

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.303/99

Thursday this the 24th day of June, 1999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.S.Ramakrishnan,
S/o P.R.Sankara Iyer,
aged 47 years,
Assistant Audit Officer,
P&T Audit Office,
Trivandru.33,
(Mangalya, Gokul Nagar,
Kavadiar Post, Trivandrum-3).

...Applicant

(By Advocate Mr. M.R.Rajendran Nair (rep.))

Vs.

1. The Senior Audit Officer-in-Charge,
P&T Audit Office, Vth floor,
Corporation Buildings,
Trivandrum.695 003.

2. The Director General (Audit)
P&T New Delhi.

3. Union of India, represented by
Secretary to Government of India,
Ministry of Communications,
New Delhi.

4. The Additional Deputy Comptroller
and Auditor General (P&T)
Civil Lines, Delhi.54.

...Respondents

(By Advocate Mr.M.R. Suresh, ACGSC)

The application having been heard on 24.6.99
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, an Assistant Audit Officer, P&T
Audit Office, Trivandrum made a representation on 8.1.99
seeking permission to decline promotion as Audit Officer
explaining his difficulties. While he did not receive any
reply by an order dated 2.2.99 the applicant and two others

were promoted as Audit Officers and the applicant was transferred to Delhi. Explaining the difficulties of the applicant in giving effect to the order of promotion and transfer and expressing his unwillingness to be promoted and his willingness to decline promotion permanently, the applicant made a representation to the second respondent on 4.2.99. Before a decision on that representation was taken apprehending that the applicant would be relieved from his present place of posting, the applicant filed O.A.162/99 seeking a declaration that the applicant's refusal to accept promotion permanently is liable to be accepted and for a direction to respondents to retain him in his present place of posting as Assistant Audit Officer. The above Original Application was disposed of by order dated 8.2.99, as agreed to by the learned counsel on either side with a direction to consider the representation submitted by the applicant and to give him an appropriate reply within a reasonable time keeping the relief of the applicant in abeyance till an order on the representation is communicated to the applicant. Now by the impugned order dated 8.3.99 (A7) the request of the applicant for permission to decline promotion permanently as Audit Officer has been rejected. It is aggrieved by that that the applicant has filed this application seeking to have the impugned order A7 set aside and for a direction to the respondents to retain the applicant in his present post of Assistant Audit Officer till his retirement and not to promote him as Audit Officer and not to implement his present promotion evidenced by Annexure.A4. The grounds on which the applicant assail the impugned order are that the applicant being a chronic patient of Inter Verberal Disc Prolapse as well as Bronchitis the rejection of his request

to decline promotion has been made without due application of mind, that as the right to decline promotion is an absolute right, the department has no authority to reject the request for declining promotion, that the refusal on the part of the applicant to decline promotion does not adversely affect anyone else in the department and that no public interest is served by compelling the applicant to go on promotion to a distant place where he would not be in a position to discharge his functions properly.

2. The respondents have filed a reply statement in detail refuting the allegations made in the application to which the applicant has filed a rejoinder.

3. We have gone through the entire pleadings as also the impugned order and the other materials which are brought on record. The impugned order A7 is a very detailed order telling the applicant as to why it is not administratively feasible to accept the request of the applicant for permission to decline promotion as an Audit Officer. In the reply statement, the respondents have reiterated the stand put forth in the impugned order giving detailed reasons.

4. We shall first deal with the contention of the applicant that though an employee has got a right to be considered for promotion as far as refusal to accept promotion is concerned, it is perfectly within the employees power and the department has no right to reject such a request, we are of the considerd view that this preposition is not tenable. It is not within the absolute power of the ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ employee to get into service and say that he would go upto a particular level only and beyond which I would not go on promotion. Although an employee promoted to a higher post is entitled to make a request for permission to decline

promotion, the ultimate decision as to whether the request is to be accepted or not lies with the competent authority in the department. It does not mean that the competent authority in the department can take a decision arbitrarily, capriciously or without application of mind. Once a decision is taken bonafide to refuse the request of the employee to decline promotion, the employee is bound to obey the order and to accept that. A perusal of the impugned order shows that the decision to reject the request of the applicant for permission was taken after careful consideration of the relevant facts and with due application of mind. An identical question was considered by us in a recent decision in O.A. 304/99. We have taken the view that once the competent authority takes a decision bonafide considering relevant facts, judicial intervention is not called for. We do not find any reason to deviate from that view.

5. Now we shall take into account whether the impugned order has been passed taking into consideration what has been stated in the representation and the other relevant factors like the requirement of service and the administrative interest. It is not a stray case of an employee seeking permission to decline promotion. Most of the Assistant Audit Officers promoted as Audit Officers are declining promotion. If such requests are accepted then it would be impracticable to operate a cadre. We find that the impugned order has been passed with due application of mind and that the respondents have decided to reject the request of the applicant declining promotion after proper application of mind to the facts and other relevant circumstances of the case.

6. In the light of what is stated above, we find no merit in this application, which is dismissed leaving the parties to bear their own costs.

Dated the 24th day of June, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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Annexure.A4: True copy of the representation dated 4.2.99 submitted by the applicant along with various Medical records to the 2nd respondent.

Annexure.A7 True copy of the Order No. Control/999/16(A)(8)98-II dated 8.3.99 issued by the Director, Office of the 2nd respondent to the 1st respondent.

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