

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 505
~~T. A. No.~~

199 0

DATE OF DECISION 22.3.91

S. Vijayakumar Applicant (s)

Mr. G. P. Mohanachandran Advocate for the Applicant (s)

Versus

Administrative Officer, Respondent (s)
Liquid Propulsion System Centre, Deptt. of Space, Trivandrum
and others

Mr. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

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? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

Annexure A-4 termination order dated 28.2.1990 is challenged in this case. It reads as follows:

"The ad hoc appointment of Shri S. Vijayakumar, a Junior Stenographer, SC No. 64231, LVP/ LPSC effected vide office order No. LPSC/EST/LVP/64331 dated 25.1.90 and dated 5.2.1990 is terminated with effect from 28.2.1990 (A.N.)"

2. The applicant having been duly selected by the Selection Committee on 20.8.1988, as Junior Stenographer in the Liquid Propulsion System Centre of Indian Space Research Organisation (ISRO for short) was included in the Select List. Four vacancies were notified at the time of selection. Seven persons were in the list. The applicant being the sixth in the rank list will have to get an appointment within a period of one year and six months; which is the life period of the list. After posting five

out of the seven, the applicant was offered an appointment by the first respondent as per letter dated 27.12.1989, Annexure A-1 against a leave vacancy on ad hoc basis. He joined duty on 1.1.1990. By the Annexure A-2 and A-3 orders the appointment was further extended upto 28.2.1990. But his service was terminated as per the impugned order Annexure A-4. It is also submitted by the learned counsel for the applicant that the applicant refused another offer of appointment in the Kerala Institute of Tourism and Travel Studio, Trivandrum believing that he would be regularised under the respondents. Now he is over-aged for a fresh appointment in the Government service and it would cause gross injustice if he is denied the benefit of appointment. Hence he has filed this application under section 19 of the Administrative Tribunals' Act, 1985.

3. In the reply statement filed on behalf of the respondents the main contention raised for rejecting the grant of relief to the applicant is that the validity period of the Selection panel prepared by the Committee is initially one year from the date of its approval, but it is extendable by another six months under Exhibit R-7 O.M. No. ADMN 4.20(1) dated 2.5.83. In this case the period of one year and six months expired on 1.3.1990 and no regular vacancy arose till first of March for accommodating the applicant, even though he was given an ad hoc appointment for two months before expiry of the period of the Selection panel, in a leave vacancy. This appointment was provisional and the applicant was fully aware of the same. When Smt. K. L. Mary, on whose leave vacancy the applicant was given ad hoc appointment, joined duty, the respondents were forced to pass Annexure A-4 order. It is legal and valid.

4. The only ground on which the applicant's claim can be upheld on the facts of this case is that the ad hoc appointment order issued by the respondents for accommodating him during the currency of the validity period of selection panel in a leave vacancy, which according to the applicant confers on him a right for a regular appointment notwithstanding the expiry of the validity period of select list protects his right for a regular appointment. The learned counsel for the applicant contended that when once a provisional or ad hoc appointment has been given to a candidate, when his name is in the select list or panel, before the expiry of the period of its validity he gets a right for regular appointment in the department even after the expiry of the period of the list. The Govt. is bound to protect this right of such candidate for future appointment. He relied on an OM No.22011/2/79-Estt (D) Govt. of India dated 8.2.82. The relevant portion reads as follows:

"..Once a person is declared successful according to merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies under goes a change, after his name has been included in the list of selected candidates. Thus, where the selected candidates are waiting appointments, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and candidates awaiting appointment should be given appointments first before starting appointments from a fresh list from a subsequent recruitment of examination."

According to the learned counsel this OM governs this case in spite of the limitations prescribed by the respondents in Exhibit R-7.

5. Exhibit R-7 is an office order dated 2nd May 1983 issued by the Joint Secretary to Govt., Government of India, Depatt. of Space, Indian Space Research Organisation. Relevant portion is extracted below:

...../

".....Note that the selection is valid for a period of one year initially from the date of its approval by the appointing authority (extendable by another six months by the same authority only; revalidation should be done before the initial validity of the selection expires)...."

6. The respondents have no case that Exhibit R-7 has superseded or taken away the effect of the earlier OM issued by the Govt. on 8.2.82. They only submitted that the latter OM will not apply to the case. Both the office order deal with empanelment of candidates in a selection post and their rights thereof. While the clause above in Exhibit R-7 restricts the life of a select list, the OM dated 8.2.82 safeguards the right for appointment to a person who has been declared successful in the selection and included in the select list without any restriction regarding the period. But, Exhibit R-7 being an OM specifically issued in connection with the selection and appointments in ISRO it should prevail over the OM dated 8.2.82 and we are forced to negate the contention of the applicant that his case is governed by the above OM dated 8.2.82.

7. The applicant's next submission is based on Rule 6 of the Kerala State and Subordinate Service Rules 1958. He argued that this rule indicates that in a vacancy in any service which would be filled by direct recruitment shall not be filled up by appointment of a person who has not yet commenced his probation, but a probationer who has been discharged for want of vacancies shall be re-appointed in the vacancies arising in future in a specified order mentioned in that Rule. According to the applicant he was appointed in a leave vacancy of Smt. K.L. Mary for two months and can be

treated as a probationer who commenced the service pursuant to Annexure A-1 appointment order. Even though he was relieved when Smt K.L. Mary joined duty after the expiry of the leave he will be eligible for further appointment whenever a regular vacancy of the same post arises in future notwithstanding the expiry of the currency of the period of select list. These argument is attractive and it appears to be a reasonable approach considering the equity involved in the case of the applicant. ^{it deals with a case of probationer.} But ~~The~~ appointment of the applicant under Annexure-1 is not against a substantive vacancy and there is material to indicate that the applicant's first appointment in a leave vacancy for the limited period till the expiry of the leave of the regular incumbent of the post can be treated as a probationary appointment.

8. Lastly, the applicant attempted to evoke sympathy and submitted that the respondents by allowing the applicant to join in a leave vacancy on 1-1-90 during the currency of the select list created an expectation in him that his service would be continued by giving a regular appointment in future when regular vacancy arises. Accordingly, on this expectation of regularisation the applicant declined another offer from Kerala Institute of Tourism and Travel Studies, Trivandrum and he is over-aged for a fresh selection. This plea ^{is} based on the principle of equitable or quasi-estoppel.

9. In the words of Lord Denning 'the doctrine applies whenever a representation is made, whether of law or fact, present or future, which is intended to be binding, intended to induce a person to act on it and he does act on it..' (See Evendons V. Guilford City Association Football Club Ltd. (1975) 3 ALL E.R. 269

also Central London Property Ltd. V. High Trees, (1956) 1 All E.R. 256. The Supreme Court followed this doctrine in Afgan Agencies case, AIR 1968 SC 718 and M.P. Sugur Mills Case, AIR 1979 SC 621, but later laid limitations in the wide application of this principle in administrative matters and held in Union of India V. Godfrey Philips India Ltd. AIR 1986 SC 806, held as follows:

"....the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Govt. or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or the 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....."

But in later case Express News Papers (P) Ltd. V. Union of India, AIR 1986 SC 872 the Court after considering this doctrine at length said:

"....Another limitation is that the principle of estoppel does not operate at the level of Government policy. Estoppels have however, been allowed to operate against public authority in minor matters of formality where no question of ultra vires arises...."


Public authorities are bound by the principle of promissory estoppel unless it is barred by statutory prohibition or it is outside the authority or power of the officer of the Government or it operates contrary to the Government policy.

10. In the instant case after examining the facts we are of the view that the above principle of quasi- or equitable estoppel would not apply. The applicant was appointed on ad hoc basis in a leave vacancy making it clear that the appointment is purely temporary and liable to be terminated on the expiry of the leave of the incumbent

on 31-1-89. The applicant had also accepted it knowing fully that it is temporary and ad hoc appointment. Hence, on the facts there is no basis for the expectation that his service would be continued as and when regular vacancy arises in future. Under these circumstances, we are of the view that though the applicant deserves sympathetic consideration in the matter of appointment to regular post, there is no merit in his last contention raised by him.

11. In the result we are of the view that the applicant has not made out any case to come to the conclusion that he has a legal right for a regular appointment on account of his ad hoc appointment in a leave vacancy during the currency of the select list and that he is eligible to be appointed in the existing vacancy as claimed by him notwithstanding the expiry of the validity period of the select list. Accordingly, we dismiss this application as devoid of any substance.

There will be no order as to costs.


(N. Dharmadan)
Member (Judicial)

22.3.91


(S.P. Mukerji)
Vice Chairman

22.3.91

22-3-1991

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