

**Central Administrative Tribunal
Madras Bench**

OA/310/01034/2017

Dated the 31st October Two Thousand Eighteen

P R E S E N T

**Hon'ble Mr.P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

S.D.Shyam Sundar,
Assistant Treasurer (I)(LSG),
Mylapore Head Post Office,
Chennai 600 004
Chennai City Central Postal Division. .. Applicant
By Advocate **M/s.P.R.Satyanarayanan**

Vs.

1. Union of India, rep by
The Secretary,
Department of Posts,
M/o Communications & IT,
Dak Bhavan, New Delhi 110 001.
2. The Secretary,
Department of Telecommunications,
M/o Communications & IT,
Sanchar Bhavan, New Delhi 110 001.
3. Chief Postmaster General,
Tamilnadu Circle,
Chennai 600 002.
4. Postmaster General,
Chennai City Region,
Chennai 600 02.
5. Senior Superintendent of Post Offices,
Chennai City Central Division,
Chennai 600 017. .. Respondents

By Advocte **Mr.M.Kishore Kumar**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The applicant has filed this OA seeking the following relief:-

“to call for the records relating to proceedings No.3-30/2015-PACE/Exam(DE)6099-6153 dated 23.2.2017 and proceedings No.301(1)/2017/PA-Admn.III/1700 to 1890 dated 10.3.2017 passed by the first respondent and proceedings No.B1/PF/SDS/Dlgs. Dated 20.6.2017 issued by the fifth respondent and quash (I) the proceedings No.3-30/2015-PACE/Exam(DE)/6099-6153 dated 23.2.2017 and (ii) proceedings No.301(1)/2017/PA-Admn.III/1700 to 1890 dated 10.3.2017 passed by the first respondent and (iii) proceedings No.B1/PF/SDS/Dlgs. Dated 20.6.2017 issued by the fifth respondent as arbitrary and illegal in so far as the applicant is concerned and direct the respondents to delete his name from the select list dated 23.2.2017 of officials promoted to the cadre of Assistant Accounts Officers issued by the first respondent and also direct the respondents to accept his declination for promotion to the cadre of Assistant Accounts Officers and permit him to continue in the present line of promotion and pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The applicant submits that he was appointed as Postal Assistant in Chennai city in the year 1982 and at present he is working as Lower Selection Grade (LSG) from the year 2016 onwards. According to him, he had participated in the Junior Accounts Officer(JAO) Examination Part-I held in the year 1991 and he came out successful. Thereafter, the applicant participated in the Part-II Examination in the year 1992, 1994 and 1997 but he could not pass in it. After the formation of the single unified cadre of Assistant Accounts Officers (AAO), the respondents conducted a Special

Limited Departmental Examination-2012 (SLDCE) for the promotion to the cadre of AAO as a last chance and all those candidates who are qualified in Part-I Examination (JAO) were permitted to appear in the said test in the year 2012. The applicant participated in it but he failed. The applicant submits that he is now aged 56 years and has only 4 years of service left. The applicant has opted for promotion to LSG in promotion hierarchy. The respondents in this case had in the year 2017 decided to give grace marks to the candidates who had not passed in the SLDCE-2012 and a list was prepared and the applicant was also qualified as per the said order No. 301(1)/2017/PA-Admn.III/1700 to 1890 dated 10.3.2017. Now the respondents have ordered for promotion of the candidates who have passed as per order mentioned above after a long period of time. At present the applicant is not at all keeping well. He had to undergo a hip surgery in the year 2007. As per order dated 20.6.2017 he was promoted and posted at New Delhi rejecting his representation that he is not interested in promotion and he is not willing. He has unconditionally declined his promotion to the AAO cadre and filed written submission on 13.3.2017 itself and thereafter again on 19.4.2007. But the respondents had rejected the above representations and issued the impugned order and posted him at New Delhi. So the applicant has no other way and approached the Tribunal seeking to quash the above order of promotion.

3. The respondents entered appearance and admitted almost all the facts submitted by the applicant in this matter. According to the respondents they have suo moto reviewed the result of the SLDCE-2012 and gave 38 grace marks and declared the result and the applicant has passed the said examination. As per the terms and conditions under which the SLDCE-2012 was conducted, the candidates were liable to be posted anywhere in India. The candidates had also furnished the willingness as per Annexure A1 where it was clearly mentioned that candidates is liable to be posted anywhere in India. The applicant in this case had passed the examination and he is liable to be posted anywhere in India and there is no merit in the contention raised by the applicant. The respondents has rejected the request of the applicant on grounds of administrative exigencies. So, the applicant is liable to accept the promotion and join at the place of posting.

4. We have heard the counsel for the applicant and the respondents. The applicant in this case mainly rely on an earlier decision of this Tribunal in R.Kamakshi vs. Director General, Department of Posts & Others (OA 72/2012) wherein this Tribunal has held that when the applicant has declined the promotion he cannot be compelled to take the promotion. The respondents on the other hand mainly contend that the applicant has given his willingness before writing the examination SLDCE-2012 and he cannot revoke the same and decline the posting. On going through the pleadings of the applicant in this case, it can be seen that the

examination for promotion was conducted in the year 2012 and the applicant failed in the examination and thereafter he was given promotion in the cadre as LSG in the year 2016. The respondents in this case had after a lapse of 5 years had decided to give grace marks to the candidates who failed in the examination and published a result by which the applicant was qualified for the promotion. Immediately on knowing the same, the applicant has filed his representation stating his unwillingness to accept the promotion of AAO on 13.3.2017 itself. He had also given another representation stating his declination, but the respondents in this case had passed an order of rejection on 27.6.2017 stating that his application is rejected due to administrative exigencies. But, no further explanation is there in the impugned order regarding what was the administrative exigencies which required the applicant to be compelled to be promoted as AAO in this case. It seems that the order of the respondents in the impugned order is not clear and it is not a speaking order and it has not properly dealt with the reasons for rejection of the declination offered by the applicant in this case. The action of the respondents is highly arbitrary and it will not be justified to compel the applicant after a lapse of more than 5 years to go to a place in the pretext of a promotion. It has been noted that after giving willingness for appearance in the examination conducted in 2012, circumstances had changed substantially and the applicant was promoted to the post of LSG in the hierarchy of promotion by the year 2016 and he has accepted the same and is working in the post

of LSG, Mylapore. It is at this stage the respondents had directed the applicant to accept promotion of AAO. According to the applicant, he had to undergo a hip surgery in the year 2007 and he is not hale and healthy and he has to undergo physiotherapy. He has intimated this fact immediately on knowing the proposal for posting the applicant at New Delhi as AAO. So, it is clear that substantial changes in the service of the applicant had taken place after giving the willingness in the year 2012 and it will be highly arbitrary to impose a promotion on him on the basis of a willingness given some 5 years ago. So, we find that the impugned order passed by the respondents at Annexure A4 and A8 is liable to be quashed as arbitrary. A Division Bench of this Tribunal had also considered this aspect earlier and held that applicants cannot be compelled to take up promotion which they had declined.

5. Accordingly, OA is allowed. The impugned order passed by the respondents at Annexure A4 and A8 are set aside as far as the applicant is concerned. No costs.

(T.Jacob)
Member(A)

31.10.2018

(P.Madhavan)
Member(J)

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