

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex (BDA)
 Indiranagar
 Bangalore - 560 038

Dated : 23 AUG 1988

APPLICATION NO.

780

/88(F)

W.P. NO.

Applicant(s)Respondent(s)

Shri A. Ramachandran

V/s The Chief Commissioner of Income Tax, Karnataka,
 Goa & Kerala, Bangalore & 3 Ors

To

1. Shri A. Ramachandran
 Stenographer (OG)
 Office of the Chief Commissioner
 of Income-Tax (Karnataka, Goa & Kerala)
 Central Revenue Building
 Queens' Road
 Bangalore - 560 001
2. Shri Ranganatha S Josi
 Advocate
 36, 'Wagdevi'
 Shankarapuram
 Bangalore - 560 004
3. The Chief Commissioner of
 Income-Tax (Karnataka, Goa & Kerala)
 Central Revenue Building
 Queens' Road
 Bangalore - 560 001
4. The Registrar
 Income-Tax Appellate Tribunal
 Old Central Govt. Offices Building
 101, Maharshi Karve Marg
 Bombay - 400 020

5. The President
 Income-Tax Appellate Tribunal
 Lok Nayak Bhavan
 Khan Market
 New Delhi - 110 003
6. The Secretary
 Ministry of Law & Justice
 New Delhi - 110 001
7. Shri M.S. Padmarajaiah
 Central Govt. Stng Counsel
 High Court Building
 Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAX/EXPERIMXBRER
 passed by this Tribunal in the above said application(s) on 18-8-88.

Encl : As above

for DEPUTY REGISTRAR
 (JUDICIAL)

o/c

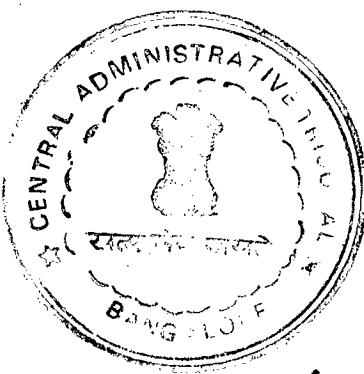
advertisement and applied for the post of PA. He was appointed to that post by an order dated 19th August, 1987 issued by the ITAT, Bombay pursuant to which he joined the post at Bombay, and his pay was fixed in the scale of Rs.2000-3200. While the applicant was so working, he learnt that as a sequel to the objection raised by the Audit Party, in the case of two PAs working in the Hyderabad Bench of ITAT, the pay of the applicant was sought to be refixed by granting him only a deputation allowance of Rs.200/- in addition to the basic pay drawn by him while he was working as Stenographer (OG) in the office of the R-1. The applicant therefore made a representation to the President of the ITAT on 18.1.1988 requesting that his pay as originally fixed, may not be varied to his disadvantage since he had joined the post of PA in the ITAT at Bombay, under the impression that he would be entitled to draw the pay so fixed. He again represented on 15.3.1988 but it was not accepted by the President, ITAT, Bombay and he was informed accordingly by Memorandum dated 16th March, 1988. In this Memorandum, he was also asked to apply for his posting in the office of R-1 on his reversion from the ITAT. Aggrieved, the applicant has filed this application.

2.

Shri Ranganath Jois, learned



Counsel for the applicant, strenuously contends that the order dated 19th August, 1987 issued by the ITAT appointing the applicant as PA to Member, ITAT at Bombay, gave his client the option to draw his pay in his substantive pay scale plus deputation allowance as per Rules or to get his pay fixed in the scale of Rs.2000-3200 under FR 22-C; that his client exercised the option in favour of fixation of his pay in the scale of Rs.2000-3200; that the ITAT unilaterally decided to refix the pay of his client on the basis of the last pay drawn by him while working in the office of R-1 plus deputation allowance of Rs.200/- admissible to him in the O.M. issued by the Ministry of Finance dated 7.11.1975(OM, for short); that the refixation of the pay of his client was done without conforming to the rules of natural justice according to which he was entitled to be put on notice before effecting the refixation in a manner prejudicial to him and the decision to recover the excess payments made to his client is, therefore, bad in law and liable to be quashed.



3. Shri M.S.Padmarajaiah, learned Counsel for the respondents, vehemently refutes the contentions urged by Shri Jois on the ground that in the present case the applicant himself came to know of the objection raised

1987; that his client having been induced to accept the post of PA to Member, ITAT, Bombay, on the representation that his pay would be fixed under FR - 22C in the scale of Rs.2000-3200, he subjected himself to all the difficulties of shifting to Bombay and it was not therefore open to ITAT to go back on the terms contained in the order dated 19th August, 1987.

6. Shri Padmarajaiah contests the plea based on the doctrine of promissory estoppel since according to him, no commitment was made in the Order dated 19th August, 1987 that the pay of the applicant would be fixed under FR 22-C in the scale of Rs.2000-3200 and inviting option is not tantamount to acceptance of the same.

7. This takes me straight to the scope and ambit of the doctrine of promissory estoppel which is applicable in matters involving the Government. The Supreme Court has enunciated the doctrine in the classic judgment in *M.P. SUGAR MILLS v. STATE OF UTTAR PRADESH* (AIR 1979 S.C.621) in the following terms :

" Doctrine of promissory estoppel has been variously called 'promissory estoppel', 'requisite estoppel', 'quasi estoppel' and 'new estoppel'. It is 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 true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal



A handwritten signature in black ink, appearing to be "W.L." followed by a stylized flourish.

promise which is intended to create legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

It is clear from the passage extracted above that the promise held out should be clear and unequivocal. In the case cited supra the Supreme Court held that it was clear from the letter of the respondent dated 23rd January, 1969 that a categorical representation was made by the respondent on behalf of the Government that the proposed vanaspati factory of the appellant would be entitled to exemption from sales tax in respect of sales of vanaspati effected in Uttar Pradesh for a period of three years from the date of commencement of production; that the letter dated 23rd January, 1969 clearly showed that the respondent made this representation on behalf of the Government.



8. Applying the dictum of the Supreme Court referred to above to the facts of the present case, I am clearly of the view that there is nothing in the body of the Order dated 19th August, 1987 holding out that the pay of the applicant would be fixed in the scale of Rs.2000-3200. In fact, the order clearly states that the appointment of the applicant was on

deputation basis on the usual terms and conditions of deputation contained in the O.M. The endorsement of the copy of the order to the applicant no doubt says that he may be given option to draw his pay in terms of the OM or his pay would be fixed in the pay scale of Rs.2000-3200 under FR 22C. But, this endorsement cannot run counter to the unambiguous language in which the order dated 19.8.1987 was couched. In other words, the endorsement will not have the effect of varying the terms incorporated in the body of the order. All that it means and implies is that the option given by the applicant, if advantageous to him, would be accepted provided it was not contrary to the terms of the OM. I am, therefore, satisfied that the applicant is not entitled to rely on the endorsement which, as already noticed, is contrary to the OM.

9. The last contention of Sr Jois is that his client was not drawing any abnormal pay as envisaged by FR 35 and if the said Rule is applied, it would violate the doctrine of "equal pay for equal work" enshrined in Article 39(d) of the Constitution of India, inasmuch as some PAs to Members of ITAT would be drawing pay in the scale of Rs.2000-3200, while others, like his client, would be drawing pay in the substantive post held by them plus the deputation allowance and the pay of the latter would fall short of the minimum in the pay scale of Rs.2000-3200.



I am not impressed by this argument since persons substantively appointed as PAs to Members of the ITAT stand in a different footing from deputationists, who are governed by the terms of the OI.

10. In the result, the application is dismissed. There will be no order as to costs.

Sd/-
MEMBER (J)

AN

TRUE COPY



JCV *[Signature]* 23/10
DEPUTY REGISTRAR (JL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

(b) for employees in respect of basic pay above Rs.300 up to Rs.750. 30% of basic pay or Rs.100 whichever is more.

(c) for employees in respect of basic pay of and below Rs.300. 33 1/3 of basic pay.

(Extract of Para.4.4 of G.I., M.F., O.M.No. F.1(11)-F.III(B)/75, dated the 7th November, 1975.)"

After careful consideration of the matter, I am satisfied that ITAT was, justified in refixing the pay of the applicant under FR - 35 in accordance with the contents of the OM. The plea that the applicant was not afforded an opportunity to represent before his pay was refixed and thereby the principles of natural justice have been violated, has no application in the present case since he himself came to know of the Audit objection and made representations, which were not found acceptable by the ITAT, Bombay. The position would, however, have been different if he was not aware of the Audit objection and an order was passed directing recovery of the excess payments made to him. To invoke the principles of natural justice, under these circumstances, would be to reduce the same to an empty formality. I do not, therefore, find any substance in this contention.



5. Shri Jois next leans on the doctrine of promissory estoppel which is equally applicable to actions of the Government and contends that his client shifted with his family from Bangalore, where he was serving, to Bombay because of the option given to him in the order of his appointment dated 19th August,

1987; that his client having been induced to accept the post of PA to Member, ITAT, Bombay, on the representation that his pay would be fixed under FR - 22C in the scale of Rs.2000-3200, he subjected himself to all the difficulties of shifting to Bombay and it was not therefore open to ITAT to go back on the terms contained in the order dated 19th August, 1987.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE EIGHTEENTH DAY OF AUGUST, 1988

Present: Hon'ble Shri Ch. Ramakrishna Rao..... Member(J)

APPLICATION NO. 780 OF 1988

Sri A. Ramachandran,
S/o. Sri S. Anantakrishnan,
aged about 28 years,
Stenographer(OG),
Office of the Chief
Commissioner of Income-tax
(Karnataka, Goa & Kerala),
BANGALORE -560 001.

Applicant

(Shri Ranganath Jois..... Advocate)

Vs.

The Chief Commissioner of
Income-tax(Karnataka, Goa & Kerala)
Bangalore and others

Respondents

(Shri M.S. Padmarajaiah..... Advocate)

This application having come up for hearing
before this Tribunal to-day, Hon'ble Shri Ch. Ramakrishna
Rao, Member (J), made the following :-

O R D E R

The Income-Tax Appellate Tribunal (ITAT),
Bombay invited applications for filling up posts of
Personal Assistants (PAs) in the ITAT by transfer as
per details given in the advertisement in the Employ-
ment News, Saturday, 25th April, 1987. The applicant
who was working at that time as a Stenographer (OG) in
the office of the Chief Commissioner of Income-tax
(Karnataka, Goa and Kerala) Bangalore /- CCIT- res-
pondent No.1(R-1) /, is intended to the aforesaid

advertisement and applied for the post of PA. He was appointed to that post by an order dated 19th August, 1987 issued by the ITAT, Bombay pursuant to which he joined the post at Bombay, and his pay was fixed in the scale of Rs.2000-3200. While the applicant was so working, he learnt that as a sequel to the objection raised by the Audit Party, in the case of two PAs working in the Hyderabad Bench of ITAT, the pay of the applicant was sought to be refixed by granting him only a deputation allowance of Rs.200/- in addition to the basic pay drawn by him while he was working as Stenographer (OG) in the office of the R-1. The applicant therefore made a representation to the President of the ITAT on 18.1.1988 requesting that his pay as originally fixed, may not be varied to his disadvantage since he had joined the post of PA in the ITAT at Bombay, under the impression that he would be entitled to draw the pay so fixed. He again represented on 15.3.1988 but it was not accepted by the President, ITAT, Bombay and he was informed accordingly by Memorandum dated 16th March, 1988. In this Memorandum, he was also asked to apply for his posting in the office of R-1 on his reversion from the ITAT. Aggrieved, the applicant has filed this application.

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