G.Rath, the learned counsel for the petitioner and Shri S.C.Samantray, the learned Additional Standing Counsel appearing on behalf of the respondents, and have also perused the records.

6. It is the settled position of law that a Government servant has no right of promotion. He has only a right to be considered for promotion. Conversely, therefore, it must be held that a

Government servant has a right to refuse promotion. But the point at issue is what is the extent and scope of that right. Obviously, the right to refuse promotion is not an absolute right as conceptually there cannot be any right, <sup>even</sup> including the right to life, which is absolute in character. In the instant case, the right to refuse promotion is subject to acceptance of the representation by the departmental higher authorities. This itself shows that an authority, who has to accept the prayer of the petitioner refusing his promotion, would also have the right of refusal to accept the representation. Thus, right to refuse promotion is not an absolute right. Even in case of resignation, it is well settled that even though a Government servant has a right to resign from service, such right is not an absolute right. In certain circumstances, when, for example, disciplinary proceedings are contemplated against a Government servant, who has tendered his resignation, it is open for the departmental authorities not to accept the resignation of a Government servant. On the same analogy, it must be held that the right to refuse promotion is not an absolute right and is subject to its acceptance by the departmental authorities.

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7. But such acceptance or denial of the prayer for refusing promotion must be based on genuine and bona fide grounds. The prayer of a Government servant refusing promotion cannot be rejected arbitrarily and on grounds which are not genuine or bona fide. In the instant case, it has been submitted by the learned lawyer for the petitioner that his parents are old and ailing, his wife is also ailing

and his children are studying at graduate and under-graduate levels with Oriya, and it is necessary for him to remain in Orissa to attend to his domestic problems. On these grounds, he has refused his promotion unconditionally and for all times to come. It is submitted that the parents of the applicant have been ailing for years and on two earlier occasions, when the applicant refused his promotion for one year, his representations were allowed and he was not promoted and was allowed to continue at Cuttack. With the passage of time, his parents have become older and more infirm, and this aspect has not been taken into consideration by the departmental authorities while rejecting his representation in order dated 2.6.1998. The learned Additional Standing Counsel for the respondents has, on the other hand, submitted that the post of Assistant Audit Officer is a non-transferable post and the post is filled up by promotion from the post of Section Officer in the same office. If the petitioner is allowed to forgo the promotion for all times to come, then promotion of Section Officers and Senior Auditors under him in that office will be blocked till the superannuation of the petitioner. This argument is eminently reasonable at first sight, but cannot be accepted because it was submitted by the learned Additional standing Counsel that promotion from the post of Assistant Audit Officer to the post of Audit Officer is through a process of selection.

*S. J. M.*  
If that be the case, then it is not unlikely that some Assistant Audit Officers would be found unsuitable for promotion to the post of Audit Officer and because of their unsuitability, the promotion of the Section

Officers and Senior Auditors in that office would be blocked till the Assistant Auditor Officer is found fit to be promoted. It is not necessary for us to pursue this point further because in the instant case the petitioner has been found suitable for being promoted to the post of Audit Officer and he has been so promoted and transferred. Having gone through the selection process and having been selected, he cannot at this stage refuse to accept his promotion for all times to come. His personal problems are no doubt genuine, which is borne out by the fact that on two occasions in the past these difficulties have been accepted as genuine by the departmental authorities, but the illness of his parents is obviously a continuing problem and he has to make other arrangement for looking after these problems and on that ground he cannot be allowed to block the promotional prospects of the persons who are in the cadre below him. Learned Additional Standing Counsel, in this connection, has drawn our attention to a Division Bench decision of Ernakulam Bench in OA No.781/98 (K.V.Karunakaran v. The Director General of Audit, Posts & Telecommunications and others) (decided on 28.5.1998). In this decision, it was held by the Ernakulam Bench that if an official at a particular level continuously refused to accept promotion, it would stand in the way of those who are aspiring for promotion to that level. Though the issue of right of a Government servant to refuse promotion was not specifically considered in this decision, we are in agreement with the conclusion arrived at in this decision. We, therefore, hold that the right to refuse promotion is not an absolute right and it is subject to acceptance of the prayer to refuse promotion by the

departmental authorities. In the instant case, the grounds on which the departmental authorities have rejected the prayer of the applicant refusing promotion cannot be held to be extraneous or non-genuine. In consideration of the above, we hold that the petitioner has not been able to make out a case for the reliefs claimed by him.

8. In the result, therefore, the O.A. is rejected, but, under the circumstances, without any order as to costs.

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(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM) 21.7.98  
VICE-CHAIRMAN

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