

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.606 of 1995

Wednesday this the 14th day of August, 1996.

CORAM

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

S.Vijayakumar,
Senior Manager - Law,
Cochin Refineries,
Residing at Maithri,
Shenoy Road, Kaloor,
Cochin-17.

... Applicant

(By Advocate Mr. P. Ramakrishnan)

Vs.

1. Union of India, represented by the
Secretary, Ministry of Labour,
Shram Shakti Bhavan, Rafi Marg,
New Delhi-110 001.

2. The Chief of Naval Staff,
Naval Headquarters,
New Delhi-1.

3. The Controller of Defence Accounts,
Navy, Bombay.

4. The General Manager,
Naval Armament Depot,
NAD (PO), Alwaye-683563.

... Respondents

(By Advocate Mr. Saji Varghese for Mr.P.R.R.Menon)

The application having been heard on 14.8.1996, the Tribunal on the same day delivered the following:

O R D E R

Applicant seeks a declaration that the pay received by him earlier, is liable to be protected, on appointment as Labour Officer, under respondents.

2. While working as Manager (Personnel & Administration) in the Thiruvananthapuram Regional Co-operative Milk Producers Union Limited, a unit under the Kerala Co-operative Milk Marketing Federation Limited (MILMA), applicant applied for a post under the Government of India in the Central Labour Service. He was selected by the Union Public Service Commission and was appointed as a Labour Officer in the scale Rs.2200-4000 under respondents. At the

time of such appointment he was drawing a pay of Rs.5205/- (Basic pay) and Rs.3090/- (Dearness Allowance) totalling Rs. 8295/- under the former employer. A-1 order of the Government of India governing such appointments, inter alia states:

"....it has been decided that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and DA.... will be protected..."

(emphasis supplied)

3. According to applicant his emoluments had to be fixed at Rs.8295/- (Rs.5205 (Basic pay) + Rs.3090 (DA)), but instead it was fixed at Rs.4334/- (Rs.2200 (Basic pay) + Rs.2134 (DA)), at the lowest stage in the scale. Applicant submits that this is in violation of the promise extended to him under A-1 and upon which he acted. The rules of promissory estoppel would operate, and interdict respondents from adopting this course and fixing his emoluments at Rs.4334/-, submits applicant.

4. Before appointing applicant as Labour Officer, the Government of India ascertained from the former employer, the status of the applicant. By A-3 the Government of Kerala informed the Government of India that:

"...Trivandrum Regional Co-operative Milk Products' Union is a Co-operative Society registered under Kerala Co-operative Society Act, 1969 which is an autonomous body with elected members of the Board."

It would therefore be seen that applicant was appointed under the Government of India on the clear understanding that he was serving under an autonomous body, and that his pay and allowances would be

fixed in terms of A-1 order. On the basis of this understanding or promise, applicant ordained his affairs, resigned the earlier post and joined the service of Respondents. Then he found to his dismay that his emoluments were halved. This goes against the promise extended to him and upon which he acted.

5. However, respondents put forward a justification for the course adopted by them. Flag Officer Commanding-in-Chief sought a "clarification" and obtained a "clarification" from MILMA. By R1(a) MILMA informed the Flag Officer Commanding-in-Chief that:

"...Trivandrum Regional Co-operative Milk Producers' Union is affiliated....is an autonomous body with elected members of the Board. However, it does not come under your definition of an autonomous body..."

For one thing the matter having been settled between the Government of India and the State Government of Kerala, there is no occasion for seeking a "clarification". Yet for another reason, there can be no special definition, for the 2nd respondent. It is not the case of MILMA that it is not an autonomous body, its case being that it is not an autonomous body, according to 'your definition'. Yet for a third reason, clarifications have no relevance when no doubt is felt in the minds of the competent agencies. At any rate a clarification is not an amendment, and it cannot do service for amendment. We have been noticing several instances where "clarifications" were sought and obtained, only to overturn the existing state of things. The clarification has often been the very opposite of what was sought to be clarified. In other words what is euphemistically called a clarification is often a cancellation. There was no justification or occasion for the Flag Officer Commanding-in-Chief to have intervened in the matter. There are orders of the Government of India governing the subject (A-1) and in the case of the applicant the issue had been settled by A-3. More importantly, after the appointment of applicant, by A-8 the Government of India

issued specific instructions to Admiral, Naval Armament Depot, Alwaye (probably a misdescription for 3rd or 4th respondent) to take immediate action for fixing the pay of applicant in terms of A-1 order. After all these, the course adopted by third and fourth respondents, contrary to A-1 contrary to A8, and contrary to the understanding on which the authorities acted, is capricious to the core and is stamped with the vice of arbitrariness on its forehead.

6. Having extended a promise to applicant (A1 and A3) and applicant having acted on the promise and ordained his affairs accordingly, respondents 3&4 are estopped from resiling from their earlier stand. The law of promissory estoppel deeply rooted in principles of equity has gained ground in regions of administrative law. By a long line of decisions from Collector of Bombay Vs. Municipal Corporation of the City of Bombay (AIR 1951 SC 469), Union of India Vs. Anglo Afghan Agencies (AIR 1968 SC 718), M.P. Sugar Mills Vs. State of U.P. (AIR 1979 SC 621), Vasanthkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay (AIR 1991 SC 14), Kasinka Trading and another Vs. Union of India and another (1995(1) SCC 274) the law has been declared by the Apex Court. One who makes a promise cannot be released from the consequences attracted by the promise. When the Government makes a promise and the promisee acts on the basis of the promise, the Government cannot go back on it.


7. Respondents are estopped from going back on the promise extended to applicant. They will fix the pay of applicant in terms of A-1 and subject to the ceiling in A-1, within fifteen days from today. They will also issue the Last Pay Certificate of applicant - who disgusted with them - left their employment and

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took up employment with the Cochin Refineries and is still paying the price for his short stint with Respondents 3 and 4, who have not yet forwarded his Last Pay Certificate to Cochin Refineries. Respondents 3 and 4 will pay eighteen percent interest on the arrears from the date on which such arrears became due. They will also pay the costs of applicant which we fix at Rs.2500/- (Rupees two thousand five hundred).

8. Original Application is allowed.

Dated the 14th August, 1996.


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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List of Annexures:

1. Annexure A1: True copy of DPT OM No.12/1/88-Est(Pay-I) dated 7-8-1989 issued by Department of Personnel and Training.
2. Annexure A3: True copy of letter No.8218/D2/93/AD dated 12/4/93 from the Secretary to Government.Agriculture(Dairy) Dept, to the 1st respondent.
3. Annexure A8: True copy of letter No.A-19011/4/92-CCSI dated 29/11/94 from the 1st respondent to the 4th respondent.
4. Annexure R-1(a): True copy of the letter No.PER/12:95 3141 dated 5/10/95 of the Kerala Milk Marketing Federation Limited.