

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI HYDERABAD~~O.A. No. 147/89
T.A. No.

198

DATE OF DECISION 29-6-92

Sri V. Rami Naidu

Petitioner

Mr KV Subrahmanyam Narasu

Advocate for the Petitioner(s)

Versus

Sr. Supdt. of Post Offices, Srikakulam Respondent

Mr N. Bhaskara Rao

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. JAIN, MEMBER (ADMN), PRINCIPAL BENCH

The Hon'ble Mr. T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal? X

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

(HTCR)
M(J)(HPCJ)
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.147/89

DATE OF JUDGEMENT:

29/6 JUNE, 1992

BETWEEN

Sri V. Rami Naidu

.. Applicant

A N D

1. The Regional Director of Postal Services, Visakhapatnam
2. Senior Superintendent of Post Offices Srikakulam
3. Sub-Divisional Inspector (Postal) Rajam, Sub-Division, Rajam Srikakulam District
4. D.Sankara Rao, *Omamli*, Rajam Mandal, Srikakulam District .. Respondents

Counsel for the Applicant

:Mr KV Subrahmanya Narsu

Counsel for the Respondents

:Mr N.Bhaskara Rao, Addl. CGSC

CORAM:

HON'BLE SHRI P.C. JAIN, MEMBER(ADMN), PRINCIPAL BENCH

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This application is filed by the applicant herein, under Section 19 of the Administrative Tribunals Act to direct the respondents, to continue the applicant as EDMC/DA, Govindapuram (B.O) Seetarampura (SO) Srikakulam District and pass such other order as may deem fit and proper in the circumstances of the case.

The facts giving rise to this OA in brief are as follows:

1. The post of EDMC/DA Govindapuram BO fell vacant on promotion of the permanent incumbent to the Group 'D' cadre with effect from 23.4.1987. The applicant herein was appointed to the said post from 1.5.1987 on provisional basis. Steps were taken to fill up the said post of EDMC/DA, Govindapuram on regular basis and so the Employment Exchange was addressed on 15.9.1987 to sponsor said the list of the candidates for the post of EDMC/DA. As there was no response from the Employment Exchange, a notification was issued at the Govindapuram village by the 3rd respondent, on 24.12.1987, duly notifying the vacancy and invited applications. In the said notification, it was made clear that the educational qualification that was required to hold the said post of EDMC/DA was 8th Std. In the selection that was conducted, the applicant was selected and was appointed on regular basis by the 3rd respondent as per the memo of the 3rd respondent dated 19.6.88. Subsequently, on verification, it came to ~~light~~ light that the selection of the applicant for the said post of EDMC/DA was not proper as the applicant did not possess the minimum educational qualification of 8th Std as required for the post. So, a show-cause notice

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to the applicant was issued by the 3rd respondent on 7.1.89 proposing for cancellation of the applicant's appointment as EDMC/DA Govindapuram. The applicant put an representation ~~in~~ on 18.1.89. In response to the show cause notice, the regular appointment given to the applicant was cancelled as per Memo No. PF/EDMC/DA/GDP dated 14.2.89, and as per memo No. PF/EDMC/DA dated 14.2.89, the 4th respondent herein Sri D. Sankara Rao was appointed as EDMC/DA on provisional basis. So, the applicant, had approached this Tribunal for the relief as already indicated above.

2. Counter is filed by the respondents opposing this OA.

3. When the OA came up for hearing, the learned counsel for the applicant did not dispute the fact that the applicant had not passed 8th Std.

4. Rules relating to the conduct and service of the Department of Extra Department Agents were framed in the year 1964 vide Department of communication Notification P&T Board No.6/63/6C-Disc dt.10.9.64. The fact that the said rules as having been framed by the competent authority is not in dispute before us. As a matter of fact, ~~in~~ the validity of the said rules relating to the conduct and service of the EDAs of the year 1964 is not challenged before us. So, it can be safely inferred for the purpose of this OA that the said rules relating to the conduct and service of the EDAs are framed by the competent authority ^{the} under the authority of Govt. of India and have ~~in~~ force of law.

5. The educational qualification that is prescribed for EDAs in the said rules is 8th Std, which in the normal parlance ~~in~~ means pass ~~of~~ 8th Std. As already pointed out, the fact that the applicant had not passed 8th Std is also not in dispute.

The above said rule makes it mandatory that a candidate to be appointed to the post of EDA should have passed the 8th Std. Besides the notification issued for filling up the post of EDA in Govindapuram in the year 1964 1987 had made it clear that the educational qualification of a candidate who competed for the said post should be a candidate of 8th Std is not in dispute in this case. As a matter of fact, we have gone through the said notification and the said notification makes it clear that 8th Std is the minimum educational qualification required for any candidate who applied to the post of the said EDA.

So, as the applicant did not possess the required qualification as prescribed in the above said rule, the applicant certainly had no right to hold the said post and the termination of the services of the applicant on the ground that the applicant did not possess the required qualification for being appointed to the post is in our opinion legal and valid. But, the contention raised by the learned counsel for the applicant is that, on the principles of 'Promissory Estoppel' that the services of the applicant cannot be terminated by the and respondents in view of this position that the termination of the services of the applicant is not valid.

6. The necessary ingredient for promissory estoppel is a representation by way of holding out a promise the and other party acting upon that representation. We have gone through the averments in the OA very carefully. Nowhere in the OA, it is pleaded that the applicant though had not passed 8th Std bonafide believed that he was eligible to be appointed as the said notification prescribed the educational qualification of a candidate for the post of EDA as 8th Std and as he was studying 8th class at the time he left the school, that he believed that he was eligible to be

appointed to the said post even though he had not passed the 8th class.

7. As already pointed out, the notification completely makes it clear that the educational qualification required was 8th Std which means ~~only~~ a pass in 8th Std. Absolutely, there was no scope to misunderstand the said notification and believe that a candidate who had not passed 8th Std and was studying to 8th class would be eligible to apply for the said post to get selected and appointed. So, there being no representation on behalf of the respondent by way of promise either to the applicant or to anybody else that without a pass in 8th class, that a candidate could be appointed as EDA cannot be accepted and believed in view of the position mentioned above, and also in view of the said notification calling for applications from eligible with the above said qualification candidates for the post of EDAs. Hence, the question of promissory estoppel automatically becoming applicable to the facts of this case, cannot be accepted and believed. In this context, it will be worthy to note a decision reported in AIR 1973 SC 2641 N.Ramanatha Pillai Vs State of Kerala and another wherein it is laid down as follows:

"As a general rule, the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception however arises where it is necessary to prevent fraud or manifest injustice".

The facts in the Ramanatha Pillai's case would disclose that the appellant therein was appointed to a temporary post and on the post being abolished, the service of the appellant was terminated. The appellant challenged

the validity of termination of service on the principle of promissory estoppel. This ground based on the doctrine of promissory estoppel was negatived and it was pointed out by the Supreme Court that the appellant knew that the post was temporary, suggesting clearly that the appellant could not possibly be led into the belief that the post would not be abolished.

So, the observations of the judgement in the Ramanatha Pilla's case will equally apply to the facts of this case. as the applicant herein also could not have possibly been led to the belief that he was eligible to be appointed to the said post. Above, all, there appears to have been a mistake to have been committed in selection and appointment of the applicant as EDA and the mistake had been rectified by terminating his services. The mistake in this case had been corrected by the Department within reasonable time, from the date of the regular appointment of the applicant. So, for all these reasons, we do not have any difficulty to hold that the principle of promissory estoppel cannot be invoked by the applicant herein.

8. Learned counsel appearing for the applicant relied on a decision reported in AIR 1990 SC 1075 (App.) Santan Gauda Vs Berhampur University and others (Resp.). The facts in this case would disclose that the appellant therein while securing his admission in the Law College had admittedly submitted his mark-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for

Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to the final year of the course. It is only at the stage of declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law course. It was therefore held that the University was clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course. The said decision can easily be distinguished from the facts of this case. It is a case where the University had granted admission for pre-law and inter-Law Examinations and also permitted to appear for the said examinations. So, under those circumstances, the Supreme Court had said that the principle of promissory estoppel was applicable. So far as the case onhand is concerned, the applicant's selection and appointment had been purely on the mistake ~~of~~ that the applicant had passed 8th class examination and thus had required qualification to be appointed. So, the principle of promissory estoppel can not at all be applied to the facts of this case and hence, the decision is not applicable to the facts of this case.

9. Further the learned counsel for the applicant relied on a decision reported in AIR AP 1959 K. Jagannadham Petitioner, Vs District Collector, Kurnool and another respondents. The facts of this case would disclose that (therein) the petitioner K. Jagannadham passed his SSLC Examination with secretarial course as his optional subject. After passing his SSLC examination, the petitioner applied for

for public service examination for selection of clerks.

The petitioner was duly permitted to appear for competing the said examination, in which he came out successful and was appointed as a typist on probation as per the communication received from the Collector of Kurnool on 12.1.62. The petitioner ~~sat~~ for the examination which was held by the Public Services Commission in the year 1959. On receipt of communication from Collector of Kurnool on 12.1.62, he had reported for duty on 25.1.62. The petitioner was appointed on probation for a period of two years and completed his probation successfully. On 4.2.64, the District Collector, Kurnool, at the instance of the Service Commission, passed an order purporting to cancel the petitioner's selection as an approved candidate on the ground that he did not possess the requisite qualification in typing for being permitted to sit for the competitive examination held in the year 1959. On that ~~ground~~ the petitioner was discharged from service. So the petitioner approached the High Court of AP for appropriate relief. In the said decision, it was held that there was negligence on the part of the government and that the petitioner had become over-aged at the time of discharge from service by the AP High Court and on the principle of estoppel, it was held ~~that~~ the said discharge of the petitioner from service was illegal. As could be seen from the said facts, the petitioner therein joined his duties on 25.1.62, in pursuance to the communication received on 12.1.62 from the collector of ~~Kurnool~~ Kurnool. It was on 4.2.64 that the Collector of Kurnool, passed the order purporting to cancel the petitioner's selection, which selection was ~~held~~ after the petitioner therein was permitted to appear for the examinations in 1959. The facts would go

T - C. *[Signature]*

To

1. The Regional Director of Postal Services,
Visakhapatnam.
2. The Senior Superintendent of Post Offices, Srikakulam.
3. The Sub-Divisional Inspector(Postal)
Rajam, Sub-Division, Rajam,
Srikakulam Dist.
4. One copy to Mr.K.V.Subrahmanyam Narsu, Advocate
3-4-625/35, Barkatpura, Hyderabad.
5. One copy to Mr.N.Bhaskar Rao, Addl. CGSC, CAT.Hyd.
6. One copy to Hon'ble Mr.T.Chandrasekhar Reddy, M(J)CAT.Hyd.
7. One copy to Deputy Registrar(J)CAT.Hyd.
8. Copy to All Reporters as per standard list of CAT.Hyd.
9. One spare copy.

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to show that the petitioner after being permitted to appear in the examination in 1959 and after being selected for the said post, was discharged from his service in the year 1964. So, the discharge in that case was after a period of 5 years after the petitioner was permitted to appear for the said competitive examination held for selection of clerks, etc. In this case on hand, the applicant herein had been appointed on regular basis as EDA from 19.6.88. A show cause notice was issued to the applicant on 7.1.1989 on the ground that as he did not possess the required qualification for the said post of EDA, why his services should not be terminated and his services were terminated on 14.2.89. So, the events in this case were quick and so the facts of the said decision are not applicable to the facts of this case. Above all, in view of the observations made in the Ramanatha Pillai's case, we are of the view that the above cited two judgements relied by the learned counsel for the applicant, do not apply to the facts of this OA. Hence, this OA is liable to be dismissed. By an order dated 24.2.89, This Tribunal had ordered status-quo with regard to the post of EDMC/DA which the applicant was holding on the said date, pending disposal of this OA. As we have ordered dismissal of this OA, the said stay order stands vacated. The OA is dismissed with no order as to costs.

T. Chandrasekhar Reddy
(T.CHANDRASEKHARA REDDY)
MEMBER (JUDL.)

C. Jain
(P.C. JAIN)
MEMBER (ADMN)

Dated:

29 June, 1992

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Deputy Registrar (J).

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.
THE

THE HON'BLE MR. P. C. JAIN
SUBRAMANIAN: M(A)

THE HON'BLE M. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE M. C. J. ROY : MEMBER (J)

Dated: 29-6-1992

ORDER / JUDGMENT

P.A./C.A./M.A. No.

in

O.A. No. 147/89

T.A. No.

(W.P. No.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

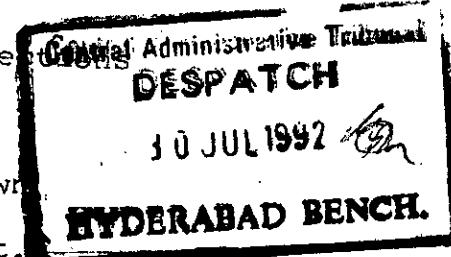
Dismissed ✓

Dismissed as withdrawn

Dismissed for Default

M.A. Ordered/Rejected.

No order as to costs.



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For the despatch of the
with 18 copies certified
Copies affixed, 00.

29/7/92