

(1974) 02 CAL CK 0007

In the Calcutta High Court

Case No : Civil Rule No. 3262 (W) of 1971 heard analogously with Civil Rule No. 3263 (W) of 1971.

Hari Shankar Pant

APPELLANT

Vs

Commissioner, Andaman and Nicobar Administration

RESPONDENT

Date of Decision : 12-02-1974

Acts Referred:

Andaman and Nicobar Administration Amalgamated Clerical Establishment Recruitment Rules, 1966 — Rule 7(2)
Constitution of India, 1950 — Article 14, 16, 240, 309

Citation : (1974) 2 ILR (Cal) 84

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : N.C. Chakravorty and Madhusudan Banerjee, for the Appellant; A.K. Dutta and S.N. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Chittatosh Mookerjee, J.—In May 1955, the Petitioner joined as a lower division assistant in the Home Department, Civil Secretariat, Lucknow (Uttar Pradesh). While the Petitioner was serving in the said capacity, the Government of Uttar Pradesh by an office order dated November 11, 1964, circulated among its staff a copy of the letter dated September 28, 1964, issued by the Assistant Secretary to the Chief Commissioner, Andaman and Nicobar Administration, Chief Commissioner's Secretariat, Port Blair, to the Chief Secretary, Government of Uttar Pradesh, Lucknow (vide annex. A to the writ petition). The Assistant Secretary to the Chief Commissioner of Andaman and Nicobar Administration, inter alia, stated that the Andaman and Nicobar Administration required the services of a few experienced and efficient upper division clerks for appointment, on deputation basis, in the various offices under the Administration. Terms and conditions of the deputation were set out in para. 2 of the said letter. The Petitioner having expressed his willingness to go to deputation under the Andaman and Nicobar Administration, the Government of Uttar Pradesh, Home

Department (Police-E), by an office order No. 196 AHE/VIII-E-274/64, dated July 22, 1965, placed the services of Subhash Kumar Saxena, the Petitioner in this Rule, and the services of Hari Shankar Pant, the Petitioner in C.R. No. 3262(W) of 1971, at the disposal of Andaman and Nicobar Administration, Port Blair, on deputation with effect from July 22, 1965 (afternoon) (vide annex. "B" to the writ petition). At the relevant time the Petitioner was serving as a temporary lower division assistant officiating in the scale of Rs. 80-110-140-200. On July 29, 1965, the Petitioner joined as a higher grade clerk under the Public Works Department under the Administration of Andaman and Nicobar Islands, Port Blair. On September 16, 1965, the Chief Commissioner's Secretariat, Andaman and Nicobar Administration, issued order No. 2444 stating that the Petitioner in this Rule and the aforesaid Hari Shankar Pant, the Petitioner in C.R. No. 3262(W) of 1971, had been appointed as higher grade clerks in the Amalgamated Clerical Establishment with effect from July 29, 1965, and they had been posted to the offices shown against their names in the said order. Their pay were fixed in the scale of Rs. 130-300, with effect from July 29, 1965. They were given benefit of advance increments. The para. 2 of the said office order purported to mention the terms and conditions of their appointment (vide annex. A to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi filed on March 13, 1972).

2. While the Petitioner was serving as a higher grade clerk of the Public Works Department of the Andaman and Nicobar Administration, he addressed a letter to the Chief Secretary, Andaman and Nicobar Administration, Port Blair, stating that he had come to the conclusion that he should stay in the island. He, accordingly, prayed that necessary steps for his permanent absorption be taken. Thereupon, the Assistant Secretary to the Chief Commissioner of Andaman and Nicobar Administration wrote a letter No. 60-1992/68-Estt. (ADM) dated April 19, 1969, to the Home Department (Police-E) of Uttar Pradesh State stating that the Petitioner had applied for his permanent absorption under the Andaman and Nicobar Administration. Andaman and Nicobar Islands Administration had no objection to retain him. The Assistant Secretary to the Chief Commissioner of the Andaman and Nicobar Administration requested that the Uttar Pradesh Government might intimate whether they had any objection to the permanent absorption of the Petitioner under the Andaman and Nicobar Administration. A copy of the said letter was forwarded to the Executive Engineer, Port Blair, South Division, Public Works Department, under whom the Petitioner was serving. It was stipulated therein that the seniority of the Petitioner in the grade of higher grade clerk in the Amalgamated Clerical Establishment of this Administration would count only with effect from the date of his confirmation in due course and thereby absorption in the cadre. His confirmation would, however, depend upon his suitability, availability of permanent posts and his seniority as higher grade clerk under this Administration. The Petitioner's deputation was extended. He had applied for his permanent absorption in the post held by him under the Andaman and Nicobar Administration. On April 19, 1969, the Petitioner was asked by the Andaman and Nicobar Administration to confirm that he was

agreeable to his permanent absorption subject to the conditions mentioned therein. The Andaman and Nicobar Administration also wrote to the Uttar Pradesh Government whether they had any objection to his absorption (vide annex. D to the writ petition). In the meantime, on June 4, 1969, the Ministry of Home Affairs, Government of India, issued a letter dated June 4, 1969, conveying the order of the President of India on the subject of Andaman and Nicobar Islands withdrawal of Andaman special pay--grant of special allowance and compensatory allowance. I shall hereinafter deal with the legal effect of the said order of the President (vide annex. C to the affidavit-in-opposition affirmed by Suresh Chandra Vajpayi dated March 6, 1972). On November 3, 1969, the Under-Secretary to the Government of India, Ministry of Home Affairs, New Delhi, addressed another letter on the said subject clarifying the previous orders on the special allowance and compensatory allowance, etc. (vide annex. B to the aforesaid affidavit-in-opposition affirmed by Suresh Chandra Vajpayi).

3. On January 1, 1970, the Andaman and Nicobar Administration issued a memorandum stating that the Petitioner along with six others had offered to be absorbed permanently under the Andaman and Nicobar Administration. The said persons were required to exercise options as to whether they would like to be permanently absorbed under the Administration on the new terms with effect from June 4, 1969, or would revert to their parent departments. On January 17, 1970, the Petitioner through proper channel exercised his option for permanent absorption under the new terms (compensatory allowance and special allowance) (vide annexes. E and F to the petition).

4. In the meantime, the Uttar Pradesh Government proposed to hold a competitive examination for appointment to the posts of upper division assistants. The Petitioner had applied to the Under Secretary, Secretariat Administration Department (M), Uttar Pradesh Civil Secretariat, Lucknow, for supplying him with a copy of application form to enable him to sit for the said departmental examination. According to the Petitioner, due to laches on the part of the Andaman and Nicobar Administration the relevant papers were given very late to the Petitioner and he was deprived of the opportunity to appear in the said departmental examination of the Uttar Pradesh Government.

missioner's Secretariat, Andaman and Nicobar Administration, issued missioner's Secretariat, Andaman and Nicobar Administration, issued order No. 1515 directing the Petitioner and six others, who were described as deputationists and who had exercised their option as per memorandum dated January 1, 1970, would not be eligible to Andaman special pay but would draw compensatory allowance and special allowance with effect from June 4, 1969. It appears that in April 1971 the Andaman and Nicobar Administration had written a letter to the Government of India, Ministry of Home Affairs, seeking permission for permanent absorption of the Petitioner and Ors. as higher grade clerks. The Government of India, Ministry of Home Affairs, New Delhi, by a message No. 4/31/71-ANL dated May 22, 1971, informed the Administration that the said

proposal for permanent absorption of the Petitioner and six other higher grade clerks could not be agreed to and ordered that the concerned deputationists might be reverted as early as possible (vide annex. F to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi). On July 14, 1971, the Deputy Secretary, Government of India, Ministry of Home Affairs, New Delhi, by another letter again conveyed the decision of the Government of India, Ministry of Home Affairs, that the proposal for permanent absorption of the Petitioner and six others in the higher grade posts could not be agreed to (vide annex. G to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi). On July 23, 1971, the Government of India, Ministry of Home Affairs, sent a signal to the Andaman and Nicobar Administration to the same effect.

6. On July 28, 1971, the Petitioner made a representation to the Government of India, Ministry of Home Affairs, New Delhi, for favourably considering his prayer for permanent absorption. The Andaman and Nicobar Administration, while forwarding the said representation to the Petitioner, had asked the Petitioner to keep himself in readiness in proceeding on reversion to his parent department (vide annex. L to the petition). The Petitioner's representation was not successful. The Assistant Secretary (Establishment), Chief Commissioner's Secretariat, Andaman and Nicobar Administration, Port Blair, by his order No. 2570 dated September 4, 1971, intimated to the Petitioner that he had been reverted to his parent department, viz. the Government of Uttar Pradesh (vide annex. N to the petition). On September 13, 1971, the Executive Engineer, Port Blair (South) Division, issued another office order No. 829 in pursuance of the previous office order No. 2570 stating that the Petitioner be relieved of his duties from that division with effect from the afternoon of August 13, 1971. After availing of the joining time as admissible on transfer under the rules he should report for duty to the Assistant Secretary, Government of Uttar Pradesh, Home (Police) Department, Lucknow (vide annex. O to the petition). The Petitioner has prayed in this writ petition that the aforesaid orders dated September 4, 1971, and September 13, 1971 (vide annexes. N and O to the petition) be quashed and the Respondents be commanded to absorb the Petitioner under the Andaman and Nicobar Administration permanently. The Petitioner has also prayed that the Respondents be further commanded to rescind, recall and/or set aside the impugned orders dated September 4, 1971, and September 13, 1971, releasing him from service under the Andaman and Nicobar Administration and further directing them to absorb the Petitioner and not to revert him.

7. After this Rule was issued, the Petitioner prayed for adding the State of Uttar Pradesh as a Respondent in the Rule. He also prayed that he might be allowed to urge the additional grounds in his application dated December 8, 1971. On January 11, 1972, I allowed the said two applications. The State of U.P. has not contested this Rule.

8. Mr. Chakraborty, learned Advocate for the Petitioner, has submitted that the impugned order reverting the Petitioner from his present post under the

Andaman and Nicobar Administration to his previous post under the Uttar Pradesh Government was illegal and without jurisdiction. The Petitioner had been already absorbed in service under the Andaman and Nicobar Administration. Therefore, was no question of releasing the Petitioner and asking him to join service under the Uttar Pradesh Government. Further contention of Mr. Chakraborty, learned Advocate for the Petitioner, is that the Respondents by their communications and orders (vide annexes. A and C, D and K to the petition) held out assurances and representations regarding the Petitioner's permanent absorption under Andaman and Nicobar Administration. The Petitioner in good faith acted upon the said representation. Therefore, the Respondents were not entitled to act contrary to such representations and refused to permanently absorb the Petitioner. The Respondents did not allege that the Petitioner's work was not found satisfactory. Therefore, according to the conditions of his deputations from the Uttar Pradesh Government to Andaman and Nicobar Administration, he was eligible to be permanently absorbed. The Petitioner has claimed that his case should be governed by the provisions of the Andaman and Nicobar Administration Amalgamated Clerical Establishment Recruitment Rules, 1966. Under the said Rules persons on deputation were eligible for permanent absorption in the Amalgamated Clerical Establishment with the consent of their parent department. The Rules do not prescribe that such absorption will be subject to the approval of the Government of India, Ministry of Home Affairs. Therefore, the Andaman and Nicobar Administration was not entitled to release the Petitioner and to direct him to join service under the Uttar Pradesh Government on the plea that the Government of India did not approve the proposal for his absorption. Mr. Chakraborty, learned Advocate for the Petitioner, also contended that the Petitioner's reversion had been made at the behest of the Union Government. The Uttar Pradesh Government which were the competent authority had agreed to the Petitioner's permanent absorption. The order of reversion has also been attacked on the ground that the same was in violation of Articles 14 and 16 of the Constitution. The Administration had absorbed some other persons who had also come on deputation like the Petitioner, but at the same time discriminated against him by releasing him.

9. The Assistant Secretary to the Chief Commissioner, Andaman and Nicobar Administration in his letter No. 1-5/64-Estt. dated September 28, 1964, (vide annex. A to the petition) had clearly stated that--

The Administration required the services of a few experienced and efficient Upper Division Clerks for appointment, on deputation basis, as Higher Grade Clerks in the various offices under the Administration....

Clause VIII of para. 2 of the said letter stated:

period of deputation--Three years. These candidates can also be permanently absorbed provided their work is found satisfactory.

The Government of Uttar Pradesh Secretariat Administration, while circulating

the said letter of the Assistant Secretary to the Chief Commissioner, stipulated that the assistants who were willing to be considered for the said post under the Andaman and Nicobar Administration might apply by November 21, 1964. The said offer was for the post of higher grade clerks on deputation basis. The Petitioner had volunteered for the same by expressing his willingness to be considered for deputation to the post of higher grade clerk. The clause VIII did not hold out any assurance that a candidate should be automatically absorbed provided his work was found satisfactory. The expression "can be permanently absorbed" merely meant that the deputationists would be eligible to be considered for permanent absorption. The Andaman and Nicobar Administration reserved an option to permanently absorb a deputationist. The office order No. 2444 dated September 16, 1965, (vide annex. A to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi) also mentioned that the deputation period of the Petitioner would be for three years in the first instance with effect from afternoon of July 22, 1965. The said office order also did not mention that the Petitioner would be automatically absorbed in permanent service under the Andaman and Nicobar Administration.

10. I am, accordingly, unable to accept the extreme submission made on behalf of the Petitioner that his appointment letter provided for automatic confirmation in his post under the Andaman and Nicobar Administration.

11. The Supreme Court in *Shri Kedar Nath Bahl Vs. The State of Punjab and Others*, has pointed out that--

Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf.

The Supreme Court further observed that there would be such automatic confirmation only when the terms of appointment clearly indicate that confirmation would automatically follow or where there was a specific service rule to that effect.

12. I have already observed that the terms of appointment contained in the offer made to the Petitioner and also in the subsequent office order issued by the Andaman and Nicobar Administration did not provide for automatic confirmation. Therefore, the Petitioner was not entitled to be confirmed in the post of higher grade clerk on the expiry of three years of service under the Administration. It is a matter of regret that the Petitioner was unable to sit for the departmental examination conducted by the Uttar Pradesh Government due to delay which, according to the Petitioner, was occasioned by the Andaman and Nicobar Administration. Even assuming the Petitioner's case on this point is correct still the same cannot give rise to any estoppel against the Andaman and Nicobar Administration. The Andaman and Nicobar Administration by its alleged failure to forward to the Petitioner the communication received from the Uttar Pradesh

Government regarding holding of the said departmental examination did not expressly or by implication convey any impression that the Petitioner would be permanently absorbed in service under the Andaman and Nicobar Administration and, therefore, it was not necessary for him to sit in the said departmental examination. I shall hereinafter deal with further question whether the Andaman and Nicobar Administration by their actions subsequent to the Petitioner's appointment in any other manner made representation that he would be permanently absorbed so as to attract the doctrine of equitable estoppel.

13. The Petitioner claimed that his case was governed by the Andaman and Nicobar Administration Amalgamated Clerical Establishment Recruitment Rules, 1966. The Rules made by the Chief Commissioner, Andaman and Nicobar Islands, regarding the method of recruitment to the post borne on the Amalgamated Clerical Establishment under the said Administration specified in col. II, append. A of the said order. Rule 7 of the said Rules prescribed the method of recruitment for the posts in question. Higher grade clerks were made non-selection posts.

80 percent of these posts shall be filled by promotion from amongst the permanent lower grade clerks of the Amalgamated Clerical Establishment and the remaining 20 percent shall be filled by deputation. Deputation to these posts shall be from amongst selected clerks serving in the Central/State Government or other Union territories.

According to the affidavit of Amiya Bhusan Sen, the Respondent No. 3, the quota for deputationists was reduced to 15 % under amended Rule 7(2).

14. In the instant case, the Andaman and Nicobar Administration had proposed to permanently absorb the Petitioner and had written to the Ministry of Home Affairs, Government of India, for approval. The Government of India, Ministry of Home Affairs, by its message No. 4/31/71-ANL dated May 22, 1971, and its letter No. 4/31/71-ANL dated July 14, 1971, stated that the proposal for permanent absorption of the Petitioner and six others had been carefully considered, but the same could not be agreed to. Expeditious step be taken to replace them with local candidates (vide annexes. F and G to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi dated March 6, 1972). On July 22, 1971, the Government of India again directed that the deputationists be reverted.

15. In this connection, my attention has been drawn to the letter No. 45-34(MRD)/71-Adm. dated June 21, 1971, of the Administration to the Government of India, Ministry of Home Affairs, New Delhi, (vide annex. O to the affidavit-in-opposition dated May 29, 1972). The Chief Secretary of the Administration had stated that the Administration had always needed the service of experienced clerical staff, and persons who were brought on deputation from Central and State Governments to meet such need. It was also found in public interest to retain the services of certain deputationists on permanent basis. Accordingly, relevant recruitment rules had been amended and provisions were

made in these rules to the permanent absorption of the deputationists. The persons in question (meaning the Petitioner and six others) had offered for permanent absorption. Since the orders absorbing them permanently in the cadre were not issued before June 4, 1969, a clarification was sought from the Government of India as to the admissibility of A.S.P./S.A. in the context of replacement of A.S.P. by compensatory allowance and special allowance. The deputationists had agreed to the new terms (of compensatory allowance and special allowance) with effect from June 4, 1969. The Chief Secretary pointed out that

the Petitioner and Ors. have served for a considerable length of time and have, in fact, formed part of the cadre. This administration still needed the services of efficient and experienced clerks.

The Chief Secretary requested the Government of India to reconsider their decision and to accord approval to the permanent absorption of seven deputationists mentioned in the statement annexed to this Administration letter. The Andaman and Nicobar Administration in continuation of their letter dated April 16, 1971, wrote another letter dated April 21, 1971, to the Government of India on the subject of permanent absorption of the Petitioner and Ors. (vide annex. P to the affidavit-in-reply, dated May 29, 1972). The Administration recommended that the Petitioner and Ors. be permanently absorbed. Suitable qualified and experienced higher grade clerks were not available locally and it would be in the public interest to have been permanently absorbed in the Amalgamated Clerical Establishment.

16. Reference may be also made to para. 5 of the affidavit-in opposition affirmed by Amiya Bhusan Sen, the Respondent No. 3, dated August 7, 1972. The said deponent, inter alia, stated that the answering Respondents in their diverse letters to the Government of India supported the prayer of the Petitioner for permanent absorption and/or for retention in the service under the Administration. The Administration though in their diverse letters to the Government of India recommended that the Petitioner might be permanently absorbed the Administration being by the rules and orders passed and/or made by the President regarding service of the Petitioner and/or other staff, it could not effectively take any further step in the matter of permanent absorption after the Home Ministry, Government of India, intimated that the question of permanent absorption of the Petitioner cannot be entertained and instead vacancies were to be filled by the local people in accordance with the Presidential orders.

17. Therefore, the real question is whether the orders of the Government of India that the Petitioner be reverted were valid or not (vide annexes. F, G and H to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi dated March 6, 1972) The Government of India presumably purported to act in exercise in pursuance of the directives contained in the letter No. 27/36/67-ANL dated June 4, 1969, of the Ministry of Home Affairs and in pursuance of the Home Ministry's

subsequent letter No. 27/36/67-ANL(2) dated November 3, 1969, and the signal No. 4/56/70-ANL dated December 9, 1970. The last mentioned signal has not been, however, produced by the Respondents.

18. I have already mentioned about the said letter of the Ministry of Home Affairs dated June 4, 1959, (vide annex. C to the affidavit of Suresh Chandra Vajpeyi dated March 6, 1972) The said letter or the subsequent letter dated November 3, 1969, (vide annex. B to the said affidavit of Suresh Chandra Vajpeyi dated March 6, 1972) did not state that the President was exercising his power under Article 240 of the Constitution making Regulations for the Union territory of Andaman and Nicobar Islands. But the two letters contained administrative decisions on the subject of withdrawal of the Andaman Special Pay and Compensatory Allowance to the various categories of Government servants under the Andaman and Nicobar Administration. Paragraph 2 of the said letter dealt with "main land" recruit/deputationist. The exception (2) of the letter (vide annex. C to the affidavit of Suresh Chandra Vajpeyi dated March 6, 1972) dealt with the existing deputationists. They were to continue to draw the Andaman Special Pay under the existing terms of deputation until the expiry of tenure of the deputation. But in case of extension of their tenure of deputation they would be ineligible for Andaman Special Pay, but only draw compensatory allowance and special allowance during extended periods of deputation. In case the deputationists were unwilling to serve under the revised terms, they were to be reverted to their parent departments. Incidentally, the Petitioner did exercise his option to serve under the said revised term. Therefore, we are not directly concerned in this Rule with the question whether the Government of India had acted within its power by revising the terms and conditions of services of the existing deputationists by their letter dated June 4, 1969.

19. Paragraph 9 of the said letter (vide annex. C to the affidavit of Suresh Chandra Vajpeyi dated March 6, 1972) did not totally prohibit the recruitment on the main land but directed that the appointments of Class III and Class IV posts under the Andaman and Nicobar Administration shall, in future, primarily be made locally in the Andaman and Nicobar Islands. In case suitable candidates were not locally available, the Administration with the specific approval of the Government of India was entitled to make recruitment on the main land. In my view, para. 9 of the said letter (vide annex. C to the affidavit of Suresh Chandra Vajpeyi dated March 6, 1972) did not in terms apply to the Petitioner. He was already serving on deputation under the Administration at the date of the issue of the said letter. In his case, the question of making fresh recruitment did not arise, but whether he should be absorbed on permanent basis after the expiry of the tenure of his deputation. In this connection I may refer to the subsequent letter No. 27/36/67-ANL(2) dated November 3, 1969, (vide annex. C to the affidavit of Suresh Chandra Vajpeyi dated March 6, 1973) of the Government of India, Ministry of Home Affairs, clarifying the points raised by the Administration. Paragraph 2 of the said letter dealt with the terms and conditions of the deputationists whose extended period of deputation commenced from a date

prior to June 4, 1969, but the orders extending the term were actually issued after June 4, 1969. Paragraph 3 of the said letter deals with persons who were initially taken on deputation and had offered to become permanently absorbed under the Andaman and Nicobar Administration. In case where the Administration decided before June 4, 1969, to permanently absorb these persons, but the actual permanent absorption order was not issued before June 4, 1969, the persons concerned were to be given chance to be governed by the new terms of Compensatory Allowance and Special Allowance or to withdraw their offer to permanent absorption and to revert to their parent department. In case of persons whose permanent absorption were taken only after June 4, 1969, they were eligible only for the new terms.

20. The Petitioner was originally appointed on deputation for a period of three years (vide annex. A to the affidavit of Suresh Chandra Vajpeyi dated March 6, 1972). His term of deputation was extended from time to time. After the expiry of the extended terms of deputation the Andaman and Nicobar Administration did not seek for extension of the period beyond December 31, 1970, and took steps for permanent absorption of the Petitioner and several others. As early as November 2, 1968, the Petitioner had applied to the Chief Secretary, Andaman and Nicobar Administration, for taking steps for his permanent absorption (vide annex. C to the petition). The facts and circumstances prove that the Andaman and Nicobar Administration had intended to permanently absorb him prior to June 4, 1969. On April 19, 1969, the Assistant Secretary to the Chief Commissioner of the Andaman and Nicobar Administration had addressed a letter to the Uttar Pradesh Government stating that the Petitioner had applied for his permanent absorption by his application dated November 2, 1969. The Uttar Pradesh Government was requested to intimate whether the State Government had any objection to permanently absorb the Petitioner. Further, the Uttar Pradesh Government was requested to protect his lien until he was confirmed under the Andaman and Nicobar Administration. In the meantime, the Government of India, Ministry of Home Affairs, had issued a letter No. 27/36/67-ANL dated June 4, 1969, (vide annex. C to the affidavit of Suresh Chandra Vajpeyi dated March 6, 1972) and subsequent clarification by its letter dated November 3, 1969 (vide annex. B to the affidavit of Suresh Chandra Vajpeyi). Therefore, in the case of the Petitioner para. 3 of the letter of the Government of India dated November 3, 1969, (vide annex. B to the affidavit affirmed by Suresh Chandra Vajpeyi dated March 6, 1972) was applicable. On April 19, 1969, the Andaman and Nicobar Administration had asked the Petitioner to confirm that he was willing to be permanently absorbed subject to the conditions mentioned in the letter (vide annex. D to the petition). The Assistant Secretary to the Chief Commissioner by his memo. No. 49/1/69-ADM dated January 1, 1970, had again called upon the Petitioner and Ors. to exercise their option whether they were prepared to be permanently absorbed on the new terms of Compensatory and Special Allowance with effect from June 4, 1969, or to revert to their parent department (vide annex. E to the writ petition). It is also not disputed that the

Petitioner had exercised his option to be absorbed under the new terms of the Andaman Special Allowance and Compensatory Allowance (vide annex. F to the petition). The Respondents in para. 22 of their affidavit-in-opposition, affirmed by Suresh Chandra Vajpeyi dated March 6, 1972, did not fully set out the terms and conditions of offering permanent absorption to the Petitioner. The Assistant Secretary to the Chief Commissioner while forwarding the copy of the letter written by the Administration to the Uttar Pradesh Government had informed the Petitioner that the seniority as higher grade clerk in the Amalgamated Clerical Establishment would come only with the date of confirmation in due course. His confirmation was to be taken upon suitability and availability of permanent post and his seniority as higher grade clerk under the Administration. The said offer did not, however, mention that the Petitioner's absorption would be subject to the approval of the Government of India. The memo. No. 49-1/69-Adm. dated January 1, 1970, of the Assistant Secretary to the Chief Commissioner of the Andaman and Nicobar Administration (vide annex. E to the petition) also did not stipulate that the absorption of the Petitioner and Ors. mentioned therein were subject to the approval of the Government of India. In fact, the Government of India's letter No. 27/36/67-ANL(2) dated November 3, 1969, (vide annex. B to the affidavit of Suresh Chandra Vajpeyi) did not also stipulate that the case of existing deputationists who had agreed to be absorbed prior to the issue of the Government of India's letter dated June 4, 1969, (vide annex. C to the affidavit of Suresh Chandra Vajpeyi) would be subject to the approval of the Government of India.

21. In my view, the Andaman and Nicobar Administration was not entitled to release the Petitioner on the plea that the Government of India did not approve of the Petitioner's absorption on permanent basis. The Petitioner acting on the representations of the Andaman Administration that if he exercised his option and agreed to abide by the new terms and conditions for his permanent absorption he had certainly altered his position and had acted to his detriment. The Andaman and Nicobar Administration, in my view, in such circumstances should not be allowed to act in breach of their representations contained in their letter dated September 13, 1968, referred in the Petitioner's letter dated November 2, 1968 (vide annex. C to the writ petition), the subsequent letter of the Administration dated April 19, 1969 (vide annex. D to the petition) and the memorandum dated January 1, 1970 (vide annex. E to the petition).

22. I have already observed that the Petitioners were existing deputationists when the Government of India, Ministry of Home Affairs, issued their letters dated June 4, 1969, and November 3, 1969 (vide annexes. C and B to the affidavit affirmed by Suresh Chandra Vajpeyi dated March 6, 1972), their absorption on permanent basis cannot be strictly equated with fresh recruitment contemplated by para. 9 of the letter dated June 4, 1969 (vide annex. C to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi). Further, the Administration by their communications to the Government of India (vide annexes. O and P to the affidavit-in-reply affirmed by Hari Shankar Pant, on May

29, 1972) clearly stated that the Petitioner already formed part of the cadre and the Administration needed his service. It was necessary to retain his services. In substance, the Andaman and Nicobar Administration themselves had stated that local recruits were not available. The Assistant Secretary (E), Andaman and Nicobar Administration, in his letter No, 45-34(MRD)/71-Adm. dated April 26, 1971, had expressly stated:

However, approval of the Government of India is now necessary for permanent absorption of these officers in terms of Ministry's signal No. 4/56/70-ANL dated the 9th December, 1970. Suitable qualified and experienced higher grade clerks are not available locally and it will be in the public interest to have them permanently absorbed in the amalgamated clerical establishment.

Therefore, the conditions mentioned in para. 9 of the letter dated June 4, 1969, were fulfilled. I have already stated that the Respondents, however, have not produced before me any copy of the Ministry's signal No. 4/56/70-ANL dated December 9, 1970, and they have not disclosed the precise nature of the directive, if any, contained therein. Presumably, the Government of India had directed by the said signal that its approval was necessary for permanent absorption. I have already pointed out that the Andaman and Nicobar Administration, while recommending that the Petitioner be permanently absorbed, had pointed out that suitable qualified and experienced higher grade clerks were not locally available. (In this connection, see para. 5 of the affidavit of Amiya Bhusan Sen, the Respondent No. 3, filed on August 7, 1972). The Petitioner had exercised his option to be governed by the new rules regarding payment of compensatory and other allowances.

23. The Government of India while refusing to accord its approval to the absorption of the Petitioner did not give any reasons. The orders of the Government of India disapproving the Petitioner's absorption were not certainly judicial or quasi-judicial in nature. But, the Government of India had itself laid down the principles for permanent absorption of deputationists from main land. Therefore, the Government of India in granting and refusing the approval to permanent absorption of such deputationists was bound to act in terms of its own directives. The Respondents cannot be allowed to make departure from the said rules specially after the Petitioner had acted upon the representations made by the Respondents. It was not open to the Government of India to act arbitrarily and capriciously by withholding the approval to absorption of deputationists who otherwise fulfilled the terms and conditions for such absorption. The Government of India was made one of the Respondents in the Rule, but it has not any separate affidavit-in-opposition stating the circumstances under which it had refused the approval to the permanent absorption of the Petitioner. I may further point out that the aforesaid directives of the Government of India dated June 4, 1969, and November 3, 1969, (vide annexes. C and B to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi) did not absolutely prohibit permanent absorption of the main land deputationists. The Andaman and Nicobar

Administration, as already stated, had recommended for Petitioner's absorption. But, they were unable to absorb the Petitioner because of the directives of the Government of India to the contrary. In my view, the directives of the Government of India for not approving the Petitioner's permanent absorption were illegal. The same were issued without any regard to the provisions of the Government of India's letter dated June 4, 1969, and November 3, 1969, The Government of India did not give any reason and there is nothing to show whether it applied its mind to the facts and circumstances of the Petitioner's case. In such circumstances, I must hold that the Government of India's decision that the Petitioner should not be permanently absorbed cannot stand.

24. There is considerable substance in the contention of the Petitioner that in the instant case the Andaman and Nicobar Administration by its own Recruitment Rules, 1966, reserved 20 percent of the higher grade clerks for deputationists. According to the affidavit of Amiya Bhusan Sen, the Respondent No. 3, amended Rule 7(2) provides for 15 percent quota for filling up by deputation on temporary basis. Although the Andaman and Nicobar Administration while initially offering appointment to the Petitioner did not hold out any promise that they would be automatically absorbed, the Administration called upon the Petitioner to exercise option for permanent absorption. The Petitioner's deputation came to an end in July 1969. But, he was retained in service and his deputation was extended from time to time, but ultimately he was retained by the Andaman and Nicobar Administration without further extension of his deputation period. The Administration offered to absorb the Petitioner provided that he was agreeable to accept the new terms regarding payment of compensatory allowance, etc. (vide annex. E to the writ petition). The Andaman and Nicobar Administration requested the Uttar Pradesh Government to intimate whether they were agreeable to the Petitioner's permanent absorption. The Uttar Pradesh Government had agreed to such absorption of the Petitioner. The Petitioner had exercised his option for permanent absorption according to the new terms and conditions of the service. The Petitioner's deputation was not renewed beyond December 3, 1970, long after the expiry of the period of his deputation, the Uttar Pradesh Government had stated that it was prepared to consider further extension of the Petitioner's deputation and, therefore, the said fact was not relevant (vide annex. K to the affidavit of Suresh Chandra Vajpeyi). The Andaman and Nicobar Administration in its communications to the Government of India has stated that the Petitioner almost formed part of the regular cadre (vide annex. P to the affidavit-in-reply) and recommended that he be permanently absorbed (vide para. 5 of the affidavit-in-reply of Amiya Bhusan Sen, the Respondent No. 3).

25. The Supreme Court in *Union of India and Ors. v. Indo-Afghan Agencies etc.* AIR 1968 S.C. 718 (725, 727) laid down:

... where a person has acted upon representations made in an Export Promotion Scheme that import licences upto the value of the goods exported will be issued,

and had exported goods, his claim for import licence for the maximum value permissible by the Scheme could not be arbitrarily rejected.

... It is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise was not recorded in the form of a formal contract as required by the Constitution.

The Supreme Court in its latter decision in *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, followed its earlier decision in *Union of India and Ors. v. Indo-Afghan Agencies etc.* *Supra*. The Supreme Court held that the Respondent municipality, who had entered into an arrangement not to levy control duty for a period of seven years, cannot later on decline to abide by the said undertaking. Shah J. (as he then was), *inter alia*, observed:

A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person, it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting therefore, but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation.

Shah J. (as he then was) further observed:

Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced *ex contract* by a person who acts upon the promise; when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if, the contract be not in that form, may be enforced against it in appropriate cases in equity.

26. In the instant case, the Government of India did not frame rules under Article 309 of the Constitution. No Regulation was made under Article 240 regarding the permanent absorption of the deputationists to the Andaman and Nicobar Administration. On the other hand, the Government of India and the Andaman and Nicobar Administration by administrative instructions provided for absorption of deputationists subject to the terms and conditions contained therein. According to the Andaman and Nicobar Administration itself the Petitioner fulfilled such terms and conditions. The Petitioner had exercised his option accepting the terms and conditions mentioned in the letter of the Andaman and Nicobar Administration dated April 19, 1949 (*vide annex. D to the*

petition).

27. Therefore, the later decision of the Supreme Court in *C. Sankaranarayanan, etc., etc. Vs. The State of Kerala*, has no manner of application. In *Sankaranarayanan v. State of Kerala etc.* the Government in exercise of its power under Article 309 had made rules changing the conditions of services of teachers of aided schools. The Supreme Court held that the rule of estoppel could not be invoked in such cases. In *State of Tamil Nadu and Others, etc. Vs. S.K. Krishnamurthi, etc. etc.*, the Supreme Court found as a fact that the Government held out no representation to the publishers of text-books that the books once prescribed would not be changed for the specified period. Therefore, the Supreme Court in *State of Tamil Nadu v. S.K. Krishnamurthy* declined to apply the principles of law laid down in *Union of India v. Indo-Afghan Agencies Supra*.

28. For the foregoing reasons I hold that the Petitioner is entitled to succeed.

29. I, accordingly, make this Rule absolute. Let a writ in the nature of certiorari issue quashing the orders dated December 29, 1967, September 4, 1971, and September 15, 1971 (annexs. A, G and K to the writ petition and annexes. F, G and H to the affidavit-in-opposition dated March 6, 1972). Let a writ in the nature of mandamus also issue commanding the Respondents not to give effect or further effect to the orders for reverting and releasing the Petitioner from his post of upper division clerk under the Andaman and Nicobar Administration and further commanding them to cancel and rescind orders for reverting and releasing him.

30. There will be no order as to costs.

31. As these Rules have succeeded, I direct that the sums paid under interlocutory orders of this Court by the Respondents to the Petitioners would be adjustable against arrears of salaries, if any, payable to the Petitioners for the period in question.

32. The operation of this order is stayed for eight weeks from date.

Rule absolute

Chittatosh Mookerjee#, J.—This Rule has been heard analogously with C.R. No. 3263(W) of 1971. Today, by a separate judgment, I have disposed of the said Rule. The facts and points of law of this case are similar with those of C.R. No. 3263(W) of 1971. Therefore, the judgment given in C.R. No. 3263(W) of 1971 will also govern this case. I, therefore, propose to only briefly indicate the facts of the present case.

2. The Petitioner was a lower division assistant in the Home (Police) Department, Uttar Pradesh Civil Secretariat. While the Petitioner had been officiating as upper division assistant, he exercised his option to serve on deputation as an upper division assistant under the Andaman and Nicobar Administration. The Uttar Pradesh Government placed his services at the disposal of the Andaman and

Nicobar Administration on deputation with effect from July 22, 1965 (vide annex. A to the writ petition). The terms and conditions of his appointment as upper division assistant under the Administration were set out in the letter of the Administration dated September 28, 1964 (vide annex. A to the writ petition) and the office order No. 2444 dated September 16, 1965 (vide annex. A to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi dated March 6, 1972). On October 29, 1970, the Petitioner had applied to the Chief Secretary, Andaman and Nicobar Administration, for his permanent absorption (vide annex. H to the affidavit-in-opposition affirmed by Suresh Chandra Vajpeyi dated March 6, 1972). The Andaman and Nicobar Administration requested the Government of India to approve the proposal for his permanent absorption. The Government of India by its message No. 4/31/71-ANL dated May 22, 1971, informed the Andaman and Nicobar Administration that the said proposal could not be agreed to and the deputationists concerned should be reverted as early as possible. The Andaman and Nicobar Administration made further communications to the Government of India for reconsidering the matter, but the Government of India declined (vide annexes. J, K and L to the affidavit affirmed by Suresh Chandra Vajpeyi dated March 6, 1972). It may be noted that the Petitioner's original period of deputation had expired. The same was extended from time to time. Long after the expiry of the said extended period, the Uttar Pradesh Government had expressed its willingness to give further extension of the Petitioner's deputation period. Ultimately, the Andaman and Nicobar Administration released the Petitioner from service to enable him to join his post under the Uttar Pradesh Government. At that stage, the Petitioner moved this Court and obtained the present Rule.

3. For the foregoing reasons, I hold that the Petitioner is entitled to succeed.

4. I, accordingly, make this Rule absolute. Let a writ in the nature of certiorari issue quashing the orders dated December 29, 1967, September 4, 1971, and September 15, 1971 (vide annexes. N and O to the writ petition and annexes. F, G and H to the affidavit-in-opposition dated March 6, 1972). Let a writ in the nature of mandamus also issue commanding the Respondents not to give effect or further effect to the orders for reverting and releasing the Petitioner from his post of upper division clerk under the Andaman and Nicobar Administration and further commanding them to cancel and rescind orders for reverting and releasing him.

5. There will be no order as to costs.

6. Let the operation of this order be stayed for eight weeks.