

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 146 of 2013

FRIDAY, this the 12th day of April, 2013

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

V.K. Lekshmanan,
S/o. Krishnan Nampoothiripad,
Assistant Postmaster, Irinjalakuda H.O,
Irinjalakuda. Residing at "Vembliasmana",
Kanjirathode Road, Irinjalakuda,
Trichur District – 680 121.

... Applicant

(By Advocate Mr. Shafik M.A)

versus

1. Union of India represented by
The Chief Post Master General,
Kerala Circle, Trivandrum.

2. The Superintendent of Post Offices,
Irinjalakuda Division,
Irinjalakuda – 680 121.

... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 09.04.2013, the Tribunal on
12-04-13 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant while working as Assistant Postmaster, Irinjalakuda HO had declined his promotion as HSG-II in the year 2011. He was again promoted as HSG-II vide order dated 06.12.2012. In response to his letter dated 05.01.2013 declining promotion, Annexure A-1 letter dated 13.02.2013



was issued directing to relieve the applicant immediately to join as Postmaster, Koratti. The applicant was forced to handover the charge of the Postmaster, Irinjalakuda, which he was holding as additional charge as well as the charge of Assistant Postmaster on 15.02.2013, as per the say of the applicant. Aggrieved, he has filed this O.A. for the following reliefs:

- (i) To call for the records relating to Annexure A-1 to A-7 and to quash Annexure A-1 and A-2;
- (ii) To declare that the applicant is at liberty to decline the promotion to HSG-II as per A-5 by submission of A-6 and to declare that the relinquishment of charges as per A-2 made forcibly is illegal and arbitrary;
- (iii) To direct the respondents to permit the applicant to continue in his post at Irinjalakuda HO prior to A-5;
- (iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case; and
- (v) To grant the costs of this Original Application.

2. The applicant contended that the refusal of the respondents to accept his representation declining promotion and forcibly relieving him in order to join the promoted post is not in accordance with any rules or instructions. As per Annexures A-3 and A-5 orders, the applicant is at liberty to refuse promotion. Annexure A-6 representation of the applicant is understood not to have even been forwarded to the 1st respondent who is the competent authority to consider it. No rule in the MACP Scheme envisages forcible acceptance of promotion. The applicant is to retire in a short time.

3. Respondents in their reply statement submitted that the applicant was granted the 3rd financial upgradation under the MACP Scheme on completion



of 30 years of service as PA and LSG vide order dated 12.08.2010. The applicant did not accept the promotion granted as HSG-II in the year 2011. He was again promoted as HSG-II and posted as Postmaster, Koratty, vide order dated 21.12.2012. He had submitted Annexure A-6 representation to the 1st respondent declining the promotion due to personal inconvenience. The same was forwarded to the Office of the Postmaster General and after due consideration of the same, with reference to Note 13 to Rule 11 of the CCS (CCA) Rules, Annexure A-1 order was issued directing the applicant to join as Postmaster, Koratty. But he has not joined the new post. It was further submitted that when an official has been granted financial upgradation under the MACP Scheme, he cannot refuse regular promotion and higher responsibilities. There are 33 HSG-II posts in the Central Region, out of which 14 posts are lying vacant. If every senior official is allowed to decline assumption of higher responsibilities, the administration will be left with no choice but to run the public office with less experienced junior staff and this will be caused not due to the non-availability of sufficient qualified hands but due to the non-acceptance of promotion by the eligible officials. The impugned orders are in consonance with the rules and Government of India instructions. Each Regional Postmaster General including the Chief Postmaster General has been delegated all financial and administrative powers of the the Head of the Department as spelt out in the delegation of Financial Power Rules, General Financial Rules, Fundamental Rules and Supplementary Rules.

4. In the rejoinder, the applicant submitted that there are abundant eligible officials awaiting promotion in the department. The respondents have not

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cited the rules by which those who have been granted 3rd financial upgradation under the MACP Scheme, cannot decline promotion. Even in respect of promotion based on competitive examination, qualified candidates are given the liberty to decline promotion as per Annexure A-8.

5. We have heard Mr. Shafik M.A, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents and perused the records.

6. The applicant was promoted as HSG-II for the 2nd time vide Annexure A-5 dated 06.12.2012. Paras 5, 8 and 10 of the said order are extracted as under:

"5. Those who are placed financial upgradation under TBOP/BCR and MACP are not entitled for further fixation of pay under FR22(I)(a) (1) on account of this promotion. Officials declining promotion shall not be considered for MACP placement or further promotion to HSG-I cadre.

6. xxxxxxxx xxxxxxxx

7. xxxxxxxx xxxxxxxx

8. Those who refuse HSG-II promotion now offered will not be eligible for regular/officiating promotion to HSG-II cadre for one year from the date of such refusal. Such officials if officiating in HSG-II/HSG-I posts, on adhoc basis will be reverted immediately.

9. xxxxxxxx xxxxxxxx

10. In case any official is not willing to accept promotion, his/her representation declining the promotion offered should be received in this office within 30 days from the date of issue of posting orders."

(third emphasis supplied)

7. The officials declining promotion shall not be considered for MACP placement or further promotion to HSG-I cadre and will not be eligible for regular/officiating promotion to HSG-II cadre for one year as per the above

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order. Further, it is provided that if any official is not willing to accept promotion, his representation declining the promotion offered should be received in the office of the Assistant Postmaster General (staff) within 30 days. The point raised by the applicant that he is at liberty to refuse promotion is not refuted by the respondents in their reply statement. The respondents cannot close their eyes to clause 10 of the promotion order and pretend that it is not there. Annexure A-5 order provides scope for not accepting the promotion offered. Accordingly, the applicant responded to the offer of promotion vide Annexure A-6, which is reproduced as under:

"Irinjalakuda,
05.01.2013

From

V.K. Lekshmanan
Postmaster (offg)
Irinjalakuda HO – 680 121.

To

1. The chief Postmaster General
Kerala Circle
Thiruvananthapuram – 695 001.
2. The Postmaster General
Central Region
Kochi.

Sir,

Sub:- Promotion to HSG-II

Ref:- 1) Memo. No. ST-3-4/2012 dated 06.12.2012 of CPMG
Kerala TVM
2) Memo. No. ST/42-22/2010 dated 21.12.2012 of PMG
Kochi.

With reference to the above Memos, I may kindly be permitted to submit that due to personal inconvenience, now I am not accepting the promotion offered vide Memo. under reference (1) above, I may kindly be permitted to continue in the LSG cadre at present.

Yours faithfully,
Sd/-
(V.K. Lekshmanan)"



The applicant had declined promotion due to personal inconvenience.

8. Clause 10 in both Annexures A-3 and A-5 orders does not indicate any administrative exigency that compels the respondents to force promotion on the officers who are offered promotion but just the opposite. They beckon the applicant and others who are inclined to forego promotion for whatever reason, to send representations within 30 days of the order of promotion. The applicant precisely did so on two occasions of promotion.

9. Relevant extract from Annexure A-1 letter dated 13.02.2013 is reproduced as under:

"Please refer to the letter cited above endorsing the letter dated 05.01.13 received from the above official declining his promotion to HSG-II and posting as PM Koratti MGD.

The competent authority has not accepted the letter dt. 05.01.13 received from Sri V.K. Lekshmanan LSG APM Irinjalakuda HO declining the promotion and posting as HSG-II PM Koratti. When an official has been granted financial upgradation under MACP-III, he/she cannot decline regular promotion and higher responsibilities. As such, the official may please be relieved immediately under office arrangement and directed to join as PM Koratti. Please report compliance."

The applicant has been informed that his letter dated 05.01.2013 declining promotion and posting as Postmaster, Koratti, is not accepted. The ground for rejection of his letter is that as he has been granted 3rd financial upgradation under the MACP Scheme, he cannot decline regular promotion and higher responsibilities.

10. Para 25 of the MACP Scheme, reads as under:

"25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not

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been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal."

(emphasis supplied)

As per the above clause, financial upgradation cannot be withdrawn even if the employee refuses promotion subsequently. He will not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again. There is no provision in the MACP Scheme to force promotion upon an employee who has been granted financial upgradation. Therefore, the reliance of the respondents on the MACP Scheme to force promotion upon him is misplaced.

11. In the reply statement, the respondents have pointed out that out of 33 HSG-II posts in the Central Region, 14 posts are lying vacant and it may not be possible for them to run the administration smoothly if all eligible officials decline promotion. They did not state that all officials have declined promotion. If a few officials declined promotion, there are other eligible officials who can be promoted. The respondents have not stated that there are no eligible officials who can be promoted. Therefore, the administrative exigency projected by the respondents is not convincing. If there was an administrative exigency, clause 10 would not have found a place in the promotion order.

12. Further, the respondents have relied on Note-13 of Rule 11 of the CCS (CCA) Rules, 1965, which is extracted as under:

"(13) Action on refusal of promotion - In cases where the reasons adduced by an officer for his refusal of promotion are not acceptable to the Appointing Authority, then he should enforce the promotion of the officer and in case the officer still refuses to be promoted, then even disciplinary action can be taken against him for refusing to obey orders."

The instruction of the Government of India is that where the reasons adduced by the official for his refusal of promotion are not acceptable to the appointing authority, then he should enforce the promotion and disciplinary action can be taken against him for refusing to obey the orders. In the instant case, the respondents have not referred to Note-13 to Rule 11 of the CCS (CCA) Rules in Annexures A-1, A-3 and A-5 orders. The respondents have no case that the reasons adduced by the applicant are not acceptable to the appointing authority. Instead, they have relied wrongly on the MACP Scheme for rejecting his representation declining promotion.

13. The respondents cannot approbate and reprobate at the same time. They are barred from invoking the Government of India instruction No. 13 to Rule 11 of the CCS (CCA) Rules, 1965, after calling for representation from officials who decline promotion. If they had any intention of invoking the said instruction, they should have mentioned the same in the order of promotion, instead of calling for representation from those who decline promotion. In fact, there is no mention of Government of India instruction No. 13 in the impugned Annexure A-1 order, which is relied upon by the respondents in their reply statement.

14. The Annexure A-2 order is not in consonance with paras 5, 8 and 10 of the promotion order at Annexure A-5 in so far as it imposes promotion on the

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applicant. Both Annexures A-1 and A-2 orders are made without due application of mind to relevant factors. The respondents have not taken into consideration the fact that the applicant is to retire in a short time while imposing on him a promotion involving transfer. The calling of representation declining the promotion gives rise to the legitimate expectation of fair consideration of the same as per rules. The rejection of the representation of the applicant declining promotion is not on the basis of any rules/instructions. If otherwise, the respondents should have mentioned the relevant rule or instruction in the impugned order. We have already found that the MACP Scheme does not force promotion on the beneficiary.

By Justice P.R.Raman, Judicial Member:

15. I have gone through the order rendered by my learned Brother and I fully concur with the views as expressed above. However, I would like to add a few lines of my own.

16. Govt. of India instructions only indicates that there is no inherent right to refuse promotion and if the reasons for declining promotion is not convincing the authorities can impose promotion unless otherwise specified and take disciplinary action in case it is refused. In the present case the promotion order issued itself gives him an option to refuse promotion but the consequence is that he will not get future promotion for one year from the date of refusal. Further he will not be considered for MACP placement. Thus by declining promotion the employee forfeits his claim for promotion as also future MACP placement. Thus a right is conferred on him to refuse

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promotion subject to the above condition. If those clauses are absent, the matter is different and the Govt. of India instructions come in to play. But in the present case and going by the order of promotion issued asking the employee to indicate within 30 days as to whether he refuses promotion, he could not have been relieved imposing promotion.

By Order of the Court:

17. In the conspectus of the facts and circumstances and the legal issues involved, we are of the considered view that the impugned orders are legally not tenable and accordingly, the O.A is allowed as under.

18. Annexures A-1 and A-2 orders are quashed. The respondents are directed to issue appropriate orders restoring the status quo ante the quashed orders as early as possible, at any rate, within two weeks from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 12th April, 2013)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

CVR.