

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, MUMBAI.**

**O.A.No.716/2015**

**Date of decision : 20.02.2017.**

**Coram: Hon'ble Shri Arvind J. Rohee, Member (Judicial),  
Hon'ble Ms.B. Bhamathi, Member (Administrative).**

NSV Arivarasan,  
601-B, Siddharth Heights,  
Azad Nagar,  
Wanawadi,  
Pune-411022.

**...Applicant**

**(By Advocates Ms.Priyanka Mehndiratta)**

**v.**

1) The Union of India  
Through the Secretary,  
Ministry of Labour and Employment,  
Shram Shakti Bhavan,  
Rafi Marg,  
North Block,  
New Delhi-110001.

**...Respondent.**

2) The Commandant and MD,  
512 Army Base Workshop,  
Khadki,  
Pune-411003. (Deleted as per orders dt. 13.12.2016)  
**(By Advocate Smt.H.P.Shah) .**

**Order Reserved on 06.02.2017**

**Order Delivered on 20.02.2017**

**O R D E R**

**Per : Arvind J. Rohee, Member (Judicial).**

The applicant who is presently working as Deputy Labour Welfare Commissioner at Army Base Workshop, Kirkee, Pune approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs :-

"a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside orders dated 10.12.2015 (A-

1) and 21.08.2015(A-2) with consequential benefits.

b) This Hon'ble Tribunal may further be pleased to hold and declare that the Applicant is entitled to be Promoted we.f. 30.4.2015 and posted in the next vacancy that is likely to arise at Kochi on 1.1.2016 or alternatively, he may be accommodated and Posted on Promotion Post against the vacant Post at Kirkee, Pune.

c) Cost of the Application be provided for.

1.d)\Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed".

2. The applicant was previously working as Deputy Labour Welfare Commissioner at Avadi, Chennai. He was transferred to Pune in the same capacity in 2015. By the order dt. 28.5.2015 (Annexure-A-3) the applicant was promoted to the post of Welfare Commissioner (Central) and was posted at Jammu. This was before he joined at Pune on 5.6.2015 after his transfer from Avadi, Chennai. Thus by the said order the applicant was transferred on promotion to Jammu. He immediately submitted a representation dt. 28.5.2015 (Annexure-A-7) for cancellation of his transfer and allow him to join at Pune on the vacant post of Welfare Commissioner. This was followed by subsequent reminder representations dt. 4.6.2015 (Annexure-A-8) & 4.8.2015 (Annexure-A-9). His request was turned down vide impugned order dt. 21.8.2015 (Annexure-A-2), against which he submitted further representation on dt. 31.8.2015 (Annexure-A-10) followed by 4.9.2015, 9.9.2015 and 29.9.2015 (Annexure-A-11

collectively). By the impugned order dt. 10.12.2015 (Annexure-A-1) the applicant's representation and his request to forego the promotion was rejected, which orders are challenged in the present O.A.

3. The following interim relief is also sought by the applicant :-

"a) Pending final determination of the present Original Application, the Hon'ble Tribunal may be pleased to restrain the Respondents from giving effect to the implementation and execution of transfer order dated 10.12.2015 and he be Promoted in the next vacancy which will arise at Kochi on 1.01.16.

b) Ad-interim orders in terms of prayer clause 9(a) above may be granted".

4. This Tribunal while issuing notice to the respondents vide order dt. 21.12.2015 directed the respondents to maintain the status quo with regard to the transfer of the applicant to Jammu on the promotional post of Welfare Commissioner, till the next date of hearing. This interim order was continued from time to time, which is still in force.

5. The respondents appeared and resisted the claim by denying the adverse averments made in the O.A. The impugned orders were fully supported on the ground that the representations were considered by the Competent Authority and rejected since no merit was found. It is stated that since the applicant was transferred on promotion his request to permit him to forego promotion was rightly rejected. It is stated that transfer was effected on administrative ground, since promotion post

was newly created at Jammu.

6. The applicant then filed rejoinder and the respondents sur-rejoinder on record reiterating the facts and grounds.

7. The impugned orders have been challenged mainly on the ground that the same is unsustainable and the applicant's request to forego the promotion should not have been rejected and he should have been accommodated where vacancies are there including Pune.

8. We have heard the submissions of Ms.Priyanka Mehndiratta, learned Advocate for the applicant and reply arguments of Smt.H.P.Shah, learned Advocate for respondents on 30.11.2016 and 6.2.2017. We have carefully perused the case record.

9. It was transpired during the course of hearing that the applicant immediately submitted representation for cancellation of his transfer order on personal grounds that he has to look after his old parents and ailing wife. He has also indirectly foregone his promotion in the first representation itself in the following words :-

"I may be considered for promotion in the next DPC as per the Relevant Rules".

10. The respondents took a decision on his representations and rejected his request for cancellation of transfer, as well as, to forego his promotion and the impugned orders were passed.

11. It is submitted by learned Advocate for

applicant that when he decided to forego his promotion for the reasons stated above, it was not open or permissible for the respondents to reject it. However, in this behalf as per the provisions of clause \_\_\_\_\_ of the circular dt. \_\_\_\_\_ it is obvious that it is the prerogative of competent authority to accept or reject such request. Further, as per rules on foregoing promotion employee can be considered for promotion after one year. The only consequence of foregoing the promotion is that the employee will not get the monetary benefits of the promotional post and nature of duties would also remain the same. It is obvious that since the applicant has been transferred at a distance place he had decided to forego the promotion and also seeks cancellation of transfer on personal grounds. However, it is also obvious that his request was rejected for genuine reasons. In fact, since the applicant did not join the promotion post within one year from issuance of the order dt. 28.5.2015, the respondents should have considered his case after one year therefrom by holding a review DPC. However, it was not done and even response to representations was delayed by the respondents for the reasons best known to them.

**12.** It is obvious that since the request of foregoing the promotion has been rejected the order of promotion still holds good especially when it was not revoked for failing to join at Jammu. As such there is

no necessity to consider applicant's case afresh for promotion by DPC or administratively by the respondents. Further since interim relief is granted to the applicant, the order transferring him to Jammu is also stayed or kept in abeyance, the respondents, in fact, should have considered applicant's case even during the pendency of this O.A., especially when he is due for retirement on 30.7.2017. However, the same has not been done and it was submitted by the learned Advocate for the respondents that appropriate directions may be issued in this behalf which will be complied by the respondents.

**13.** From the above discussion, it is obvious that the impugned orders so far as rejecting the request of the applicant for foregoing his promotion cannot be said to be illegal, arbitrary or improper. However, order rejecting request for cancellation of transfer is liable to be quashed. The same are accordingly quashed.

**14.** The respondent No.1 is is therefore directed to pass appropriate office order within a period of two weeks from the date of receipt of certified copy of this order applicant's posting on promotion post in accordance with law. In doing so, available vacancy in this way be considered including Pune taking fact that applicant now has left only 5 months of service before his retirement on 31.7.2017.

**17.** The orders so passed, shall then be communicated to the applicant at the earliest who would be at liberty

to approach the appropriate forum in case his grievance still persists. No order as to costs.

( Ms.B. Bhamathi )  
Member (A)

(Arvind J. Rohee)  
Member (J)

B.