

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(a)
CAT/3/12

O.A. No. 612/87
TaxxNax

198

DATE OF DECISION 24.4.1990.

Shri S.N. Teckchandani & Ors. Petitioners.

Shri J.S. Bali, Counsel. Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri P.P. Khurana, Counsel. Advocate for the Respondent(s)

CORAM.

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

The Hon'ble Mr. B.C. Mathur, Vice-Chairman(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND-12 CAT/86-3-12-86-15,000

(Amitav Banerji)
Chairman

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PRINCIPAL BENCH
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REGN. NO. O.A. 612/87

DATE OF DECISION: 24.4.1990.

Shri S.N. Teckchandani & Ors. Applicants.

Versus

Union of India Respondents.

For the Applicants. Shri J.S. Bali,
Counsel.

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

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman(A).

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

This Original Application was filed by the six applicants, who belong to the Indian Economic Service. They were appointed as Investigators in the scale of Rs.425-700 and were subsequently promoted to the post of Senior Investigators in the scale of Rs. 550-900. They stated that the post of Senior Investigator in the scale of Rs.550-900 is a feeder post for Grade IV of Indian Economic Service (IES) which carries the scale of Rs.700-1300. They also claimed that in normal course they had their avenues of promotion to the post of Export Promotion Officer in the scale of Rs.650-1200 (Class II Gazetted). Thereafter, the next grade is of Deputy Director in the scale of Rs.1200-1600. They also claimed that from the post of Senior Investigator they can be directly

empanelled in the Grade IV Officers of IES. They claimed that while working as Export Promotion Officers, which is the next higher grade from the feeder cadre, they were treated as being in the equivalent post for Grade IV of I.E.S. ever since 1981. They relied on the decision in the case of Narender Chadha (AIR 1986 SC 638) to claim that they should be deemed to be in Grade IV and should be assigned seniority in the said cadre with effect from the date they were continuously officiating in the said post. They also relied on the list of Officers in Grade IV posts filed before the Hon'ble Supreme Court, which included the names of all those officers, who were regularly/irregularly/legally/illegally promoted to the post of Grade IV. They also claimed that the Hon'ble Supreme Court had directed that all those persons should be treated as having been regularly promoted with effect from the date of their continuous officiation. The department had taken out eligibility list of the incumbents of feeder posts to Indian Economic Service for preparation of select list for promotion to Grade IV of I.E.S. in Jan 1981. Under Col. No. 10, the applicants had been shown to be in the equivalent post to Grade IV with effect from the dates noted against each. However, no date was mentioned against the Applicant No. 2. Consequently, Applicant No. 2 made a representation for the correction in the said list. In the year 1984, a draft eligibility list of incumbents of the feeder posts was again taken out. The date of appointment of Applicant No. 2 as

Research Officer/Export Promotion Officer was also shown. The names of other applicants were also shown in this list. The above draft list was prepared by the respondents in due compliance with the directions of the Hon'ble Supreme Court. Ultimately, a final list was prepared on 8.5.86 but the names of Applicants No. 1 and 2 were deleted. However, the names of other applicants were there. The applicants No. 1 and 2 made a representation pointing out the mistake committed by the respondents. Thereafter, the respondents took out the final notification, which is now impugned in this O.A., under which the names of all the six applicants were missing. They have thereafter filed this Application and challenged the said list.

names of the
They have prayed that the/applicants arising from their eligibility be included in the impugned notification 'regarding appointment of I.E.S. Grade IV officers' at appropriate places with consequential benefits.

The respondents in their reply have taken the stand that all the six applicants were appointed as Senior Investigators on different dates. Applicant No. 1 was appointed as Senior Investigator on 28.5.1965; Applicant No. 2 on 28.9.1965; Applicant No. 3 on 4.10.1967; Applicant No. 4 on 4.7.1967; Applicant No. 5 on 25.6.1971 and Applicant No. 6 on 18.5.1970. They further stated that Senior Investigator in the scale of Rs. 650-1200 also acts as feeder post holder for Grade IV of I.E.S. They denied that the

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applicants were empanelled in Grade IV and they were made to work as Export Promotion Officers. It was also denied that the scale of Rs.650-1200 was the next higher grade from the feeder cadre. It was stated that the posts in the scale of Rs. 650-1200 constitute the feeder post along with the posts in the scale of Rs.550-900 for Grade IV in the I.E.S. The posts held by the applicants had never been treated as Grade IV posts. The inclusion of the applicants' names in the list of officers shown as appointed to Grade IV on regular or ad hoc basis was inadvertent. The error was rectified after the processing of the eligibility had been completed and the applicants were not notified for promotion on their ineligibility, coming to the notice. The applicants had not been found to be eligible for Grade IV of I.E.S.

It was then urged that the crucial issue was whether the posts held by the applicants were Grade IV posts of IES or not. The respondents' stand was that the posts held by the applicants were not Grade IV posts. The I.E.S. Board had its meeting on 22.12.1981 and again in 1982. In the later meeting, it was held that "The feeder posts carry two scales namely Rs. 650-1200 and Rs.550-900". The Board had also considered the matter of assignment of seniority to the feeder post holders of two different scales. It was mentioned that 32 feeder posts in the I.E.S. were in the higher scale. Thereafter, the decision was arrived at in consultation with the U.P.S.C. that the feeder post-holders

in the higher scale of Rs.650-1200 were placed enbloc senior to the post holders in the scale of Rs.550-900. The Ministry of Commerce had never up-graded the posts of Export Promotion Officers to the scale of Rs.700-1300. It was further stated that the appearance of the names in the draft seniority list had no relevance as the Draft seniority list was always subject to correction before finalisation. The inclusion of the names of applicants No. 3 to 6 was an error and it was being rectified. Lastly, it was urged that the posts held by the applicants were never upgraded. Consequently, there was no force for regular appointment in Grade IV of I.E.S. in the light of Supreme Court judgement.

A Rejoinder was filed by the applicants. It was briefly stated that the wrong statement had been made wilfully and deliberately. The respondents had taken their stand on an "inadvertent mistake and omission". At no stage during the last two decades, the post of Export Promotion Officer was shown as "Feeder Post". The list submitted to the Supreme Court which contained the names of the applicants was termed wrongly and wilfully as an "Inadvertent mistake". The Supreme Court's decision in Narender Chadha's case (Supra) was applicable to the applicants. It was no where indicated by the respondents that the Export Officer holds a feeder post to the Grade IV of I.E.S. It was also admitted by the respondents

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that the post of Export Promotion Officer was treated equivalent to Grade IV of IES. No distinction was made by the Ministry of Commerce in the scale of Rs.650-1200 and Rs.700-1300. Further, several persons junior to the applicants were promoted to the post of Research Officer from the post of Senior Investigator at a time when the applicants were already working as Export Promotion Officers. One of them was Shri K.G. Manchanda, who was junior to Applicant No. 4.

We have heard learned counsel for the parties. The two questions that arise for consideration in this case are-

- (1) Whether the post of Export Promotion Officer was a post in Grade IV of the I.E.S. or was only a feeder post to the said Grade?
- (2) Whether the applicants are entitled to the inclusion of their names in the list of Grade IV posts?

Shri J.S. Bali, learned counsel for the applicants, contended that the Draft Eligibility list issued in 1984 of incumbents from feeder posts for preparation of select list for promotion to Grade IV of Indian Economic Service included the name of the applicants No. 1 to 6. Column No. 10 indicated that the Grade IV or equivalent posts had been held by them. The Draft Eligibility list places Applicant No. 1, Shri S.N. Teckchandani, at Serial No. 146, Applicant No. 2, Miss Vimla Puri, at Serial No. 147, Applicant No. 3, Smt. Seetha Laxmi Krishnan, at

Serial No. 83, Applicant No. 4, Shri T.K. Ganguli, at Serial No. 80, Applicant No. 5, Shri N.R. Aggarwal, at Serial No. 208 and Applicant No. 6, Shri B.S. Bedi, at Serial No. 207. All of them are shown to be Senior Investigators except Shri B.S. Bedi. The date of appointment of Applicants No. 3 and 4 are 4.10.67 whereas those of Applicants No. 1 and 2 are 25.6.71 and that of Applicant No. 5 is 24.1.73. The date from which Grade IV or equivalent post held is indicated in the case/Applicants No. 1 and 2 as 31.3.75; 4.5.76 in the case of Applicant No. 3; 1.4.72 in the case of Applicant No. 4, and 24.1.73 in the case of Applicant No. 5. No date was mentioned in the case of Applicant No. 6. The Annexure A5 to the O.A. , therefore, showed that it was a Draft Eligibility list of incumbents of Feeder Posts for preparation of Select List for promotion to Grade IV and the Applicants No. 1,2,3,4 and 5 were working either in Grade IV or equivalent post. It was further contended that the applicants were holding either a post in Grade IV or equivalent post and were thus entitled to be considered for promotion to Grade IV. He further relied on the order passed by the Hon'ble Supreme Court on February 1, 1984, which is quoted in paragraph 1 of the judgement in the case of Narender Chadha (Supra). That order reads as follows:-

"We are not able to understand why the vacancies available to the departmental candidates under R.8(1)(a)(ii) of the Indian Economic and Indian Statistical Services Rules, 1961, have not been filled up on regular basis. We find that some of the departmental candidates (petitioners)

have been holding the promotional posts on ad hoc basis for several years. There appears to be no justification for keeping them 'ad hoc' so long. We, therefore, issue a Writ of Mandamus directing the Union of India to fill up, within four weeks from today, the vacancies available to the departmental candidates under R.8(1)(a)(ii) with effect from the date from which the petitioners became entitled to be promoted on regular basis. Their seniority will be determined according to Rules. We wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now. The writ petition is disposed of in these terms. There will be no order as to costs."

Learned counsel contended that the above direction was applicable in the case of the applicants as well and the respondents did not comply with the above order.

In the judgement of Narender Chadha (Supra), the Supreme Court said that 'on the expiry of four weeks, the Union of India filed an application for extension of time to comply with the directions contained therein. Time was extended by the Court till April 30, 1984. On May 1, 1984 the Union of India filed before the Court two sets of seniority list in respect of the Indian Economic and Indian Statistical Service'. The Supreme Court observed that 'Since on a perusal of the said lists it was found that the position of some of the departmental promotees who had already put in nearly 15 years of service in Grade IV was worse than the position in which they were before the writ petition was filed and were facing imminent threat of reversion to the feeder posts from which they had

been promoted several years ago, the Court directed the petition to come up for hearing before the Court on its re-opening after summer vacation and directed that status quo should be maintained in the meanwhile*.

Thereafter, on July 24, 1984 'the Court while declining to endorse either of the two seniority lists directed the Union of India to implement the order dated February 1, 1984 on or before 30th November, 1984. In the meanwhile the petitioners filed Civil Miscellaneous Petition No. 2604 of 1985 complaining that the Union of India had failed to comply with the order made by this Court and that action should be taken for contempt against it. The stand taken by the Union of India was that they had complied with the directions of the Hon'ble Court bona-fide and in good faith. However, if there is any slip on the part of the respondent, the respondent would tender unconditional apology*. The Court hearing the parties including interveners declined to take any action for contempt against the Union Government or any of its officers for not obeying the orders, as prayed for. It considered the case afresh and passed a detailed order of which reference to paragraphs 23 and 24 is relevant. In paragraph 23, the Supreme Court has laid down -

" Having given our anxious consideration to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several

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posts in Grade IV in each of the two Services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under R.8(1)(a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or post as provided in Cl.(a) of R.9-C of the Rules. A seniority list of all the promotees and the direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts. This direction shall be applicable only to officers who have been promoted till now. This is the meaning of the direction given by the Court on February 1, 1984 which stated, 'we wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now.' All appointments shall be made hereafter in accordance with the Rules and the seniority of all officers to be appointed hereafter shall be governed by R.9-C of the Rules."

Shri Bali laid great emphasis on the contents of the above paragraph. He said that the principal direction given by the Supreme Court was that Government should treat all persons who are stated to have been promoted in this case to several posts in Grade IV as having been regularly appointed to the said posts and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Further direction was that

those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. The Supreme Court further said that "this direction shall be applicable to the officers who have been promoted till now".

Shri Bali referred to paragraph 24 of the report, which reads as under:-

"If as a result of the preparation of the seniority list in accordance with the decision and the review of the promotions made to higher grades any of them is likely to be reverted such officer shall not be reverted. He shall be continued in the higher post which he is now holding by creating a supernumerary post, if necessary to accommodate him..."

Shri Bali argued that the Government is estopped from reverting the applicants from the post of Export Promotion Officer to a post in Feeder Scale. Likewise, he argued that the Government is estopped from not considering the applicants after they had been put in so many years of service as Export Promotion Officer. Another point urged in this regard by Shri Bali was that after showing the name of the applicants in the above list, the names of the applicants were withdrawn and not shown in the final list, which according to him, could not be done. He urged that if the Government had to delete their names, then they had to give a show cause notice before they had deleted their names, as the applicants had matured their rights in view of the decision in the case of Narender Chadha (Supra). Shri Bali stated that when the final seniority

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list was prepared (Annexure A6 to the OA) in compliance of the judgement of the Hon'ble Supreme Court dated 11.2.1986, only four names were shown i.e. Shri T.K. Ganguly (Serial No. 350), Smt. S. Krishnan (Serial No. 463), Shri B.S. Bedi (Serial No. 466) and Shri Naresh Aggarwal (Serial No. 480). Applicants No. 1 and 2 made a representation that their names have been deleted from the final seniority list. Another list was issued deleting the names of even those four applicants. Learned counsel contended that this could not be done. He further urged that the various seniority lists showing the name of applicants issued from time to time were in a nature of official commitments which could not be retracted by the respondent to the detriment of the applicant after such a length of time. Learned counsel in other words relied on the doctrine of promissory estoppel. He relied on the following cases:-

- (1) M.P. Sugar Mills Vs. State of U.P. (A.I.R. 1979 SC P-643).
- (2) Delhi Cloth & General Mills Ltd. Vs. Union of India (A.I.R. 1987 SC P-2414).

Learned counsel also cited the decision in the case of P.V. Pavithran Vs. State of Andhra Pradesh (A.T.R. 1988(1), C.A.T.26) where it was held that cancellation of an earlier order favourable to a Govt. Servant without issue him a show cause notice would be in violation of the principle of natural justice. He also cited the case of M. Venkaiah Vs. Union of India (ATR 1989(2) CAT 23) where a similar view as in the above case was taken.

The first question raises a question of fact whether the post of Export Promotion Officer was a post in Grade IV? Secondly, was it only a feeder post to the said Grade. The applicants have urged that the post of Export Promotion Officer was a post in Grade IV and was not a post in a feeder scale. They further urged that their names were included in the provisional list of 1984 where they were shown to be holding a post in Grade IV or equivalent post.

The respondents take the stand that Export Promotion Officer was a post in the scale of Rs.650-1200, a class II Gazetted Service and was never a post in Grade IV. It was always a post in the feeder scale. It was urged that the applicants were in the scale of Rs.650-1200. They were never in the grade of Rs.700-1300.

There can be no dispute that the applicants were shown to be Export Promotion Officer in the Ministry of Commerce and were shown in the draft eligibility list to be holding a Grade IV post. Reference has already been made to Annexure A5, where the applicants were shown to be holding either Grade IV post or equivalent post from specific dates in Column No. 10 of the chart in Annexure A5. It is true that the plea taken in the reply of the Respondents that the inclusion of the names of the applicants as holding Grade IV post was inadvertent and was subsequently rectified in 1986. There is, however, no denial of the fact that for a period of almost two years the names of the applicants were continued to be shown holding a

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Grade IV or equivalent post. The respondents' case therefore hinges on the fact that the names of the applicants had been wrongly shown in the list (Annexure A5) and they were neither holding the post in the scale of Rs.700-1300 nor equivalent post to Grade IV at any time. At the most, they were discharging the duties of Export Promotion Officer.

It was contended by the Learned counsel for the respondents that the applicants were not acting as ad hoc nor officiating in a Grade IV post. Their names were included in the draft eligibility list of 1984. It was only a provisional list. When the final list was prepared, their names were excluded as they were not holding a Group 'A' post. They were officiating in Group 'B' post under the Ministry of Commerce. The applicants had not worked in Group 'A' post.

Learned counsel further pointed out that the case of Shri K.G. Manchanda was different. He had worked as ad hoc in Grade IV. Consequently, his case came under the purview of the direction issued in Narender Chadha's case. The applicants did not work or officiate in any Grade IV post and as such they were not covered by the directions issued in Narender Chadha's case.

The distinction that has been pointed out by Shri Khurana was that the applicants had not worked in Group 'A' post by officiating or ad hoc or otherwise. Their names had merely been included in the Draft Eligibility List, which was not final. The list could be amended, changed and their names could be added or deleted. This takes us to a question whether the

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applicants at all worked as Grade IV officer in the Ministry of Commerce. A right accrues to a person under certain circumstances when he works as Ad hoc for a substantially long period of time in a higher post. Such a right would not accrue to a person if he has not worked as such. Therefore, the crucial question in this regard is whether the applicants at all worked or held a Grade IV appointment. There is no denial of the fact that the applicants were not in the Grade of Rs.700-1300. They were ~~at the most~~ at / in the scale of Rs.650-1200. A question arises whether the grade of Rs.650-1200 is to be equated to the scale of Rs.700-1300. The answer has to be in the negative. The different scales of pay have different rights. The grade of Rs.700-1300 would entitle a person to be in Grade IV, but not one who was in the scales of Rs.550-900 and Rs.650-1200. Undisputedly, these two lower scales were feeder posts to the Grade IV posts. The applicants were in the feeder scales and not in the scale of Rs.700-1300. If they were officiating in ad hoc capacity in a higher post, then they were entitled to be paid in a higher scale. Consequently, we have to conclude that the applicants were not in the higher scales of pay of Rs.700-1300 and they would not be deemed to be in Grade IV.

It has been spelt out in the case of Narender Chadha (Supra) that a person working for a long period of time in adhoc capacity becomes entitled to regularisation from the date of his continuous officiation.

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If the person has not worked at all in that grade even as ad hoc, the question of claiming any right or maturing any right does not arise. Before we put down our conclusion on this part, it will be relevant to refer to the decision in the case of Narendra Chadha (Supra). In the very first order passed by the Supreme Court on 11-2-86 their Lordships have said 'we find that some of the departmental candidates have been holding the promotional posts on ad hoc basis for several years. There appears to be no justification for keeping them 'ad hoc' so long'. The entire case proceeded on the basis that the petitioners before the Supreme Court had been holding the promotional posts on ad hoc basis for several years. The direction given in paragraphs 23 and 24 also makes the position clear. In para 23, 'the Court proposed to direct the Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under Rule 8(1)(a)'ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Ultimately, later in the same paragraph, the Court further observed that 'seniority list of all the promotees and the direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts'. This shows that the person must be holding

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a post in Grade IV before being entitled to the benefits of the above observations and directions of the Supreme Court. If they were not holding that post in that grade at all, then the question of applying the law laid down in the Narender Chadha's case (supra) does not arise.

It appears to us that the applicants' case is based entirely on the Draft Eligibility list (Annexure A5), where the heading of Column No.10 read: Date from which Grade IV or equivalent post held; and dates against the names of the applicants are mentioned. It was urged that this amounted to an admission that the applicants held a Grade IV post or an equivalent post. But according to the respondents, on checking the above fact appeared to be wrong as the applicants were not holding any post in Grade IV or equivalent at any time. Entries in the draft list cannot be a proof that they were holding a post in Grade IV. They had to show that they were actually working in ad hoc capacity on a post in Grade IV or equivalent. They have not been able to show that they were holding any such post.

As far as the Export Promotion Officer is concerned, there are two groups in it, Senior Group and Junior Group. A person had to complete 5 years of service in the senior group for qualifying for promotion as Deputy Director, whereas a Person had to have 8 years of service as Export Promotion Officer (Junior) for being promoted as Deputy Director.

The post of Export Promotion Officer senior has since been abolished. There were 7 posts of Deputy Director of which 3 posts were created, one at Headquarter, one at Bombay and one at Madras.

in the scale of Rs.1100-1600 in Grade III, which was treated to be equivalent to Rs.1200-1600 scale.

An argument was raised by Shri Bali that the doctrine of flexibility should have been applied in the case of applicants that they were holding the posts in the scale of Rs.650-1200, which should be treated the same scale as Rs.700-1300. We do not see how this can be equated or doctrine of flexibility be made applicable.

Having considered the matter, we are, therefore, of the view that the applicants were not officiating or ad hoc in Grade IV posts nor held any post equivalent to the above post. Consequently, the observations and the directions made in the case of Narender Chadha (Supra) have no application to the applicants.

We now come to the second question as to whether the applicants are entitled to the inclusion of their names in the list of Grade IV posts? This question basically rests on the list (Annexure A5) where under Column No. 10, they were shown to be holding either a Grade IV post or equivalent post. This, as noticed earlier, was a Draft Eligibility List. This list was subsequently changed and the names of the applicants were deleted in 1986.

An argument was raised that the names of the applicants could not be deleted from the above list and consequently not showing the names of the applicants in the final list were contrary to law. An argument was also raised that when once the names were included, these could

not be excluded without issuing show cause notice to them. We are unable to accept this contention. There can be no dispute that the list (Annexure A5) was a draft eligibility list. This did not confer any right whatsoever. The final list was prepared in 1986. If their names did not qualify, then the draft eligibility list could be amended on a later stage. Since no rights have been conferred, deletion of their names from the list also did not affect ~~the same~~. A right is conferred only upon finalisation. If the list was a final Eligibility list, then the argument could have been appreciated. If the list was not a final one and was only a draft or proposed one, deletion of their names from there would not affect the right of that party. In this view, we see no substance in the arguments that Rules of natural justice were violated by deleting their names or non-inclusion of their names in the final list.

Another argument was raised by the learned counsel for the applicants that by inclusion of their names in the list (Annexure A5), the applicants were given an assurance that they were working in Grade IV. Consequently, they were entitled to be treated in Grade IV as such and their position could not be worsened. It was also argued that inclusion of their names in the Eligibility List of 1984 held out an assurance that their services were to be regularised in Grade IV and deletion of their names amounted to violation ~~the~~ of the doctrine of promissory estoppel.

Doctrine of Promissory Estoppel has come for consideration in a number of cases. We may briefly refer to

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some of them. In the case of Century Spinning & Manufacturing Co. Ltd. and another Vs. The Ulhasnagar Municipal Council and another (A.I.R. 1971 SC 1021), the Supreme Court in paragraph 10 of the report laid down as under:-

"There is undoubtedly a clear distinction between a representation of an existing fact and a representation that something will be done in future. The former may, if it amounts to a representation as to some fact alleged at the time to be actually in existence, raise an estoppel, if another person alters his position relying upon that representation. A representation that something will be done in future may result in a contract, if another person to whom it is addressed acts upon it. A representation that it is true when made. But between a representation of a fact which is untrue and a representation express or implied - to do something in future, there is no clear antithesis. A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting therefor but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation".

In paragraph 11 of the report, their Lordships said-

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if the contract be not in that form may be enforced against it in appropriate cases in equity."

Therefore, it will be noticed that there was no representation or promise that something will be done in future. Learned counsel had argued that after inclusion of names of the applicants in the draft eligibility list of 1984, they assumed that their position will not be altered in future. We cannot subscribe to this that there was any assurance.

The next significant case of the Supreme Court in regard to the doctrine of promissory estoppel is M.P. Sugar Mills Vs. State of U.P. (A.I.R. 1979 SC 621). Justice Bhagwati had explained meaning of the term "Promissory Estoppel". The doctrine of promissory estoppel was first noticed in England in 1877 and thereafter in 1888. It was only in 1947 that it was disinterred and restated as a recognised doctrine by Mr. Justice Denning, as he then was, in the High Trees case. In paragraph 8 of the judgement in M.P. Sugar Mills's case, it was held-

"The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."

It was further held-

"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. If the

Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual".

There can be no dispute about this proposition, which is very well settled. However, the question is whether the established facts in this regard provide a basis for applying this principle of "Promissory Estoppel". It would be relevant to refer to the case/M. Ramanatha Pillai Vs. State of Kerala (A.I.R. 1973 SC 2641). It was referred to by Justice Bhagwati in M.P. Sugar Mills's case(Supra): In this case it was held -

"This was a case where the appellant was appointed to a temporary post and on the post being abolished, the service of the appellant was terminated. The appellant challenged the validity of termination of service, inter alia, on the ground that the Government was precluded from abolishing the post and terminating the service, on the principle of promissory estoppel. This ground based on the doctrine of promissory estoppel was negatived and it was pointed out by the Court that the appellant knew that the post was temporary, suggesting clearly that the appellant could not possibly be led into the belief that the post would not be abolished. If the post was temporary to the knowledge of the appellant, it is obvious that the appellant knew that the post would be liable to be abolished at any time and if that be so, there could be no factual basis for invoking, the doctrine of promissory estoppel for the purpose of precluding the Government from abolishing the post. This view taken by the Court was sufficient to dispose of the contention based on promissory estoppel..."

(39)

Justice Bhagwati then observed in the above judgement-

"....It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment.
..."

The view taken in M.P. Sugar Mill's case(Supra) has been reiterated by the Supreme Court in Union of India Vs. Godfrey Philips India Ltd. (A.I.R. 1986 SC 806) and then again in Delhi Cloth and General Mills Ltd. Vs. Union of India (A.I.R. 1987 SC 2414). In the latter case, Justice Shetty J. has expressed his views on the doctrine of promissory estoppel in the following words-

"...All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The Court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the premise that it is reliance based and nothing more."

It will be relevant to refer three passages from the above judgement containing paragraphs 24, 25 and 27-

"24. The concept of detriment as we now understand is whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to resile from his assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation."

"25. It is, however, quite fundamental that the doctrine of promissory estoppel cannot be used to compel the public bodies or the Government to carry out the representation or promise which is contrary to law of which is outside their authority or power. Secondly, the estoppel stems from equitable doctrine. It, therefore, requires that he who seeks equity must do equity. The doctrine, therefore, cannot also be invoked if it is found to be inequitable or unjust."

"27. The last and final aspect of the matter to which attention should be drawn is that for the purpose of finding whether an estoppel arises in favour of the person acting on the representations, it is necessary to look into the whole of the representation made. It is also necessary to state that the representation must be clear and unambiguous and not tentative or uncertain."

In the last paragraph above, the Supreme Court has laid down that it is necessary to look into the whole of representation made and the representation must be clear and unambiguous and not tentative or uncertain.

the
In the present case, what is representation made by the Government? Mere inclusion of the names of the applicants in the tentative or draft list of eligible candidates does not make it clear that the applicants are in Grade IV or are to be promoted to the higher posts. We do not find any such representation for two reasons. Mere inclusion in the list is not enough. Final list may crystallize a right. But if the list itself is tentative, it does not confer any right.

that
The very fact/it is a draft list of eligible candidates and shows that it is still in the in-formative stage. Such a list does not create a right. Consequently, it does not spell out a representation on behalf of the Government. If that was so, then there was no need for a final list. Then the rights would accrue by the draft list itself. In a

department where there are large number of employees and the question of their promotion and seniority is taken up for consideration, it may require not only one but several tentative or draft lists before one is finalised. There may be inclusion or deletion of names and even changes in the position of names.

We are unable to accept the contention that a representation was made by the Government in the present case while issuing the draft eligibility list of 1984 and as such we do not accept the contention that the principle of promissory estoppel is applicable in the present case. We are, therefore, of the view that the applicants were not entitled to have their names included in the final list for promotion to Grade IV posts.

An argument was raised that the name of Shri K.G. Manchanda had been included in the final list, who was a person junior to the other persons. The stand taken by the respondents was that he had actually acted as ad hoc in Grade IV post. Consequently, according to the decision of the Supreme Court, his name had to be included and he was entitled to the benefit of Grade IV post. The applicants' case is distinguishable, as seen above. They never worked in a Grade IV post. Consequently, the contention that ^{persons} junior to the applicants had been given the benefit and they had been denied the same, is not accepted.

3

Having given the matter our full consideration, we are of the view that the applicants are not entitled to any relief. This Application, therefore, fails and is dismissed.

We leave the parties to bear their own costs.

B.C. Mathur
(B.C. MATHUR)
VICE-CHAIRMAN (A)

AB
(AMITAV BANERJI)
CHAIRMAN
AB
34.4.90

SRD