

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.144/86

Shri A.N.Kolhatkar,  
Member,  
Forward Markets Commission,  
Bombay ... Applicant

V/s

- i. Secretary, Ministry of Food and Civil Supplies, (Dept. of Civil Supplies), Krishi Bhawan, P.B.No.391, New Delhi - 110 001.
- ii. Secretary, Ministry of Personnel and Training Administrative Reforms and Public Grievances and Pension (Department of Personnel and Training), New Delhi.
- iii. Secretary, Central Board of Direct Taxes, New Delhi.
- iv. Secretary, Forward Markets Commission, 'Everest', 100, Marine Drive, Bombay-2 .. Respondents

Coram: Vice-Chairman B.C.Gadgil  
Member J.G.Rajadhyaksha.

Present:

1. Applicant in person
2. Shri M.I.Sethna for Respondents.

Judgement:

(Per Vice-Chairman B.C.Gadgil) Dated: 27-6-1986.

The controversy in this application is about the tenure of the applicant as a Member of the Forward Markets Commission. The applicant belongs to Indian Revenue Service (II) and was Assistant Commissioner of Income-tax up to the end of 1982. He would be shortly due for promotion as Commissioner of Income-tax. He was informed by a Demi Official Letter (Annexure IV) dated 7th December, 1982 that the Ministry of Finance had placed his services at the disposal of the Ministry

of Civil Supplies for appointment as Member of the Forward Markets Commission, Bombay. Applicant was advised to take charge of the new assignment immediately. He had earlier represented against this posting, but the Department was telegraphically advised by the Aayakar Board (Annexure III) that the applicant's representation was rejected, that he should be relieved at once, as the appointment was approved by the Appointments Committee of the Cabinet, and he must take over without delay, failing which adverse notice will be taken. Accordingly he took over as Member of the Forward Markets Commission on the 30th of December, 1982. Notification in respect of this appointment was issued by the Ministry of Civil Supplies slightly later i.e. on the 14th of January, 1983 (Annexure V). There are two interesting communications, one from the Department of Personnel (Annexure VI) and the other from the Department of Civil Supplies (Annexure VII) both conveying in purport the pay that the applicant would be able to draw, and that the deputation period will be for five years, which is the normal tenure as entitled for a Director in the Government of India. It is these two letters, and the communications (Annexure XIV and XV) which suggested that the tenure of the applicant was initially extended initially for 3 months up-to the end of 31st of March, 1986 and later extended upto the 30th of June, 1986 which constitute the main grievance of the applicant. The applicant's contention in short is that in view of Annexures VI and VII, his tenure cannot be reduced below 5 years.

It is material to note that the Forward Markets Commission is established under sec.3 of the Forward Contracts (Regulations) Act, 1952 and consists of a Chairman and Members. Sec.3 confers upon the Central Govt. powers to appoint Members including the Chairman, either as Whole-time or Part-time Members, as the Central Government may direct. This is provided by Sub.sec.2 of Sec.3. Sub-sec.4 suggests that no Member of the Commission shall hold office for a period of more than 3 years from the date of his appointment and the Member relinquishing his office on the expiry of his term shall be eligible for re-appointment of his term. The notification at Annexure V appoints applicant as a Member of the Forward Markets Commission w.e.f. the afternoon of 30th December, 1982 until further orders. On getting intimation that his term had been extended upto the 30th June, 1986, the applicant had made a representation against the short term extension, that representation was rejected on 24.4.1986 (Annexure XVII). The applicant challenges the two short term extensions for 3 months each and the rejection of his representation and prays that the orders contained in the two annexures XIII and XV be quashed.

Even admitting that his first tenure of <sup>not</sup> more than 3 years expired at the end of December, 1985, the applicant's contention is that by allowing him to continue, the Government of India gave him de-facto extension for another tenure not exceeding 3 years i.e. for two years more in terms of Annexures ~~XIII~~<sup>XV</sup> and ~~XV~~<sup>XVI</sup> which said that his tenure on deputation would be 5 years. The controversy

therefore, is between statutory provisions contained in sec.3 of the Forward Contract (Regulations) Act, 1952 and the Administrative instructions issued by the Department of Personnel and the Department of Civil Supplies. It is not disputed that applicant was selected for this position. The applicant's claim that he had put in meritorious service and had an unblemished career is also not disputed. What is disputed however, is the contention of the applicant that he has to be given a 5 years tenure over-ruling the statutory provisions that no Member can hold office for more than 3 years. The applicant argued that this section 3(4) vested the volition to hold office in the Member and took it out of the hands of Government. It is the applicant's contention that Government has no powers to curtail the term of a Member since the legislature has not conferred such powers on the Government. There is also no provision for Government of India to give extension to the tenure of a Member except by wa-y of reappointment. The applicant sought to rely upon the principle of promissory estoppel.

The respondents have filed their affidavit in reply. Initially it was a reply against the interim relief that was prayed for. It was contended that the applicant's appointment was not for any fixed period inasmuch as the Notification of his appointment states that he has been ~~appointed~~ appointed until further orders. It was further pleaded that there cannot be any appointment for a period of more than 3 years in view of the provisions of sec.3(4) of the Act. It was then pleaded that the short term extensions were really appointments as the Government was to take a ~~decision~~ decision about another regular incumbent to the post. Thus the main

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contention of the respondent is that in law there cannot be any initial appointment as Member, FMC for a period of 5 years. Mr.Sethna for the respondent stated before us that the above reply may be treated as a reply to the main application and hence as suggested by the applicant and the respondents we took up the matter for main hearing and heard it on 20.6.1986.

In the application, the applicant has made reference to his meritorious service in the Income-tax Department, as also in some other departments. Mr.Sethna frankly stated before us that the Government has no quarrel about all this. We may add that the said meritorious service of the applicant has nothing to do with the point involved in the application. It cannot be disputed that in view of the provisions of sec.3(4) the applicant cannot hold his office for more than 3 years from the date of appointment. In view of this specific legal provision, the applicant could not ordinarily be entitled to claim a tenure of more than 3 years on the basis of the letters dt.18.7.1985 and 25.7.1985. It is true that these letters do make a mention that the deputation of the applicant would be for 5 years. The applicant drew our attention to the fact that the incumbent earlier to him also continued to hold the office for more than 3 years. However, all this will be of no use, as there is a bar which prevents such incumbent from holding the office for more than 3 years. At one stage the applicant submitted that the principle of promissory estoppel would come into play and that in view of these letters dt.18.7.1983, 27.7.1983 the Government would be estopped from contending that the tenure would be

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for 3 years. There cannot be any estoppel against the statute. Secondly, for invoking the principle of estoppel the first and foremost point to be seen is that the concerned person should have changed his position on the basis of any representation made to him. In the present case, the applicant had already joined as a Member in December, 1982; there is nothing to show that on the basis of the above mentioned letter of July, 1983 the applicant has changed or altered his position. It would, therefore, be difficult to accept the contention that has been made in the application that in spite of the prohibition under sec.3(4) the appointment of the applicant should be treated for a period of 5 years. The applicant has claimed quashing of the two extensions of 3 months each on an assumption that those extensions were really not warranted as his period was to continue upto December, 1987. The assumption that has been made by the applicant about the tenure of his office for 5 years is in-correct. His tenure came to an end in December, 1985, and there is nothing which prevented the Government from re-appointing the applicant after that period. Though the 2 letters (Annexures. XIII and XV) used the word extension for 3 months it would in effect be an appointment for three months.

6. It was next urged by the applicant that at any rate the appointment of the applicant would be for a period shorter than three years. He therefore, claims that the extension (in fact an appointment) granted after December, 1985 would be legal and proper. However, according to him the limiting period of 3 months would be bad. He

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submits that the appointment after the initial period of 3 years would again be for a period of 3 years. We must observe that this contention has not been raised in the application. However, we propose to deal with it as the applicant and the respondent have made submissions in that respect.

7. The applicant relied upon the wording of sec.3(4) and contends that that section merely contemplates an appointment of a Member and that the said appointment cannot be restricted for any period at all. His argument is that though there is an obligation on the part of the Member that he should not hold office for more than 3 years, still the Government cannot appoint a Member by restricting the tenure in any manner. In our opinion, it will not be possible to construe the wording of sec.3(4) in this way. The obvious anomaly that would arise from the submission of the applicant is that once a Member is appointed the Government would not be able to revoke or terminate the said appointment for any reason, whatsoever. We are not able to put a construction on sec.3(4) which would create such anomaly. In our opinion, the Government would have a right to appoint a Member for any period whatsoever, provided that the period should not exceed 3 years. Thus the shorter appointment for 3 months after December, 1982 are not illegal and improper.

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8. It was frankly argued before us that such short term extensions may cast aspersions against earlier good and meritorious services of the applicant. We may observe that such apprehension is un-warranted particularly, when Mr. Sethna has frankly stated before us that the Government has taken a decision to appoint another person in usual routine manner.
9. The result is that the application is dismissed. There would however, be no orders as to costs.

Recd to my  
AMM. Malla  
Applicant  
27.6.86

B.C. Gadgil 27.6.1986  
(B.C. GADGIL)  
VICE - CHAIRMAN

20.6.1986  
(J.G. RAJADHYAKSNA)  
MEMBER.

Recd copy.

Shri R. S. Nair 27/6/86.

Assist. Secy, Forward Members Committee