

SUPREME COURT OF INDIA

Central Airmen Selection Board

Vs.

Surender Kumar Das

C.A.No. 251 of 1994

(N. Santosh Hegde and B. P. Singh JJ.)

21.11.2002

JUDGEMENT

B. P. Singh, J.

1. 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, 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 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 post.

2. 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 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. In 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 the case of the respondent if he had passed the Intermediate examination.

3. 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, 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.

4. 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*¹, and *Ms. Sangeeta Srivastava v. Prof. U. N. Singh*² held that the authorities having selected the respondent and having called upon him to report at the Selection Centre, they, 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.

5. 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 fulfil 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.

6. 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 appellant 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.

7. 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 was 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.

8. 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 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.

9. In the result this appeal is allowed. The impugned judgment and order of the High Court is set aside, and writ petition filed by the respondent dismissed.

Appeal allowed.

¹*AIR 1976 SC 376*

²*AIR 1980 Delhi 27*