

(65)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::

O.A.No.196/93.

Date: 22.7.1993.

Between:

B.S.Prakasa Rao .. .. Applicant

And

1. The Flag Officer Commanding-in-Chief  
Eastern Naval Command  
Naval Base  
Visakapatnam 530 014
2. The Admiral Superintendent  
Naval Dockyard  
Visakapatnam 530 014
3. The Sr. Administrative Officer  
Naval Dockyard  
Visakapatnam 530 014
4. The Asst. Manager Officer-in-Chief,  
Telephone Exchange,  
Yard Utility Department,  
Naval Dockyard,  
Visakapatnam-530 014. .. Respondents

HEARD:

For the applicant : Sri V.Venkateshwara Rao, Advocate  
For the respondents : Sri V.Bhimanna, Addl. CGSC

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO, VICE-CHAIRMAN

THE HON'BLE MR.P.T. THIRUVENGADAM, MEMBER (ADMN.)

.....

(JUDGMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE SRI JUSTICE V. NEELADRI RAO, VICE-CHAIRMAN)

...

The applicant is working as Telephone Operator Grade-II in the Naval Dockyard of Eastern Naval Command at Visaka-patnam, an industrial unit. He was promoted as Telephone Operator Grade-I and posted to Communication Centre, a non-industrial unit. Then the applicant submitted a declaration dt. 28.9.1991 declining the said promotion. The declaration was accepted and hence his promotion was cancelled. Again by proceedings dt. 31.3.1992, the applicant was again promoted as Telephone Operator Grade-I and was posted to the same non-industrial unit. The same is assailed in this O.A.

2. One of the contentions raised for the applicant is that when the declaration of the applicant declining the promotion was accepted, the applicant should not again be considered for promotion within a period of one year from that date in view of para-3 of O.M.No.22034/3/81-Estt(D), dt. 1.10.1981 of Ministry of Home Affairs (Department of Personnel and Administrative Reforms) on the subject of "Policy to be followed in case where persons refuse promotion to a higher grade". The relevant para-3 reads as under:-

"In view of the fact that Government have decided to further liberalise the procedure of fixation

of pay of Officers, and also to reduce cases of refusal of promotion to the barest minimum which adversely affects of the promotion prospects of officers working down the line, it has now been decided to modify the provisions contained in this Department's O.M.No.1/3/69-Estt.(D) dt. 22.11.1975 mentioned in para-1 above, to the effect that from the date of issue of this order, refusal of promotion by an officer should entail that no fresh offer of promotion would be issued to him for a period of one year, instead of six months as provided for in the earlier instructions. (emphasis is applied)

It is manifest from the above underlined portion that when once an employee gives a declaration declining the promotion and if it is accepted, the employee should not be considered for promotion for one year from that date and employee looses his seniority to that extent. But it is contended for the respondents that in view of the above provision the employee cannot claim promotion within a period of one year and it does not debar the concerned authority from considering the case of such an employee for promotion even before the expiry of one year from the date of declaration. We cannot ~~accede~~ to the said contention. When an employee gives a declaration to the effect referred to, <sup>he is</sup> ~~his~~ is foregoing a valuable right for ~~his~~ depressed in seniority, <sup>unless</sup> ~~unless~~ there are some reasons which prompt the employee to decline the promotion, he would not decline the same.

: 4 :

Of-course as per para-4 of the above O.M. dt. 1.10.1981 bearing No.22034/3/81-Estt.(D), it is open to the officer concerned not to act upon the refusal of the promotion if the reasons adduced by the officer for his refusal of promotion are not acceptable. But when once it is accepted, the case of such employee should not be considered for promotion before the expiry of one year from the date of declaration unless the employee is again agreeable for promotion. Hence, it has to be stated that within a period of one year from the date of declaration if the concerned authority intends to consider the case of such an employee for promotion, it can be considered if there is no protest from the ~~estt~~<sup>junior</sup> ~~while~~ and if such employee is agreeable for such consideration. But as in this case, the applicant had not agreed for promotion as per proceedings dt. 31.3.1992 which were issued even before the expiry of one year from 28.9.1991 the date of the declaration of the applicant whereby he declined his promotion, the impugned proceedings dt. 31.3.1992 in regard to transfer ~~to the~~ ~~extent~~ of the applicant are to be ~~set~~ set aside.

3. In the above view the O.A. has to be ordered ~~for~~ <sup>for</sup> setting aside the impugned orders to the extent of the applicant. Hence we do not propose to advert to the other contentions raised for the applicant. We are making it clear that the impugned order in regard to transfer of the applicant as per proceedings dt. 31.3.1992 are set aside only on the ground that the case of the applicant was considered within a period of one year from the date of his declaration declining the promotion earlier and not on any other grounds. This

order of the Tribunal does not deprive the concerned authority from considering the case of promotion of the applicant to Telephone Operator Grade-I. The O.A. is ordered accordingly. No costs.

(Dictated in open court)

P.T.Thiruvengadam  
( P.T.Thiruvengadam )  
Member(Admn.)

V.Neeladri Rao  
(V.Neeladri Rao )  
Vice-Chairman

grh.

Deputy Registrar(Judl.)

Copy to:-

1. The Flag Officer Commanding-in-Chief, Eastern Naval Command, Naval Base, Visakhapatnam-014.
2. The Admiral Superintendent, Naval Dockyard, Visakhapatnam-014.
3. The Sr. Administrative Officer, Naval Dockyard, Visakhapatnam-014.
4. The Asst. Manager Officer-in-Charge, Telephone Exchange, Yard Utility Department, Naval Dockyard, Visakhapatnam-014.
5. One copy to Sri. V.Venkateswara Rao, advocate, CAT, Hyd.
6. One copy to Sri. ~~V.Bhimanna~~ V.Bhimanna, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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TYPED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTY : MEMBER(AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY  
MEMBER(J)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated : 22/7/1993

ORDER/JUDGMENT:

M.A. / R.L. C.A. No.

O.A. No.

in  
196/93

T.A. No.

(w.p. )

Admitted and Interim directions  
issued

Allowed

Disposed of with directions

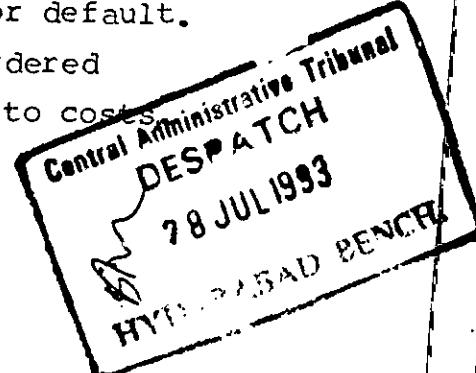
Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/ Ordered

No order as to costs



pvm