

In the Central Administrative Tribunal

Principal Bench: New Delhi

Regn. No.OA 124/1987

Date of decision:19.08.92.

Shri S.K. Jain

...Petitioner

Versus

Union of India through ...Respondents  
the Secretary, Ministry of Steels and Mines,  
Department of Steel, Udhog Bhavan,  
New Delhi and the Secretary,  
Department of Personnel and Training,  
North Block, New Delhi.

Coram :-

The Hon'ble Mr. Justice V.S. Malimath, Chairman  
The Hon'ble Mr. I.K. Rasgotra, Administrative  
Member.

For the petitioner Shri P.P. Khurana, Counsel.

For the respondents Shri M.L. Verma, counsel.

Judgement (Oral)  
(Mr. Justice V.S. Malimath, Chairman)

The petitioner Shri S.K. Jain started his career as Assistant. In due course he was given promotion on ad hoc basis to the cadre of Section Officer in the Ministry of Steel. A select list was made for the year 1985 on 7.5.1986 for regular promotion to the cadre of Section Officer. The petitioner was allocated to the Department of Education in the Ministry of Human Resource Development. On 14.5.1986, the petitioner made a request for his being retained on regular promotion as Section Officer in the Ministry of Steel itself. His own Ministry supported his request and recommended his retention in public interest. The Department

of Personnel by order dated 19.6.1986 turned down the request for retention of the petitioner in the Ministry of Steel. They, however, gave an option to the petitioner to accept the post of Section Officer on 30.09.1986 in the vacancy to be caused on the retirement of Shri D.S. So-dhi in the Ministry of Steel, provided he is willing to forego his inclusion in the Select List of the year 1985 and agrees to <sup>the</sup> inclusion of his name in the select list for the year 1986. The petitioner not having given his option within 10 days' time, given for the purpose, there was a reminder issued to him on 25/28 July, 1986. The petitioner ultimately gave his undertaking as per Annexure A-6 on 1.12.1986, agreeing to his inclusion in the 1986 list for being accommodated in the vacancy of Shri D.S. So-dhi on 30.09.1986. The petitioner was not informed about the decision of the authorities on the undertaking furnished by him. However, by order dated 13.1.1987, one Shri T.V. Atchut Ram was appointed as Section Officer and posted in the Ministry of Steel. It is in this background that the petitioner has approached this Tribunal for relief. He prays that in accordance with the offer made to him, he having given the requisite undertaking, he should be retained in the Ministry of Steel as a regularly promoted Section Officer

w.e.f. 30.09.1986 in the vacancy of Shri So-dhi.

2. In reply, the respondents have resisted the claim of the petitioner primarily on two grounds. It is their contention that the petitioner did not give his undertaking within the time given to him and that even the undertaking that he gave was not in terms of the offer made to him and cannot, therefore, be regarded as a proper undertaking.

3. As regards the delay in offering the undertaking is concerned, Shri Khurana, learned counsel for the petitioner submitted that though there is nearly five months' delay in offering the undertaking, there is satisfactory explanation for the delay and that the delay has not, in any manner affected the rights and interests of anybody else. He invited our attention to the fact that the Ministry of Steel in which he was working, itself further reiterated the claim of the petitioner for retention in that Ministry by addressing a letter on 20.10.1986. In the said letter they have strongly recommended the case of the petitioner for retention in the Ministry of Steel on the ground that he is a good and competent officer and his services are very much needed in the Ministry of Steel. If, in this background the petitioner


was hoping that there will be a favourable order of retention in his favour and did not, therefore, offer the <sup>required</sup> undertaking. Though his conduct can be understood it/ cannot be appreciated. When the Ministry of Steel itself had strongly recommended his case in October, 1986 for retention, it was not unreasonable for him to wait for the response to that recommendation. Besides, it is necessary to point out that there has been no change in the position till 30.1.1987 until the order came to be made, appointing Shri T.V. Atchut Ram as Section Officer in the Ministry of Steel. This happened more than a month after the petitioner had given his undertaking. We are therefore, of the opinion that the delay could not be put-forward as a ground for not accepting the undertaking offered by the petitioner. We should hasten to add here that the order dated 30.1.1987, posting Shri Atchut Ram as Section Officer in the Ministry of Steel was to be given effect from 6.1.1987.


4. So far as the contention that the undertaking is not in terms of the offer made to him is concerned, it appears to us to be a very technical contention. It is no doubt true that the petitioner was required to state that he is willing to forego his inclusion in the 1985 select list and to agree for inclusion in the 1986 list and to take the

position of Section Officer on 30.09.1986 in the vacancy of Shri D.S. Sodhi. What the petitioner, however, has stated in his undertaking is that he is willing to be included in the 1986 list and accepting the assignment offered to him. In the context, it is obvious that the undertaking given by the petitioner must be understood as having been made in response to the offer made to him. Inclusion in the 1986 list to which he has had made a specific reference himself, must, in the circumstances be understood as conveying that such inclusion of his name in the 1986 list be made <sup>excluding his</sup> ~~name from~~ the 1985 select list. In our opinion, the respondents have acted in a very technical manner in understanding the undertaking given by the petitioner. We are, therefore, satisfied that there is no good reason offered by the respondents in not accepting the offer of undertaking made by the petitioner in response to the offer made by the respondents. But then the petitioner should not be permitted to take advantage of the delay in offering the undertaking. As already stated, he has given his undertaking on 1.12.86. Shri Atchut Ram was given appointment by order dated 30.1.1987 w.e.f. 6.1.1987. The petitioner

has, on the strength of the interim order, granted by the Tribunal during the pendency of the case, continued to function in the Ministry of Steel as Section Officer. Having regard to the background on the part of the petitioner, we consider it appropriate to direct that the petitioner should be regarded as having been promoted on a regular basis and posted in the Ministry of Steel w.e.f. 6.1.1987.

5. For the reasons stated above, this Petition is allowed and the respondents are directed to accept the undertaking given by the petitioner and to treat the petitioner as having been regularly promoted and posted as Section Officer in the Ministry of Steel with effect from 6.1.1987. No costs.

  
(I.K. Rasgotra)  
Member(A)

  
(V.S. Malimath)  
Chairman

August 19, 1992.

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