

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.305/99

Friday this the 25th day of June, 1999

CORAM:

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

Alexander Varghese,
S/o M.A.Varghese aged 52 years,
Assistant Audit Officer,
P&T Audit Office, Trivandrum
residing at Mattakkal, Prasanthi,
Peal Nagar, Peroorkada,
Trivandrum.

...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.3.

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

3. Union of India, represented by Secretary
to the 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. K.R.Rajkumar, ACGSC)

The application having been heard on 25.6.99, the Tribunal
on the same day delivered the following:-

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
Applicant Alexander Varghese is an Assistant
Audit Officer, P&T Audit Office, Trivandrum. He made a
representation to the Additional Deputy Comptroller and
Auditor General (P&T) seeking permission to relinquish his
claim for promotion as Audit Officer permanently. While
this representation was pending by Order dated 2.2.99 the

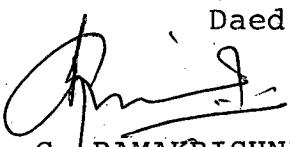
applicant and two others were promoted as Audit Officers, the applicant being posted to Calcutta. Explaining his difficulties in carrying out the promotion and transfer, the applicant made a representation on 4.2.99 to the second respondent which was not considered and disposed of. Apprehending that the applicant would be relieved to report at Calcutta, the applicant filed O.A.161/99 seeking to have the order of transfer cancelled or in the alternative for a direction to dispose of the representation. The application was disposed of by the Tribunal by Order dated 8.2.99 as agreed to by the learned counsel on either side with a direction to the second respondent to consider the representation submitted by the applicant and to give him an appropriate reply keeping the relief of the applicant pending till a reply is given to him. Pursuant to the above direction of the Tribunal, the second respondent has by impugned order dated 8.3.99 (A6) disposed of the representation of the applicant rejecting his request for relinquishing promotion as Audit Officer permanently. The applicant aggrieved by the rejection of his request for declining promotion permanently as Audit Officer has filed this application seeking to have A6 order set aside and for a declaration that the applicant's permanent refusal to accept promotion is liable to be accepted 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 applicant has alleged in the application that he has an absolute right to decline promotion which the competent authority has no discretion to reject, that the impugned order has been issued without due application of mind to the various facts mentioned in the representation and that the order does not serve any public interest.

2. Respondents have filed a detailed reply statement. We have heard the learned counsel on either side. We are of the considered view that the applicant does not have a legitimate legal right to claim that he should be permanently allowed to continue as an Assistant Audit Officer till his retirement. No person who enters into a Government Service can dictate a term that he would go upto a particular level only and beyond that he may not be promoted. A Government Employee has a right to make a representation for permission to decline promotion for valid reasons but that right is not an absolute right. The request has to be considered by the competent authority and a decision has to be taken. The decision lies with the competent authority in the department and not with the employee. It is not as if the competent authority in the department can take a decision arbitrarily, capriciously or without application of mind. But once a decision is taken taking into account the relevant facts and circumstances bonafide, the decision is final and has to be obeyed by the Government Employee. Thus the right of the employee to decline promotion is not an absolute right. ✓

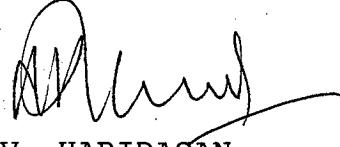
3. A perusal of the impugned order shows that the competent authority has considered the feasibility of accepting the request of the applicant for retention in his present post and present place of posting. It has been very clearly stated that the applicant has been allowed to forego promotion on several previous occasions and that his request cannot further be entertained in the administrative interest and cadre management.

4. In the light of what is stated above, we do not find any infirmity in the impugned order which calls for judicial intervention. The application, is therefore, dismissed leaving the parties to bear their costs.

Daed the 25th day of June, 1999



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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Lis of Annexures referred to in the Order:

Annexure.A4:True copy of the representation datd 4.2.99 submitted by the applicant alongwith Medical Certificate dated 3.2.99 to the 2nd respondent.

Annexure.A6:True copy of the order No.Control/1000/16(A)(8)98-III dated 8.3.99 issued by the Director, Office of the 2nd respondent to the 1st respondent.

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