

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00130/2017

Dated this Thursday, the 30th day of January, 2020

**CORAM : R.VIJAYKUMAR, MEMBER (A)
R.N.SINGH, MEMBER (J)**

Shri Adinath Popat Garje, Age: 30 years, Occupation: Nil
at present Residing at Post Padali, Tal Pathardi,
District Ahmednagar 414 505.

(By Advocate Shri D.J.Dalal)

- Applicant

VERSUS

1. Union of India, Through the Secretary, Ministry of Defence,
South Block, New Delhi 110 011.

2. The Department of Defence Production,
Director General of Quality Assurance (DCQA),
Quality Assurance Estt. (Military Explosives)
Dehu Road, Pune 412 101.

(By Advocate Ms. Vaishali Choudhari)

- Respondents

ORAL ORDER

Per : R.Vijaykumar, Member (A)

This application has been filed on
24.01.2017 under Section 19 of the
Administrative Tribunals Act, 1985 seeking the
following reliefs:

“8.a. That this Honourable Tribunal may be pleased to call for
the records and proceedings of the said application.

8.b. The applicant submits that the Respondent No.2 appoint
the applicant to the post of CMD (OG) for QAE or any other
equivalent post in the said department.

8.c. That pending final disposal of this Application, as and by
way of interim relief, this Honourable Tribunal be pleased to
restrain the Respondents from appointing any other person to
the post of Driver to the Respondent No.2 ordinance factory
until the Applicant is decided.

8.d. That this Honourable Tribunal be please to grant cost for
this Application be paid in favour of Applicant by the
Respondents.

8.e. That this Honourable Tribunal be pleased to grant any
other relief as this Honourable Court may deem fit.”

2. The applicant responded to an advertisement for appointment as Civilian Motor Driver (Ordinarily Grade Group 'C') published in the Employment News on 9-15 August, 2015 and later appeared in written test and interview and was shortlisted and necessary forms duly filled up by the applicant but no response has been received until 06.04.2016 when he filed this Original Application and it was communicated to the applicant that selection had been scrapped by the respondents. He was also advised that a fresh examination will be conducted. The applicant has filed the present OA and also refers to an OA No.670/2015 filed by another applicant who had also participated at that time for some other post and whose examination was also scrapped and the Tribunal had, in that case, directed the respondents to take immediate steps to conduct the fresh recruitment process. Those orders were passed on 28.04.2017. The applicant in the present OA has urged that examination should be held and recruitment should be conducted since since he is awaiting favourable decision for eligibility and recruitment.

3. The respondents have replied stating that the entire recruitment has been cancelled because at the level of the Ministry of Defence, a Committee of Experts was constituted for enhancing capability of Armed Forces and this Committee has made certain recommendations which are in the context of the Adjutant General's branch and had recommended that 31,000 defence civilian employees working in various defence installations were likely to be declared surplus and these, surplus employees, need to be redeployed within the existing defence establishments. Therefore, they have declined to issue NAC (Non-Availability Certificates) for filling up vacancies in the defence establishments unless redeployment is complete. As a number of Group C employees including CMD (OG) who need to be redeployed is quite large, direct recruitment to all Group C posts has been stopped till all the surplus employees are adjusted. Hence no recruitment to the Group C post including CMD (OG) could be initiated.

4. The learned counsel for the applicant submits that having participated in recruitment that was cancelled, he has a right to be considered for the examination to be conducted

for the fresh recruitment. He argues by reference to the judgment of the Hon'ble High Court of Madras in Writ Petition No.16669 of 1999 dated 19.06.2006 in **M/s Vairavikulam Lime Products Private Limited Vs. Government of India & Others** and that by virtue of such a communication, that although the respondents are the Government in the present case, there can exist promissory estoppel for which the Hon'ble High Court had set out certain guidelines:

"21. From the above decisions, the following guidelines would emerge, with regard to promissory estoppel:

- (1) If a statutory authority functioning on behalf of the State, in exercise of its legally permissible powers has held out any promise to a party, who relying on the same, has changed its position, then, on the principle of promissory estoppel, the promisor can be pinned down to the promise offered by it, by way of representation, containing such promise for the benefit of the promisee.
- (2) The doctrine of promissory estoppel cannot be pressed into service, to compel the Government, to carry out a representation or promise, which is contrary to law or which is outside the authority.
- (3) The doctrine of promissory estoppel would apply to the Government also. The Government cannot claim immunity from the doctrine of promissory estoppel.
- (4) The principle of promissory estoppel would be applicable to the Government as well, where it makes a promise knowing or intending that it would be acted upon by the promisee, and the promisee in fact acting on the promise alters his position, then the Government will be held bound by the promise and such a promise would be enforceable against the Government, at the instance of the promisee.

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38. From the above decisions, the following guidelines would emanate, with regard to public interest:

(1) Doctrine of promissory estoppel cannot come in the way of public interest. Indisputably, public interest has to prevail over private interest. A change in policy must be made fairly and should not give the impression that it has been so done arbitrarily."

(2) Where the Government on the basis of the material available before it is satisfied bona fide that the public interest would be served by withdrawing an exemption already granted, it should be allowed a free hand to do so. Where public interest is likely to be harmed, neither the doctrine of 'legitimate expectation' nor 'estoppel' can be allowed to be pressed into service against the State authorities.

(3) It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. However, the Court would not act on the mere ipse dixit of the Government. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming. The Court would insist on a highly rigorous standard of proof in the discharge of this burden.

(4) Even when there is no such overriding public interest, it may still be competent to the Government to resile from the promise 'on giving reasonable notice, giving promisee a reasonable opportunity of resuming his position', provided it is possible for the promisee to restore status quo ante. If the promisee cannot resume his position, the promise would become final and irrevocable."

5. The learned counsel for the applicant further argues that promissory estoppel would apply in the present case, compelling the respondents to conduct the examination and recruit the persons required for the said vacant post to which the applicant had applied.

6. We have heard the learned counsels for the parties and considered the pleadings on record. The learned counsel conceded that promissory estoppel may not apply in case there was public interest involved but has argued that in the

present case, the respondents had not made such a claim or referred to the existence of public interest. However, his argument is answered in the fact that the Ministry of Defence had carried out an elaborate exercise to assess their need of staff. It cannot be denied that this exercise was purely in the public interest of conserving their resources, both of more, materials and funds that are provided to the Ministry of Defence, for the best possible purposes in the public interest. Mere omission of the word 'public interest' in affidavit of the respondents will not vitiate their action of acting accordingly by not advertising the post for recruitment or by not filling up the post. The affidavit bears clear indication that the experts constituted by the Ministry of Defence has found more than 31000 defence civilian employees as surplus and such numbers undeniably Civilian Motor Driver which is the post for which the applicant was a candidate.

7. In the aforesaid facts and circumstances, we find that the OA is devoid of merits and the same is accordingly dismissed but without any order as to costs.

(R.N.SINGH)
MEMBER (J)
kmg*

(R.VIJAYKUMAR)
MEMBER (A)

JD
03/12