

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1687/87
TAXXNNo.

198

DATE OF DECISION 26.3.1990

Shri Ahmed Khan

Petitioner

Shri K.L. Bhandula

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri D.K. Sinha

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Ms. Usha Savara, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

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JUDGEMENT

(Delivered by Hon'ble Ms. Usha Savara, Member (A))

The applicant, Shri Ahmed Khan was appointed on daily wages w.e.f. 22.4.1984 as a driver. Later on, he was appointed on adhoc basis w.e.f. 1.6.85 initially for a period of 6 months, which was extended from time to time. The last order extending his services was dt. 9.12.86 and the appointment was extended till further orders or till such time he is regularised, whichever is earlier. The petitioner's complaint is that although he was fully eligible to be appointed on regular basis as a driver, the authorities have not given him regular

appointment and his services have been terminated w.e.f. 16.11.87 and one Shri Ved Prakash has been selected as a driver in his place.

2. Shri K.L. Bhandula appeared for the applicant and submitted that the petitioner had been appointed against a regular vacancy created vide order No.37/4/84-SAC dated 7.7.84 w.e.f. 1.6.85. This appointment could not be considered to be an adhoc appointment as he continued for over 2½ years. Since there was a vacancy in the post of driver in Goa Sadan and the petitioner was fully qualified to be appointed to the said post, he should have been selected and given the appointment. The petitioner was registered with the Employment Exchange and the mere fact that he had not been sponsored by the Employment Exchange was no reason for not considering him for the post. Shri Bhandula relied upon the decision of the Central Administrative Tribunal, Calcutta Bench in OA-664/86 decided on 1.5.89. It was held that the case of the applicant for regular appointment should have been considered by the respondents even though there was no response from the Employment Exchange Authorities to sponsor his name.

3. Shri Bhandula, further submitted that the respondents were bound by the doctrine of promissory estoppel. He referred to annexure A-5 dated 9.12.86 by which the adhoc appointment of the petitioner as driver was extended till further orders or till such time he is regularised, whichever is earlier. The learned counsel, Shri Bhandula submitted that there was a promise made to the petitioner to appoint him on a regular basis and the respondents were bound by this. He has relied upon the decision of the Central Administrative Tribunal, New Delhi, Swami Nath Sharma & Ans. Vs. U.O.I. ATR 1988(1) CAT-84 decided on 11.9.87. The

applicants had been given appointment on adhoc basis subject to the operation of "Rangatantra" a society now transferred to Design Centre. They were in service for 2 to 3 years and their services were terminated on the ground that their names had not been sponsored by the Employment Exchange though their names were registered with the Employment Exchange. The legality of this order was challenged and it was held that the doctrine of promissory estoppel could be enforced against the law ^{and} ~~of~~ the order of termination could not be upheld.

4. In the instant case, the respondents vide order dt. 9.12.86 while extending the period of adhoc service gave a positive assurance that the term of adhoc appointment was till further orders or till such time the applicant was regularised, whichever was earlier. A promise had been made to the petitioner and the respondents are bound by the principles of 'Promissory estoppel' and the so called formality of not getting the applicant's name sponsored by the Employment Exchange is not such as to make the appointment bad in law.

5. It was argued by Shri Bhandula that the above decision applies fully to the facts of the case under consideration. By their letter dated 9.12.86, the respondents had extended the adhoc appointment of the petitioner till further orders or till such time he is regularised whichever is earlier. Therefore, it was prayed that the order of termination dated 16.11.87 should be quashed and the applicant should be declared to be a regular driver.

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6. Shri D.K. Sinha, learned counsel, appeared for the respondents and submitted that the post of drivers were in category-C and therefore the Recruitment Rules had to be followed scrupulously. It was necessary to get the names from the Employment Exchange in respect of direct recruitment vacancies. It would have been totally against the prescribed procedures and rules if the petitioner or any other daily wage driver had been given the appointment order on regular basis when his name had not been sponsored by the Employment Exchange.

7. It was submitted that a DPC was held on 21.9.87 and 6 candidates from the Employment Exchange came for interview. After interview and the driving test, Shri Ved Prakash was selected to be the best candidate as he fulfilled all the requirements of the Recruitment Rules and he was given a letter of appointment. In order to implement the same, it was necessary to terminate the services of Shri Ahmed who was drawing his salary against that post. Though the Resident Commissioner had tried to accommodate the petitioner but her efforts at getting his name sponsored from the Employment Exchange were not successful. Therefore, his appointment on regular basis was not possible.

8. It was submitted that his appointment was on adhoc basis and was merely a stop gap arrangement at all times. This did not give him any right nor bestow him any claim for regular appointment. It had been made clear to the petitioner from the very begining that he was appointed on adhoc basis and a specified period of 6 months had been mentioned in the orders given to him from time to time.

9. In view of this, Shri Sinha argued that the question of promissory estoppel did not arise and the applicant could not expect to be regularised.

10. Having heard the arguments of both counsels at some length, we are of the view that although the petitioner was first given an adhoc appointment for a period of 6 months (which period was extended from time to time) yet the last appointment order dated 9.12.86 (Annexure A-5) makes a positive commitment as the appointment of the petitioner was extended till further orders or till such time he is regularised, whichever is earlier. This offer was not for adhoc appointment, but for regular service. Having made this order, the respondents cannot go back on their word, merely because the applicant's name has not been sponsored by the Employment Exchange. The Supreme Court has held in the case of U.C.I. Vs. N. Hargopal & Ors. (ATR 1987) 1257 on which reliance was placed by the Calcutta Bench in OA-664/86 that the object of the Employment Exchange was "Not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient, and to provide an opportunity to the worker to have his claim for employment considered without the worker having to knock at every door for employment. Therefore, the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchange." In view of this, the respondents cannot deny that the applicant, who had been working with them for over 3 years, should have been considered for regular appointment even if his name had not been sponsored by the Employment Exchange.

11. The respondents are also bound by the principle of promissory estoppel and the mere fact that the petitioner's name has not been sponsored by the Employment Exchange should not stand in their way in fulfilling their commitment. It is elementary that in a republic governed by the rule of law, no one, however high or low, is above the law. Every one is subjected to the law as fully and completely as any other, and the Government is no exception. The doctrine of promissory estoppel is a significant judicial contribution in that direction and if it could be shown by the respondents that having regard to the facts as they have subsequently transpired, it would be inequitable to hold them to the promise made by them, then the Tribunal would not enforce the promise against the Government. But in this case, the only reason given by the respondents for not appointing the applicant is that the name of the petitioner was not sponsored by the Employment Exchange. These are only administrative instructions for the benefit of the people. Therefore, we held that the respondents are bound by the doctrine of promissory estoppel and the applicant cannot be discharged by the impugned orders.

12. Shri Sinha has averred that an offer was given to the petitioner to work on daily wages but since he did not accept it within a reasonable time, they have appointed some other persons. This offer was made to the petitioner vide order dated 16.11.87 wherein he was given an option to work on daily wages if he so desired. No time limit for the acceptance of this offer was mentioned in this letter nor was it clarified that he would be working as a driver on daily wages. The petitioner opted to work on daily wages by letter dated 30.11.87 i.e. merely 2 weeks after the offer was made and

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he was informed that since he did not respond in time though his services were no longer required.

13. In all fairness, we feel that since the petitioner has been denied regularisation on a flimsy ground, he should have atleast been accommodated, even if it was on daily wages as a driver. The offer seems to have been withdrawn in undue haste by the respondents?

14. Having regard to the facts discussed above, since the applicant had been working as a driver for over 3 years and was in fact promised regularisation in the post of the driver, we direct that the respondents appoint him on daily wages within a period of one month and consider his case for regular appointment even though his name has not been sponsored by the Employment Exchange, whenever a vacancy arises in the Goa Sadan.

15. The application is disposed of on the above lines. Parties will bear at their own costs.

U. Savara
(USHA SAVARA)
MEMBER (A) 26/3/90.

AB
26/3
(AMITAV BANERJI)
CHAIRMAN

The judgment was pronounced in open court today.

AB
26/3/90