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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 284/86 1986
T.A. No.

DATE OF DECISION 31.7.1987

Shri Ram Parkash

Petitioner

The petitioner in person

Advocate for the Petitioner(s)

Versus

Secretary, Planning Commission

Respondent

Shri N.S. Mehta

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. M.B. Mujumdar, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

(M.B. Mujumdar)
Judicial Member

S.P. Mukerji
Administrative Member

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Central Administrative Tribunal
Principal Bench, Delhi

Regn. No. DA-284/86

Date: 31.7.1987.

Shri Ram Parkash

.... Applicant

Versus

Secretary, Planning Commission .. Respondent

For the Applicant Applicant in person

For the Respondent Shri N.S. Mehta,
Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member
Hon'ble Shri M.B. Mujumdar, Judicial Member.

(Judgement of the Bench delivered by the Hon'ble
Shri S.P. Mukerji, Member)

Shri Ram Parkash who has been on deputation from the Planning Commission (P.C.) to the Indian Institute of Public Administration (I.I.P.A.) and later absorbed in the I.I.P.A., has moved the Tribunal under Section 19 of the Administrative Tribunals Act praying that the order of the Planning Commission, dated 28.11.1983 (Annexure XIV) reducing his pay with retrospective effect from 1.6.1981 may be set aside and respondents directed not to withdraw the certificate, dated 16th June, 1981 to the effect that he would have continued to officiate as Deputy Adviser in the Planning Commission but for his transfer to foreign service with the I.I.P.A. He has also prayed for consequential relief of arrears of pay, allowances, etc., including retirement benefits.

2. The brief facts of the case can be recounted as follows. The applicant, a permanent Central Government servant, was appointed as Deputy Adviser in the Planning Commission on an ad hoc basis with effect from 3.5.1979 until further orders. The appointments were extended

from time to time and by the last extension "till 31.5.1981 or until further orders, whichever is earlier". With effect from the afternoon of 31st May, 1981, his services were placed at the disposal of the I.I.P.A. (Annexure VII) and it was certified to the I.I.P.A. by Planning Commission that he would have continued to officiate as Deputy Adviser (Rs.1500-2000) in the Planning Commission but for his transfer to foreign service with the I.I.P.A. The I.I.P.A. vide their order of 30.9.1981 (Annexure IX) took him on deputation initially from 1.6.1981 to 24.9.1982 and then with the approval of Planning Commission (Annexures IX and XV) extended his deputation for a further period of two years from 25.9.1982. His pay in the I.I.P.A. was accordingly fixed as Rs.1620/- with a deputation allowance of Rs.100/-. His first term of deputation which was to expire on 25th September, 1982, was extended for a further period of two years and the Planning Commission as late as on 16.8.1983 issued an increment certificate (Annexure XI) giving him increments in Dy. Adviser's pay scale till 1.5.1983 when by the Planning Commission's impugned order of 28th November, 1983, (Annex XIV), he was reverted as Senior Research Officer with retrospective effect from 1.6.1981 and his pay reduced from Rs.1620 to Rs.1500 with effect from 1.6.1981. The I.I.P.A. protected his pay of Rs.1620 and deputation allowance of Rs.100 between 1.6.1981 and 29.11.1981 but thereafter fixed his pay in the Professor's grade without deputation allowance w.e.f. 30.11.1981 at Rs.1560 with annual increments in the Professor's grade (Rs.1500-2000). The applicant retired from service on superannuation and was absorbed permanently in the I.I.P.A. with effect from 1.6.85. Since the applicant was a Central Govt. servant on deputation to the I.I.P.A. which is admittedly a society ^{registered} ^{^ R} under the Registration of Societies Act, 1860, the case in so far as it relates to his service conditions till 1.6.85 are concerned lies within the jurisdiction of the Tribunal under Section 14(1) of the Administrative Tribunals Act, 1985.

3. The main contention of the applicant is that the Planning Commission could not on 20.11.83 withdraw the certificate with retrospective effect from 1.6.81, not only because he was not given any show-cause notice before reversion to the lower grade but also because the Planning Commission is estopped from going back on the certificate

on the basis of which he had opted for the Planning Commission's scale of pay and not the IIPA's grade, and had not appeared in selection for the post of Deputy Adviser during his deputation with the I.I.P.A. He has also argued that he was not an ad hoc Deputy Adviser. His pension also has been permanently affected by the illegal ex parte order of retrospective reversion.

4. According to the respondents, the applicant's ^{was} appointment as Deputy Adviser (P.C.) ~~on~~ ^{was} ad hoc basis and was extended from time to time. The U.P.S.C. were consulted for extension beyond one year of ad hoc appointment. They have further indicated that the last extension having expired on 31.5.1981, they did not issue any further orders of extension as the recruitment rules for the post had been finalised and the U.P.S.C. had been approached for filling up the post on a regular basis. As regards the certificate given by the Planning Commission in the endorsement of Notification, dated 16.6.1981, they have indicated that the certificate was erroneous inasmuch as instead of giving the certificate in respect of the lower post of Management Analyst, it was given against the post of Deputy Adviser. As the applicant stood automatically reverted as Management Analyst with effect from 31.5.1981 when the last extension of his ad hoc promotion as Deputy Adviser expired, the question of a ^{certificate for an indefinite period against the post of} ~~officiation~~ Deputy Adviser did not arise. They have further explained that the applicant's seniority as Deputy Adviser does not entitle him to the certificate mainly because his juniors have been officiating as Deputy Advisers during his period of deputation. This is because the post of Deputy Adviser

is not filled exclusively by promotion of Senior Research Officers but by calling for applications on an All-India basis from the Central and State Governments, public sector undertakings, etc. Thus, the senior-most Senior Research Officer in the Planning Commission does not have an automatic claim ^{or} ~~for~~ appointment to the post of Deputy Adviser.

5. We have heard the arguments of the applicant in person and the learned counsel for the Union of India, Shri N.S. Mehta and for the I.I.P.A., Smt. S. Mahajan. The main point to be decided in this case is whether the certificate given by the Planning Commission could be withdrawn by the impugned order, dated 20th November, 1983 with retrospective effect. Shri Mehta has argued at length that by no stretch of imagination, the applicant's appointment as Deputy Adviser, which was originally on an ad hoc basis, can be considered to be regular as it was extended from time to time. He has also quoted the ruling of the Supreme Court in S.P. Vasudev Vs. the State of Haryana, AIR 1985 S.C. 2292. to say that an ad hoc appointee has no right to the post. Even if we accept this contention of the learned counsel, we cannot persuade ourselves to accept that any ad hoc appointment can be dismantled with retrospective effect without giving any show-cause notice or opportunity to the Government servant concerned. In this particular case, the impugned order was passed on 20th November, 1983 reverting the applicant to the lower post of Senior Research Officer w.e.f. 1.6.1981 and reducing his pay also with retrospective effect. Since, admittedly, no opportunity was given to the applicant who was on deputation with the I.I.P.A. and was duly fortified

by the certificate given by the Planning Commission in the endorsement to the Notification, dated 16th June, 1981, it was incumbent upon the Planning Commission to give a show cause notice to the applicant.

6. It is also clear from the records that the first extension of the deputation of the applicant expired on 15.9.1982 and the Planning Commission was approached in June 1982 (Annexure VIII) for the second extension which was also given till 24.9.84 without withdrawal of certificate of officiation. This was further followed by ^{the} Planning Commission's increment certificate dated 16.8.83 in the pay scale of Deputy Adviser. At no stage till 17.9.84 (Annexure XII) did the Planning Commission withdraw the certificate or correct it by replacing the words 'Deputy Adviser' by the words 'Management Analyst'.

7. Shri Mehta referred to the celebrated ruling of the Supreme Court on Maneka Gandhi's case to argue that the show cause notice can be given even at this stage. We feel that while the show cause notice at this stage may, to some extent, meet the requirements of principles of natural justice, it cannot entitle the respondents to give retrospective effect to applicant's reversion.

8. The applicant has very persuasively argued before us that by omitting to either withdraw or correct the certificate about his continued officiation as Deputy Adviser but for his deputation to the I.I.P.A., either on 13.10.81 when the post held by him in the Planning Commission was filled by a regular appointee or when the second extension was given to him in 1982, and by taking no action against the officer who had given the erroneous certificate, the respondent 1 has bound himself by the principle of promisor estoppel. He indicated that because of the certificate, he acted in a manner which later proved to be prejudicial to his interests in as much as because of the certificate ^{for the} he did not compete/post of Deputy

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Adviser while on deputation, he did not seek voluntary retirement earlier to get a pension based on his pay as Deputy Adviser, he did not accept the foreign assignment, he opted for the Planning Commission pay instead of the I.I.P.A.'s. It is because of this certificate that the I.I.P.A. also granted him the higher pay of Rs. 1620/- but ~~did not allow the increments~~ reduced the same as soon as they received intimation about the reversion. According to the applicant, the certificate had induced him to act in a manner which he would not have acted if the certificate had not been given and the withdrawal of certificate at this stage would result in financial and other injuries because of his conduct based on the certificate. Accordingly, by the principle of promissory and equitable estoppel, ~~the respondent(s) cannot withdraw the certificate at this stage.~~ ^{allowed}

9. The learned counsel for the Planning Commission, Shri Mehta, referred to the ruling of the Supreme Court in Union of India & Others Vs. Godfrey Philips India Ltd., A.I.R. 1986 S.C. 806. In their judgement the Supreme Court upheld the doctrine of promissory estoppel enunciated by them earlier in Motilal Sugar Mills case (AIR 1979, S.C. 621) by quoting from that judgement in the following terms:-

"The law may therefore now be taken to be settled as a result of this decision that where the Government makes it promise knowing or intending that it would be acted on by the promises and, in fact, the promises, acting in reliance on it, alters his position the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in Republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is

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no exception. It is indeed the pride of constitutional democracy and rule of law that the government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the government say that it is under no obligation to act in a manner, i.e. fair and just or that it is not bound by the considerations of "honesty and good faith"? Why should the government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the government to repudiate even its contractual obligations, but let it be said to the eternal glory of this court, this doctrine was emphatically negatived in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action."

The Supreme Court after analysing and disagreeing with the subsequent ruling in *Jeet Ram Vs. State of Haryana*, (AIR 1980 SC 1285) observed as follows:-

".....It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, ~~it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority.~~ The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in *Motilal Sugar Mills case (supra)* and we find ourselves wholly in agreement with what has been said in that decision on this point."

10. We feel that the above ruling supports the applicant's case more than the respondent's because in this

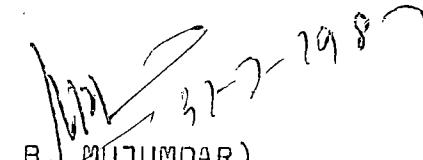
case, it is the applicant who has suffered financially and professionally because of the representation made by the respondent 1 through the certificate and its subsequent conduct of not modifying or correcting the representation when any reasonable person would have done it. The balance of equity lies ^{more} in favour of the applicant than respondent (1) in this case and the full benefit of the certificate has to be made available to the applicant at least up to 24.9.84 till which date the deputation of the applicant was extended with the approval of the Planning Commission for the second spell in 1982 without withdrawing the officiation certificate.

11. The result is, that the applicant is entitled to the pay in the Planning Commission scale of Rs. 1600-2000 with an initial pay of Rs. 1620. when he joined the I.I.P.A. on deputation with increments and other allowances including deputation allowance 24.9.84 due to him, upto till which date the Planning Commission agreed in 1982 to extend his deputation for the second spell of two years (25.9.82 to 24.9.82) without withdrawing or modifying the officiation certificate originally given. The I.I.P.A. should give an option to the applicant as on 25.9.84 either to draw his grade pay in the reverted grade of Senior Research Officer in the Planning Commission w.e.f. 25.9.84 or the Professor's grade in the I.I.P.A. If he opts for the I.I.P.A. grade pay, his pay in that grade should be fixed as on 25.9.84 by taking into account for increments his service as professor in the I.I.P.A. between 1.6.1981 and 24.9.1984, in addition to such

allowances, including deputation allowance if due to him under the rules and terms of his deputation till his retirement-cum-permanent absorption in the I.I.P.A. on 1.6.1985. It will not be possible in the facts and circumstances of the case to give him the benefit of the erroneous certificate of the Planning Commission beyond 24.9.84, as further extension of his deputation fell within the mischief of the impugned order of his reversion dated 28.11.1983 and cancellation of increment certificate dated 17.9.83. Since the applicant had been appointed purely on a temporary and ad-hoc basis as Deputy Adviser in the Planning Commission and was getting the promotion extended from time to time, he cannot claim any right to continued promotion as Deputy Adviser. Further since the post is not reserved for departmental candidates, the applicant cannot have any right of promotion merely because his juniors were appointed to the post during his deputation, through selection by the U.P.S.C. The applicant also, if he so desired, could have competed.

12. In the result, we allow the application in part with the direction that the applicant should be allowed full benefit of the certificate to draw pay in the Planning Commission scale of Rs. 1500-2000 with an initial pay of Rs. 1620/- with deputation allowance as admissible to him and with increments in that scale till 24.9.84. The I.I.P.A. should give him an option as from 25.9.84 either to opt for the professor's grade or the Planning Commission's Management Analyst grade of Senior Research Officer and if he opts for the

Professor's grade, his pay in that grade should be fixed after taking into account his service as Professor between 1.6.1981 and 24.9.1984 with such deputation and other allowances as due to him under the rules. All consequential benefits including Pension, etc., should also be given to him in accordance with relevant rules. The application is disposed of on the above lines and there will be no order as to costs.


(M. B. MUJUMDAR)
JUDICIAL MEMBER


(S. P. MUKERJI)
ADMINISTRATIVE MEMBER