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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 387 of 2008

Cuttack this the 11th day of March, 2011

Ms. Jhunurani Behera Applicant
-Versus-
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yy*
2. Whether it be circulated to Principal Bench,
Central Administrative Tribunal or not? *Yy*

AK
(A.K. PATNAIK)
Member (Judl)

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(C. R. MOHAPATRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No.387 of 2008
Cuttack, this the 11th March, 2011

C O R A M

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

&

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDICIAL)

Ms.Jhunurani Behera, D/o.Banshidhar Behera, aged about 31 years, a permanent resident of Tulasipur, Near Ranapur House, Cuttack, PIN 753 008.

...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, Chandrasekharpur, PO. Sainik School, Bhubaneswar, Dist. Khurda, PIN 751 005..
4. The Superintending Engineer, Doordarshan Kendra, Po: Sainik School, Chandraekharpur, Bhubaneswar, Dist. Khurda.
5. The Station Engineer, Doordarshan Maintenance Centre, At-Bhimpura, Dist. Balasore-756 003

....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 letter of intimation, applicant appeared at the selection and was empanelled in the merit list prepared for appointment to the post in question. In letter dated 12.5.1994, 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 belongs to SC (W) community and did well in the interview, she was placed below in the merit list i.e. at Sl. No.17. Respondents without verification of the documents in proper manner at the first instance appointed three candidates out of the merit list. Subsequently, on the basis of the complaints made in regard to securing job by producing false/fake certificates, all the three candidates who had joined in the post of Technicians resigned from

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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 and belongs to SC (W) community having the qualification of ITI in Electronics and holder of the National Trade and National Apprenticeship Certificates. By placing materials it was contended that though there were/are vacancies besides the vacancies caused after the resignation of those irregularly recruited candidates, her case did not receive due consideration. Two 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 and in order dated 10th day of February, 2004 disposed of the matter pursuant to which both of the above named applicants were appointed. Further case of the Applicant is that her case is covered by the above order of this Tribunal as also the order dated 21st

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September, 2010 in OA No. 87 of 2007 (Smt.Lilima Singh v UOI and others). Hence, it was prayed by Learned Counsel for the Applicant that this OA may be disposed of in the light of the earlier decision of this Tribunal taken in the case of Smt. Lilima Singh (Supra).

2. Respondents though filed counter objecting to the stand of the Applicant, that the present case is covered by the aforesaid decision of this Tribunal have not disputed either in the counter or in course of hearing of this case.

3. Relevant portion of the order dated 21st September, 2010 in OA No. 87 of 2007 (Smt.Lilima Singh v UOI and others) is extracted herein below:

"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

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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 acted upon and in fact acted upon is binding. The principle of promissory estoppel has been

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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

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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."

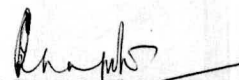
4. On perusal of the records of the case in hand vis-à-vis the case of Smt.Lilima Singh (supra) we find no

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distinction or difference so as to differ from the view already taken as quoted above.

5. Hence, the Respondents are hereby directed to consider/reconsider the case of the Applicant, keeping in mind the observations made above and decision so arrived at should be communicated to the Applicant in a well reasoned order within a period of 90 days from the date of receipt of copy of this order. With the aforesaid observation and direction, this OA stands disposed of. There shall be no order as to costs.


(A.K.PATNAIK)
MEMBER(JUDL.)


(C.R.MOHAPATRA)
MEMBER (ADMN.)