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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.735/99

DATE OF ORDER : 1-11-1999.

Between :-

K.Narasinga Rao

...Applicant

And

1. Joint Commissioner of Income Tax,
Range-5, Ayakar Bhavan, Basheerbagh, Hyd-4.
2. Dy.Commissioner of Income Tax (Admn.),
Circle-5, Ayakar Bhavan, Basheerbag,
Hyderabad.
3. Chief Commissioner of Income Tax, AP,
Ayakar Bhavan, Basheerbagh, Hyderabad.
4. C.V. Padmanabhan

... Respondents.

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Counsel for the Applicant : Shri GVRs Vara Prasad

Counsel for the Respondents : Shri V.Rajeshwar Rao, Addl.CGSC

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CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri B.S.Jai Parameswar, Member (J)).



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... 2.

(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J)).

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Heard Sri G.V.R.S.Vara Prasad, learned counsel for the applicant and Sri V.Rajeshwar Rao, learned Standing Counsel for the Respondents.

2. The applicant is presently working as Daftry in the office of Respondent No.2. On 7.4.1995 he was promoted to the cadre of LDC. He declined to accept the promotion. The reasons for his declining the promotion in the year 1995 were accepted and the promotion order was cancelled by memo dated 16.5.1995 (Annexure-J page-20 to the OA).

3. On 4.2.1999 Respondent No.2 called upon the applicant to give his willingness for the promotion of LDC. The applicant did not respond to it. Then a second memo dated 12.2.99 was issued calling for his willingness by 15.2.1999. The applicant did not respond to it also.

4. However, by proceedings No.6/Estt./R-5/98-99 dated 30.3.1999 (Annexure-A page-10 to the OA) the applicant was promoted to the post of LDC on adhoc basis and directed the applicant to report immediately. On promotion he was posted to work in the office of Respondent No.2. The applicant by his representation dated 7.4.1999 stated that he was not willing to join the post of LDC due to certain unavoidable and domestic circumstances and requested to continue him as Daftry. The Respondent-2 by memo dated 8-4-1999 called upon the applicant to report to duty as LDC. Again the applicant by his representation dated 8.4.1999 requested the Respondents 1 and 2 that he had already submitted representation dated 7.4.1999 stating that he was not willing to accept the post of LDC. However the Respondent No.1 again issued memo dated 13.4.1999 informing the applicant that as per the OM No.22034/3/81-Estt(D) dated 1.10.1991, the reasons advanced by the applicant are to be acceptable to the appointing authority and therefore directed the applicant to give specific bonafide reasons for declining the promotion. The Applicant by letter dated 20.4.1999 submitted that he was not in a position to take adhoc promotion due to certain

unavoidable domestic circumstances and also submitted that he may have to learn type-writing in the cadre of LDC and at this stage it may not be possible for him to learn type-writing and that he was prepared to work as Daftry till his retirement. However, the Respondent No.1 issued another Memo dated 5.5.1999.

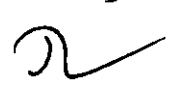
5. At this stage the applicant filed this OA to declare the action of the respondents in promoting the applicant to the post of LDC is highly illegal, arbitrary, malafide and discriminatory and consequently to set aside the order issued by the respondent in CR No.6/Estt./5-5/98-99 dated 30.3.1999 promoting the applicant as LDC and to continue him as Daftry.

6. An interim order was passed directing the respondents not to compel the ^{applicant}~~respondents~~ to join the ^{duties}~~applicant~~ as LDC.

7. The Respondents submit that the reasons put forth by the applicant for not accepting the promotion were not acceptable. That there are provisions for giving exemption for learning type-writing to promotee LDC. In case the appointing authority feels that the reasons given by the promoted official are not acceptable, the appointing authority can enforce the order of promotion as per OM dated 1.10.1981. Thus they justify their action in promoting the applicant to LDC and compelling the applicant to join as LDC.

8. By the impugned order, the applicant has been promoted to the cadre of LDC on adhoc basis. The applicant has stated certain reasons that he was not inclined to accept the adhoc promotion and that he is having domestic problems mental agony and further at this age it may not be possible for him to discharge higher responsibilities in the cadre of LDC.

9. The OM Dated 1.10.1981 and another OM dated 22.11.1975 relied upon by the Respondents pertain to the promotions made on regular basis. The Respondents relied on the Office Memorandums at Annexures R1 and 2 to state that they are at liberty to post an employee on higher post and if that employee refuse to accept the same, the authorities have the power to force the employee to



take up that job and if the employee still refuses to take up the same, Disciplinary Action can be initiated against him.

10. A perusal of the Office Memorandums at Annexures R1 and 2 does not indicate that the memorandums are meant for action against an adhoc promotion. Any Office Memorandum issued for promotion should be taken for regular promotion. Nowhere it is stated in this memorandum that these memorandums are also applicable to adhoc promotions. Hence in our view, the reliance on these Office Memorandums may not be relevant. The Respondents themselves submit that the employees who refuses promotions will not be issued any fresh offer of promotion for a period of one year from the date of such refusal as contained in the Office Memorandum dated 1.10.1981 is not applicable to the adhoc employees. If so, how can the respondents state that the other powers are applicable to the adhoc employees. Either this Memorandum is applicable to the adhoc promotees or it is not applicable to adhoc promotees. They cannot take two stands that some instructions are applicable to the adhoc promotees and some other instructions are not applicable to the adhoc employees. Hence in our view Office Memorandum dated 1.10.1981 is not applicable to adhoc promotions in accordance with the view taken by the Respondents themselves.

11. It is not the case of the respondents that the administrative exigencies require the applicant to comply with the promotion order. Earlier, in the year 1995 the Respondents had accepted the reasons stated by the applicant and cancelled the promotion order. Hence the respondents may consider the representation of the applicant for his unwillingness to accept the post of LDC as the promotion is only on adhoc basis. We feel that compelling him to join the post with threat of initiating Disciplinary Proceedings may not be proper.

12. If the respondents are of the opinion that his continuance as Daftry in the Office of the Respondent No.2 is not in the interest of administration, it is left to them to take action as per the rules in this connection.





13. The learned counsel for the applicant submits that the respondents are estopped for considering him for promotion as he refused the same in the year 1995. This contention has got no relevance at all. The Department reserves the right of promoting an employee in the feeder cadre in accordance with the rules and seniority. One time refusal by an employee to accept promotion cannot be regarded as blanket refusal for all time to come. For some time, an employee, if not willing, may refuse the promotion. Hence this contention is rejected.

14. In view of the above, the following directions are issued to the Respondents :-

The Respondents should not compel the applicant to carry out the promotion order dated 30.3.1999 as per OM dated 1.10.1991.


1.5. Original Application is allowed leaving the parties to bear their own costs.


(B.S. JAI PARAMESHWAR)
1. 11/95
Member (J)


(R. RANGARAJAN)
Member (A)

Dated: 1st November, 1999.

Dictated in Open Court.


4-11-99

Avl.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO :-

1. DBHND
2. HRRN M (A)
3. BBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPALED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR

VICE - CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN

MEMBER (ADMIN)

THE HON'BLE MR. S.S. JAI PARAMESWAR

MEMBER (JUDL.)

* * *

DATE OF ORDER: 11/11/99

MA/RA/CP.No.

in

OA. NO. 735/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

(8 copies)

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

