

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1196 of 1997

Date of Hearing : 16.5.2000

Date of order: 16.05.2000

Present: Hon'ble Mr. Justice S.N.Mallick, Vice-Chairman
Hon'ble Mr. B. P. Singh, Administrative Member

BIRESH KUMAR TRIPATHY

VS.

UNION OF INDIA & ORS

For the Petitioner(s): Ms. B.Banerjee, counsel

For the Respondents: Ms. K.Banerjee, counsel

O R D E R

S.N.Mallick, V.C.:

In this OA, the petitioner has prayed for the following reliefs :-

A) Declaration that the rejection order (Annexure-A9) and the withholding of appeal (Annexure-A11) are arbitrary, unreasonable and wrongful and are liable to be set aside.

B) Order directing the respondents to forbear from giving any effect or further effect to the rejection order (Annexure-A9) till the applicant exhausts all remedies of submitting appeal to higher authority and from withholding the appeal (annexure-A11).

C) Order directing the Chief PMG, W.B. Circle to forthwith forward the appeal to Director of Postal Services (Annexure-A10) for disposal and to withdraw, rescind and cancel the order communicated the SPO, Contai Divn. (annexure-A11)

D) Order directing the Chief PMG not to fill up the post of SDI(P) until the appeal to Director of Postal Services is not disposed of by a speaking order.

2. The application has been contested by the respondents by filing a written reply.

3. The facts are as follows :-

The petitioner while working as Office Assistant/Postal Assistant in the office of SPO, Contai, Midnapore appeared in a competitive examination for promotional post of Inspector of Post Offices (SDIP) held in August 1993. He was successful in the said examination and was informed that he was selected for appointment in IPO cadre as per communication dated 13.5.94 vide annexure-A1. He also underwent the prescribed training for such post which would appear from annexure-A1 dated 27.6.94 and also annexure-A2 dated 8.6.94. Thereafter, the respondent authorities issued the promotion order dated 29.8.94 as per annexure-A3 which shows that the petitioner on promotion was posted as SDI(P), Malda East Sub-division, Malda. By an order dated 5.9.94 (annexure-A4), the respondent authorities directed the selected candidates to join their respective place of posting immediately as the telegraph training to be undergone by them would take some time. By another order dt. 7.9.94 (annexure-A4) the respondent authorities directed to petitioner to join his place of posting at Malda as SDI(P) immediately. Thereafter, the petitioner submitted a representation dated 3.10.94 as per annexure-A6 to the Chief PMG whereby he refused to accept the promotion on the grounds stated therein. The relevant part of the said representation is quoted below :-

" In view of above I am led to urge your kind magesty that I desire to forego my promotion to IPOs cadre and beg to be retained in PA cadre in Contain Division which is my parent cadre. I pray to your kind authority to be kind and convinced with my prayer and to issue favourable order at the earliest convenience in order that I am not forced by my divisional authority to proceed on promotion against my will and against interest of my family."

4. His prayer was allowed by the respondent authorities which was communicated to him by an order dated 7.11.94 as per annexure-A6, which is also annexure-R14 to the reply filed by the respondents. The petitioner was informed that the authorities had accepted his prayer contained in his representation dated 3.10.94 for refusal of the promotion to the IPOs cadre and he was given to understand that in view of his refusal he will have no claim to the said promotion on the basis of the competitive examination held in August 1993. By an order dt. 8.11.94 as per annexure-A7, the petitioner was permitted to join and act as PA/Contai HO with immediate effect. Since then he has been working there. But thereafter the petitioner filed several representations as per annexure-A8 dated 9.5.95 and 10.7.95 to the Chief PMG to allow him to withdraw

the letter of refusal of promotion and to give him promotion on sympathetic ground. Such prayer was rejected as communicated to the petitioner under Annexure-A9 dated 31.8.95. Thereafter, the petitioner made an appeal dt. 20.11.95 to the Director General, (Post) New Delhi for consideration of his prayer for withdrawing his refusal of protmotion. He sent reminder ^{to} the same authority by his letter dt. 14.8.96. This appeal has not been considered; on the other hand, the petitioner was informed by the Superintendent of Post Offices, Contain Division, by a letter dt. 8.10.96 (annexure-A10) asking him not to submit representations on the subject.

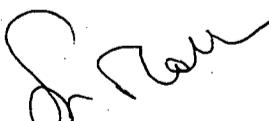
5. We have heard Ms. B.Banerjee, 1d. counsel appearing for the petitioner and Mrs. K.Banerjee, 1d. counsel appearing for the respondent authorities.

6. The only question is whether the petitioner can pray for such appointment in the promotional post of SDIP to be filled up on the basis of competitive examination after he had already refused to accept such promotion. Ms. Banerjee, 1d. counsel for the petitioner contends that as per rules, an employee, who has refused promotion, is debarred from getting such promotion for a period of only one year and as such her client should be considered for promotion as the refusal was made in the year 1994 and more than one year has passed since then. But the rule she is relying upon relates to promotion to be given on the basis of DPC recommendation. Admittedly, in the present case the post of SDI(P) is a promotional post to be filled up on the basis of competitive examination to be participated by eligible candidates. The petitioner appeared in the competitive examination held in 1993 and on being selected and appointed, he refused to accept the said post and his refusal was accepted by the competent authority as per rule. Under such circumstances, we do not find any point of return on the part of the petitioner to claim back such promotional post. There is no merit in this application and it must fail.

7. Accordingly, the application is dimissed. No costs.

Dayanidhi

MEMBER(A)


VICE CHAIRMAN