

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Ernakulam Bench

OA No.431/91, 451/91, 694/91, 721/91 & 733/91.

Date of decision: 14.10.92

Applicants

Mr Francis Rodrigues & 4 others in OA 431/91.

Mr Sabu K and another in OA 451/91.

Mr Jolly Pallipadam & 2 others in OA 694/91.

Mr T Sahadevan and others in OA 721/91.

Mrs PL Kochumary and another in OA 733/91.

Advocate for the applicants

Mr P.S. Biju in OA 431/91, & 694/91.

Mr M Girijavallabhan in OA 451/91.

Mr M.R. Rajendran Nair in OA 721/91.

Mr P. Santhosh Kumar in OA 733/91.

Versus

Respondents

Union of India and others

Advocate for the respondents

Mr NN Sugunapalan, SCGSC for respondents 1 & 2 and
Mr M. Girijavallabhan for respondents 3 to 7 in OA 431/91.

Mr K.A. Cherian, ACGSC for Res.1 to 3 and
Mr P.S. Biju for Respondents 4 to 6 in OA 451/91.

Mr V. Ajitnarayanan, ACGSC in OA 694/91.

Mr S.V. Balakrishna Iyer, ACGSC for Res.1 to 3 and
Mr. P.S. Biju for respondents 4 to 7 in OA 721/91.

Mr NN Sugunapalan, SCGSC for Res.1 & 2 and
Mr P.S. Biju for respondents 3, 4 & 5 in OA 733/91.

contd.

C O R A M:

The Hon'ble Mr SP Mukerji, Vice Chairman
and

The Hon'ble Mr AV Haridasan, Judicial Member

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1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporters or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

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J U D G E M E N T

(Hon'ble Shri AV Haridasan, JM)

Since the decision in all these cases would depend mainly on resolving a common question whether the apprentices trained in the Naval Ship Repair Yard are ex-Naval Apprentices, all these cases are being considered and disposed of by this common order. Since facts of individual cases vary to certain extent from case to case, it is necessary to state the facts of the cases in detail.

DA 431/91

The applicants, four in number, after passing the ITI's course in electrical trade underwent apprentice's training in the designated trade of Electrician in the Naval Dockyard Apprentice School, Kochi, from October, 86 to September, 87. They came out successful in the examination held in October, 1987, the result of which was

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published on 29.12.1987. According to the recruitment rules for appointment as Tradesman (Skilled) in the Naval Ship Repair Yard issued vide SRO 338 S1 3 dated 19.11.79 amended vide SROs 131/84, 25/87 and 200/89 (Annexure A1), recruitment is first by the absorption of trained ex-Naval Apprentices. Even after the completion of the apprenticeship training by the applicants, several vacancies which arose under the 2nd respondent were regularly filled by appointment of persons who were not ex-Naval Apprentices. Respondents 3 to 7 were some among them. Claiming that the applicants are ex-Naval Apprentices and that the appointment of outsiders overlooking their preferential claim for appointment under the recruitment rules ^{was illegal} and requesting for regular appointment as Tradesmen, the applicants submitted representations to the 2nd respondent. A copy of the representation submitted by the 1st applicant on 21.1.1991 is at Annexure A2. Their representations were disposed of by the 1st respondent indicating that their request for appointment as Tradesmen (Sk), Electrician, would be considered in turn as and when suitable vacancies arose. Annexure A3 is a copy of the reply dated 31.1.1991 received by the 1st applicant. Alleging that the 2nd respondent was taking hasty steps to fill existing vacancies in the posts of Tradesmen (SK), Electrician, by appointment of outsiders without considering them and that the appointment of respondents 3 to 7 overlooking their claim for

preferential absorption is illegal and in gross violation of the provisions of the recruitment rules, the applicants have filed this application under Section 19 of the Administrative Tribunals Act for the following reliefs:-

- (i) To call for the records leading to Annexure A3 and appointment of respondents 3 to 7 and set aside the appointment of respondents 3 to 7 as illegal, their appointment being in contravention of the provisions of Recruitment Rules at Annexure A1 and the provisions of Apprentice Act;
- (ii) to direct the respondents 1 and 2 to appoint the applicants against the post of Tradesmen (Sk), Electrician available vacant under the 2nd respondent;
- (iii) to direct the respondents 1 and 2 not to make any appointment to the post of Tradesmen (Sk), Electrician under the 2nd respondent which arose after 29.12.87 giving preference in seniority over those appointed in contravention of Annexure A1 Recruitment Rules and provisions of the Apprentice Act; and
- (iv) to allow the applicants to file the OA jointly.

3. The material contentions raised by the respondents 1 & 2 in their reply statement are as follows:-

Since the respondents 3 to 7 were appointed in the year 1988, the applicants who have not so far challenged these appointments, cannot be allowed to challenge the same after a lapse of three years. The application to that extent, is barred by limitation. According to the

clarification given by the Naval Headquarters in its letter CP(SC)/2889 dated 30th September, 1981, the term ex-Naval Apprentices used in Statutory Rule and Order 338 of 1979 refers only to apprentices trained for Navy's requirement. In other words, this term refers to non-designated ex-apprentices. According to Government of India, Ministry of Defence UD No.2(2)/82/D(LAB) dated 9th May, 1983 (Annexure R4) 50% of the direct recruit vacancies is to be filled by trained apprentices, first preference being given to the apprentices trained in the same establishment. The vacancies in the post of Tradesmen Electrical (Sk) which arose in December, 1988 were filled up strictly according to rules inasmuch as 4 apprentices already in employment on casual basis were appointed along with promotees and other casual employees who were already in service. Applications requesting for appointment in the Naval Ship Repair Yard were not received from the applicants at that time. When the applicants requested for appointment, they were appointed on casual basis in April, 1989 against short term vacancies and on completion of the project in which they were appointed, they could not be further appointed for want of vacancies. Since the regular appointments made were in accordance with rules and as no vacancy existed presently, the applicants are not entitled to any relief and, therefore, the application is liable to be dismissed.

4. The material contentions raised in the reply statement by respondents 3 to 7 can be summarised as follows:-



As the applicants have not registered their names with the Employment Exchange after passing the NTC and NAC examination conducted by the National Council for Vocational Training (NCVT), they are not entitled to be appointed under the 2nd respondent. The claim of the applicants that they are ex-Naval Apprentices and are entitled to preference for absorption according to Recruitment Rules at Annexure A1, is unsustainable. The terms ex-Naval Apprentices referred to in SRO 338/79 as amended by SRO 131/84, 25/87 and 200/89 is in respect of Naval Apprentices recruited for training under Navy Act, 1957 and Naval Regulations 268 to 274 of Part III of the Regulations for the Navy promulgated statutorily under Section 184 of the Navy Act, 1957. The applicants who are ex-ITI Apprentices recruited by the respondents 1 & 2 for apprentice training in designated trade, are only apprentices under the Apprentice Act, 1961 and, therefore, they are not ex-Naval Apprentices. Hence, they are not entitled to challenge the appointment of the respondents 3 to 7 after 3 years of their appointment and cannot claim to belong to the preferential category under the Recruitment Rules. The decision taken by this Tribunal in OA 436/90 that apprentices trained in the Naval Ship Repair Yard are ex-Naval Apprentices included in the preferential category in the Recruitment Rules does not reflect the correct legal position and requires reconsideration. For the above reasons, the application is liable to be dismissed.

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OA 451/91

5. The two applicants, after passing their ITC/ITI course in the trade of Mechanic, Radio and Television, in the year 1984, successfully completed apprenticeship training in Kerala State Electronics Development Corporation (KELTRON), Trivandrum, ^{and} obtained National Apprenticeship Certificate awarded by the NCVT. Their names were sponsored by the Employment Exchange to the 2nd respondent for selection to the 16 vacancies of Radio Mechanic (Skilled) and after selection test ~~and~~ interview and police verification, they were initially appointed by the 2nd respondent as Radio Mechanic (Sk) on casual basis. Though they were appointed initially on casual basis with effect from 20.6.88. The 16 vacancies notified were really regular vacancies. The 1st applicant was continued in service with intermittent breaks till 4.9.91 and the 2nd applicant till 30.3.90 and thereafter, they were not engaged. The respondents 4 to 6 who have not passed the National Apprenticeship Certificate Examination conducted by the NCVT and not sponsored by the Employment Exchange were directly inducted without any selection process to regular ^{posts of Tradesmen (Sk)} ~~XXXXXX~~ Mechanics with effect from 21.6.88. ³ On enquiry, coming to understand that the respondents 4 to 6 who were imparted apprenticeship training under the 2nd and 3rd respondent in designated trades under the authority of an executive instruction issued by the Ministry of Defence by letter No.DY/0442/NHQ/3393/D (N-II) dated 26th March, 1966 (Annexure C) were treated as ex-Naval

Apprentices, given preference for regular absorption in service ^{in preference} to the applicants who were sponsored by Employment Exchange and were duly selected, the applicants have filed this application praying that it may be declared that respondents 4 to 6 are not ex-Naval Apprentices, that the 3rd respondent has no legal and valid authority to issue certificates on completion of apprenticeship training, that the certificates issued by the NCVT alone are valid apprenticeship certificates and for a direction to the respondents to appoint the applicants with retrospective effect from 20.6.88 against the vacancies which arose on or after 4.8.87 ignoring the technical or artificial breaks in preference to respondents 4 to 6. They have also prayed that the administrative instruction dated 26.3.66 issued by the Government of India, Ministry of Defence (Annexure C) and the Recruitment Rules SRO 338/79 as amended by SRO 131/84, 25/87 and 200/89 (Annexure D1 to D4) providing for preference to ex-Naval Apprentices may be quashed ^{they are} as arbitrary and violative of Articles 14 and 16 of the Constitution. It has been alleged in the application that respondents 4 to 6 who had undergone training in designated trades and have not passed the examination held by the NCVT are not ex-Naval Apprentices and that the decision of this Tribunal in OA 436/90 that apprentices trained by the Naval Ship Repair Yard are ex-Naval Apprentices, is opposed to the correct legal position. The applicants have also prayed that it may be declared that the decision of this Tribunal in

8. The applicants have filed a rejoinder reiterating their contentions in the Original Application that ex-Naval Apprentices mean only apprentices recruited under Navy Regulations 268 to 272 and that the 3rd respondent has no authority to issue Apprenticeship Certificates.

OA 694

9. The three applicants in this case, after obtaining ITI certificates, underwent apprenticeship training in the trade of Sheet Metal Worker at the Apprentice Training School, Naval Ship Repair Yard, Kochi from 1.10.1986 to 30.9.1988. On successful completion of the apprenticeship, the National Council for Vocational Training (NCVT) awarded National Apprenticeship Certificates to them. As per the Recruitment Rules issued vide SRO 388 (81 3) dated 19.11.79 recruitment to the post of Tradesmen (Sk) is first by absorption of ex-Naval Apprentices. After the applicants have successfully completed their apprenticeship training in September, 1988, three persons who were not ex-Naval Apprentice, namely Shri Francis Padavan, Shri Ponnann and Shri Francis were appointed against the regular vacancies as Tradesmen (Sk), Sheet Metal Worker after 30.9.88. According to the applicants, these vacancies should have been filled by first absorbing them in accordance with recruitment rules. Finding that even existing vacancies were being attempted to be filled by outsiders, the first applicant

submitted a representation to the 1st respondent on 4.4.91 pointing out that he was entitled to be appointed as Tradesmen (Sk) with due preference under the Recruitment Rules. The other applicants had also made representations. In reply to the representation, the applicants were told that their request for appointment would be considered in their turn when suitable vacancies become available. Apprehending that the respondents would fill the existing vacancies by appointing persons other than ex-Naval Apprentices like the applicants, the applicants have filed the application praying that the records in relation to the appointment of Tradesmen (Sk) Sheet Metal Workers since 30.9.88 may be called for and the respondents may be directed to appoint the applicants giving them seniority above all those who were appointed as Tradesmen(Sk) Sheet Metal Worker after 30.9.88.

10. The respondents in their reply statement have contended that the applicants who had undergone apprenticeship training in designated trade cannot be considered as ex-Naval Apprentices as the term ex-Naval Apprentice referred in SRO 338 mean only apprentices trained in non-designated trades and that the claim of the applicants that they are entitled to first preference in the matter of recruitment of Tradesmen is unsustainable. They have indicated that the appointment of three persons named in the application as Tradesmen were made before the applicants had completed their training and that according to Recruitment Rules/Promotion Rules SRO 338/79 as amended by SRO 131/84, 25/87 and 200/89,

only 50% of the vacancies are to be filled by apprentice trained in the Naval Ship Repair Yard and the remaining 50% is to be filled by candidates sponsored by Employment Exchange as provided in the Government of India, Ministry of Defence letter No.2(2)/82/D(LAB) dated 9th May, 1983 (Annexure R4). The respondents contend that as there is no vacancy at present, the complaint of the applicants that steps are being taken for appointment of outsiders ignoring their claim is devoid of merit. They, therefore, contend that the application may be dismissed.

QA 721/91

11. The case of the applicants is as follows:-

The applicants, after obtaining the ITI Certificates, underwent apprenticeship training in vocational trade in Electrical trade and were awarded National Apprenticeship Certificate by NCVT. Pursuant to a requisition issued by the 3rd respondent to the Employment Exchanges to nominate qualified persons for appointment as Electrician (Sk), the applicants were nominated by different Employment Exchanges. After trade test and interview, they were provisionally selected for appointment to the post of Electrician (Sk). The first applicant commenced service on 25.9.87 and the applicants 2 to 5 commenced service on 10th November, 1987, 23rd December, 1987, 21st December, 1987 and 22nd December, 87 respectively. They were working almost continuously with intermittent breaks. While so, the respondents 4 and 7 were

appointed on casual basis on 2.5.88 and 20.6.88 respectively without being sponsored by the Employment Exchange and without being subjected to any test or interview. As the respondents 4 and 7 had obtained only similar ^{certificates} ~~service~~ as the applicants, they were not entitled to any superior claim for regular appointment in preference to the applicants who had longer continuous service. While the respondents 4 & 7 are being allowed to continue in service, the services of the 1st applicant was terminated on 28.2.1991, that of the 5th applicant on 3.11.90 and that of the applicants 2 to 4 were terminated with effect from 4.1.91. Pointing out the discriminatory treatment, the applicants approached the 3rd respondent, but without any positive result. On further enquiry in the matter, the applicants came to know that the respondents 4 to 7 have been regularly appointed. Thereafter the applicants submitted representations pointing out that they were selected for regular appointment, that termination of their services without passing any order retaining in service those who commenced service later, was illegal and requesting for re-engagement and regularisation in service without break in service and consequential benefits. Finding no response to these representations, the applicants have filed this application for a declaration that denial of employment and regularisation to them while respondents 4 to 7 were retained and regularised in service is illegal, that the applicants are entitled to be considered seniors to respondents 4 to 7 and for a direction to the respondents

to reinstate the applicants in service and to regularise them with effect from the date of their initial appointment in preference to respondents 4 to 7 with consequential benefits.

12. The respondents 1 to 3 in their reply statement seek to justify the regular absorption of respondents 4 to 7 as Tradesmen on the ground that the respondents 4 to 7 being ex-Naval Apprentices trained in NSRU, Kochi, in accordance with Recruitment Rules, they have to be considered for absorption in regular vacancies. They contend that the applicants who were engaged only on casual basis for non-availability of ex-Naval Apprentices, have no right to claim regular absorption. It was also averred in the reply statement that in DA 436/90, this Tribunal has held that ex-Naval Apprentices are entitled to first preference in the matter of appointment to regular vacancies.

13. In a detailed rejoinder, the applicants have contended that the term ex-Naval Apprentices mean apprentices recruited under the Navy Regulations and that the view taken by the respondents 1 to 3 that apprentices trained by the NSRY under the Apprentices Act, 1961 are ex-Naval Apprentices, is erroneous. Reference is made to the clarification issued by order of Chief of Naval Staff in reply to a letter by the Flag Officer Commanding-in-Chief, Southern Naval Command, which reads as follows:-

"I am directed to refer to the correspondence resting with Naval Headquarters letter CP(SC)/2889 dated 22 Jul 78 and to clarify that the term "ex-Naval apprentice" used in SRO 338/79 referred to only apprentices trained for Navy's requirement. In other words, this term refer to non-designated ex-apprentices."

Relying on the above clarification, the applicants contend that the term "ex-Naval apprentices" do not apply to apprentices who had undergone apprenticeship training in designated trades and that viewed in that perspective, the respondents 4 to 7 who had undergone training in designated trades of Electrician under the 1961 Act cannot be called ex-Naval apprentices. The applicants also contend that the ex-Naval apprentices mentioned in the Recruitment Rules mean Naval apprentices who had undergone $4\frac{1}{2}$ years apprenticeship course in the Indian Navy under the Navy ~~xxx~~ order 6/76 and that the absorption of respondents 4 to 7 wrongly treating them as ex-Naval apprentices is unjustified. The applicants further contend that ~~xxxxx~~ the Navy order No. 2832 issued by the Ministry of Defence on 4th March, 1950 (Annexure XX) prohibits departure from the requirement of notifying vacancies to the Employment Exchanges and that the recruitment of respondents 4 to 7 by directly absorbing them without being sponsored by the Employment Exchange was unlawful and unjustified.

OA 733/91

14. The case of the applicants is as follows:-

The two applicants possess the National Apprenticeship Certificate issued by the National Council for Vocational

Training having undergone apprenticeship training in recognised establishments. As per requisition issued by the 2nd respondent, the District Employment Exchange, Ernakulam, sponsored names for consideration for appointment to 16 vacancies of Radio Mechanics (Sk). After conducting a written test and interview of the candidates sponsored by the Employment Exchange, 16 including the applicants were selected. After appointing 11 persons from the select list made on 4.8.87, the respondents 3 to 5 were appointed on casual basis on 21.12.87 by the 2nd respondent without observing the requirement of sponsorship by Employment Exchange and selection. The respondents 3 to 5 do not possess the National Apprenticeship Certificate as they had undergone apprenticeship in non-designated trades, in the training school in the Naval Ship Repair Yard, Kochi which had no authority to conduct examinations for apprentices under the Apprentices Act, 1961. Therefore, the respondents 3 to 5 do not have the minimum qualification prescribed in the Recruitment Rules for appointment as Radio Mechanic (Sk) under the 2nd respondent. While recruitments to the Departments of Government of India have to be made strictly through Employment Exchange from among persons who possess the requisite qualification, the action on the part of the respondents 1 & 2 in regularly absorbing the respondents 3 to 5 characterising them as ex-Naval Apprentices without regularly absorbing the applicants in service, is wholly unjustified. The term 'ex-Naval Apprentices' mean only apprentices recruited under the Navy Regulations. The respondents 3 to 5 merely

for the reason that they were imparted some training in the training school of the Naval Ship Repair Yard cannot be treated as ex-Naval apprentices and given preference under the Recruitment Rules. After the respondents 3 to 5 were given regular appointment in preference to the applicants overlooking their seniority, the applicants made a representation to the 2nd respondent requesting that the appointments of respondents 3 to 5 may be cancelled and the applicants may be appointed. In reply to this representation, the applicant No.2 was informed by the Civilian Gazetted Officer Staff Officer (Civilians) for Flag Officer Commanding-in-Chief by letter dated 1st February, 1991 (Annexure VI) that the respondents 3 to 5 who were trained in non-designated trades were ex-Naval apprentices and that their appointment in preference to the Employment Exchange candidates irrespective of their position in the casual labour employment was in accordance with the existing rules and that the 2nd applicant even going by the seniority in casual service was appointed later than the initial appointment of the respondents 3 to 5. It is aggrieved by the above communication at Annexure VI and by the appointment of respondents 3 to 5 on a regular basis before the applicants were appointed, that the applicants have filed this application praying that the impugned order at Annexure VI may be quashed, that it may be declared that the respondents 3 to 5 are not qualified to be appointed in the vacancies which arose on or after 4.6.87, the date of selection of the applicants

against notified vacancies and for a direction to the respondents to appoint the applicants as Radio Mechanics (Sk) in preference to the respondents 3 to 5.

15. The respondents 1 & 5 have in their reply statement contended that the respondents 3 to 5 who were qualified ex-Naval apprentices were, on completion of their training successfully in non-designated trades in the training school under the Naval Ship Repair Yard, Kochi, entitled to first preference for recruitment to the cadre of Tradesmen according to the Recruitment Rules and that the applicants who were engaged on casual basis towards short term vacancies have no right to challenge the absorption of the respondents 3 to 5. It is contended that the recruitment of artificer apprentices under the Navy Regulations, has absolutely no relevance to the recruitment in question and that for the purpose of absorption of ex-Naval apprentices sponsored through Employment Exchange is not applicable. The respondents, therefore, contend that there is absolutely no merit in the application and it has to be dismissed.

16. Since the pivotal question to be decided in all these cases is "whether the apprentices trained in the Naval Ship Repair Yard are ex-Naval apprentices", these applications were heard together. The counsel for ~~all~~ the parties addressed their arguments. We have also carefully perused the pleadings, documents and the relevant rules and instructions touching the matter.

17. We shall now consider the issue whether the apprentices trained in the Naval Ship Repair Yard in designated trades and non-designated trades are ex-Naval apprentices entitled to preference for recruitment to the posts of Tradesmen (Sk) in the Navy. Annexure A1 in OA 431/91 is a copy of the Recruitment/Promotion rules for Tradesmen (Sk) SRO 338/SL 3 dated 19th November, 1979 amended in the SRO 131/84, 25/87 and 200/89. Column 11 in the Recruitment Rules reads as follows:-

"Method of recruitment whether:

Absorption of ex-Naval apprentices failing which by promotion and failing that by transfer and failing both by direct recruitment and failing all by transfer on deputation/re-employment of ex-servicemen."

It is evident from the above extracted portion of the Recruitment Rules that if ex-Naval apprentices are available for absorption, they should be first considered and absorbed. In OA 451/91, the applicants have also prayed that the Government of India, Ministry of Defence order dated 26th March, 1966 according sanction of the President for the introduction of the scheme of training of ex-ITI apprentices in Base Repair Organisations, Cochin and Vishakhapatnam in conformity with the Apprentices Act, 1961 for designated and non-designated trades and the Recruitment Rules SRO 338 amended from time to time (Annexure D1 to D4) may be declared as illegal and unconstitutional to the extent that they are violative of the Articles 14, 15 and 16 of the Constitution, on the ground that they abridge the

fundamental rights of apprentices trained in other institutions in the matter of public employment and confer undue and undeserving benefits on certain individuals on the ground that they were given training under a particular institution. We feel that this point has first to be settled. The order of the Government of India, Ministry of Defence, New Delhi, dated 26th March, 1966 is only one conveying the Presidential sanction for the introduction of a scheme of training of ex-ITI apprentices in Base Repair Organisations, Cochin and Vishakhapatnam in conformity with the Apprentices Act, 1961. This does not abridge or diminish the fundamental rights of any individual. Any person who is qualified to apply for the apprenticeship is free to apply to these Base Repair Organisations for admission to the apprenticeship. The selection of apprentices would be made only according to the rules. There is no prohibition for any person qualified from seeking admission for the apprenticeship. Therefore, we do not find anything illegal or unconstitutional in this order.

18. Now, coming to the Recruitment Rules SRO 338, amended from time to time, (Annexure D1 to D4) the objectionable provision in these Rules according to the applicants is that ex-Naval apprentices are preferred for recruitment in Navy which means if ex-Naval apprentices are available for absorption, apprentices trained in other institutions would not get a chance for employment. The learned counsel for

the applicants with considerable tenacity argued that this offends the equality provisions contained in Articles 14 & 16 of the Constitution. We are not able to agree with the learned counsel. As stated by us while dealing with the Government of India, Ministry of Defence order dated 26th March, 1966 (Annexure C), any person qualified for admission to the apprenticeship under any one of the Base Repair Organisations was free to seek admission. The Recruitment Rules only provide for preference for absorption of ex-Naval apprentices. It is the prerogative of the Departments of the Government to frame Recruitment Rules incorporating provisions which are found to be most appropriate in the interest of service. If while framing the Recruitment Rules, it was considered that trained Naval apprentices would suit the requirement of the Navy better than other apprentices, the classification cannot be considered to be irrational or unjustified. Therefore, we are of the view that the challenge against the provisions in the Recruitment Rules for preference to the ex-Naval apprentices has no merit.

19. Now, we will consider whether the apprentices trained in designated and/or non-designated trades in the Base Repair Organisations of the Navy are ex-Naval apprentices or not. Some of the parties in these applications are apprentices who had undergone apprenticeship training in designated trades and some others have undergone the apprenticeship in non-designated trades. Those who challenge the preference

given to the ex-Naval apprentices of the Base Repair Organisations contend that whether in designated or in non-designated trades, the apprentices who were imparted apprenticeship training under the Apprentices Act, 1961 in Base Repair Organisations cannot be considered as ex-Naval apprentices. They contend that ex-Naval apprentices mean only apprentices recruited under Navy Act, 1957 and the statutory regulations 268 to 274 and other Naval Regulations promulgated under Section 184 of the Navy Act, 1957. According to them, only Naval Artificer Apprentices recruited under the above said Act and Regulations alone can be called ex-Naval apprentices and ^{not} ~~the~~ apprentices who had had apprenticeship training in Base Repair Organisations. Under the Navy Act and the Regulations, Artificer Apprentices are recruited not merely for giving apprenticeship, but for eventual enrolment in the regular service of the Navy as Seamen. Such of those who were thus recruited under the Navy Regulations after their apprenticeship become fullfledged Navymen and after their service they are called ex-Navymen or ex-servicemen. The impugned Recruitment Rules provide for recruitment of ex-servicemen. Ex-servicemen cannot, therefore, come under the category of ex-Naval apprentices. Therefore, the argument that only Artificer Apprentices recruited under the Navy Act and Regulations can be called ex-Naval apprentices does not stand the test of reason. The question whether apprentices trained in the Base Repair Organisations are ex-Naval apprentices came up for consideration in OA 436/90 before the very same Bench of

this Tribunal. In that case, the applicants who had successfully completed apprenticeship training in Naval Ship Repair Yard challenged the appointment of the nominees from ~~Employment~~ Exchange as Radio Mechanics (Sk) on the ground that by doing so, the provision in the statutory Recruitment Rules for giving preference to ex-Naval apprentices in appointment was violated. It was contended on behalf of the Department that those who were trained in the Naval Ship Repair Yard cannot be considered as ex-Naval apprentices. Considering the rival contentions raised in the matter, this Bench ~~observed~~ as follows:-

"We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced. Annexure R2 is a photo copy of the rules regarding recruitment to the post of Tradesmen Skilled (SRO) 338(S1.3) dated 19.11.1979 as amended vide SROs 131/84, 25/87 and 200/89. Column 11 of this reads as follows:-

"Method of recruitment whether by direct recruitment or by promotion or by deputation or transfer and percentage of the vacancies to be filled by various methods.	: Absorption of ex-Naval Apprentices failing which by promotion and failing that by transfer and failing both by direct recruitment and failing all by transfer on deputation/re-employment of ex-servicemen."
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It is evident from the above SRO that the method of recruitment of Tradesmen (Sk) grade is first by the absorption of trained ex-Naval Apprentices. That the applicants have successfully completed the Apprentices Training conducted by the third respondent is a fact admitted. It is contended in the reply statement that in clarificatory notes dated 30.9.1981 at Annexure R3 the term "ex-Naval Apprentices" used in SRO 338/79 has been clarified to mean Apprentices trained for Navy's requirement and that as the Apprentices trained in Naval Ship Repairing Yard are not for Navy's requirement, the applicants have no legitimate claim to claim the first chance for recruitment under the Recruitment Rules. Annexure R3 a letter written by order of Chief of the Naval Staff in reply to a letter by the Flag Officer Commanding-in-Chief, Southern Naval Command, Cochin reads as follows:

"I am directed to refer to the correspondence resting with Naval Headquarters letter CP(SC)/2889 dated 22 Jul 78 and to clarify that the term "ex-Naval apprentice" Navy's requirement. In other words, this term refer to 'non-designated ex-apprentices!'"

Annexure R2 Recruitment Rules is one as amended by SRO 200/89. It is nowhere stated in Annexure R3 that ex-Naval Apprentices mentioned in this letter refers to the term ex-Naval Apprentices in the SRO 338 dated 19.11.1979. Further, from Annexure R3 itself it is clear that ex-Naval Apprentices are in other words referred to a non-designated ex-Apprentices. As the applicants were non-designated ex-Apprentices, the contention of the respondents that as the training was imparted to more candidates than required for immediate absorption in the Navy all those who have undergone training cannot be termed as ex-Naval Apprentices does not stand to reason at all. Annexure R1 is the Government of India, Ministry of Defence letter dated 21.11.1986 addressed to the Chief of Naval Staff on the subject of implementation of Apprentices Act, 1961, Dockyard Apprentices Schools at Bombay, Vizag and Cochin. Paragraph 1 to Appendix A2 to this letter reads as follows:

"General

1. The aim is to train and provide a steady rate of skilled tradesmen required for employment in the Naval Dockyard and other Repair Organisations of Indian Navy and to meet the increasing demand of such personnel in the country. The training will be imparted in accordance with 'The Apprentices Act 1961' and the Rules framed thereunder."

It is obvious from the above extracted declaration of aim that the training was intended to train and provide a steady rate of skilled tradesmen required for employment in the Naval Dockyards and other Repair Organisations of Indian Navy and to meet the increasing demands of such personnel in the country. In the face of this declaration of the aim of the apprenticeship training, it is idle to contend that the applicants trained under this scheme in the third respondent's training school were not apprentices trained for the requirement of the Navy. Therefore, that contention has only to be rejected."

Though it has been contended in some of the applications that this finding of this Tribunal needs re-consideration, we do not find any reason for a re-consideration of this finding. We have in the foregoing paragraphs held that Artificer Apprentices recruited for enrolment as Seamen are not the persons referred to in the Recruitment Rules as ex-Naval

apprentices. Since the Naval Ship Repair Yard is admittedly a Naval unit, the apprentices who had undergone apprenticeship in this unit whether in designated or non-designated trades, are undoubtedly ex-Naval apprentices. Shri Santhosh Kumar, Shri Rajendran Nair and Shri Girijavallabhan appearing for the ex-apprentices of other institutions ~~than~~ the institution of the Naval Ship Repair Yard, argued that even assuming that the decision of this Tribunal in OA 436/90 to be correct, since that application related to apprentices in the non-designated trade only, the apprentices of the Naval Ship Repair Yard who had undergone apprenticeship in designated trades cannot claim to be ex-Naval apprentices. It is true that all the applicants in OA 436/90 were ex-apprentices in non-designated trades. But referring to the Government of India, Ministry of Defence letter dated 21.11.86 (Annexure R1 in that application) addressed to the Chief of Naval Staff on the subject of implementation of Apprentices Act, 1961, Dockyard Apprentices Schools at Bombay, Vizag and Kochi and to paragraph 1 to Appendix A2 to the above letter which reads as follows:-

"General

1. The aim is to train and provide a steady rate of skilled tradesmen required for employment in the Naval Dockyard and other Repair Organisations of Indian Navy and to meet the increasing demand of such personnel in the country. The training will be imparted in accordance with "The Apprentices Act, 1961" and the Rules framed thereunder." held that it was

It was obvious that the aim of the training was to train and provide a steady rate of skilled tradesmen required

for employment in the Naval Dockyards and other repair organisations of the Indian Navy and to meet the increasing demands of such tradesmen in the country. It is idle to contend that those who are trained in the Apprentices Training Schools were not for the requirement of the Navy and that, therefore, that contention had only to be rejected. The aim of the training of apprentices both in the designated and non-designated trades was one and the same, namely, to meet the increasing demands for skilled tradesmen primarily of the Navy and also of the country. Therefore, the apprentices whether in designated trade or non-designated one who had undergone apprenticeship in any unit of Navy can be legitimately called ex-Naval Apprentices. The trade in which ~~an~~ individual apprentice has undergone apprenticeship does not determine ~~his~~ status of being naval apprentices. We are, therefore, of the view that the contention that the persons who had undergone apprenticeship training in designated trades in the Apprentices Training Schools under Base Repair Organisations are not ex-Naval apprentices is fallacious.

20. Yet another contention raised in some of these applications remains to be answered. It has been contended that the training school under the 2nd respondent is not authorised to issue apprenticeship certificates and that those who have undergone apprenticeship in non-designated trades having not obtained the National Apprenticeship Certificates issued by the NCVT, they are not eligible for

recruitment to the post of tradesmen. This argument also has absolutely no force because the Recruitment Rules do not prescribe that ex-Naval apprentices for being eligible for recruitment should possess certificates issued by the NCVT. Those who contend that persons who have undergone apprenticeship in training schools under the Base Repair Organisations are not ex-Naval apprentices and, therefore, not eligible for preference under the Recruitment Rules have contended that the ex-Naval apprentices mentioned in the Recruitment Rules are those who had undergone Artificer Apprenticeship in the Navy. But for Artificer Apprentices, the NCVT do not hold any examination and naturally they cannot have the National Apprenticeship Certificate. Yet it is contended that preference under the Recruitment Rules should be given only to ex-Artificer apprentices. This is mentioned only to expose the inconsistency of the contention.

21. Giving the various contentions raised, documents, records and rules and instructions brought to our notice our serious and anxious consideration, we are convinced that those who have successfully undergone apprenticeship in the training school in the Naval Ship Repair Yard, Kochi and similar other Base Repair Organisations, are ex-Naval apprentices entitled to be preferred for recruitment in accordance with the Recruitment Rules SRO 338.

22. Having thus resolved the pivotal question in these cases, we shall now proceed to dispose of the individual applications.

DA 431/91

23. We have found that the apprentices trained in the Naval Ship Repair Yard (NSRY) whether in designated trade or non-designated trade, are ex-Naval apprentices entitled to first preference for absorption in the direct recruitment vacancy of tradesmen, under the 2nd respondent. Therefore, the communication dated 21.1.91 at Annexure A2 stating that the 2nd respondent had no obligation for providing appointment to the ex-apprentices of NSRY and that Employment Exchange candidates appointed on casual basis are eligible for regular appointment in preference to the ex-apprentices of NSRY has to be set aside. However, since the applicants have not sought the relief of quashing the appointments of respondents 3 to 7, the applicants are entitled only to be considered for appointment to the post of Tradesmen (Sk) Electrician under the 2nd respondent which arose after 29.12.87 and remained unfilled on the date of filing of this application.

24. In the result, the application is allowed, the impugned communication at Annexure A1 is set aside, the respondents 1 and 2 are directed to consider the applicants for regular appointment to the posts of Tradesmen (Sk) Electrician which arose after 29.12.87 and remained unfilled on the date of filing of this application considering them as ex-Naval Apprentices entitled to first preference under the Recruitment Rules SRO 338 and to appoint them as Tradesmen(Sk) Electrician if they are not otherwise unsuitable for the appointment.

Action on the above lines should be completed within a period of two months from the date of communication of a copy of this order.

25. There is no order as to costs.

OA 451/91

26. The applicants have sought for a declaration that the Annexure C order dated 26th March, 1966 of the Government of India, Ministry of Defence, New Delhi, conveying the sanction of the President to the introduction of a scheme of training of ex-ITI apprentices in Base Repair Organisations, Kochi and Vizag in conformity with the Apprentices Act, 1961 and according sanction to the recruitment of apprentices in designated and non-designated trades and the Recruitment Rules and the amendments at Annexure D1 to D4 as unconstitutional and violative of Articles 14 & 16 of the Constitution. They have also prayed that it may be declared that the respondents 4 to 6 who have undergone apprentice training in the NSRY and have not obtained NCVT certificates may be declared ineligible for preference for recruitment as tradesmen under the 2nd respondent and that the judgement in OA 436/90 requires to be re-considered. They have further prayed that the respondents 1 & 2 may be directed to appoint the applicants against regular vacancies with retrospective effect from 20.6.88 for vacancies which arose on or after 4.8.87. We have held that there is nothing unreasonable or violative of the principles of equality

contained in Annexure C order or ^{in the} Recruitment Rules at Annexure D1 to D4. ~~xxxxxx~~ Since the Recruitment Rules do not prescribe that ex-Naval apprentices for appointment towards direct recruitment to the post of tradesmen (Sk) ~~xxxx~~ should possess National Apprenticeship Certificate and since the respondents 4 to 6 are ex-Naval apprentices, we find that their regular appointment is perfectly in order and that the applicants are not entitled to any declaration as prayed for or for a direction to appoint the applicants towards the two vacancies. The applicants, therefore, are not entitled to any relief.

27. The application is, therefore, dismissed without any order as to costs.

OA 694/91

28. The applicants who have successfully undergone apprenticeship in the NSRY in trade (Sheet Metal Worker, have prayed that the records in relation to the appointment of Tradesmen (Sk) Sheet Metal Worker since 30.9.88 may be called for and the respondents may be directed to appoint the applicants as Tradesmen (Sk) Sheet Metal Worker in the available vacancies with seniority and consequential benefits over all persons appointed as Tradesmen (Sk) Sheet Metal Workers after 30.9.88. As the applicants are ex-apprentices of the NSRY, they are ex-Naval apprentices and belong to the preferential category for consideration for appointment to the post of Tradesmen (Sk) under the 2nd respondent according to the Recruitment Rules. But no

person appointed after 30.9.88 till the date of filing of the application has been imple^{ed} in the application and, therefore, the applicants are not entitled to agitate the question of seniority against persons who are not in the array of parties. However, since an interim order was issued on 3.5.91 directing that the appointment made to the post of Tradesmen (SK) Sheet Metal Worker would be subject to the outcome of the application and the appointees are to be informed specifically about it, the applicants should be entitled to be considered for ~~appointment~~ ^{if any} to the post of Tradesmen (Sk) Sheet Metal Worker ^{if any} ~~which~~ remained vacant as on 3.5.91 treating them as ex-Naval Apprentices falling within the first preferential category prescribed in the Recruitment Rules SRO 338.

29. In the result, the application is allowed to the extent of directing the respondents to consider the applicants for appointment to the post of Tradesmen (Sk) Sheet Metal Worker ^{if any} ~~which~~ remained vacant as on 3.5.91 and arising thereafter, treating them as ex-Naval Apprentices entitled to preference under the Recruitment Rules SRO 338 and to appoint them to such posts of Tradesmen (Sk) within a period of two months from the date of communication of a copy of this order.

30. There is no order as to costs.

OA 721/91

31. In view of our finding that ex-apprentices of the NSRY are ex-Naval apprentices entitled to first preference in recruitment under the Recruitment Rules SRO 338, we find the regular appointment of respondents 4 to 7 is fully justified and that the applicants are not entitled to challenge the same. Though the applicants have prayed for a declaration that they are entitled to equal pay for equal work for the period of service on casual basis and for a direction to grant the same, there is no averment in the application that during the period of their casual service as Tradesmen, they were not paid at the rates applicable to the post. On the other hand, the averment in the application is that they were appointed on casual basis on pay Rs.950/- per month against the 11 sanctioned vacancies. Therefore, the applicants are not entitled to this relief also.

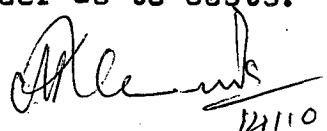
32. The application is, therefore, dismissed without any order as to costs.

OA 733/91

33. The applicants who had undergone apprentice training in other institutions have challenged the appointment of the respondents 3 to 5 who were apprentices trained in the NSRY in non-designated trades on the ground that they are not eligible for appointment as they are not ex-Naval apprentices.

They have also prayed to quash the order dated 1st February, 1991 at Annexure VI wherein they were informed that the respondents 3 to 5 who were trained in the NSRY as non-designated trade apprentices were ~~not~~ entitled to be appointed in preference to the Employment Exchange candidates. Since we have found that the apprentices who had undergone apprenticeship training in NSRY ~~inxxxxxxxdesignatedxxxxxxx~~ are eligible to be absorbed in the vacancies of Tradesmen treating them as ex-Naval apprentices, we find that the applicants are not entitled to the relief prayed for.

34. The application is, therefore, dismissed without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

14/10/92


(SP MUKERJI)
VICE CHAIRMAN

14.10.92

14.10.1992

*ps

R.A. 33/91

m O.A. 43/91

10.7.91

SPMSAVH

Order in M.P.609/91 and RA 33/91

Mr. Girijavallabhan-for petitioner in MP and RA.
Mr. P.S. Biju-for original applicants
Mr. Sugunapalan-rep. through proxy counsel.

Heard the learned counsel for all the parties on the R.A. in which the Review Application has prayed for a review of our order dated 12.4.91 in which we had directed that the names of respondents 3 to 7 be deleted from the array of respondents. The learned counsel for the applicant has no objection to the review application being allowed and including respondents 3 to 7 again as such. Accordingly we allow the Review Application and also the impleadment application (MP 609/91) and direct that the persons mentioned in the M.P. ie., Shri E.K.Sasi, Shri T.V.Umesh, Shri T.Jayaprakashan, Shri Doban Mani and Shri V.I.Baby be impleaded as additional respondents 3 to 7 in the array of respondents in the main application. Registry to carry out necessary corrections.

The learned counsel for the applicant prays for some time to amend the original application and undertakes to do so ^{within three weeks} with an application for amendment with a copy to the learned counsel for the respondents.

List for further directions on 1.8.91.

10.7.91

Received only 'A' part.

Mr. BCP