

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1077/95
Transfer Application No.

Date of Decision : 5-12-95

Smt. S.S. Chandanwala

Petitioner

Shri S.P. Kulkarni

Advocate for the
Petitioners

Versus

Union of India & 4 Ors.

Respondents

Shri P.M. Pradhan

Advocate for the
respondents

C O R A M :

The Hon'ble Shri M.R. Kolhatkar, Member(A)

The Hon'ble Shri

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to X
other Benches of the Tribunal?

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

abp.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.1077/95

Smt.S.S.Chandanwale .

... Applicants

V/s.

1. Union of India,
Through : Postmaster General,
Pune Region, At/Po.Pune,
Dist. Pune, Pin - 411 001.
2. Sr.Superintendent of Post Office,
Pune City East Division,
Swar Gate,
Pune - 411 042.
3. Postmaster General,
Aurangabad Region,
Aurangabad - 431 002.
4. Superintendent of Post Offices,
Jalgaon,
At/Po. Jalgaon - 425 001.
5. Kumari Sunita P.Sonawane,
Postal Assistant,
Pune Head Post Office,
Pune - 411 001.

... Respondents.

CORAM: Hon'ble Shri M.R.Kolhatkar, Member(A).

APPEARANCE:

Shri S.P.Kulkarni, Counsel
for Applicant.

Shri P.M.Pradhan, Counsel
for Respondents.

JUDGEMENT:

DATED : 5-12-95

[Per Shri M.R.Kolhatkar, M(A)]

In this OA under section 19 of the
Administrative Tribunals Act, the facts are as
below:-

At the material time, the applicant was serving as
Postal Assistant, Jalgaon Division at Jalgaon Head
Office. She had applied for transfer to Pune Division
on the ground of the posting of her husband at Pune.
The respondent-5, Ms.Sunita.P.Sonawane had agreed
to a transfer to Jalgaon Division., ~~on~~ in terms of
mutual exchange basis, rule 38 of P&T Manual Volume-IV .

Pune Division falls under Post Master General, Pune and Jalgaon Division falls under Post Master General, Aurangabad. The approval of both the Post Masters General was, therefore, necessary. The approval of the Post Master General, Aurangabad was conveyed by memorandum dated 25/7/95 at Annexure-0 (Page-35) of application. The approval of the Post Master General, Pune was conveyed by memorandum dated 22/6/95 at Annexure-P (page-36) of application. Accordingly, applicant got herself relieved as Postal Assistant, Jalgaon on 9/8/95 F/N, and after availing of leave for one day, reported at Pimpri Penicillin Factory, Post Office in Pune Division on 11/8/95. The Sub-Post Master of the said Office, however, refused to let her join and directed her orally to contact Senior authorities. Subsequently, the Post Master General, Pune vide order dated 4/9/95 cancelled his own earlier approval on the ground that the other party viz. Kumari Sunita Sonawane is not willing for transfer to Chalisgaon. The applicant then made representation on 8/9/95 to all concerned requesting for necessary guidelines as she had already got herself relieved at Jalgaon. The applicant contends that she did not receive any guidance and she is without salary since and she had also not received her increment due on 2/9/95. The applicant approached the Tribunal on 11/9/95 and Interim Relief was granted in terms of prayer to extend "idle wait" from 11/8/95 till the final outcome of the OA and Interim Relief granted on 12/9/95 has been continued from time to time.

2. The main contention of the applicant is that the Doctrine of Promissory Estoppel applies to her case in as much as she has got herself relieved in terms of approval to the transfer on mutual exchange basis and it is not open to the department to cancel the same on the basis of a subsequent representation of respondent No.5 who has not joined because she has been posted to Chalisgaon whereas she wanted posting at Jalgaon. According to her, both the private and Government respondents are bound by the Doctrine of Promissory Estoppel. It was also not proper for the department to cancel the original approval for transfer on mutual exchange basis unilaterally without giving an opportunity to the applicant to give her say and for this purpose, the applicant relies on the case of MAJOR A.A.Aphraim V/s. Director General National Cadet Corps, New Delhi and others vide 1989(9) ATC 763 decided by Single Bench of CAT, Ernakulam Bench on 25/1/89.

3. She has, therefore, claimed the reliefs of quashing the order dated 4/9/95 and directing respondents including respondent No.5 to carry out the original transfer or alternatively to direct respondents to modify the order into an order of "transfer on request", and to treat the period of "idle wait" as on duty and to protect the increment of the applicant falling due on 2/9/95.

4. The Official respondents have opposed the OA. The private respondent named respondent No.5 Ms. Sunita Sonawane has not filed her appearance.

Respondents deny that no guidance was given to applicant regarding what she should do. According to the respondents, a telegraphic order was issued on 9/8/95 by Post Master General, Pune to defer the transfer until further orders vide R-1, because after the transfer orders were issued, Ms. Sunita Sonawane, i.e. respondent No.5 vide letter dated 2/8/95 applied for cancellation of her mutual transfer. The applicant was also informed vide letter dated 13/9/95 (Annexure P-3) that since the Post Master General, Pune has cancelled the transfer order, she should join her duties as Postal Assistant, Jalgaon. Admittedly, this memo was issued two days after the filing of the application and one day after Interim Relief. According to respondents more than 167 officials were in the waiting list since '85-86 for transfer to Pune Division and hence the request of the applicant for transfer which was initially made on 6/10/92 could not be considered. However, she could only be accommodated at Pune on mutual transfer basis. The applicant had ~~no~~ right to posting at a particular place and when the circumstances justified, the department was within its rights to cancel the orders of transfer on mutual exchange basis and applicant was bound to comply with the revised orders and rejoin at Jalgaon. According to the respondents, the Doctrine of Promissory Estoppel is not applicable to the circumstances of the case.

5. We have considered the matter. The relevant rules read as below:-

Rule 38(1) - Transfer at one's own request.

- (1) Transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another, either within the same Circle, or to another Circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists ~~of both~~ the offices, the official brought in should take the place, in the new gradation list, that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower.

NOTE: Transfer of officials, who are not permanent in the grade, may, in deserving cases, be permitted with the personal approval of the Head of Circle/Administrative Office.

- (2) When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all

persons who have been approved for appointment to that grade as on that date."

6. It is not disputed that the applicant was transferred on mutual exchange basis in terms of rule 38(1). Rule 38(2) deals with transfer on own request but without arranging mutual exchange. We are required to consider whether we can afford the relief and direct specific performance by ^{way} ~~use~~ of the implementation of the original orders or alternatively direct the respondents to treat the case as one of transfer at own request i.e. case in terms of Rule 38(2). In this connection, the dates of issue of various orders are quite relevant. The order of Post Master General, Pune is dated 22/6/95 and the order of Post Master General, Aurangabad is dated 25/7/95, the order of Post Master General, Aurangabad states that Ms. Sunita Sonawane is to report at Chal~~is~~gaon HO in the vacant post. It was after issue of this order that respondent No. 5 changed her mind regarding mutual transfer namely on 2/8/95. The applicant got relieved on 9/8/95 i.e. the date on which the Post Master General, Pune issued a telegraphic order deferring transfer and she reported for duty at Pune on 11/8/95. We have no doubt that the Doctrine of Promissory Estoppel squarely applies in this case because it was in terms of the orders of the department that the applicant carried out the transfer. She wound up her affairs at Jalgaon and reported for duty at

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Pune. The department cancelled the orders well after the event after respondent No.5 changed her mind because she wanted a posting at Jalgaon proper and not at Chalisgaon. The department states that efforts were made to see whether Ms. Sunita Sonawane could be accommodated at Jalgaon instead of Chalisgaon but this was not possible and, therefore, the department was required to cancel the approval. It is clear that the department considered the convenience of respondent No.5 but did not think it necessary to consult the convenience of applicant or to give her an opportunity to show cause as to why the order should not be cancelled. ^{It is notable} that PMG Aurangabad has not cancelled his approval dated 25-7-95.

7. Counsel for the applicant has relied on page-652 of Shorter Constitution of India by Durga Das Basu, The Doctrine of Promissory Estoppel is explained there in following terms:-

"Promissory estoppel, doctrine of.

1. As just stated, even where there is no formal contract to bind the Government under Art. 299, Government cannot escape its liability when a citizen has altered his position relying upon the representations or assurances made by public officials.
2. But the doctrine of promissory estoppel cannot be invoked when the petitioner knew all the facts and there was no question of his being misled by the representation or the authority or the Government was under a legal duty or prohibition to act in a particular manner, or the

application of the doctrine would involve the violation of a statute, or the Petitioner failed to substantiate that he had altered his position, relying on the alleged representation or the Officer concerned was not competent acted beyond the scope of his authority, so that the alleged representation was ultra vires, or the Government has withdrawn or cancelled a notification which was ultra vires, with retrospective effect.

3. On the other hand -

(a) the Government or administrative authority cannot ignore its promise on some unidentified or undisclosed grounds of necessity.

(b) The Petitioner has not to show that he has suffered detriment as a result of acting in reliance on the promise of the authority. The doctrine of promissory estoppel would operate where injustice would be caused to the promisee, if the promisor would be allowed to go back on the promise.

But the facts giving rise to the doctrine must be pleaded. Thus,

In the absence of any statutory bar, it is open to the Government to withdraw any exemption from a tax or a concession previously granted, by means of a subsequent notification.

But where a new industry shows that it was established on the expectation that it would enjoy the exemption.

Government cannot withdraw that exemption except by legislation (because promissory estoppel cannot be claimed against a statute).

4. A doctrine akin to that of promissory estoppel is that of 'legitimate

expectation". Under this doctrine, even a non-statutory policy or guideline issued by the State would be enforceable against the State if a person can show that he has been led to take certain action on the basis of or on the legitimate expectation that the Governments would abide by such policy or guideline. In such a case, deviation from the policy would be arbitrary and involve a violation of Art.14."

8. On perusal of the summary of the principles established as a result of a number of judicial Pronouncements, we are of the view that the present case is squarely covered by the Doctrine of Promissory Estoppel. The petitioner has shown that she was relieved at Jalgaon on the promise of the authority and offered to join at Pimpri Penicillin Factory Post Office, but the Sub- Postmaster of the said post office however refused to get her join and she was later on told to go back to Jalgaon because the private party chose to go back on her earlier promise. It is clear that an injustice has been caused to the applicant. The Head Note of the case "Major A.A. Aphraim V/s. Director General National Cadet Corps, New Delhi and Others to which reference has been made by the applicant is reproduced below:-

"Transfer - Cancellation of - Legality - Transfer on request on account of personal exigencies - No misrepresentation of facts - Request being allowed after 1 ½ years of deliberation - Transferee getting advance TA, being relieved from

old station reaching new station and getting children admitted there - Cancellation of the transfer at this stage, without affording opportunity, on the ground of alleged earlier postings and vested property interest in the new place, held, arbitrary Estoppel - Promissory estoppel."

9. This case clearly brings out that although the transfer is an incident of service not to be lightly interfered with but there are circumstances in which judicial intervention is called for. I am of the view that the present case is one of the cases in which judicial intervention would be justified. for the reasons given. At the same time, it would not be possible for me ^{to} ensure specific performance of the orders as originally issued. I am, therefore, of the view that the next alternative relief should be given by directing the department to give an appropriate posting to applicant at Pune by ~~taking~~ the applicant's case as a transfer at her own request in terms of Rule 38(2) and regularise her seniority in terms of the rule. The department is also directed to treat the period from 11/8/95 till the applicant joins a regular posting at Pune as compulsory waiting and therefore, as on duty for all purposes and give her the pay and allowances to which she is entitled. The department is also directed to allow the increment to applicant as on 2/9/95. The action to give the posting to applicant should be carried out within a month of the communication of the order and the payment of the period of compulsory waiting ^{a well as drawn increment} should be made to the

applicant within one month thereafter. There
will be no orders as to costs.

abp.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)