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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2112/2003

This the 21st day of October . 2003

HON'BLE SHRI SHANKER RAJU. MEMBER (J)

HON'BLE SHRI R. K. UPADHYAYA. MEMBER (A)

V. K. Dhawan.
Asstt. Accounts Officer.
Ministry of Road Transport and Highways
and Ministry of Shipping.
Jamnagar House.
New Delhi.

... Applicant

(By Shri A. D. Mahendroo, Advocate)

-versus-

1. Controller General of Accounts.
Ministry of Finance.
Department of Expenditure.
Government of India.
Lok Nayak Bhawan.
New Delhi.
2. Chief Controller of Accounts.
Ministry of Road Transport and
Highways and Ministry of Shipping.
Jamnagar House.
New Delhi.

... Respondents

(By Shri M.M.Sudan. Advocate)

O R D E R

Hon'ble Shri Shanker Raju. Member (J) :

Applicant impugns respondents' order dated 30.7.2003 whereby on promotion as Pay & Accounts Officer (P&AO) w.e.f. 4.8.2003 he has been relieved to report for duty to ZAO, CBDT, Bhubaneswar. Also impugned is another office order dated 30.7.2003 whereby representation made refusing promotion as P&AO has been turned down by the CGA's Office. Quashing of the aforesaid impugned orders has been sought with further direction to allow the applicant to continue to work as AAO at Delhi.

2. By an order dated 2.9.2003 the aforesaid transfer has been subjected to the final outcome of the present OA.

3. Briefly stated, the Joint Controller General of Accounts informed all Principal Chief Controllers of Accounts about the transfer policy promulgated on 20.3.2003 pertaining to P&AOs. By office memorandum dated 21.3.2003 enclosing therewith a list of AAOs, including the applicant, likely to be promoted as P&AOs during the year 2003-04, options for preferences of stations of posting had been invited. Applicant, in turn opted for Delhi vide his letter dated 27/28.3.2003. By an order dated 19.5.2003 the applicant was promoted as P&AO and was posted to CBDT, Bhubaneswar. Applicant preferred a representation refusing promotion on domestic reasons as well as on the ground of illness of his wife suffering from Rheumatic Arthritis. The aforesaid representation was channelised through the Chief Controller of Accounts (CCA) who recommended acceptance of refusal of promotion, but on consideration by the Office of Controller General of Accounts (CGA), applicant's request has been turned down, giving rise to the present OA.

4. Admittedly, the appointing authority for Group "B" posts, which includes the post of P&AO, is the CCA, whereas Additional Controller General of Accounts and CGA are the appellate authorities as per the notification under Schedule to Central Civil Services (Classification, Control & Appeal) Rules, 1965, promulgated on 30.3.2001.

5. The learned counsel of applicant Shri A.D.Mahendroo contends that as per paragraph 17.12 of DOP&T's OM dated 10.4.1989 pertaining to DPCs as well as OM dated 27.3.1997, when a Government employee does not want to accept promotion offered to him on his^h written request and after consideration by the appointing authority taking relevant aspects into consideration, if the reasons adduced for refusal are acceptable, promotion is denied and the next person in the select list is promoted. This also debars the Government servant refusing promotion for further promotion for a period of one year from the date of refusal of the first promotion.

6. Having regard to the aforesaid, it is contended that once the appointing authority has exercised its jurisdiction and taken a decision to accede to the request of the applicant refusing promotion, the CGA (appellate authority) not being the appointing authority, is only to control and cadre management and he has no authority to reject the request of the applicant being beyond his jurisdiction.

7. Further, contending that though the promotion order had been issued on 5.6.2003, the relieving of the applicant had been deferred till 30.7.2003, shows mala fide and arbitrariness on the part of the respondents.

8. It is further contended that the applicant has been arbitrarily discriminated inasmuch as similarly circumstanced persons, namely, S/Shri M.P.Sharma, A.R.Zanzani and Shalab Kumar, who, on being promoted

though refused the promotion and their requests were turned down. subsequently retained in Delhi. This, according to the applicant, is without any reasonable basis and offends Articles 14 and 16 of the Constitution.

9. It is further stated that applicant's wife who has been undergoing treatment for Rheumatic Arthritis and keeping in view his own ailment, as well as liability of marriageable daughters, refusal of promotion has been turned down against the guidelines.

10. Placing reliance on the guidelines issued on 28.7.2003, it is contended on behalf of the respondents that the CGA has to consider clause (B)(vi) of the guidelines wherein even if the applicant's wife has been suffering from a disease which prevents moving out of the present station of posting, he should have been debarred for promotion as per DOP&T OM dated 10.4.1989.

11. On the other hand, the learned counsel of respondents Shri M.M.Sudan contested the OA and vehemently opposed the contentions. He has also produced the relevant record for our perusal.

12. According to Shri Sudan, no illegality is apparent if the CGA who is the higher authority than the appointing authority decided the request of the applicant for refusal of promotion. Moreover, the medical grounds and domestic problems of the applicant have been duly considered. If the reasons are acceptable, only then the refusal for promotion is accepted.

13. Insofar as the discrimination is concerned, it is contended that though the three persons referred to above had requested for refusal of promotion and after turning down their requests, ten posts of P&AOs were available against which these three persons who are senior to the applicant have been adjusted. As such, not being similarly circumstanced, applicant cannot allege any discrimination.

14. Insofar as the posting of husband and wife is concerned, it is stated that though the guidelines in vogue provide posting them together, but this would not confer an enforceable right on the Government servant to insist posting at a particular place. In administrative exigencies, applicant has been transferred.

15. It is stated that the medical treatment for the disease from which the applicant's wife has been suffering is available at Bhubaneswar. Moreover, personal problems have to give way to the larger public interest and exigencies of administration.

16. Lastly, it is contended that as the consideration has been made in absence of any mala fide or violation of rules, the transfer cannot be interfered with.

17. Shri Sudan, to substantiate his plea, relied upon the decision of the Apex Court in **Bank of India v. Jagjit Singh Mehta**, (1992) 1 SCC 306; and **Union of India & Anr. v. N. P. Thomas**, 1993 Supp. (1) SCC 704.

wherein transfer on promotion has not been interfered with in absence of any mala fides or violation of rules.

18. In rejoinder, the applicant reiterated his pleas taken in the OA.

19. We have carefully considered the rival contentions of the parties and perused the material on record. It is not disputed that as per the Schedule under CCS (CCA) Rules, the CGA is the appellate authority whereas the CCA is the appointing authority of the applicant. As per transfer guidelines pertaining to the post of AAOs and P&AOs issued on 20.3.2003 refusal of promotion is to be dealt with in accordance with DOP&T OM dated 10.4.1989. It is also laid down in clause (3) of the policy that refusal of promotion should not be taken to mean that those refusing promotion cannot be posted by the CGA to any other station in their existing grade. However, the option of the applicant was sought for Delhi and on his promotion which has an all India transfer liability as a condition of service in the Civil Accounts Organisation, the applicant was transferred to Bhubaneswar.

20. It has been found that promoted candidates included in the panel were not inclined to be posted at unpopular stations and few stations were opted by almost every promotee P&AO. This led to anomaly and vacancies at those places are to be filled up by giving ad hoc promotions to AAOs despite availability of regularly selected persons. In the event of unfilled posts, there

was risk of those posts being lapsed as per the Government of India instructions. This led to revision of the policy.

21. As per policy laid down vide letter dated 28.7.2003, all representations for refusal of promotions are to be rejected forthwith with direction to the employee concerned to join the new post. However, there are few considerations which include serious illness and physical disability which prevents persons to move out. Rheumatic Arthritis is not such a disease which prevents movement of concerned. It is not averred and established that the wife of applicant has not been attending office. From the documents concerned pertaining to medical records, it transpires that mostly the treatment has been taken from homoeopathic doctors. Bhubaneswar being the Capital of the State of Orissa has all requisite medical facilities where the applicant's wife being a CGHS beneficiary can take treatment.

22. A transfer can be interfered with only when it is established that the same is mala fide or is in violation of statutory rules. A Government servant having an all India transfer liability cannot choose his place of posting. By interference by the Court in judicial review, the administrative work is stalled, which is not only unfair but also runs counter to the public interest as well as administrative exigencies. It is for the authorities to decide postings as per the requirement of work and other factors while transferring an official. We have seen the records. Even a partially

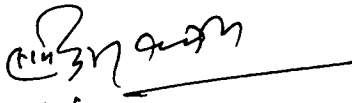
blind person's request for refusal of promotion has been turned down. Only a case where a family member was a cancer patient was acceded to. As per the guidelines, applicant's claim though considered, has not been found fit to be allowed refusal of promotion. There is neither arbitrariness nor mala fide in the action of the respondents.

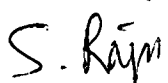
23. Insofar as the contention that it is only the appointing authority which has to exercise the jurisdiction, we find that as per DOP&T OM dated 10.4.1989 and 27.3.1997, in an appropriate case, for the reasons which satisfy the appointing authority on very strong grounds, refusal of promotion could be acceded to. This does not give any right to the Government servant to forego promotion de hors the rules. As per the guidelines of the Accounts Department even after refusing promotion, one can be transferred on the orders passed by CGA, on examination of record. A higher authority can act as appointing authority; rather converse of it is not legally sustainable. Though the CCA had recommended the case, the decision has been taken in all such cases by the CGA. We do not find any legal infirmity in the action of the CGA to reject the request of the applicant for refusal of promotion, being the Head of Department and on evaluation of the grounds and keeping in light the guidelines. Once the case of the applicant has not been found covered and within the ambit of the guidelines, rejection of the same in absence of any mala fides does not suffer from any legal infirmity.

24. As regards discrimination, we find that S/Shri M.P.Sharma, A.R.Zanzani and Shalab Kumar, though refused promotion and their requests were turned down, however, from the notings on official records, we find that subsequently on availability of posts, admittedly being seniors, these persons had been retained at Delhi. It is a settled position of law that while invoking Articles 14 and 16 of the Constitution, it has to be shown as a pre-condition that the person with whom discrimination is alleged is situated equally in law in all respects. Being seniors, the aforestated three persons have a preferential right to be considered for retention. Accordingly, as the classification was reasonable with an object sought to be achieved, we do not find any violation of Articles 14 and 16 of the Constitution.

25. As the decision of the respondents is based on guidelines and is free from any malice or arbitrariness being in public interest and administrative exigencies, having failed to discharge his burden, applicant has miserably failed to establish his case for our interference.

26. Accordingly, the OA is found bereft of merit and is dismissed. No costs.


(R. K. Upadhvaya)
Member (A)


(Shanker Raiu)
Member (J)

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