

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 62
T.A. No.

1992

DATE OF DECISION 25.8.92

P.S. Chandran

Applicant (s)

Mr. John Varghese

Advocate for the Applicant (s)

Versus

Union of India represented by Secretary, Ministry of Finance, Respondent (s)
New Delhi and 4 others

Mr. A.A. Abul Hassan, ACGSC Advocate for the Respondent (s) 1-4

CORAM: Mr. M. Girijavallabhan for R-5

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?
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

Mr. N. Dharmadan, Judicial Member.

The applicant is a young sportsman aged 21 years. He is a member belonging to Scheduled Caste community. He is aggrieved by the refusal of the first respondent to appoint him as a Sepoy in the office of the Collector of Central Excise, Cochin in spite of the fact that he has been found to be meritorious to be included as sixth in the rank/merit list.

2. According to the applicant, when second respondent issued a notification inviting application for the post of Sepoy on sportsmen quota (Football) he applied for the post and Annexure-B call letter was received by him directing him to report at the GCDA stadium on 4.1.90 for participating in the suitability test in Football in connection with the

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recruitment. Accordingly, he reported for suitability test and he was included in the list of persons selected on that date/ prepared after the suitability test. Later, he was directed as per Annexure-D letter dated 2.2.90 to attend coaching camp. He was also given free accommodation and allowances of Rs. 500/- per month for expenses during the period of coaching. He was given Annexure-E letter by the Manager of the Football Team directing him to report at GCDA Stadium, Ernakulam on 22.3.90 to sign for the Central Excise Football Team and play for the said team in various tournaments both inside and outside Kerala. While so, /letter dated 23.3.90, Annexure-A of the Central Excise, Cochin, 8 persons including the applicant were called for physical endurance test to be held on 29.3.90 for recruitment to the post of Sepoy, Central Excise in the sportsmen quota. Out of the total 8 persons, two persons did not attend the test. According to the applicant, except the applicant all the persons in the list prepared on 29.3.90 were appointed. The applicant who won many laurels for the Department by playing football was denied appointment. Hence, he has filed this application under section 19 of the Administrative Tribunals Act for a direction to the respondents to appoint him in the post of Sepoy along with others who have been appointed in the sports quota.

3. The applicant has impleaded the fourth rank holder in the select list, Shri J. Antony, as the fifth respondent and contended that he is better qualified than the fifth respondent in every respect and the person last appointed by the Department was the fifth respondent who was not even selected in the Sr. District Team, Ernakulam. According to the applicant, when he was playing for the department, the fifth respondent was only sitting outside as a substitute.

The applicant has demonstrated his skill and scored many goals for the team in the tournaments in which he was allowed to participate. Hence, the applicant that vehemently submitted / some foul play has crept in the selection proceedings.

4. Respondents 1 to 4 and the 5th respondent have filed separate reply statements. Respondents admitted that the applicant belongs to S.C. community and he was also included in the list giving the sixth place. But taking into consideration the total vacancy likely to arise upto 31.3.91, vacancies in the Department in the sports quota, were calculated as 5% and, 5 candidates who were at Sl.Nos. 1 to 5 were appointed as Sepoy in the Central Excise as per order No. 72/90 dated 22.5.90. There is no reservation on the basis of community for appointment against sports quota. Since the applicant figures only at 6th in the panel, he was not appointed.

5. In the reply filed by the fifth respondent, he has produced some certificates to establish that he is also a meritorious player and on account of his merit, he got a higher rank and consequent appointment in preference to the applicant.

6. It is true that no post is reserved for a Scheduled Caste candidate in the sports quota for appointment as Sepoy in the Central Excise Department. The selection was made for XXXXXXXXXXXXXXX maintaining an efficient football team for the Department. Hence, proficiency in the particular game alone was considered for the post for making the selection. Eminent players like Simon Sunderaj and T.A. Jaffer have prepared a rank list of six players on 4.1.90. Even though a list of 8 persons were prepared, only 6 are available and the applicant is the sixth person.

After the aforesaid ranking, a physical endurance test xxxxxxxxx and interview were conducted on 29.3.90. But the ranking has not been changed. Even though there is no reservation on the basis of the caste or community for appointment against sports quota, since the applicant is ^{and} a member belonging to S.C. community, was included in the select list as the sixth rank holder, the respondents should have endeavoured to provide him appointment as Sepoy. This Tribunal has repeatedly considered the rights of person belonging to SC and ST communities in the matter of appointment and promotions in various judgments. In the judgment in O.A. 946/91, in which one of us, Shri N. Dharmadan, was a party observed as follows:

"Relying on Annexure-VI letter of the Ministry of Personnel & Training dated 24.6.85, the applicant submitted that the Government should give a favourable treatment to the SC and ST candidates even in matters of appointment and promotion. The relevant portion of the letter is extracted below:

"2. It has, however, been pointed out to this Department, that the SC and ST officers, after appointment are subjected to harassment and discrimination on grounds of their social origins. It has been pointed out that SC/ST officers are sometimes transferred to far off places and also placed at insignificant positions. It has also been stated that these officers are not accepted at their places of posting by the concerned superior officers in some cases.

3. In this connection, it is emphasised that Govt. servants should desist from any act of discrimination against members of SC/ST communities on grounds of their social origin. It is also requested that senior officers, including the Liaison Officers of the Ministry/Department, should keep a clear watch to ensure that such incidents do not occur at all. However, if any such incident comes to the notice of the authorities, action should be taken against the erring officials promptly."

9. It is an admitted fact that Government has declared as a policy that the department is obliged to give favourable consideration to the claims of SC/ST candidates for appointment as well as promotion. This Tribunal is consistently taking the view that the administrative authorities are bound to implement the policy of the Government of India in the spirit in which the same had been issued from time to time. In S. Nalinakshan v. The Chief General Manager, Telecom Kerala Circle, Trivandrum and others, O.A. 488/91, this Tribunal held as follows:

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"...Under these circumstances, it is rather surprising that SC/ST candidate is not given any sort of encouragement by the respondents for getting selection either by reserving some posts for them or at least recognising Annexure-VII and VIII and implementing the same in the selection proceedings particularly when the Constitution makers have proclaimed by incorporating various provisions such as Articles 15(4),16(4),47,330,332, 335, and 366(24) and (25) of the Constitution of India indicating that "Scheduled Caste and Scheduled Tribes are by and large backward in comparison with other communities in the country. This is the result of historical causes." (See T. Devarasan Vs. The Union of India, AIR 1964 SC 179). There is a definite need to improve the condition of the Scheduled Caste and Scheduled Tribe so as to bring them at par with other sections of society as part of the scheme for their uplift as envisaged in our Constitution. In State of Kerala V. N.M. Thomas, AIR 1976 SC 490, Justice Khanna has made the position very clear and beyond a pale of doubt as follows:

'The framers of the Constitution were conscious of the backwardness of large section of the population. It was also pointed to them that because of their backwardness those sections of population would not be in a position to compete with the advanced sections of the community who had all the advantages of affluence and better education. The fact that the door of competition were open to them would have been a poor consolation to the members of the backward classes because the chances of their success in the competitions were far too remote on account of the inherent handicap and disadvantages from which they suffered.'

It was this consciousness and awareness of the Constitution makers about the neglected position of certain section of Indian Society which inspired them to make provisions of reservation in favour of backward classes, Scheduled Caste and Scheduled Tribe citizens in public employment.

7. This constitutionally protected right of the Scheduled Castes and Scheduled Tribes should be respected by all employers including the Government of India. The Supreme Court in K.C. Vasanth Kumar vs. State of Karnataka, AIR 1985, said as follows:

'... The Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes, all of whom have been compendiously described as 'the weaker sections of the people, have long journeys to make society. They need aid; they need facility, they need launching; they need propulsion. Their needs are their demands. The demands are matters of right and not of philanthropy. They ask for parity, and not charity. The days of Dronacharya and Ekalavya are over.'

They claim their constitutional right to equality of status and of opportunity and economic and social justice. Several bridges have to be erected, so that they may cross the Rubicon. Professional education and employment under the State are thought to be two such bridges. Hence, the special provisions for advancement and for reservation under Articles 15(4) and 16(4) of the Constitution.'

(emphasis supplied)

In the light of the constitutional mandate and the decisions of the Supreme Court pertaining to the rights of the SC/ST candidates we can only observe that the failure of the respondents to set apart at least one post out of the 44 Lectures in RTTC/CTTC is not in consonance with the spirit and policy underlying the Constitution of India and policy of the Government in this behalf."

This Tribunal also observed in V. Nakan V. Union of India and others, O.A. 755/89 as follows:

"4. It needs no mention about the special right of the SC/ST candidates. It is well settled that the SC and ST employees are by far the most backward classes of citizens. There are various provisions in the Constitution itself which indicate that Constitution makers had recognised the SC and ST to be the backward classes of citizens. Article 15(4) permits special provisions for them. Special mention of SC and ST categories has been made in Article 46. The reservation of seats for SC and ST in Parliament under Article 330 and in Legislatures under Article 332 clearly shows that they need special provision in the form of reservation in every walk of life. The provision for appointment of Special Officer for SC & ST under article 338 proves the constitutional anxiety to protect their interest by giving top priority and special interest. Reference to claims of SC & ST in Article 335 also shows that they have preferential claim to services and posts under the State. In a number of cases the Supreme Court judicially recognised the preferential rights and privileges to be conferred on the SC and ST candidates in service matters. Taking into account all these aspects, the Govt. of India repeatedly issue instructions and letters reminding the authorities to give maximum protection and privilege to members belonging to SC & ST in every respect. Annexure-IX is one of such memoranda. The relevant portion of it reads as follows:

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"Ministries/Departments are aware that the Govt. as a part of the programme for the General Welfare of persons belonging to the SC/STs have provided reservation in Central Govt. Services accompanied by various other benefits, concessions and relaxation. The main objective for providing reservation for SC & STs in appointment to civil posts and services of the Govt. is not just to give jobs to some persons belonging to these communities and thereby increase their representation in services but to uplift these people socially and merge them in the mainstream of the nation.

2. It has however, been pointed out to this Department that the SC & ST Officers after appointment, are subjected to harassment and discrimination on grounds of their social origin. It has been pointed out that SC/ST officers are sometimes transferred to far off places and also placed at insignificant positions. It has also been stated that these officers are not accepted at their places of postings by the concerned superior officers in some cases."

In the light of the fact that the accepted policy of the Govt. of India is to give encouragement for SC/ST communities at every level in the public service by giving them appropriate appointment and promotions, the respondents should have considered the applicant for appointment as Sepoy in one of the available vacancies since he had been ranked as sixth in the select list as disclosed by the files, and that there was a recommendation for filling up six posts.

7. Respondents 1 to 4 have taken a definite stand that the total vacancies likely to arise upto 31.3.91 are only 5 and hence, they have restricted the appointment to five persons. The learned ACGSC Shri Abul Hassan, was kind enough to produce the entire files pertaining to the selection for our perusal. From the office note prepared by the Assistant Collector on 14.3.90, it can be seen the following facts were considered:

i) Ministry's letter dated 5.5.89 stated 5% of the vacancies can be held back to be filled up by meritorious sportsmen. It is made clear in the notes that recruitment against sports quota is not being done every year so as to enable the Deptt. to maintain a pacca football team. But the Department was anxious to fill up all the vacancies in the interest of efficiency of the team. Piecemeal recruitments of one or two sportsmen every year will not serve any purpose. If a team is to be prepared a minimum number of men are required. Hence, according to the recommendations 6 or 7 players will have to be inducted in the football team at present. The vacancy position as on 1.1.89 and subsequent vacancies accrued in 1989 and likely to arise in 1990 and 91 were also worked out as follows:

vacancy as on 1.1.89	71
vacancy accrued in 1989	14
anticipated vacancy in 1990	8
anticipated vacancy for 1991	8
Total:	101

- ii) This proposal was endorsed by the Deputy Collector reiterating the necessity of induction of new six footballers to infuse fresh lease of life into the existing team so that the Collectorate can hope for participation in other major tournaments and make its mark. He also suggested that upto six vacancies out of the total vacancies of 101 calculated above can be filled by football players to revive, to a very large extent and sustain a good level of performance for the next few years.
- iii) After considering the above two reports, the Collector of Central Excise on 2.4.90 sent a self contained proposal for getting sanction for filling up of six posts of Sepoys on the basis of vacancies calculated above with the observation that the conditions/instructions stipulated in Ministry's letter dated 18.9.86 will be adhered to and reservation in respect of all categories taken together will not exceed 50% of the total vacancy.
- iv) The approval/sanction of the Principal Collector for filling up of the six posts are not seen in the file except a remarkon a note sheet with reference to the discussion with the Collector w.r.t. letter dated 2.4.90. By order No. 72/90 dated 22.5.90 five persons were appointed as Sepoys against sports quota vacancies. Before the issue of the appointment order, 8 persons were already selected for appointment.

8. From a careful perusal of the files, it is very clear that respondents were proceeding with the selection formalities as if they can fill up six vacancies of Sepoys under sports quota and this is clear from the d.o. letter of the Collector dated 2.4.90 addressed to the Principal Collector. Before sending the proposal respondents took steps to invite applications from football players for filling up the post of Sepoys on sports quota. They finally called 8 candidates for physical endurance test. Out of them, only six candidates appeared for the endurance test and a merit list of six persons was prepared. While sending the proposal on 2.4.90 for sanction of six posts on sports quota, respondents were aware that six candidates available in the select list are going to be appointed and the applicant cannot be faulted if he bonafidely believed that he will be appointed in his due turn under the above circumstances. In fact, respondents have taken all steps throughout for filling six posts of Sepoys on sports quota.

9. The applicant has also raised a contention based on the principles of promissory estoppel and submitted that by issuing letters Annexures-B, D and E and allowing the ~~sign~~ applicant to ~~/~~ agreements for playing on behalf of the Department, they have represented to the applicant that he will be appointed in service. Consequently, he has also played some of the matches for the Department along with other members. Hence, according to the learned counsel for the applicant, there is a representation by the respondents to the applicant that he will be appointed as Sepoy and in that circumstances he did not apply for other jobs. Hence, the denial of appointment in the aforesaid circumstances constitute equitable/promissory estoppel.

10. The learned counsel for the applicant vehemently submitted that the applicant has represented various district tournaments in the Sr. Inter District Football tournaments and was a member of the State School Team which played in the National School Games 1987-88. He has even won laurels for the Department while playing for the Central Excise Football Team after signing the agreement dated 22.3.90. Since applicant's name was included in the list and he was also allowed to be a member of the Football team in the coaching camp for 1½ months earlier to the regular selection of Sepoys on sports quota with the advantage of signing the agreement as indicated in Annex.B dated 5.3.90, we are of the view that there is some force in the statement made by the learned counsel for the applicant.

11. The theory of equitable/promissory estoppel was first discovered by Lord Denning and it came to be enforced in Indian law after the decision of the Supreme Court in Union of India V. Indo Afghan Agencies, AIR 1968 SC 718. But, if we examine the decisions on the subject for about

fifteen years from Centuary Spinning & Manufacturing Co. Ltd. and another V. The Ulhasnagar Municipal Council and another, 1971 SC 1021 till the judgments in Jit Ram Shiv Kumar Vs. State of Haryana, AIR 1981 SC 1285 and M/s. Filterco & another V. Commissioner of Sales Tax, M.P. and another, AIR 1986 SC 626, it can be seen that the Supreme Court is not taking a uniform attitude. Conflict has been noted in some of them. However, it is settled that this principle cannot be invoked against the exercise of Legislative power including the power of delegated legislation nor can it apply against the policy decision of the Govt. nor to compel an authority to act in a certain manner to act contrary to the public interest. It can be invoked only when an assurance was given by the competent authority and in pursuance of the assurance the person concerned has changed his position and the circumstances are such that unless the authority is pinned down to the assurance, manifest injustice will result as held in Gujarat State Financial Corporation Vs. Lotus Hotel, 1983 SC 848, Surya Narain Vs. Bihar SEB, (1985)3 SCC 379 and Motilal Padampat Sugar Mills Ltd. Vs. State of U.P., AIR 1979 SC 621. The basic principle of estoppel is that "a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth of it is not allowed to deny it later, even though it is wrong, Justice here prevails over the truth". Even though estoppel is often described as a rule of evidence, but more correctly it is stated as a rule of principle of law. As a principle of common law it applies only to representations about the past or present fact. But there is an equitable/ quasi principle known as "promissory estoppel" which would apply to all public authorities to avoid miscarriage of

justice. Justice Bhagavathi(as he then was) in R.D. Shetty Vs. I.A.A., (1979) 30 SCC 489, following the passage of Frank Furt J, in an American decision, Vaternalli Vs. Seaton, 359,US 535, held as follows:

"If dismissal from employment is based on a definite procedure, even though generous beyond the requirement that binds such agency, that procedure must be scrupulously followed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so, he who takes the procedural sword shall perish with sword."

12. The Supreme Court in Amrit Banaspati Co. Ltd. and Another Vs. State Of Punjab and Another, (1992) 2 SCC 411, observed as follows:

"Law of Promissory Estoppel which found its 'most eloquent exposition in Union of India Vs. Indo-Afghan Agencies Ltd. crystallised in Motilal Padmpat Sugar Mills Co.(P) Ltd. V. State of U.P. as furnishing cause of action to a citizen, enforceable in a court of law, against government if it or its officials in course of their authority extended any promise which created or was capable of creating legal relationship and it was acted upon, by the promisee irrespective of any prejudice. It was reiterated in Union of India V. Godfrey Philips India Ltd. and was taken further when it was held that no duty of excise was assessable on cigarettes manufactured by assessee by including cost of corrugated fibreboard containers, when it was clearly represented by the Central Board of Excise and Customs in response to the submission made by the Cigarette Manufacturers' Association- and this representation was approved and accepted by the Central Government that the cost of corrugated fibreboard containers would not be includable in the value of the cigarettes for the purpose of assessment of excise duty. In Delhi Cloth and General Mills Ltd. Vs. Union of India, it was held: (1988 19 SCC 86))

"All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel."

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In Godfrey Philips case (1985 4 SCC 369) it was observed:

"Now the doctrine of promissory estoppel is well established in the administrative law

of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law."

Basic ingredients of promise by the Government, belief of the appellant that it was true and if acted upon shall entitle it to refund of sale tax, and finally altering its position by investing substantial amount were thus established to invoke promissory estoppel against the Government.

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But promissory estoppel being an extension of principle of equity, the basic purpose of which is to promote justice founded on fairness and relieve a promisee of any injustice perpetrated due to promisor's going back on its promise, is incapable of being enforced in a court of law if the promise which furnishes the cause of action or the agreement, express or implied, giving rise to binding contract is statutorily prohibited or is against public policy. What then was the nature of refund which was promised by the Govt.? Was such promise contrary to law and against public policy? Could it be enforced in a court of law? Taxation is a sovereign power exercised by the State to realise revenue to enable it to discharge its obligations. Power to do so is derived from entries in Lists I, II and III of the Seventh Schedule of the Constitution. Sales tax or purchase tax is levied in exercise of power derived from an Act passed by a State under Entry 54 of List III of VII Schedule. It is an indirect tax as even though it is collected by a dealer the law normally permits it to be passed on and the ultimate burden is borne by the consumer. But the fact that the burden of a tax may have been passed on to the consumer does not alter the legal nature of the tax (Halsbury's Laws of England Vol. 52, paragraph 20.04) Therefore, even a legislature, much less a government, cannot enact a law or issue an order or agree to refund the tax realised by it from people in exercise of its sovereign powers, except when the levy or realisation is contrary to law validly enacted. A promise or agreement to refund tax which is due under the Act and realised in accordance with law would be a fraud on the Constitution and breach of faith of the people. Taxes like sales tax are paid even by a poor man irrespective of his savings with a sense of participation in growth of national economy and development of the State. Its utilisation by way of refund not to the payer but to a private person, a manufacturer, as an inducement to set up its unit in the State would be breach of trust of the people amounting to deception under law."

13. In M/s. Pine Chemicals Ltd. and others Vs. Assessing Authority and others and similar other cases, 1992 2 SCC 683, the Supreme Court has held as follows:

".... This is also clear as the learned Judges themselves have observed that the industry commissioned subsequent

to the notification could also plead estoppel and and observed:

" We must, however, observe that the power of revocation or withdrawal would be subject to one limitation viz. the power cannot be exercised in violation of the rule of promissory estoppel. In other words the government can withdraw an exemption granted by it earlier if such withdrawal could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the Govt. grants exemption to a new industry and if on the basis of the representation made by the government an industry is established in order to avail the benefit of exemption, it may then follow that the new industry can legitimately raise a grievance that the exemption could not be withdrawn except by means of legislation having regard to the fact that promissory estoppel cannot be claimed against a statute

14. In the light of the law laid down by the Supreme Court we cannot rule out the possibility of application of the principle of equitable/promissory estoppel in the instant case. The applicant relied on the representation of the respondents contained in the letters at Annexures B, D and E and waited for an appointment under the respondents without seeking for other engagements particularly when there was a proposal for filling up six posts of Sepoys in the sports quota and that there was no final decision by the Government in this behalf.

15. Having regard to the facts and circumstances of the case, we are of the view that the decision of the Principal Collector to appoint only 5 Sepoys in the sports quota was made before taking a decision on the proposal sent for consideration as per letter dated 2.4.90. It is also pertinent to note that the Ministry's letter dated 5.5.89 giving indication that 5% of the vacancies of the post of Sepoys in the Department can be held up to be filled up by meritorious sportsmen does not in any manner curtail the discretion of the Principal Collector to accept the recommendation and suggestion of the Asst. Collector, Deputy Collector and Collector for

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building up an efficient football team in the interest of of the Department as indicated in the office notes. Under these circumstances the Principal Collector should have decided to fill up six posts of Sepoys in the sports quota. We feel that the decision already taken by him to restrict the posts in the sports quota as five requires reconsideration. Accordingly, we direct the respondents to reconsider the availability of vacancies of Sepoys on sports quota and to increase the vacancies from 5 to 6, if there is no legal bar, and appoint the applicant in the sixth vacancy. If the respondents do not find it possible to increase the vacancies because of any legal impediment as indicated above, they shall not make any further appointment in the sports quota in the Department until and unless the applicant is appointed in the next vacancy of sports quota treating it as reserved for football. Till the appointment of the applicant, the select list in which the applicant is ranked as Sl. No. 6 will be valid.

16. In the result, the application is allowed.

17. There will be no order as to costs.

M. Dharmadan
25.8.92

(N. Dharmadan)
Judicial Member

S. P. Mukerji
25.8.92

(S. P. Mukerji)
Vice Chairman

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