



8

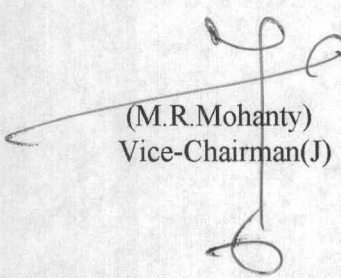
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


O.A.No. 87 of 2007

Cuttack, this the 21st day of September, 2010

Smt. Lilima Singh Applicant
Versus
Union of India & Ors. Respondents

1. Whether it be referred to the reporters or not? 
2. Whether it be circulated to all the Benches of the Tribunal? 


(M.R. Mohanty)
Vice-Chairman(J)


(C.R. Mohapatra)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No.87 of 2007

Cuttack, this the ~~25~~²⁴ day of September, 2010

C O R A M

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN (J)

AND

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Smt. Lilima Singh, aged about 37 years, C/o.Rajgopal Singh, resident of Deulasahi, Tulasipur, PS. Bidanasi, Dist. Cuttack (Ex-Casual Technician, Doordarshan, Bhubaneswar, Dist. Khurda.) Applicant

By legal practitioner: Mr.D.K.Mohanty, Counsel

-Versus-

1. Union of India represented through its Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi-110 001.
2. The Director General, Doordarshan, Coopernicus Marg, Mandi House, New Delhi-110 001.
3. The Director, Doordarshan Kendra, Chandrasekharapur, PO. Sainik School, Bhubaneswar, Dist. Khurda, PIN 751 005..
4. The Superintending Engineer, Doordarshan Kendra, Po: Sainik School, Chandraekharapur, Bhubaneswar, Dist. Khurda. Respondents

By legal practitioner: Mr.S.Mishra, ASC

O R D E R

MR. C.R.MOHAPATRA, MEMBER(ADMN.):

Factual backdrop of the matter is that the Respondents issued an advertisement dated 15-12-1993 inviting applications for filling up of the post of Technicians from amongst the unreserved candidate through open competitive examination scheduled to be held on 26-02-1994. Pursuant to her application and intimation sent by the Respondent in letter dated 03-02-1994, applicant appeared at the selection and was empanelled in the merit list published by the Respondents. In letter dated 01.03.1994, she was asked to submit attestation form in triplicate within ten days. Out of the merit list containing 21 names, 6 (six) candidates in order of their placement were appointed to the post of Technicians. According to her, though she did well in the interview, for the reasons best known to them she was placed at Sl. No.14 of the said merit list. Respondents without verification of the documents in proper manner at the first instance appointed three candidates out of the merit

10

list. Subsequently, on the basis of the complaints made in regard to securing the job by producing false/fake certificates, all the three candidates joined in the post of Technicians but resigned from the post on 09-08-1996, 16-05-1996 and 27-06-1996. Despite the resignation, the case of the Applicant could not be considered for appointment against one of those posts although she was found suitable through a regular process of selection. However, she was appointed to perform the duty of Technician on casual basis. She worked on such casual basis with effect from 01.04.1995 in the Maintenance Section of Doordarshan Kendra with remuneration of Rs.75/- per day. Though vacancies were available (after the resignation of those irregularly recruited candidates), her case did not receive due consideration to be regularized in spite of repeated representations. She along with two other similarly situated successful candidates (Miss. Pravat Nalini Tripathy & Miss. Kalpana Das) approached this Tribunal in O.A. No. 151 of 1997. This Tribunal heard the matter at length, passed an order dated 10th day of February, 2004. Relevant portion of the order is quoted herein below:

“6. In course of hearing, the officers representing the Respondents appeared in person and admitted that names of Applicants were at Sl. Nos. 7, 8 and 14 of the select/merit list and could have been considered for appointment, had the competent authority decided to fill up the vacancies at that point of time from this list. However, the fact of the matter is that consequent upon resignation of those three appointees, two posts of Technician at Doordarshan Kendra, Bhubaneswar were abolished with effect from 05-11-1999 (copies of the relevant orders submitted); HPT, Cuttack was separated from administrative control of DDK, Bhubaneswar and Doordarshan maintenance Centre, Dhenkanal was separated from DDK, Bhubaneswar w.e.f. 01-04-1999. However, after resignation of Shri Manoj Kumar Panda, the vacant post in the cadre of Technician was filled up on deputation basis from LPT Puri on 02-01-1997. Applicants have repeatedly submitted that two of the three appointees namely Manoj Kumar Panda and P.K. Mohapatra had obtained appointment by submitting fake documents. However, the Respondents submitted that they have not verified the educational certificate of those appointees before giving appointments. We are not impressed by this action of the Respondents; because it was the duty of the selecting authorities to verify the documents properly before giving appointments; which could have avoided apprehension all around. As regards the other plea

2

of the Respondents that the select list is no more valid, it is to be noted here that there are no materials produced by the Respondents showing that there was any further interview/Advertisement, or panel has been made/prepared for filling up of the post of Technician. Applicants were given engagement, though casually, when their names continue in the select/merit list and the grievance of the Applicants arose when the candidates who had taken the posts of the Applicants, ran away by resigning from the post. Law is a living organism and its utility depends on its vitality and ability to serve as a sustaining pillar of society. Justice to the individual is one of the highest interests of the democratic state. The best advantage of one person could be the worst disadvantage to another. Law steps into iron out such creases and ensures equality of protection to individuals as well as group liberties. Despite three left out vacancies, the Respondents have not filled up the same apparently, remaining under the impression that the panel is not in force. But for the reasons of various judicial pronouncements and circulars, we are inclined to hold that the panel is active until the next panel is drawn. In the aforesaid circumstances, the panel cannot be treated to have outlived its utility. However, in the face of the formal submissions made by the Respondents that two posts have been abolished w.e.f. 05-11-1999 and two posts have been separated from Doordarshan, Bhubaneswar, we are not sure, whether there is any vacancy in the cadre of Technician for operating the panel. We, therefore, leave this matter to the departmental authorities to act upon the panel prepared by them and consider the grievance of the Applicants for giving them appointment strictly in accordance with the position shown in the select/merit list. Until final decision is taken in the matter, Applicants shall be allowed to continue, as it is, as Casual employees".

2. During the pendency of the Original Application, the Respondents filled up two posts of Technician (vacated by irregularly recruited candidates) by promoting one Shri Rabindra Nath Mishra and another Shri M.R. James from the post of Helper subject to the out come of the Original Application No. 151 of 1997 filed by Ms. Pravati Nalini Triapthy and others. Respondents in the counter in OA No. 151 of 1997 had taken the plea that there were no vacancies and as the posts have been shifted from the DDK, Bhubaneswar though actually no posts were shifted from the DDK, Bhubaneswar as per the letter dated 15-10-2004 of the office of the Chief Engineer (East Zone). After the order of this Tribunal, the Respondents could have reverted the persons appointed subject to the out come of the OA No. 151 of 1997. But no such step was taken by them nor the applicants were

appointed as against the vacancies shows in the letter dated 22.12.2005 of the Chief Engineer, (East Zone), All India Radio and Television, Akashvani Bhawan, Kolkata.

3. As no action was taken to appoint Ms. Tripathy and others they again approached before this Tribunal in OA Nos. 234 of 2005 and 209 of 2006 which was heard and disposed of by this Tribunal in order dated 24-03-2006. Relevant portion of the order is extracted herein below:

“In the present case it is seen that although the Applicant was regularly selected for the post of Technician, usurpation of the post by somebody else being not on account of any defect on the part of the appellant but on the erroneous decision of the employer itself by applying the law laid down by Their Lordships of the Hon’ble Apex Court, the impugned order under Annexure-A/5 dated 12/24-01-2005 is hereby quashed. The Respondents are hereby directed to appoint the Applicant in the post of Technician within a period of 30 days from the date of receipt of a copy of this order”.

4. Thereafter, the Director General, New Delhi conveyed its approval vide letter dated 29.5.2006 for appointment of Ms. Tripathy & Ms.Das. But no order was issued so far as the applicant is concerned though she stood in same footing. It is the positive case of the Applicant in paragraph 4.13 of this Original Application that there are unfilled vacancies in the grade of Technician available under the Directorate of Doordarshan Bhubaneswar viz: (1) **DDK,Bhubaneswar-4**, (2) **LPT,Bhubaneswar (DD-II)-1**, (3) **LPT,Gandia-2**, (4) **LPT, Tirtol-2**. But even after her selection and empanelment and the appointment of two others, she is kept out of her right to earn livelihood. Her stand is that as no further recruitment has been conducted to the post, in question, meanwhile and that as per the order of this Tribunal dated 10th February, 2004 in OA No. 151 of 1997 the life of the panel has not been spent its force, taking support of the decision of the Hon’ble Apex Court of India in the cases of **Vijay Kumar Sharma and others v Chairman, School Service Commission and others – (2001) 4 Supreme Court Cases**

2

289 & Purushottam v Chairman, MSEB and Another (in Criminal Appeal Nos. 2906-07 of 1999 arising out of SLP (c) Nos. 1184-1185 of 1999 disposed of on 11-05-1999 she has approached this Tribunal in the present Original Application filed under section 19 of the A.T. Act, 1985 seeking direction to the Respondents to appoint her in any of the existing vacancies.

5. The letter showing the vacancy at different places is not in dispute in the counter filed by the Respondents though it is stated that there is no vacancy. Selection and empanelment of the applicant at Sl.No.14 of the merit list prepared by the Respondents is also not in dispute. Appointment of Ms.Tripathy and Das pursuant to the order of this Tribunal is also not in dispute. It is not the case of the Respondents that meanwhile any selection has been held for the post of Technician. However, it has been stated by the Respondents that after expiry of one year the life of the panel has spent its force and no appointment can be provided to any of the candidates out of the said panel. According to the Respondents she was selected in the interview held on 26.2.1994 and could have been considered if it could have got sanctioned post of Technician within one year of constitution of this panel. Since applicant was not appointed/retrenched at any point of time, question of regularization does not arise. In course of submission it was stated by the Respondents' Counsel that the applicant was asked to perform her duty on casual basis at Paradeep but she refused to do so. Hence, she is not entitled to any appointment as claimed by her in this OA. Accordingly, Respondents have prayed for dismissal of this OA.

6. Learned Counsel appearing for respective parties have reiterated the stand taken in their respective pleadings and having heard them at a considerable length, perused the materials placed on record including the decisions relied on by them in support of their pleadings.

7. We are not impressed with the stand of the Respondents that the life of the panel is no more available to be acted upon as it was specifically held by this Tribunal in its earlier order dated 10th February, 2004 in OA No. 151 of 1997 filed by the Applicant and others that for the reasons of various judicial pronouncements and circulars, we are inclined to hold that the panel is active until the next panel is drawn and that there is no selection having taken place or new panel drawn is not in dispute either in the counter filed by the Respondents or in course of submission by producing any such evidence. The said order of this Tribunal still holds good in absence of any challenge by the Respondents before the higher forum or filing review application. Hence the said stand of the Respondents that the life of the panel has spent its force after one year is not applicable in so far as the applicant is concerned. As recorded above, the letter showing the vacancy position in support of the stand of the applicant that vacancy in the grade of Technician still exists is not disputed by the Respondents except a bald submission that there is no vacancy. Since the applicant has successfully proved her contention that there are vacancies in the grade of Technician and that the applicant was duly selected and empanelled along with two others who have approached this Tribunal earlier have been provided with appointment, in our considered view the applicant is entitled to appointment against one of the vacancies of Technician in DDK, Bhubaneswar. The doctrine of legitimate expectation and promissory estoppel has come to stay as one of the well-recognized grounds of judicial review of administrative action. It is well settled that the doctrine of promissory estoppel applies equally to Government and public authorities. The essence of the doctrine is that a man should keep his words, all the more so when the promise is not a bare promise but is made with the intention that the other party should act upon it. In other words, a promise intended to be binding, intended to be

h

acted upon and in fact acted upon is binding. The principle of promissory estoppel has been evolved by courts on the principle of equity to avoid injustice. This view also gained support by the decision of the Hon'ble Apex Court relied on by the Applicant. It provides as under:

Vijay Kumar Sharma and others v Chairman, School Service Commission and others – (2001) 4 Supreme Court Cases 289

“We see no justification for not appointing Appellant when vacancies were available. We also see no justification for not extending the panel life of the OBC category. We, therefore, direct that Appellant be appointed against the vacancies which are available in the OBC category”.

Purushottam VRS. Chairman, MSEB and Another (in Criminal Appeal Nos. 2906-07 of 1999 arising out of SLP (c) Nos. 1184-1185 of 1999 disposed of on 11-05-1999).

“In view of the rival submission the question that arises for consideration is whether a duly selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the Appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature”.

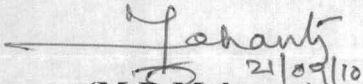
8. For the aforesaid reasons, the Respondents are hereby directed to consider/reconsider the case of the Applicant, keeping in mind the observations made above and decision so arrived upon such consideration




should be communicated to the Applicant in a well reasoned order. The entire exercise shall be completed within a period of 90 days from the date of receipt of copy of this order.

9. In the result, this OA stands allowed to the extent stated above.

There shall be no order as to costs.


(M.R. Mohanty)
Vice-Chairman(J)


(C.R. Mohapatra)
Member(Admn.)