

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

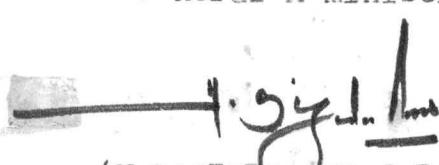
ORIGINAL APPLICATION NO. 26 OF 1994

Date of decision: 31st January, 1994

Dayanidhi Harichandan	...	Applicant
<u>-Versus-</u>		
Union of India & others	...	Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *yes*.
2. Whether it be circulated to all the benches of the *yes* Central Administrative Tribunals or not?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

31 JAN 94


(K.P. ACHARYA)
VICE - CHAIRMAN

Jan 31. 1. 94

CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO: 26 OF 1994

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Dayanidhi Harichandan ... Applicant

Versus

Union of India & Others ... Respondents

For the Applicant ... M/s G.A.R.Dora,
V.Narasingh,
Advocates

For the Respondents ... Mr.Uma Ballav Mohapatra,
Addl. Standing Counsel
(Central).

CORAM:-

THE HONOURABLE MR.K.P. ACHARYA, VICE-CHAIRMAN
A N D
THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

O R D E R

K.P.ACHARYA, V.C. In this application under section 19 of the
Administrative Tribunals Act, 1985, the Petitioner prays
to set aside the impugned orders at Annexures 4, 5 and
6 and to direct the Opposite Parties to allow the
Petitioner to continue as Manager, Postal Printing
Press (Orissa) till 31st March, 1995.

2. Shortly stated the case of the petitioner is that while he was functioning as an Assistant Director under the State Government, an advertisement was published by the competent authority inviting applications from the intending candidates to fillup the post of Manager, Postal Printing Press(Orissa) which is a Government of India organisation. The petitioner was one of the applicants. He was selected through Union Public Service Commission. In the letter of appointment, contained in Annexure-3, dated 7th February, 1992, the petitioner was appointed as Manager Postal Printing Press(Orissa) with a stipulation that he would continue as such till the expiry of the third year of his deputation with effect from 7th February, 1992. Thereafter, the petitioner continued in service and some time later, ~~vide~~ letter dated 1st September, 1993, the petitioner was informed that as he is attaining the age of 58th year, he should retire on superannuation with effect from 31st January, 1993. Hence this application has been filed with the aforesaid prayer.

3. This case came up for admission on 27th January, 1994. The learned Single Judge while admitting the case for hearing had directed the learned Standing Counsel Mr. Uma Ballav Mohapatra to take necessary instruction and file a statement revealing the case of the opposite parties so that the matter could be finally disposed of on 31st January, 1994. A statement has been filed on behalf of the Opposite Parties. Therein it is maintained that according to Fundamental Rule 56, no Government servant can continue after attaining 58th year and that is the year which has been fixed for retirement on superannuation and next it has been mentioned that the petitioner being a deputationist, cannot claim extension of period of service beyond the date of superannuation. Hence it is finally maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. G. A. R. Dora, learned counsel appearing for the petitioner and Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central Government).
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5. Mr.Dora learned counsel appearing for the Petitioner contended that the petitioner having been offered the post,in question,for a period of three years,it is no longer open to the Government to recede/back from its commitment and order retirement of the Petitioner with effect from 31st January,1994. Mr.Dora further submitted that the Government is bound by its own offer which has been duly accepted by the Petitioner and therefore,promissory estoppel would arise against the Government. It was further contended by Mr.Dora that had not this illegal order been passed by the Government asking the petitioner to retire with effect from 31st January,1994 and the Petitioner would have continued in service till 31st March,1995,certain promotional avenues would have been availed by the Petitioner which he cannot now avail and ultimately,the emoluments which the Petitioner would have drawn in the promotional post between 1st February,1994 and 31st March,1995 would have added to his pensionary benefits and therefore,serious prejudice is being caused to the petitioner which is not curable and therefore,the impugned order should be quashed.

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In support of his contention, Mr. Dora relied upon two judgments one relates to a judgment pronounced by Hon'ble Supreme Court reported in AIR 1986 S.C. 806 (UNION OF INDIA VS. GODFREY PHILIPS INDIA LTD. AND OTHERS) and the other one is reported in 1993(24)ATC 900(ALLAHABAD)(O.P.KHARE VS. UNION OF INDIA AND OTHERS).

6. On the other hand, Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central) contended that an administrative error could be corrected by the Government at any point of time. In case it is found that an administrative error has been committed in Annexure-3, by giving a period of service to be rendered by the Petitioner beyond the date of superannuation, no notice should be taken of the same because the Government having issued orders informing the Petitioner that he has to retire on superannuation with effect from 31st January, 1994, the administrative error contained in Annexure-3 stands corrected. Therefore,

Mr. Mohapatra learned Additional Standing Counsel

contended that in such a situation, promissory estoppel will not arise against the Government.

7. We have given our anxious consideration to the arguments advanced at Bar. No doubt, we are bound by the dictum laid down by Their Lordships in the case of Union of India Vs. Godfrey Philips India Ltd and others (supra) but the distinguishing feature is that here is a case, where a clear error has been committed in issuance of the impugned order contained in Annexure-3. While submitting his application, the Petitioner had specifically stated his date of birth and had also specifically stated the date of his retirement on superannuation i.e. 31st January, 1994. We think there is substantial force in the contention of Mr. Mohapatra that principle of Promissory estoppel will first arise against the Petitioner for having given his commitment that his date of retirement on superannuation is 31st January, 1994. We cannot brush aside the grave mistake committed by the concerned authority in passing such an illegal order in the name of President. The concerned Authority must have been well aware of the provisions over which reliance was

placed by Mr. Mohapatra(R.F. 56). Therefore, in our opinion, an inexcusable mistake/error has been committed by the concerned authority due to sheer carelessness amounting to negligence in due discharge of one's duties. All concerned should have been vigilant and careful keeping in mind that the order was being issued in the name of the President. Be that as it may, the grave and illegal error committed by the concerned officer of the Government cannot supersede the statutory rules. The provisions contained in the statute or the rules enacted under Article 309 of the Constitution has to be acted upon and the rules have to be strictly adhered to especially because promissory estoppel cannot be pleaded against the statutory provisions; in the present case the provisions contained in F.R. 56 envisages that a servant has to retire on superannuation on attainment of his/her 58th year. Further more an illegal proposal made by one party and accepted by the other party cannot form the basis of a legal and enforceable contract and it does not become enforceable under the law; ^{hence} principle of promissory estoppel does not arise. For example 'A' promises to kill 'B' and ultimately ~~he~~ rescinds from his promise; can estoppel be pleaded against 'A' ?

The only answer is in the negative. Therefore, in the peculiar facts and circumstances of this case, principle of promissory estoppel does not arise and we find no merit in the aforesaid contention of Mr. Dora. At this stage it would be appropriate to discuss the argument advanced on the dictum laid down by Their Lordships in the case of Godfrey Phillips India Ltd. (Supra) -

8. At paragraphs 12, 13 and 14 of the judgment, Their Lordships were pleased to observe as follows :

" There can therefore, be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its Governmental, public or executive functions and the doctrine of executive necessity of freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. We must concede that the subsequent decision of this Court in Jeet Ram V. State of Haryana (1980) 3 SCR 689; (AIR 1980 SC 1285) takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in Motilal Sugar Mills case (AIR 1979 SC 621) that the doctrine of Promissory estoppel

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cannot be defeated by invoking the defence of executive necessity suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult to understand how a Bench of two Judges in Jeet Ram's case could possibly overturn or disagree with what was said by another Bench of two Judges in Motilal Sugar Mills case. If the Bench of two Judges in Jeet Ram's case found themselves unable to agree with law laid down in Motilal Sugar Mills case, they could have referred Jeet Ram's case to a larger Bench but we do not think it was right on their part to express their disagreement with the enunciation of the law by a co-ordinate Bench of the same Court in Motilal Sugar Mills.

We have carefully considered both the decisions in Motilal Sugar Mills case and Jeet Ram's case and we are clearly of the view that what has been laid down in Motilal Sugar Mills case represents the correct law in regard to the doctrine of promissory estoppel and we express our disagreement with the observations in Jeet Ram's case to the extent that they conflict with the statement of the law in Motilal Sugar Mills case and introduce reservations cutting down the full width and amplitude of the prepositions of law laid down in that case.

Of course we must make it clear, and that is also laid down in Motilal Sugar Mills case (AIR 1978 SC 621) (Supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing

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a statutory prohibition. 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."

9. This Bench was constituted by Three Hon'ble Judges of the Hon'ble Supreme Court whereas in the case of Motilal Sugar Mills and in the case of Jeeta Ram, the Bench was constituted by two Hon'ble Judges of the Supreme Court. Therefore, in our opinion the law

laid down by the Bench constituted by Three Hon'ble Judges would prevail. Though Hon'ble Mr. Justice Pathak (as ~~My Lord~~ Chief Justice then was), a Member of the Bench disagreed with the views expressed by the then Hon'ble Chief Justice Mr. Bhagwati on the question of Secondary packing but His Lordship agreed with the views of Hon'ble Chief Justice on the question of law relating to promissory estoppel. The observation of Their Lordships at paragraph 14 of the judgment, quoted above, directly runs against the arguments advanced by Mr. Dora. We feel persuaded to repeat the observations of Their Lordships made in para 14 of the Judgment that promissory estoppel cannot be used to compel the Government or public authority to carry out a representation or promise which is contrary to law or which was ~~outside~~ the authority of power of the officer of the Government or of the public authority to make. Equally, the observations of Their Lordships that it would be inequitable to hold the Government or the Public authority to yield to the doctrine of promissory estoppel when the order on which a person aggrieved proposes to rely upon is against the statutory provision. Therefore, applying the above quoted observations of

Their Lordships to the facts of the present case our view stands reinforced that promissory estoppel cannot arise against the Government or the Public authority to carry out a promise or representation 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 and it would be inequitable to do so.

9. Incidentally it may be stated that during the course of argument advanced by Mr. Dora repudiating the contentions of Mr. Mohapatra, it is submitted that nothing has been mentioned in the statement filed to-day that the Government has committed an administrative error and therefore, this Bench should not go beyond the pleadings. This oral argument of Mr. Mohapatra to the above effect should not be accepted. True it is that the Courts cannot go beyond the pleadings, but keeping in view the submission made by Mr. Mohapatra, the Courts have a duty and responsibility to see that illegal orders are not made to be enforced. We have absolutely no iota of doubt in our mind to hold that the contention of the petitioner that he should retire with effect from 31st March, 1995 on the basis of the order contained in Annexure 3 is an illegal order.

10. The next argument advanced by Mr. Dora that

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the Presidential order appointing the petitioner for three years and thereby limiting the period till 31st January, 1994, should have been changed/amended/rescinded only by a presidential order. Mr. Dora further submitted that there is no indication in the impugned order, contained in Annexure-5 that sanction of the President has been obtained to modify the order contained in Annexure-3 and the petitioner should retire with effect from 31st January, 1994. Of course there is no such indication in Annexure-5. In the statement filed by the Opposite parties, this important fact has gone un-noticed and nothing has been said in regard to this aspect. Be that as it may, we agree with Mr. Dora that a Presidential order should have been obtained to modify/amend/rescind the stipulation finding place in an order issued by the President. No Executive authority has right to issue any orders amending/modifying an order passed by the President. But the distinguishing feature in the present case is an illegal order has been passed in which cannot be acted upon. We have already held that the order contained in Annexure-3 being an illegal order becomes nonest. Therefore, issuance of Annexure-5 asking the petitioner to retire on 31.1.1994 need not contain the Presidential sanction. In ordinary course any Government officer could be asked by his Executive authority to retire on the ~~due~~ date and as

such the principles laid down in the case of O.P.Khare (Supra) ^{has} _{in} having no application to the peculiar facts and circumstances of this case.

11. Thus, we find no merit in this case which stands dismissed and it is directed that the petitioner should retire on superannuation to-day, i.e. 31st January, 1994 (after-noon)

12. Before we part with this case, we must convey our strong displeasure to the officer/officers who is/are responsible in issuance of this illegal order contained in Annexure-3. Here is a case where actually the petitioner on receipt of Annexure-3 must have thought within himself genuinely that he would retire with effect from 31st March, 1995, and in the meanwhile his promotional avenues being open to him in regard to his future service prospects(if any) must have been in the mind of the petitioner. We would, therefore, recommend to the Government to consider the case of the petitioner(if an application is made by the petitioner) for re-employment, to the post he is now holding till a regular person is selected and if such re-employment is allowed to the petitioner, then the emoluments to which the petitioner would draw(according to rules relating to re-employment) may be added to his pensionary benefits. The petitioner would file a representation with ten days as submitted by Mr. Dora

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and within 30 (thirty) days therefrom the matter should be finally disposed of.

13. Thus the application is accordingly disposed of leaving the parties to bear their own costs.

T. S. Mohanty
MEMBER (ADMINISTRATIVE)
31 JAN 94

K. S. Mohanty
31.1.94

VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 31.1.1994 KN, Mohanty

