

(04)

CAT/112

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
~~ASSISTANT SECRETARY~~
BOMBAY BENCH

O.A. No. 428 OF 1991
~~XXXXXXXX~~

DATE OF DECISION 14.11.91

Kishan Mahadu Nilewar, Petitioner

Mr. C.B. Kale, Advocate for the Petitioner(s)

Versus

Supdt. of Post Offices & Ors. Respondents

Mr. P.M. Pradhan, Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. T.C. Reddy, 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. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000


(M.M. SINGH)
MEMBER (A)

Kishan Mahadu Nilewar
Extra Departmental Mail Carrier
Parbhani Head Post Office and
Approved candidate for Class IV
and Postman's ~~Grade~~ Parbhani
and Residing at Rani Savargaon
Taluka Gangakhed District Parbhani
Address for service -
C/o. C.B. Kale, 'Shree Niwas'
Kardal
P.O. Umbarpada Taluka Palghar
Dist. Thane.

.... Applicant.

(Advocate: Mr. C.B. Kale)

Versus.

1. Supdt. of Post Offices
Nanded Division
Nanded.
2. Director of Postal Services
Aurangabad Region
Aurangabad.

.... Respondents.

(Advocate: Mr. P.M. Pradhan)

J U D G M E N T

O.A.No. 428/1991

Date: 14.11.90

Per: Hon'ble Mr. M.M.Singh, Administrative Member.

The applicant was appointed as Extra Departmental Agent in Parbhani Head Post Office on 5.3.75. He passed his SSC examination from the Maharashtra State Board of Secondary Education Aurangabad Divisional Board in November 1975 after his above appointment. He is a member of a Nomadic Tribe named Bhoi. Claiming to be ignorant about his Bhoi Tribe being eligible for concession available to Scheduled Caste or Scheduled Tribe but aware that the Tribe was getting concession as his father got such concession in the postal department as Class IV employee, when the applicant sat for two examinations in the Postal Department

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and filled the application forms, he furnished, against column whether he was a Scheduled Caste or Scheduled Tribe, in the application forms reply 'yes' implying that he was a member of SC/ST community. He worked in spells in Class IV and as Postman. Though his juniors were made permanent, he was not made permanent on the ground that Bhoi community classified as Nomadic Tribe was not a SC/ST against the reservation quota for which he came to be selected on passing examinations. The applicant represented that like was done in similar other cases, he should also be treated as Other Community (O.C for brief) and given the benefit of past services. Decisions taken by Postal Department in case of Arjun G Made and K.S.A. Rasheed have been mentioned. He was informed by letter dated 19.3.91 that his candidature has been cancelled by Director Postal Services Aurangabad due to wrong information supplied by him to sit for the examination. The applicant has challenged this order in this original application filed under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant's first ground of challenge consists of the respondents taking decision behind his back without giving him any opportunity of hearing thus violating the principles of natural justice though, to quote from the application: "The applicant has put continuous regular service of not less than 4 years as an approved candidate and he was not on daily wages. Sundays and Holidays were counted towards his service. He was

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entitled to all concessions/benefits as a permanent employee and before terminating his services for any reasons he ought to have been served with a notice of show cause as he was having a vested right in the service". The second ground consists of the impugned order not being a speaking order though it is averred in the application that it states that the applicant's candidature is cancelled due to supply of wrong information. The applicant questions why ~~the~~ wrong information could not be detected at the time of scrutiny before allowing the applicant to sit in the two examinations and why the wrong information came to be noticed after six years. The third ground consists of invoking the principles of promissory estoppel against the respondents. His further ground is that there was no column for Nomadic Tribe in the application form and ~~he~~ wrote 'yes' as he was so advised on the understanding that the word SC/ST would be inserted by the respondents referring to the correct orders. The applicant therefore blames the respondents ~~as cause for~~ his furnishing incorrect information. His further ground is that caste certificate is demanded only when the applicant is entitled for concessions and because caste certificate was demanded from him thrice it means that the application was subjected to close scrutiny and the decision was taken to treat the applicant as ST after such scrutiny and it therefore does not lie in the mouth of the respondents to allege any malafide intention on the part of the applicant

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in furnishing the information. This ground is also of the class promissory estoppel is.

3. The applicant has sought the relief of setting aside of the impugned order, relief of direction to count the applicant's service as approved candidate in Grade 'D'/Postman as regular service from 1.1.87 with all consequential benefits of increments and seniority, declaration that the respondents were responsible for wrong scrutiny of the application form and therefore the applicant be treated as O.C., and that the respondents be directed to give opportunity to the applicant of being heard.

4. We have heard learned counsel Mr.C.B.Kale for the applicant and Mr. P.M. Pradhan for the respondents. As the learned counsel made their final submissions at the admission stage itself as submitted by the learned counsel for both parties, we perused the record for judgment.

5. From the pleadings of the applicant above, it is clear that he admits to have furnished reply in the application forms in affirmative to the question whether he belongs to SC/ST employees. On the basis of such information, he gained the advantage of being considered as a candidate against the quota prescribed for the SC/ST. The applicant blames respondents for advising that though belonging to a Nomadic Tribe he could mention 'yes' against the column meant for SC/ST in the application form. The implication of this is that it is the duty of the respondents to advise the candidates

on filling of the form and they should be bound by the advise they give. Firstly, there is no evidence except the averment of the applicant that he was so advised. Secondly, we notice that for furnishing ones own particulars, every applicant himself is bound by what he furnishes. In the record shown to us for the respondents, the attestation form mentions the warning that furnishing of false information or suppression of any information in the attestation form would be disqualification and is likely to render the applicant unfit for employment under the Government. The applicant's arguments based on his blaming the respondents, including the argument of improper scrutiny of the form, therefore deserve to be rejected as untenable.

6. The grounds of taking decision behind the back of the applicant without giving him opportunity of hearing and violation of principles of natural justice advanced by the applicant along with the principles of promissory estoppel are of no avail to the applicant as a service benefit acquired by furnishing of wrong information does not give rise to any constitutional right to the beneficiary to retain the benefit. Therefore when the benefit so acquired is withdrawn no constitutional right is violated. In the case Vasankkumar Radhakrishnan⁶ V/s. The Board of Trustees of the Port of Bombay (AIR 1991 SC 14) the Supreme Court summarised the law in para 12 of the judgment as follows :

"12. It is equally settled law that the promissory estoppel cannot be used compelling

the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make...
.....

Equally promissory estoppel should not be extended, though it may be founded on an express or implied promise stemmed from the conduct or representation by an office of the State or public authority when it was obtained to play fraud on the constitution and the enforcement would defeat or tend to defeat the constitutional goals....."

Earlier in Narendra Chaudha V/s. Union of India & Ors. (AIR 1986 SC 638), when the Supreme Court gave relief to the petitioners for the reasons ^{including} that they had worked for 15 to 20 years in higher posts though not regularly appointed, in para 14 of the judgment the Supreme Court clarified :

"14..... But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case the Government has also not expressed its unwillingness to continue them in the said posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts....."

6. The facts of the applicant's case are that he gained an advantage for which he was not eligible through misrepresentation. Because the authorities got misled by the misrepresentation, the authorities cannot be compelled by law to persist in their misled state. When the authority acts to create certain rights beyond its powers and when such

rights can also be scarcely upheld, a case of authority being misled by a beneficiary to create a right in his favour is on even more weak footing for claim to uphold it. Promissory estoppel cannot be of help to the applicant as no constitutional service right of the applicant ^{was created} to continue in the post gained by furnishing wrong information of belonging to SC/ST though he admittedly did not belong to the SC/ST community ^{arises}. His arguments that though he did not belong to SC/ST he should be taken as O.C. because of past instances may also be of no avail to the applicant as the past instances he quoted pertain to decision in 1973 and 1975 at which time perhaps unutilised reserved quota vacancies could be utilised for offering the same to open candidates. It is not shown by the applicant that there has been no change in the rules since and that the unutilised quota of reserved vacancies could be diverted to open candidates thus leaving the scope open for exercise of discretion of a authority. When quota is reserved for certain communities no candidate other than a member of one such community can have a right to appointment against such quota by wrong declaration that he is a member of one such community. As he gained the appointment on the basis of furnishing wrong information, he cannot even be directed to be treated as O.C. candidate to be absorbed against future O.C. vacancies as such vacancies should be liable to be filled up by the members of the O.C. when the recruitment takes place and not liable to be filled up by any candidates recruited against the quota meant for reserved categories.

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7. In view of the above, there is no merit in the application. We hereby dismiss the application without any order as to costs.

T. Chandrasekhar
(T.C. Reddy)
Member (J)

M. M. Singh
14.10.96
(M.M. Singh)
Member (A)