

GOVERNMENT OF KERALA

Abstract

PUBLIC SERVICES—RELINQUISHMENT OF PROMOTION—GUIDELINES REVISED —
ORDERS ISSUED

PERSONNEL AND ADMINISTRATIVE REFORMS (RULES) DEPARTMENT

G. O. (P) No. 20/2004/P&ARD. Dated, Thiruvananthapuram, 10th December, 2004.

- Read:—1. G. O. (P) No. 39/91/P & ARD Dated 7-12-1991.
2. Judgement dated 27-5-2002 of the High Court of Kerala in O.P. No. 28956/2000.

ORDER

In the Government Order read as Ist paper above Government had issued guidelines for relinquishment of promotions by Government employees in pursuance of the Statutory Rule 38 of the Kerala State and Subordinate Service Rules, which is extracted below:—

“Rule 38. Relinquishment of rights by members:—Any person may, in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules, if, in the opinion of the Appointing Authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

[Explanation:—The relinquishment of the right for promotion under this rule shall entail loss of seniority and a relinquishment of the right for promotion shall not be permissible unless such relinquishment entails loss of seniority]”

2. In State of Kerala *V. Suseela George* reported in 2000 (3) KLT 295 the High Court of Kerala held that “When there is an offer for a provisional promotion and the Government Servant declines to accept the post, it is difficult to lay down that he will forfeit his rights for all time to come....if, what could be relinquished by an employee is only a right or privilege, the corollary is that it may not be possible to give away what he does not have in tangible terms as a right or privilege.”

3. In *Joseph, V. State of Kerala* [1987 (2) KLT 579] a Division Bench of the Court held that "the loss of seniority contemplated is not in the feeder category, but in the promoted category. As a result of relinquishment, the juniors who were promoted can retain their seniority in the promoted post. Even if the senior who relinquished promotion is subsequently given promotion, he cannot get seniority over those juniors who were promoted earlier. This is the effect of the Explanation added to Rule 38 K.S. & S.S.R. Even before the introduction of the Explanation, the effect of relinquishment was loss of seniority in the promotion post with reference to those juniors promoted earlier. A Provisional promotee will not get seniority in the promoted cadre. This is evident from Rule 31 (c), (d) and (e) of K.S. & S.S.R. So the explanation to Rule 38 dealing with loss of seniority is applicable only to regular promotions".

4. In the judgement in OP 28956/2000 (*Dr. K. A. Kumar V. State of Kerala*) the High Court of Kerala has held that "normally a relinquishment is made of something which is offered to him or which is in the process of being offered to him. In the case at hand, what has been offered is a only a provisional promotion andhe has relinquished it permanently. Even assuming that as contended by the contesting respondents, the relinquishment is permanant, it can only be in relation to the provisional promotion which has been granted to him.... The acceptance of a relinquishment by the appointing authority is concerned only with the fact whether the relinquishment will affect public interest or not If the petitioner has right to relinquish his promotion, he must have the right to withdraw it also. The finding of the authority that his relinquishment is not against public interest will not stand in the way of exercising his right to withdraw the relinquishment. Any other interperatation of Rule 38 will be violative of the fundamental rights of a senior employee guaranteed under Article 14 to 16 of the Constitution of India and his legal rihtgs under Rule 28 and 31 of the K. S. & S. S. R., as the same will deny him the rights of being considered for promotion. It is declared that respondents 1 and 2 are bound to accept the withdrawal of relinquishment as prayed for and the claim of the petitioner to provisional promotionshall be consideredin accordance with law. In view of my finding that the petitioner has not relinquished his claim for regular promotion, the petitioner's claim for regular promotion shall be considered in accordance with law..... The executive order dated 7-12-1991 [G.O. (P) No.39/91/P&ARD dated 7-12-1991] regarding relinquishment should be understood and implemented in the light of the interpretation given to Rule 38 herein above".

5: In view of the above rulings, Government order that cases of relinquishment of promotions be dealt with and disposed of in conformity with the dicta laid down as in the foregoing paras and as summarised below---

(i) The right to relinquish promotion includes the right to withdraw it also.

(ii) A relinquishment is made of something which is offered or something which is in the process of being offered. When a provisional promotion is offered and relinquished, what is relinquished is only the provisional promotion offered, and it should not be interpreted to mean that all future regular promotions have been relinquished for all time to come.

(iii) The acceptance of a relinquishment by the appointing authority is concerned only with the fact whether the relinquishment will affect public interest or not. The finding of the authority that his relinquishment is not against public interest will not stand in the way of the employee exercising his right to withdraw the relinquishment.

(iv) The loss of seniority contemplated by the Explanation to Rule 38 is applicable only to regular promotions and not to provisional promotions, as a provisional promotee does not anyway get seniority in the promoted cadre.

(v) The loss of seniority contemplated being only in the promoted post and not in the feeder category, the person's seniority in the feeder category is not lost on relinquishment of promotion, but in the promoted post, even if the senior who relinquished promotion is subsequently given promotion, he cannot get seniority over those juniors who were promoted earlier.

By order of the Governor,

DR. M. VIJAYANUNNI,

Additional Chief Secretary.