

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 304/99

FRIDAY, THIS THE 18TH DAY OF JUNE, 1999.

C O R A M:

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

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

F.N. Chandran S/o Narayana Pillai
Assistant Audit Officer,
P & T Audit Office, Trivandrum
r/o TSC 9/2364, Sreerangam Lane,
Sasthamangalam, Trivandrum.

..Applicant

By Advocate Mr. M.R. Rajendran Nair,

Vs.

1. The Senior Audit Officer-in-Charge,
P & T Audit Office, 5th Floor,
Corporation Buildings,
Trivandrum-695 003
 2. The Director General (Audit),
P & T, New Delhi.
 3. Union of India represented by its Secretary,
to Government of India, Ministry of Communications,
New Delhi.
 4. Additional Deputy Comptroller and Auditor
General (P & T), Civil Lines,
Delhi-54.
- ...Respondents

By Advocate Ms Vani, ACGSC

The application having been heard on 14.6.1999, the Tribunal delivered the following on 18.6.99

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

In this application filed under Section 19 of the Administrative Tribunals' Act, 1985, the applicant has prayed for the following reliefs:

"i) To quash Annexure A7.

ii) To declare that applicant's permanent refusal of his claim for promotion is liable to be accepted.


....

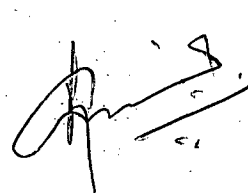
iii) To direct the respondents to retain applicant in his present post of Assistant Audit Officer, till his retirement and not to promote him as Audit Officer and not to implement his present promotion evidenced by Annexure A4.

iv) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and

v) Grant the costs of this Original Application."

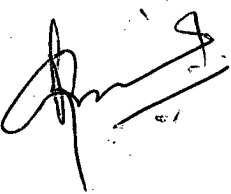
2. The facts of the case briefly stated are as follows.

The applicant commenced service as Auditor in the P & T Audit Office, Trivandrum on 16.4.70. He was promoted to the post of Section Officer on 8.4.76 and further promoted as Assistant Audit Officer on 1.4.84 in which post he is working at present. It is stated by the applicant that he has been a chronic heart patient since January, 1989 and was under treatment in the Sree Chithira Thirunal Institute of Medical Sciences and Technology, Trivandrum. He suffered first heart attack in October, 1989 and second one in February, 1996 and had undergone coronary by pass surgery in March, 1996 and undergoes periodical medical check ups in the Sree Chithira Thirunal Institute of Medical Sciences and Technology. When the applicant was promoted to the post of Audit Officer first time in 1991 he refused and the same was accepted by respondent No. 2. Subsequently also every time  except in 1998 when he was promoted, he refused the same and the refusals were accepted by respondent No.2. The applicant made a representation to the respondent No.2 in October, 1998 narrating his physical condition and declining promotion and posting as Audit Officer followed by another representation dated 8.1.99 stating therein that he would not permanently claim promotion to the post of of Audit Officer in his entire official career and therefore, he may not be considered for empanelment for promotion to the post



of Audit Officer. Respondent No.2 vide his order dated 2.2.99 promoted the applicant as Audit Officer and posted him in Mumbai. The applicant submitted a further representation dated 4.2.99 along with various medical records to the Respondent No.2 and on the applicant coming to know that he was likely to be relieved on promotion. On the advice of the doctor he went on medical leave from 4.2.99. Against the promotion order dated 2.2.99, applicant approached this Tribunal through O.A. No. 156/99 with a prayer to declare applicant's permanent refusal of his claim for promotion as liable to be accepted and to direct respondents to retain applicant in his present post of Assistant Audit Officer till his retirement and not to promote him as Audit Officer and also not to implement the order dated 2.2.99. O.A. No. 156/99 was disposed of by this Tribunal with a direction to the Respondent No.2 to consider the request dated 4.2.99 made by the applicant and to retain him in his present post till a decision was communicated to the applicant. Respondent No.2 informed respondent No.1 by letter dated 8.3.99 (Annexure A7) that the request made by applicant vide his representation dated 4.2.99 had been rejected for the following reasons:

- (a) The applicant had completed more than 3 years from the date of his refusal for promotion to Audit Officer grade;
- (b) It would be unfair on those AAOs who had chosen to accept promotion and moved out to another station, if persons who refused to accept promotion were treated with continuous indulgence.
- (c) Applicant's refusal to accept promotion would adversely affect the promotional prospects of SOGE passed Auditors as well as personnel in the feeder category;



...4...

(d) Declining promotion once for all also creates greater problems for administration in managing the cadre and in particular made the organisation ineffective;

(e) Medical facilities at Mumbai were at par or better than those available at Trivandrum;

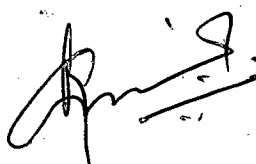
(f) Acceptance of the request of the applicant would lead to identical requests by similarly placed officers."

3. Applicant approached this Tribunal against the above letter challenging the reasons stated therein and seeking the above reliefs on the grounds that the rejection of the applicant's request and that too not by an authority who was directed to consider the representation was arbitrary, unjust and unreasonable. Further, it was stated that the medical grounds put forward by the applicant was not considered by the respondents in their true perspective. According to the applicant right to self preservation was a part and parcel to right to life guaranteed under Article 21 of the Constitution of India, and thus fundamental in character and it was in exercise of this valuable right that the applicant refused his promotion as Audit Officer. Further, according to him promotion was not an incidence of service to be imposed on an unwilling employee and that the department could bar him from being considered for promotion for a year on his refusal to accept promotion and at the most the department could proceed departmentally against him on repeated refusals.

4. Respondents filed reply statement and resisted the claim of the applicant. According to respondents, applicant had entered into All India Service and therefore, he could not avoid transfer being an incidence of service and that the applicant could not have any special preference and the

...

rejection of refusal of promotion was neither illegal nor against any statutory rules. Further, it was stated that keeping in view the efficiency of work in the office and taking into the administrative problems dueto agreeing to the requests of refusal to promotion year after year, a decision was taken in February, 1998 that Assistant Audit Officers who had completed more than three years from the date of their first refusal may be posted on promotion as Audit Officer to another branch of Audit office exempting only those Assistant Audit Officers who were due to retire within two years, provided they chose to remain in the lower post of Assistant Audit Officers when the promotion was offered. It was further stated that the refusal for promotion permanently by applicant if accepted would tantamount to permanently blocking the promotion of a number of employees belonging to the feeder category posts below the post of Assistant Audit Officer, till his retirement on superannuation. By his moving out of the Trivandrum office, amongst the cadre of Section Officers, Sr. Auditors, Auditors and Clerk-Typists, one each would be promoted as Assistant Audit Officer, Section Officer, Sr. Auditor and Auditor respectively and one post of Clerk-Typist could be filled up from the public. While the cadre of Assistant Audit Officer was filled on local basis, from Audit Officer and beyond it was on All India basis. It was further stated by the respondents that the present O.A. was similar to O.A.No.268/98 decided by the Cuttack Bench of this Tribunal and O.A. No. 781/98 and O.A. No. 1568/98 decided by this Bench in all of which the claims were rejected. Respondents stated that the applicant in O.A. 1568/98 challenged the order of this Bench of the Tribunal dismissing his O.A., in O.P. 21828/98 before the High Court of Kerala. Hon'ble High Court had held that there was no



embargo to promote the applicant in that O.P. after promoting his six seniors. According to the respondents, the applicant in the present O.A. is No.1 in the seniority list for promotion and therefore, promotion of applicant as Audit Officer was also in compliance with the judgment of High Court of Kerala and therefore, there was no illegality in the letter dated 8.3.99 passed by Respondent No.2.

5. Respondents also relied on the following judgments of the Hon'ble Supreme Court:-

(i) Union of India V. H.N.Kirtani (1989) II ATC 269 SC

(ii) Shilpi Bose & Others V. State of Bihar and Others
(1991 Suppl. (1) SCC 650)

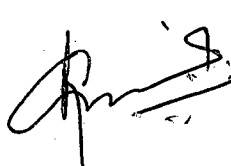
(iii) Union of India V. Abbas (AIR 1993 SC 2444)

(iv) Union of India V. N. Kamat (AIR 1993 SC 1605)

and submitted that according to the law laid down by the Apex Court in the matter of transfers, Courts/Tribunals should normally not interfere and it was for the appropriate authority who was to decide as to who had to be transferred. Respondents prayed for dismissal of the O.A.

6. During the course of the arguments, learned counsel of applicant apart from narrating the factual position, submitted that once the applicant had refused promotion, the Department could take action only in accordance with the rules and instructions of the Govt. of India as included in O.M. No. 220034/P/81-Estt.(T) dated 10.10.81, a copy of which as included in Swamy's Manual on Establishment and Administration for Central Govt. Offices Second Edition was submitted by him.

7. Heard learned counsel for the parties. We have given careful consideration to the submissions of the learned counsel for the parties, rival pleadings and have also perused the record. We find that this O.A. is identical to



O.A. No. 268/98 decided by the Cuttack Bench of the Tribunal and O.A. No. 781/98 decided by this Bench on 28.2.98. It was held by the Cuttack Bench that the right of an employee to refuse promotion was not an absolute one and was subject to its acceptance by the Departmental authority. At the same time, it was held that the prayer of the Government servant refusing promotion could not be rejected arbitrarily and on grounds which were not genuine or bonafide. From the impugned order, we find that the rejection of refusal of promotion by applicant had not been done in an arbitrary manner. The consideration and rejection advised under the letter dated 8.3.99 (Annexure A7) is a detailed and reasoned one. Moreover, in the light of the judgment of the High Court of Kerala in O.P.No. 21828/98, if the applicant's refusal of promotion is accepted by the Department, the Department would find difficulties to reject any of the requests of refusal of promotion of any of his juniors. Moreover, if the reliefs sought by the applicant are given by this Tribunal, the Department will be precluded from proceeding further the matter in terms of the O.M.dated 10.10.81.

8. In view of the foregoing, we are of the view that the applicant is not entitled to any of the reliefs sought for in this Original Application and accordingly, we dismiss this Original Application with no order as to costs.

Dated the 18th June, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

KMN



A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES REFERRED TO IN THE ORDER

1. Annexure A7.: D.O.No.Control/998/16(A)(8)-II dated 8.3.99
-Promotion of Shri P.N. Chandran, AAO to the cadre of A.O.
2. Annexure A4:-Order No. 1656/AdmnI/EAI/C-23-V dated 4.2.99
issued by the first respondent to Sri P.S. Ramakrishnan,
AAO.