

CENTRAL AIRMEN SELECTION BOARD AND ANR.

A

v.

SURENDER KUMAR DAS

NOVEMBER 21, 2002

[N. SANTOSH HEGDE AND B.P. SINGH, JJ.]

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Service Law—Selection—Age relaxation—Grant of—Subsequent finding that criteria seeking age relaxation not fulfilled and authority making the selection was misled by fake statement of the candidate—Hence, selection cancelled—On challenge High Court applying promissory estoppel directing appointment—On appeal, held, invoking principle of promissory estoppel not permissible in the facts of the case.

C

Administrative Law—Principle of promissory estoppel—Applicability of—Held, it is based on equitable principles—A person having misled the authority by making a wrong statement cannot invoke this principle.

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In the advertisement for the post of Airman in technical trade in Indian Air Force, the upper age limit prescribed therein was relaxable by 2 years in case of candidate who had passed the Intermediate examination. Respondent-candidate submitted his application for the post, claiming age relaxation on the basis that he had passed Intermediate examination. Respondent qualified the written test. At the time of reporting at selection Centre he was informed that his selection had been cancelled.

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Respondent filed writ petition before High Court challenging the cancellation of selection. Appellant in its counter affidavit stated that selection of respondent-candidate was made giving him age relaxation as the Board was misled by the particulars furnished in the application of the candidate that he had passed Intermediate examination, whereas, in final checking it was found that he had failed in Chemistry examination and therefore, he was not justified in claiming that he had passed Intermediate examination. High Court applying the principle of promissory estoppel and on finding that candidate had not made any misrepresentation, held that authorities having selected the candidate and having called upon him to report at Selection Centre, could not cancel the

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A selection on the ground that he was over aged and directed the appellants to appoint the petitioner. Hence the present appeal.

Allowing the appeal, the Court

B HELD: 1. Principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a wrong statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. [299-B-C]

C 2. High Court has proceeded on the basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the Intermediate examination. This finding of the High Court is erroneous, contrary to record and therefore must be set aside. The mark-sheet annexed to the application disclosed that the respondent had failed in the subject Chemistry and therefore, his claim in the application, that he had passed the Higher Secondary + 2 examination, was factually incorrect and a clear misrepresentation. The respondent could not be permitted to invoke the principle of promissory estoppel, and the High Court clearly erred in law in invoking the said principle in the facts of this case. The judgment and order of the High Court therefore cannot be sustained. [299-C-F]

E *Sri Krishan v. The Kurukshetra University, Kurukshetra, AIR (1976) SC 376 and Ms. Sangeeta Srivastava v. Prof. U.N. Singh, AIR (1980) Delhi 27, referred to.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 251 of 1994.

From the Judgment and Order dated 12.03.1992 of the Orissa High Court in W.P. No. 1969 of 1991.

G R.C. Verma and Ms. Sushma Suri, for the Appellant.

The Judgment of the Court was delivered by

H B. P. SINGH, J. In this appeal by special leave the appellants herein have impugned the judgment and order of the High Court of Orissa at Cuttack

dated 12th March, 1992 in Original Jurisdiction Case No.1969 of 1991, A
 whereby the High Court allowing the writ petition filed by the respondent
 herein, directed the appellants to appoint the petitioner on the post of Airman
 in the technical trade under the Indian Air Force, and to send him for training.
 The High Court set aside the decision of the appellants not permitting the B
 respondent to join the aforesaid post after selection, on the ground that he
 was not eligible for the said post in terms of the advertisement. In doing so,
 the High Court invoked the principle of promissory estoppel and held that
 having selected the respondent for appointment, and the respondent having
 discontinued his studies in the Orissa School of Mining Engineering, the
 appellants could not be permitted to prevent the respondent from joining the C
 post.

It is not in dispute that an advertisement was published in the
 Employment News of 17th-23rd February, 1990 inviting applications from
 eligible candidates for appointment to the post of Airman in the technical D
 trade under the Indian Air Force. The advertisement prescribed that the
 candidate should be born between 31st March, 1971 and 1st July, 1997, but
 the upper age limit was relaxable by two years in case of those who had
 passed the Intermediate examination. It is also not in dispute that the date of
 birth of the respondent is 13th July, 1970. Therefore, he was not eligible for
 the post as he was over age, but however age relaxation was permissible in E
 the case of the respondent if he had passed the Intermediate examination.

The petitioner was invited to appear at a written test and thereafter the
 primary examination etc. He was thereafter medically examined and found
 suitable for appointment. His name appeared in the All India merit list and
 a call letter was issued to him to report at the Airman Selection Centre, F
 Bhubneshwar on 11.3.1991. However, when the respondent reported at the
 aforesaid Centre, he was informed that his selection had been cancelled. The
 respondent thereafter represented to the authorities concerned but to no avail.
 He was, therefore, compelled to file the writ petition before the High Court
 which was allowed by the impugned judgment and order. G

The High Court applying the principle of promissory estoppel and relying
 upon the decision of this Court in *Sri Krishan v. The Kurukshetra University,*
Kurukshetra, AIR (1976) SC 376 and *Ms. Sangeeta Srivastava v. Prof. U.N.*
Singh, AIR (1980) Delhi 27, held that the authorities having selected the
 respondent and having called upon him to report at the Selection Centre, they H

A could not be permitted to cancel the selection on the ground that he was over age. In coming to this conclusion the Court observed that the respondent was not guilty of having misrepresented any fact. Moreover, the petitioner gave up his studies which he was pursuing in the Orissa School of Mining Engineering, and thereby acted to his detriment. On these facts, the High Court found that the principle of promissory estoppel could be invoked against the appellants. The writ petition was accordingly allowed.

Unfortunately, the High Court has neither noticed nor fully considered the factual averments in the counter affidavit filed on behalf of the appellants. It has only noticed the fact that the selection had been cancelled on the ground that on the date of application the petitioner was over age. It observed that since the date of birth was correctly disclosed in the application, it was known to the authorities that the respondent did not fulfill the eligibility condition regarding age. As per the advertisement the upper age limit was relaxable by two years inter alia, in case of candidates who had passed the Intermediate examination. The petitioner had not made any statement in his application that he had passed Intermediate examination.

We have perused the counter affidavit filed on behalf of the appellants before the High Court, and we have also perused the application submitted by the respondent for his appointment which has been produced before us as 'Annexure A' to the special leave petition filed in this Court. In the counter affidavit filed before the High Court, it was stated by the appellants that they were misled by the particulars furnished in the application submitted by the respondent. Though the petitioner was not eligible for selection, since he was over age, his case was considered for enrolment because he had stated in his application that he possessed the +2 qualification, i.e. he had Higher Secondary qualification which made him eligible for appointment after grant of relaxation in the matter of age. However, when the final checking was done it was found that the petitioner had failed in the subject chemistry in his +2 examination and, therefore, he was not justified in claiming that he had passed +2 examination which entitled him to claim relaxation in the matter of age. This aspect of the matter has unfortunately escaped the notice of the High Court. From the application submitted by the petitioner, it appears that under the column "name of examination passed", it is stated "HSC" and "CHSE +2". The HSC examination was conducted by the Board of Secondary Education, Orissa and CHSE +2 by the Council of Higher Secondary Education, Orissa. The mark sheets were also attached therewith. The

appellants found that though the respondent claimed to have passed the CHSE +2 examination, which could have enabled the authorities to grant relaxation of age in his case on account of Higher qualification, the relevant mark sheet annexed to the application disclosed that he had in fact failed in the CHSE +2 examination, since he was not awarded the minimum passing marks in the subject Chemistry. Even before the High Court, the respondent did not claim to have passed either the Intermediate examination or a Higher Secondary +2 examination which was considered to be equivalent.

The question, therefore, is whether in a case of this nature the principle of promissory estoppel should be invoked. It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. The High Court has proceeded on the basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the Intermediate examination. As we have found above, this finding of the High Court is erroneous, contrary to record and therefore must be set aside. In his application, the respondent had claimed that he had passed the Secondary examination as well as the Higher Secondary +2 examination, and it is clear from the counter affidavit filed on behalf of the appellants that his candidature was considered on the basis that he had passed the Higher Secondary +2 examination, as in that case he was entitled to claim relaxation in the matter of age. However, the mark sheet annexed to the application disclosed that the respondent had failed in the subject Chemistry and therefore, his claim in the application, that he had passed the Higher Secondary +2 examination, was factually incorrect and a clear misrepresentation. In these circumstances we are satisfied that the respondent could not be permitted to invoke the principle of promissory estoppel, and the High Court has clearly erred in law in invoking the said principle in the facts of this case. The judgement and order of the High Court therefore cannot be sustained.

Counsel for the appellants submitted that even in the absence of any misrepresentation, in a case of this nature where a candidate not eligible for appointment is selected by mistake contrary to the terms of the advertisement and the rules, when such mistake is detected the authorities are bound to correct the mistake and recall the order of selection. The principle of promissory estoppel cannot be invoked in such cases. He sought to distinguish the decisions relied upon by the High Court. In view of the finding we have

A recorded earlier in this judgment, it is not necessary for us to express any opinion on this question, and may be, in an appropriate case the aforesaid question may merit consideration.

B In the result this appeal is allowed. The impugned judgement and order of the High court is set aside, and writ petition filed by the respondent dismissed.

K.K.T.

Appeal allowed.