

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.555/2011

Date of decision: 09-08-2012

Orders reserved on 01.08.2012

CORAM:

**HON'BLE Mr. G. SHANTHAPPA, JUDICIAL MEMBER,
HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER.**

Amarjeet Singh Gill S/o Shri Jaswant Singh Gill, aged about 27 years, R/o House No.6, 2nd Block, Near Patwar Training School, Purani Abadi, Sriganganagar, at present employed on the post of Postmaster Grade-I, Hanumangarh Town Post Office, Hanumangarh.

: Applicant

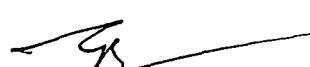
Mr. J.K.Mishra, counsel for applicant.

Versus

1. Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communications & IT, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Director General, Posts & Chairman, Postal Services Board, Dak Bhawan, Sansad Marg, New Delhi-110 001.
3. Chief Post Master General, Rajasthan Circle, Jaipur-302007.
4. Post Master General, Rajasthan Western Region, Jodhpur.
5. Superintendent of Post Offices, Sriganganagar Division, District Sriganganagar.

.....Respondents

**Mr. Ankur Mathur, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.**



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ORDER
Per G. Shanthappa, Judicial Member

The above application is filed under Section 19 of Administrative Tribunals Act, 1985 challenging the legality and propriety of the clarifications dated 26th September, 2011 issued by the second respondent (Annexure-A/1) may be declared illegal and the same may be quashed, further relief of direction to the respondents to accept the declination letter of the applicant for the post of Post Master Grade-I and he may be permitted to revert back to his substantive post of Office Assistant, Srigananagar Division with all consequential benefits.

2. We have heard the learned counsel for the respective parties. The admitted facts from either side are that the applicant while working as Office Attendant at Sri Ganganagar, was eligible to appear for Limited Departmental Competitive examination for selection to the post of Postal Assistant of Sri Ganganagar Division. He appeared for the said examination and succeed, and he was appointed as Post Master Grade-I vide memo dated 26.08.2011. On 29.08.2011 / 05.09.2011 vide memo No.B2-6(C)/PM grade I to III/2011, the applicant was posted at Hanumangarh Town as PM Grade-I. The applicant was relieved from Divisional Office of Sri Ganganagar on 01.09.2011 and he joined as Postmaster Grade-I at Hanumangarh Town SO on 07.09.2011. The applicant was sent for training at PTC Saharanpur from 12.09.2011 to 15.10.2011 vide office memo dated 08.09.2011. The applicant completed the aforesaid training

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successfully and joined at Hanumangarh Town SO on 17.10.2011.

Subsequently, the applicant submitted applications dated 22.10.2011 and 05.11.2011 requesting the respondents to accept declination for the post of Postmaster Grade-I, he may be reverted back to the earlier post i.e. Postal Assistant or Office Attendant.

3. The grievance of the applicant, he came to know the letter dated 09.08.2011 which was issued by the Directorate, Postal Services on the subject '*declining promotion to Postmaster Grade-I by the officials declared successful in Postmaster Grade-I Departmental Competitive Examination held on 12.06.2011*', only on 01.09.2011, as 31.08.2011 being a closed holiday. Before he could think anything, he was relieved in an unceremonial way on the very same day. The formal order was came to be issued by the 5th respondent on 05.09.2011. Subsequently, the applicant was sent for training at Saharanpur. He was imparted the said training from 12.09.2011 to 15.10.2011, subsequently his name was included in the eligibility list for IPO LDCE vide letter dated 23.08.2011, but he was not permitted to appear in the said examination vide letter dated 12.10.2011 issued in pursuance with Directorate letter dated 24.08.2011. The applicant was not given any opportunity to make up his mind regarding acceptance or otherwise decline the post as Postmaster Gr.I. He was absolutely no ambiguity and one could decline after the passing in departmental examination but before his appointment. The date of



result of departmental examination was on 18.08.2011 and the regions are allocated to the selected candidates on 19.08.2011. He had no time for submitting declination even the results were promulgated on 18.08.2011. The applicant was forced to join on the said post without any jurisdiction. As per the circular dated 09.08.2011, it is clear and it contemplates that one could submit his declination after the result was out but before he is appointed. It is the contention of the applicant, was not given any opportunity for accepting or declining the appointment as has been done in other Postal Circles, action of the respondents are not permitting him to revert back to his parent cadre/post is ex-facie illegal, discriminatory and not sustainable in law, the principles of natural justice has been violated and also Articles 14 and 16 of the Constitution of India. Hence the applicant is entitled for the relief as prayed in the OA.

4. The applicant relied on the judgment of the Madras CAT Bench of the Tribunal in OA No.72/2012 & MA No.167/2012 **Smt. R.Kamakshi vs. Union of India and Ors.**

5. The respondents vehemently opposed the OA and filed the reply statement refuted the allegations against the respondents. The applicant was initially appointed as post of Postal Assistant on 31.08.2004 in Sri Ganganagar HO, he appeared for Limited Departmental Competitive Examination-2011 for Postmaster Grade-I conducted on 12.06.2011 in which he was declared



successful vide Directorate letter dated 30.06.2011. The result was circulated vide letter dated 18.08.2011. The applicant was allotted Western Region vide Chief Postmaster General's memo dated 19.08.2011. Thereafter, he was appointed as Postmaster Grade-I vide R.O Memo dated 26.08.2011 and his posting orders were issued vide Memo dated 29.08.2011. He was relieved from Divisional Office, Sriganganagar on 01.09.2011 as posting order was received from Regional office, Jodhpur and the applicant joined as Postmaster Grade-I at Hanumangarh Town SO on 07.09.2011. He was ordered to join the training at PTC Saharanpur from 12.09.2011 to 15.10.2011 vide memo dated 08.09.2011 and relieved for the same on 10.09.2011. The applicant completed the said training successfully and joined at Hanumangarh Town SO on 17.10.2011. Subsequently, he submitted his applications dated 22.10.2011 and 05.11.2011, the same were forwarded to the Regional Office, Jodhpur. The Chief Postmaster General, Rajasthan Circle, Jaipur rejected the application of the applicant for reversion from Postmaster Grade-I to his parental post i.e. Postal Assistant vide letter dated 07.12.2011 as per instructions of Directorate, New Delhi letter dated 09.08.2011 and further clarification dated 07.09.2011 and 26.09.2011 in which it was clarified that declination of successful candidates may be accepted before issue of order of appointment and the same has been intimated to the applicant vide letter dated 12.12.2011. The respondents request for rejection of the OA.



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6. The applicant has filed rejoinder to the reply, there is no much clarification to the reply statement except the repetition as averred in the OA. All the documents, which were enclosed in the rejoinder, were available on the date of filing of the OA. One of the document dated 22.03.2012 (Annexure-A/16) regarding option for declination or acceptance of promotion in Postmaster Grade-I cadre, one Shri Kishore S.Bhati and one Shri Bhawani Sankar were given opportunity to submit declination for promotion to the post of Postal Assistant on or before 29.03.2012. The respondents have shown the discrimination to the applicant.

7. We have carefully considered the pleadings available and the documents enclosed with the pleadings and also the judgment of CAT Madras Bench in OA No.72/2012 & MA No.167/2012 dated 22.06.2012 in which one of the Members is the author of the said judgment.

8. On the admitted facts narrated in the earlier paras, it is evident the applicant did not submit his declination letter before joining the promoted post i.e. Postmaster Grade-I, without protest, he attended and completed the training. After completion of training, he reported the place of promoted post at Hanumangarh Town SO on 17.10.2011. While working as Postmaster Grade-I due to his personal problem, he has submitted his declination letter dated 22.10.2011 and 05.11.2011. The applicant has enclosed his representations dated 22.10.2011



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and 05.11.2011 alongwith the OA, in which the applicant has stated that official circulation of the result of Postmaster Grade-I was made by the respondents vide letter dated 18.08.2011, which was received in the Divisional Office, Sriganganagar on 23.08.2011 and the allotment of the applicant was been made vide order dated 19.08.2011 which was not received by him. It is contended the applicant was not given sufficient time to submit his declination letter for the post of Postmaster Grade-I as the result was circulated on 18.08.2011. Therefore, there was not a single day for him to submit the declination. The applicant was relieved on 29.08.2011 and immediately he was sent for training. The applicant was unable to decline for the post of Postmaster Grade-I. The applicant cannot able to work as Postmaster Grade-I due to family problems and he has not submitted his TA/DA claim for transfer to Hanumangarh & training at Saharanpur. The applicant has not stated the facts subsequent to 05.11.2011. The applicant has suppressed the fact of joining the promoted post i.e. Postmaster Grade-I on 07.09.2011 at Hanumangarh Town SO and the representation dated 22.10.2011 and 05.11.2011. When the applicant is working as Postmaster Grade-I, which is the promoted post, w.e.f. 17.10.2011, his name has been struck off in the previous post i.e. Postal Assistant. If the applicant wants to go back to his original place i.e. Postal Assistant, the interest and right of his immediate junior in the seniority list of Postal Assistant will be affected. The applicant had sufficient time to think over the matter for submission of declination letter before he joined the



promoted post and the applicant fails to make use of the opportunity as per the Directorate letter dated 09.08.2011, at a later stage he cannot say that opportunity was not given. The said letter dated 09.08.2011 was circulated to all COs of Division Office, Sriganganagar. At a later stage he cannot say that he has no knowledge about Circle Office's letter dated 25.07.2011 and the Directorate letter dated 09.08.2011, it is relevant to extract here the said letter dated 09.08.2011:

"I am directed to refer to Circle Office's letter No.STA/5-21/Gr.I Postmaster/Ruling/2010, dated 25.07.2011 on the above subject and to say that declination of appointment by the candidate to the post of Postmaster Grade-I after passing the Departmental Examination, but before his appointment, may be accepted."

9. The judgment in OA No.72/2011& MA No.167/2012 dated 22.06.2012, in the case of ***Smt. R.Kamakshi vs. Union of India & Ors.***, the facts of the case are not applicable to this case. In the said case the applicant was not relieved in the earlier post, she did not joined in the promoted post, and she had submitted her declination letter before joining the promoted post. Under those circumstances, the OA was allowed. The facts of the said case and the facts of the instant case are different and the said judgment is not applicable. When the applicant was relieved vide R.O Memo dated 26.08.2011 and his posting orders were issued vide Memo dated 29.08.2011, the applicant was relieved from Divisional Office, Sriganganagar on 01.09.2011, as posting order was received from Regional office, Jodhpur and the applicant joined as Postmaster Grade-I at Hanumangarh Town SO on



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07.09.2011, he joined the training at PTC Saharanpur from 12.09.2011 to 15.10.2011, after completion of the training he joined at Hanumangarh Town SO on 17.10.2011, he submitted his representation requesting for declination for the promoted post. He cannot be allowed on the Principles of Approbate and Reprobate, once he promoted and joined the promoted post and working, subsequently he cannot seek for declination of promoted post. In this situation, we applied the dictum of the judgment of the Hon'ble Supreme Court in the case of **Agri Gold Exims Ltd. vs. Sri Laxmi Knits & Wovans**, reported in (2007) 3 SCC 686.

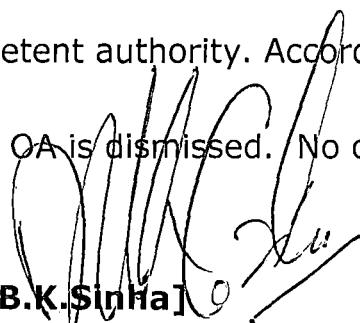
10. For the foregoing, we are of the concerned view that the applicant has no legal right to challenge the instructions given by the competent authority. It is not the case of the applicant that the impugned order dated 26.09.2011 was issued by the incompetent authority. When the competent authority has issued the instructions, because of the inconvenience to his services the applicant cannot challenge the said order. The executive has powers to issue an order, the applicant has no legal right to challenge the said order dated 26.09.2011. In this aspect, we have relied the judgment of the Hon'ble Apex Court in the case of **P.V. Joshi and others Vs. A.G. Ahmedabad & Ors.**, reported in 2003 (2) SCC 632.

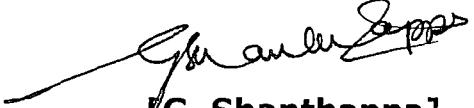
11. For the forgoing reasons, the applicant fails to establish his case of grant of relief. The respondents are justified in their



defence and supported the impugned letter issued by the competent authority. Accordingly, OA sense merit.

12. OA is dismissed. No order as to costs.


[B.K.Sinha]
Administrative Member


[G. Shanthappa]
Judicial Member

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