

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 27/96.

Date of Decision 4th April, 1996.

Shri P. S. Kasar, Petitioner

Shri S. P. Kulkarni, Advocate for the Petitioner.

Versus

Ministry Of Defence, Respondent


Shri R. K. Shetty, Advocate for the Respondents.

Coram:

The Hon'ble Mr. B. S. Hegde, Member (J).

~~The Hon'ble Mr.~~
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1. To be referred to the Reporter or not? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO.6, 3RD/4TH FLOOR.
PRESCOT ROAD, FORT, BOMBAY - 400001.

ORIGINAL APPLICATION NO. 27/96.

Dated this Thursday, the 4th day of April, 1996.

CORAM : Hon'ble Shri B.S. Hegde, Member (J).

Shri P.S. Kasar ... Applicant
(Advocate by Shri S.P. Kulkarni)

Versus

Ministry of Defence ... Respondents.
(Advocate by Shri R.K. Shetty)

: O R D E R :

{ PER.: SHRI B. S. HEGDE, MEMBER (J) }

1. Heard Shri S.P. Kulkarni for the applicant and Shri R.K. Shetty for the respondents. The only prayer made in this O.A. is that pursuant to the direction of the Tribunal vide dated 07.03.1996, the applicant has given a declaration in accordance with the proforma prescribed by the respondents. He has added that the above declaration is without prejudice to the O.A. No. 20/96 pending before the C.A.T., Bombay Bench and the above declaration is simplicitor one and the same will not debar him from considering him for promotion from 3.8.1996 or any other promotions and lastly, in view of the above declaration he may not be forced to go on promotion and status-quo as on 28.12.1995 be maintained as per the order of C.A.T., Bombay Bench dated 28.12.1995 and 7.3.1996.

2. The Learned Counsel for the respondents submits that the declaration given by the applicant is not in accordance with the rules. However, on perusal of the same, except condition no. 1, i.e. the above declaration is without prejudice to O.A. No. 29/96 pending before the C.A.T., Bombay Bench, which

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is required to be deleted, all other conditions are in accordance with the rules. During the course of hearing, the Learned Counsel for the respondents Shri Shetty produced an order passed by the respondents vide dated 25.03.1996 stating that the declaration given by the applicant is not acceptable due to the following reasons :-

- "a) You have already been SOS w.e.f. 28 Dec. 1995 and the same has been intimated to all concerned. Due to Stay Order, you have been temporarily attached with CQA (SV).
- b) The declaration given by you is not according to the prescribed proforma and it is linked with additional conditions of Note 1, 2, 3.
- c) Your services are urgently required by CQA (ICV) Medak.
- d) You had been given adequate opportunities prior to your release and issue of movement order for submission of declaration but you failed to submit the same within the stipulated period.
- e) You have given certificate for All India Services Liability stating that you shall proceed to any station in India as ordered in the exigencies of services.

It may be recalled that the order passed by the Tribunal on 08.01.1996 states that "the applicant refused the promotion vide letter dated 22.12.1995, however, inspite of this refusal he has been ordered to proceed to Medak vide Movement Order dated 11.11.1995. The case of the applicant is that, in view of the refusal he cannot be forced to go on promotion. Therefore, the Movement Order dated 11.11.1995 is illegal. Issue notice to the respondents, returnable on 22.1.1996 for admission hearing and for orders on interim relief." Thereby, the Learned Counsel for the respondents states that the request of the applicant has already been rejected. However, before asking his option whether he is willing to go on promotion, he has submitted his representation to the department refusing the promotion, which has not been disposed of by the respondents. Normally, whenever such a representation is made, the respondents have to consider the

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representation and to give a reply within the stipulated or reasonable time before any final order is passed but in this case the respondents have not given any reply and as stated earlier, except condition no. 1, all other conditions of the declaration are found to be legal and in accordance with the normal proceedings. Shri Shetty draws our attention to the Office Memorandum instructions dated 01.10.1981 of the D.o.P. which reads as follows :-

"17.12 When a Government employee does not want to accept promotion which is offered to him, he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis juniors promoted to the higher grade earlier irrespective of the fact whether the post in question are filled by selection or otherwise. The above mentioned policy will not apply where adhoc promotions against short term vacancies are refused."

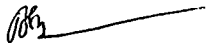
Whereas in the reply, the respondents have taken the stand that in case the applicant refuses to go on promotion, he will be debarred for promotion to the grade of D'Man Grade-II for a period of one/two/three years from the date of acceptance of his request for refusal of promotion by the competent authority. No such condition is envisaged in the O.M. of the D.o.P. It only says that during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. Therefore, the


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reply of the respondents is neither in accordance with the D.o.P. instructions nor based in accordance with the rules.

3. In the circumstances, I am of the view, that the stand taken by the department in their written statement is not in accordance with the instructions of the O.M. of the D.o.P., hence, their contention is not tenable, especially when the matter is pending before the Tribunal, the respondents is not authorised to pass an order viz. 25.03.1996, therefore, the order passed by the respondents vide dated 25.03.1996 is found to be illegal and the same is hereby quashed. The respondents is further directed to accept the declaration submitted by the applicant vide dated 08.03.1996 on record except condition no. 1 of the declaration, as stated earlier. The impugned transfer order passed earlier shall not be given effect till the respondents dispose of the pending representation, which may be disposed of within a period of two months from the date of receipt of a copy of this order.

4. With the above directions, the O.A. is disposed of. No order as to costs.




(B. S. HEGDE)
MEMBER (J).

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