

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

REGN. NO. OA 100/90

DATE OF DECISION: 13/4/92

VIRENDER SINGH

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.P. GUPTA, MEMBER (A)

FOR THE APPLICANT SHRI B.S. MAINEE, COUNSEL.

FOR THE RESPONDENTS MRS. RAJ KUMARI CHOPRA, COUNSEL.

JUDGEMENT

(DELIVERED BY HON'BLE MR. I.P. GUPTA, MEMBER (A))

This is an Application, filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant belongs to Scheduled Caste community and is a matriculate. The applicant appeared for selection and interview for the post of Grading Attendant ~~xxxxx~~ and on the recommendation of the Selection Committee he was offered the post of Grading Attendant on adhoc basis. The appointment letter dated 20.6.1980 said that he was offered the post of Grading Assistant on purely adhoc basis and this was subject to the formal letter of appointment to be issued by the Joint Agricultural Marketing Adviser. ^{By a letter dated 28/5/81, The Joint Agricultural Marketing Adviser} appointed the applicant on purely temporary and short term basis w.e.f. 21.6.1980 till the regular incumbent reverted to this post or until further orders, whichever was earlier. The Agricultural Marketing Adviser had requested the Employment Officer, Faridabad for particulars of at least 20 suitable candidates for appointment as L.D.Cs. Thus candidates were sponsored and called and though the applicant had not

contd...2.p.

10

completed five years regular service in Group 'D', he was permitted to appear for typing test and interview alongwith candidates sponsored by Employment Exchange for the post of LDCs on adhoc basis. The applicant was appointed as L.D.C. for a period of three months or till the regular candidates became available. A copy of the appointment letter dated 20.10.1981 is at Annexure A-9.

2. The applicant has sought for the following reliefs:

- i) The respondents be directed to restore the regularisation of the applicant as Grading Attendant from 1986.
- ii) To direct the respondents to allow the applicant to work as L.D.C. as ^{he}_^ has been working in that capacity for seven years.

3. The learned counsel for the respondents contended that the relief at (i) has already been given to the applicant. As regards the relief at (ii), i.e., allowing the applicant to continue to work as L.D.C., the respondents argued that his appointment was only adhoc till the regular candidates became available. The regular candidates were appointed on the recommendation of the Staff Selection Commission. The services of all direct recruits, recruited through Employment Exchange were terminated during 1985, leaving them with no employment. However, the applicant was retained in service by regularising his service as Grading Assistant and was reverted to the post of Grading Assistant against which he was regularised. Short term vacancies arising due to leave etc. by educationally qualified class IV employees were filled on the basis of seniority-cum-fitness on a purely adhoc basis without insisting on five years condition. On joining of regular nominees of S.S.C. all adhoc appointments made through Employment

Exchange, were terminated or regularised after allowing the adhoc direct recruits to appear in the special qualifying examination held by S.S.C. The applicant did not come under that category. Applicant was retained as L.D.C. till his reversion to the post of Grading Assistant was possible by regularising him in the post of Grading Assistant w.e.f. 21.10.1986. This retention was done on adhoc basis against one short term vacancy or the other. The case of a senior namely, Balbir Singh, Peon was turned down by the Ministry because he had not rendered five years regular service in any Group 'D' post.

4. The learned counsel for the applicant argued that the principle of promissory estoppel operated in this case and having appointed the applicant as L.D.C. after proper selection it was not left to the respondents to revert him suddenly without giving any show cause notice.

5. We shall deal with the question of promissory estoppel while analysing the case. The principle of promissory estoppel 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 relation to arise in 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 acted upon by the other party, the promise would be binding on the other party making it and he would not be ^{entitled} ~~certified~~ 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. The doctrine of promissory estoppel can also be applied against the Government (M/s Mohilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P. & Ors. - AIR 1979 SC 621).

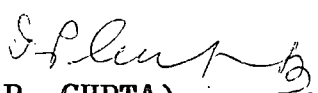
6. The point to be examined whether any clear and unequivocal promise has been made in this case. By the letter of 3rd July, 1981, the applicant was told that he could not be considered for **promotion** (emphasis ours) to the post of L.D.C. since 5 years' regular service was required. He did not have this to his credit. He was, however, advised to appear for typewriting test/interview alongwith candidates sponsored by Employment Exchange. Thus he was considered as a direct recruit. By letter of 20.10.81 he was appointed as L.D.C. on a purely temporary and adhoc basis for 3 months or **till regular candidates became available** (emphasis ours). The regular appointments to the post of L.D.C. are made through Staff Selection Commission (SSC). On joining of regular nominees of SSC all adhoc appointments made through Employment Exchange were terminated or regularised after allowing the adhoc direct recruits to appear in Special Qualifying Examination. The applicant had failed in the test which was held on 30.3.1984 by the Staff Selection Commission. Considering the case of the applicant that he had no post to fall back upon, his case for regularisation in the lower post of Grading Attendant was taken up and he was so regularised from 21.10.1986 by order dated 21.10.1986. ~~by order dated 21.10.1986.~~ Since his case was not recommended by SSC for regular appointment as LDC as a direct recruit and since he had not completed 5 years' of regular service in Group 'D' (Grading Attendant) he could not be considered ^{either direct recruitment or for} for promotion quota. He was reverted to the post of Grading Attendant ^{9th} by order dated 21.9.89. A post held in adhoc capacity does not give a legal right as such, when regular incumbents are available on recommendations of SSC against direct recruitment. The above will also indicate that no clear and unequivocal promise was made for his continuance as LDC for the principle of promissory estoppel to operate.

13

7. It is, however, seen in this case that the applicant continued for over 7 long years as LDC. He was appointed in 1981 on a purely temporary and adhoc basis. He passed the typewriting test on 28.6.1988 and consequent upon that his six increments were released by the respondents by order dated 26.8.1988 (Annexure A-12). He also qualified in the training for L.D.C. vide result sheet dated 8.8.1989 (Annexure A-13). The reversion order dated 21.9.1989 does not show that the reversion was due to joining of regular incumbent. In fact no reason has been assigned. The applicant is said to be on sanctioned leave after the issue of the order of reversion.

8. Keeping in view the principles laid down in the case of **Jethanand & Others vs. Union of India & Others - (1989 (2) ATJ 364)** it is directed that subject to the condition that no direct recruit regularly recommended by SSC is awaiting appointment, the respondents should allow the applicant to join back as L.D.C. on expiry of leave on any vacancy of L.D.C. if at all available, against direct-recruit quota and give the applicant a further chance to qualify in the SSC examination ^{and be considered by SSC along with others, not} by condonation of his age, if at the time ^{as LDC} of initial appointment ^{he} on adhoc basis he was within age and if he fulfils other eligibility conditions. On completion of 5 years of regular service, the applicant is also eligible for consideration against promotion quota and he should be considered in turn against this quota.

9. With the above observations the case is disposed of, with no order as to costs.


(I.P. GUPTA)
MEMBER(A)
13/4/92


(RAM PAL SINGH)
VICE-CHAIRMAN(J)