

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.450/99 & 768/99

Tuesday this the 19th day of September, 2000

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI G.RAMAKRISHNAN, MEMBER (A)

O.A. 450/99

1. V.R.Antony, Manapparambil House,
House No.XV/113, Near K.S.R.T.C.Bus Stand,
Perumbavoor.
2. M.K.Jayaraj, Mooliparambil House,
Palluruthy konam, Palluruthy,
Kochi-6.
3. A.M.Nazar, Anathazhath House,
Panangad P.O. Ernakulam.
4. K.V.Krishnan, Kokkavayalil House,
P.O. Kollam, Quilandy,
Kozhikode District.
5. V.S.Suhara, Vaniyakkat House,
Nedumthode, Mudikkal P.O.,
Perumbavoor.
6. M.V.Jose, Mazhuvancherry House,
Vallaparamb P.O., Ernakulam District.
7. M.K.Leela, Muriyath House,
Kadavanad P.O., Ponnani,
Malappuram District.
8. K.V.Karunakaran, Koduvelippady House,
Thabore P.O., Poothamkutty,
Ernakulam District.
9. P.Rajan, Alanthode House,
Thachankad P.O., Palakkad. .. Applicants

(By Advocate Mr. K.R.B. Kaimal)

vs.

1. The Union of India, represented by the
Secretary to Government,
Ministry of Defence, New Delhi.
2. The Chief of Naval Staff,
Naval Headquarters, New Delhi.
3. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Kochi-682 004.

(By Advocate Sri Govindh.K Bharathan, SCGSC)

O.A.768/99

1. C.S.Gopi,
Cholathu House,
VME Ward-5, Vaikom.
2. K.Aravindakshan Nair,
Thaikkattu Veedu,
North Gate, Vaikom..
3. V.Hariharan,
Valiathara House,
Kulasekhara Mangalam,
Vaikom. .. Applicant

(By Advocate Mr. Shafik M.A.)

vs.

1. Union of India, represented by the Secretary,
Ministry of Defence, New Delhi.
2. The Chief of Naval Staff, Naval Headquarters,
New Delhi.
3. The Flag Officer Commanding-in-chief,
Headquarters, Southern Naval Command,
Kochi-682 004. ..Respondents

(By Advocate Sri Govindh K.Bharathan, SCGSC)

The Application having been heard on 1.8.2000, the Tribunal
on 19.9.2000 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

As the cause of action, issue involved and the
question of law in both these cases are common, these
applications were heard jointly and are being disposed of by
this common order.

O.A.450/99

2. The nine applicants in this case were pursuant to a
notification issued by the third respondent inviting
applications for the post of unskilled labourers in its
civilian establishment, sponsored by the Employment Exchange

and were directed to appear for an interview before the Civilian Establishment Section of the third respondent in July/August 1997. As they were successful at the interview, they were directed to appear for medical examination. Having been found medically fit, they were directed to fill up and submit attestation forms with all prescribed documents which direction they complied with. The pre-appointment formalities were all over by September 1997. They were told that they would get appointment orders in their turn. Finding that four persons from among those selected alongwith the applicants were appointed on 9.12.97 and appointment orders were not issued to the applicants, they made enquiries and for the written representation submitted by the 5th applicant on 23.11.98, he was told by a letter of the third respondent in December 1998 that due to the ban imposed by the Naval Headquarters on direct recruitment, the vacancies of unskilled labourers are kept pending, that the request for appointment could be examined only after lifting of the ban (Annexure A2). Coming to know that more than 100 persons were being employed by the third respondent on daily wages and temporary status were granted to some of them with effect from various dates between 2.5.95 and 9.12.97 by order dated 15.4.98(Annexure A3) and that through the impugned orders dated 12.3.99(Annexure A4 to A12) when the applicants were informed that the recruitment of unskilled labourers pursuant to the interview held during July/August 1997 which was kept in abeyance due to the ban imposed by the Naval Headquarters on direct

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recruitment had been cancelled and that local Employment Exchanges have been intimated of the position requesting to keep them in the Live Register, the applicants have jointly filed this application seeking to have Annexures A4 to A12 set aside and for direction to the second respondent to lift the ban and to appoint the applicants with immediate effect. It is alleged in the application that the impugned action is arbitrary, illegal, discriminatory and violative of Article 14 and 16 of the Constitution. As the vacancies continue to exist and the applicants had been selected for appointment, the action on the part of the respondents to cancel the selection is illegal, allege the applicants.

O.A.768/99

3. The three applicants who had registered their names with the Employment Exchange were being sponsored by the Employment Exchange, called for an interview vide letter dated 30.7.99 for selection and appointment to the post of unskilled labourer. Being successful at the interview, they were subjected to a medical examination on 1.10.99. While they were awaiting posting, seeing that 4 persons selected alongwith them had been appointed on 19.12.99 they made representations to the third respondent. By a letter dated 6th December 1998 of the third respondent, the second applicant was informed that due to the ban imposed by the Naval Headquarters, the vacancies of unskilled labourers were kept pending and the issue of his appointment would be

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examined only after lifting of the ban by the Naval Headquarters(Annexure A8). While the applicants were awaiting offer of appointment after lifting of the ban, to their surprise and dismay, they received the impugned orders Annexure A1 to A3 dated 12.3.1999 informing them that the recruitment of unskilled labourers kept in abeyance owing to the ban imposed by the Naval Headquarters on direct recruitment has since been cancelled and the Employment Exchange has been requested to keep the names of the applicants in the Live Register. They were further surprised to see that immediately after Annexure A1 to A3 were issued, the third respondent had issued a news item (Annexure A4) in Mathrubhumi (Thozhil Vartha) inviting applications for the same posts to which the applicants had been selected. Alleging that the action on the part of the respondents in attempting to fill up the posts to which they have been selected by initiating a fresh process of selection cancelling the selection already made , for no valid reason, is arbitrary, irrational, unjustified and in violation of Article 14 and 16 of the Constitution , the applicants have filed this application to have the impugned orders set aside and for direction to the respondents to appoint the applicants as unskilled labourers forthwith.

4. On behalf of the respondents reply statements in both these cases have been filed by the Chief Staff Officer (Personnel and Administration), Southern Naval Command, Kochi, resisting the claim of the applicants. As the

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contentions in both these reply statements are on identical lines, they are stated as follows.

5. As the applicants had never held any appointment or any office under the Government of India, their application cannot be entertained by this Tribunal. As 11 vacancies of unskilled labourers arose in the year 95-96, notifications were sent to the employment exchange and as the Employment Exchange forwarded a list in January 1997, an interview was held in July 1997 and 14 candidates were selected. Since 40 vacancies of unskilled labourers arose in the year 1996-97, a further notification was placed before Employment Exchange and from among the nominees of the Employment Exchange at the interview which was held in August 1997, 46 candidates were selected. With a view to give immediate appointment to the candidates selected, they were forthwith subjected to medical examination and were asked to submit attestation forms. However the verification of antecedents of all the candidates selected for appointment were received back from the civilian authorities only in August 1998. In the meanwhile as there was Original Applications No.440/95 and 54/97 filed by nerrick rate labourers for regularisation as unskilled labourers, the respondents waited for the outcome of the case. The Tribunal by its judgment dated 24th October 1997 in.O.A.54/97 directed the third respondent to grant temporary status to casual labourers who had completed 206/240 days of service in accordance with the provisions contained in the Department of Personnel and Training O.M. dated 10th September 1993 and to consider them further for

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regularisation against 2/3 of the vacancies arising in Group D posts. In February 1998 the Naval Headquarters imposed a ban on direct recruitment and directed the third respondent to obtain prior approval for filling up of the vacancies. That was why the third respondent was constrained to cancel the select list and to inform the applicants and the Employment Exchange of the position. As the applicants who were only placed in the select list they have no indefeasible right to be appointed as without sanctioned posts backed by financial budget support, appointment cannot be made as has been held by the Hon'ble Supreme Court in AIR 1997 SC 1628. No person by name P.Rajan shown as the 9th respondent in O.A.450/99 was ever selected, but one individual by name P.Raju was sponsored by the Employment Exchange and was placed in the select list. The 9th applicant has no locus standi to claim any relief. It can be seen from the list showing the dates of receipt of verification reports in respect of all the candidates selected that the process was completed only in August 1998 as in view of the decision of the Tribunal in O.A.640/95 and 54/97 in the meanwhile directing the grant of temporary status and regularisation of nerrick rate labourers and in view of the ban on recruitment issued by the Naval Headquarters there was no option but to cancel the recruitment proceedings. As the life of the select list, according to the existing instructions, contained in Naval Headquarters letter CP(NG) 6001/DR dated 2nd May 1994 should not exceed more than one year (R3(B) in O.A.768/99) the

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validity of the select list in these cases expired in August/September 1998 and therefore the third respondent had to cancel the select list and initiate fresh action to fill up the vacancies of unskilled labourers, that resulted in 1997-98 and the action taken by the respondents being in conformity with the rules and instructions, the respondents contend that the applicants do not have any subsisting or valid cause of action.

6. In O.A.450/99, the applicants have filed a rejoinder. Meeting the case of the respondents that the application is not maintainable as the applicants do not hold any civilian post, the applicants contend that as the matter relates to recruitment to service under the Government, the Tribunal has jurisdiction to entertain the application. As the select list as is seen from Annexure A3 were finalised only in August 1998, the contention that the life of the panel expired in August 1998 is meaningless, contend the applicants. It is stated that the averment in the reply statement dated 14.6.99 that there is a ban in force has been made without any bonafides because the respondents have in the last week of May 1999 invited applications for selection and appointment to 35 vacancies of unskilled labourers. It is also contended in the rejoinder that the Annexure R3(B) produced alongwith the reply statement cannot be construed as imposing a total ban on recruitment.

7. The respondents have filed an additional reply

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statement stating that the second respondent accorded sanction in February 1999 for filling up of 35 vacancies which arose in 1997-98 only and did not approve of filling up of the vacancies which occurred during 1995-96 and 1996-97 and that as per the letter of the second respondent dated 2nd May 1994(Annexure R3(C), the life of the panel should not exceed one year.

8. We have heard the arguments of Sri K.R.B.Kaimal, learned counsel appearing for the applicants in O.A.450/99 and Sri M.A.Shafik, learned counsel of the applicants in O.A.768/99 and Sri Govindh K.Bharathan, learned Senior Central Govt.Standing Counsel appearing for the respondents in these two cases.

9. The learned counsel appearing for the applicants argued that as the applicants were duly selected against the existing vacancies and all pre-appointment formalities having been completed in September/October 1997, the action on the part of the respondents in cancelling the selection and to undertake a fresh recruitment ignoring the rights of the applicants, is illegal, unjustified and opposed to all canons of justice. They also argued that there has not been a total ban imposed against recruitment to the posts of unskilled labourers and the plea based on the letter of the Naval Headquarters dated 27 February 1998 is unsustainable. They further argued that no document has been brought on record to establish that the Government has taken a

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conscious decision not to fill up the vacancies which occurred during 1995-96 and 1996-97. If any such policy decision has been taken, the respondents should have brought the concerned document on record or made a specific plea giving the details, argued the counsel. Sri Govindh K. Bharathan, Sr. Central Govt. Standing Counsel on the other hand, argued that the mere fact that the applicants were selected and placed in the panel for appointment does not confer on them any right for appointment. As a decision has been taken not to fill up the vacancies which occurred during 1995-96 and 1996-97, it cannot be said that vacancies existed and therefore the applicants claim for appointment based on their inclusion in the panel has no force, argued Sri Bharathan. To buttress this point, the learned counsel referred us to the ruling of the Apex Court in Ashwani Kumar Vs. State of Bihar reported in AIR 1997 SC 1628. The learned counsel also referred us to the ruling of the Hon'ble Supreme Court in N. Mohanan vs. State of Kerala, AIR 1997 SC 1896 and Government of Orissa vs. Haraprasad Das, AIR 1998 SC 375. The learned counsel of the applicants argued that though the Government can deny appointment to the selected person to a post and decide not to make appointment, it should be for a valid reason and cannot deny appointment arbitrarily as has been done in these cases. He sought support from the ruling of the Hon'ble Supreme Court in R.S. Mittal vs. Union of India, 1995 Supp (2) SCC 230.

10. It is well-settled that a person selected and placed in the panel does not have an indefeasible right for

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appointment and appointment can be denied for valid reason. It is also well-settled that there should be a bonafide decision taken by the Government not to make appointment of a person selected to the vacancy and to keep the vacancy unfilled for valid reason and that not filling up of the posts or denying appointment to the selected persons shall not be arbitrary or whimsical. The only reason put forth by the respondents in the reply statements in these two cases for not making appointment of the applicants who have been selected against the vacancies in a due process of selection is that there was a ban imposed on direct recruitment by the Naval Headquarters vide its order dated 27 February 1998(Annexure R3(B) in O.A. 450/99). To see whether there has been an absolute ban on making the appointments of the applicants in these cases, it would be worthwhile to extract the letter dated 27th February 1998 which reads as follows:-

" A committee for reviewing Infrastructure manpower for service as well as civilian personnel has been appointed. The ways and means are being examined to downsize the present strength of service as well as civilian personnel. A study is also being carried out as to see the present rate of strength of civilian personnel going down due to wastages etc.

2. It is requested that the information as per the enclosed format showing the data as on 31 Dec and 30 Jun be forwarded by 15 Jan and 15 Jul of the year respectively and the information for the year ending 31 Dec 97 be forwarded by 30 Mar 98 and with an advance copy by Fax. Also, the information as per the format also be given for 96 and 95 to examine the rate of strength going down.

3. It is further requested that no further recruitment be undertaken except through the DAS

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schools without the prior permission of NHQ except to meet operational and emergent requirements that also under intimation to NHQ."

It is evident from para 3 of the above extract that the request was that no further recruitment be undertaken except through the DAS schools without the prior permission of NHQ except to meet operational and emergent requirements that also under intimation to NHQ. The recruitment process in the case of the applicants in these two cases had commenced in April 1997 and it was almost complete on 27 February 1998, the request made by the Naval Headquarters was not to undertake any further recruitment. Annexure R3(A) the list of selected candidates for the post of unskilled labourers produced by the respondents alongwith the reply statement in O.A.450/99 would show that even the verification reports in respect of all the applicants in these cases had been received long prior to 27 February 1998. Therefore it is unreasonable to contend that it was on account of the ban imposed by the Naval Headquarters that appointment orders were not issued to the applicants in these cases. As the verification reports in respect of the applicants had been received in December 1997 and January 1998, it is idle to contend that the appointment was not made owing to the ban on recruitment. Further the contention of the respondents that the Tribunal had in applications filed by the casual labourers for grant of temporary status and regularisation directed the respondents to consider to grant them temporary status and consider their regularisation against 2/3 vacancies and that was the reason why the appointments were not made also has no force because the Tribunal had not

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issued any order restraining the appointments of the applicants to the posts of unskilled labourers. There was no need for the respondents to await the decision of the Tribunal in the aforesaid case before making the appointments. In other words, the order of the Tribunal in Original Applications filed by nerrick rate casual labourers had no bearing on the appointment to the posts of unskilled labourers of the applicants on the basis of their selection. Though the respondents have contended in the reply statement that the matter was taken up with the Naval Headquarters for filling up of the vacancies of the year 1995-96 and 1996-97 and the Naval Headquarters did not accord sanction but accorded sanction to fill up 35 posts which occurred in 1997-98 also is not borne out by any material placed on record. As the posts which are now being attempted to be filled by making fresh direct recruitment are of the same nature for which the applicants were selected, we do not find any reason why a fresh selection should be made while the persons selected are remaining to be appointed. The contention of the respondents that the life of the panel got exhausted by August, 1998 is also untenable because the respondents themselves had informed the applicants in the year 1998 that the recruitment has been kept pending on account of the ban imposed and that the question of their appointments would be examined after lifting of the ban by the Naval Headquarters. Once the recruitment process is kept in abeyance then it is improper and unfair to contend that the selected panel got exhausted. The letter dated 2 May 1994 relied on by the respondents to say that the life of the panel is only one year also does not support the case

of the respondents because the said letter relates to waiting list for recruitment through the Employment Exchange. The effective instructions contained in the said letter reads as follows:

" The matter has been carefully considered and the following decision taken for information and guidance of all concerned:-

(a) For the purpose of direct recruitment through employment exchange, the select list should not contain more number of candidates than the declared number of vacancies, except under very special circumstances, candidates found otherwise suitable can be put as a reserve list to be restricted to the barest minimum number.

(b) Immediately thereafter the list of selected candidates together with the number of wait listed persons(if any) is to be forwarded to the Employment Exchange concerned with the advice to delete the name of selected candidates only and not the wait listed ones.

(c) If wait listed candidates are finally selected for job, their names are to be forwarded to employment exchange for deletion from their list.

(d) All efforts are to be made to exhaust the panel drawn within reasonable period but under no circumstances exceeding one year."


The above extract would clearly establish that the instructions contained has no application to the facts of this case. The contention of the respondents that vacancy was not in existence, budget support and financial backing is without any documentary support as nothing has been brought on record to show that the vacancies of the years 1995-96 and 1996-97 had been surrendered. The facts of the case cited by Sri Bharathan are totally different from the facts of the case on hand. In Ashwani Kumar's case, appointments

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were made without sanctioned posts flouting the statutory rules. In the case on hand, there is no such allegation. The other two rulings are different on facts, although the principle that a selected candidate has no indefeasible right to be appointed would hold good. In R.S.Mittal vs. Union of India, 1995 Supp.(2) SCC 230, the Apex Court has observed as follows:-

"It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr.Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach to this case was wholly unjustified."

The above observations squarely applies to the facts of this case. As the applicants were selected to the existing vacancies for there is no case that the vacancies did not exist for appointment of the applicants and as the pre-appointment formalities were all complied with in January 1998 itself, there is absolutely no justifiable reason why the respondents did not make the appointments, the so-called ban said to have been imposed by the Naval Headquarters vide its letter dated 27 February 1998 came




long after the date on which appointment of the applicants could have been made. Further as observed supra, the ban did not attract to the appointment of the applicants because in their cases, the recruitment process had been concluded but for issue of appointment orders. The ban was only against undertaking further recruitment. Nothing has been brought on record to show that the Government had taken a conscious decision for valid reasons not to make appointment towards the vacancies which existed during 1995-96 and 1996-97 and to make recruitment only to the vacancies which arose in 1997-98. Even according to the respondents the vacancies arose in the year 1997-98 only on account of the cancellation of the recruitment process already undertaken. This also shows that the contention of the respondents lacks bonafides.

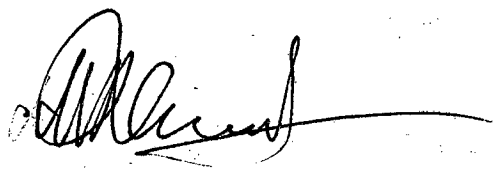
11. In the case of the applicant No.9 in O.A.450/99, there is a dispute regarding identity of the person. The respondents in the reply statement have contended that no person by name P.Rajan was either sponsored by the Employment Exchange or selected. The person sponsored by the Employment Exchange and selected was P.Raju. In this part of the country it is common practice to call Rajan affectionately as Raju. Therefore, just for the reason that instead of Rajan, Raju is written, it is not possible to conclude that Rajan described in the cause-title of the application is not Raju whose name is shown in the list R3(A). Since the address of the individual and the details regarding identity would be available in the application submitted by the candidate, the letter of nomination sent by

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the Employment Exchange and in the verification certificate issued by the civil authorities, the competent authority can see whether P.Rajan, the applicant No.9 is the same person as P. Raju mentioned as 47 in Annexure R3(A) or not and decide his entitlement for appointment.

12. In the conspectus of facts and circumstances, we allow the applications. We set aside Annexures A4 to A12 in O.A.450/99 and A1 to A3 and A4 in O.A.768/99 to the extent it relates to the vacancies for which the applicants were selected and direct the respondents to consider the appointment of the applicants as unskilled labourers in the existing vacancies and to appoint them if they are found otherwise not unsuitable for such appointment. In the case of applicant No.9 in O.A.450/99, the competent authority may take a decision whether he is the same person as P.Raju mentioned in the list Annexure R3(A) after hearing the applicant No.9 and then to consider his appointment. The above action should be completed and resultant orders issued as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of this order. There is no order as to costs.


(G. RAMAKRISHNAN)
MEMBER (A)


(A.V. HARIDASAN)
VICE CHAIRMAN

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List of annexures referred to:
OA.450/99

Annexure.A2: True copy of the letter No.CS 2702 dt.Nil/Dec.98 of the third respondent addressed to the 5th applicant.

Annexure.A3: True copy of the Order No.CS.4504/44/A dt.15.4.98 issued by the third respondent.

Annexure.A4: True copy of the Memo No.CS 2702/dated 12.3.99 issued by the third respondent to the first applicant.

Annexure.A5: True copy of the Memo No.CS 2702 dated 12.3.99 issued by the third respondent to the 2nd applicant.

Annexure.A6: True copy of the Memo No.CS 2702 dated 12.3.99 issued by the third respondent to the 3rd applicant.

Annexure.A7: True copy of the Memo No.CS 2702 dated 12.3.99 issued by the third respondent to the 4th applicant.

Annexure.A8: True copy of the memo No.CS 2702 dated 12.3.99 issued by the third respondent to the 5th applicant.

Annexure.A9: True copy of the Memo No.CS 2702 dated 12.3.99 issued by the third respondent to the 6th applicant.

Annexure.A10: True copy of the Memo No.CS 2702 dated 12.3.99 issued by the third respondent to the 7th applicant.

Annexure.A11: True copy of the Memo No.CS 2702 dated 12.3.99 issued by the third respondent to the 8th applicant.

Annexure.A.12: True copy of the Memo No.CS 2702 dated 12.3.99 issued by the third respondent to the 9th applicant.

OA 768/99

Annexure.A1: True copy of the letter dated 12.3.99 issued by the third respondent to the 1st applicant.

Annexure.A2: True copy of the letter dated 12.3.99 issued by the third respondent to the 2nd applicant.

Annexure.A3: True copy of letter dated 12.3.99 issued by the third respondent to the 3rd applicant.

contd....

Annexure.A4 True copy of news item appeared on the weekly 'Mathubhumi Thozhil Vartha.'.

Annexure.A8: True copy of letter No.ES 2702 dated 16.12.98 to the 2nd applicant.

Annexure.R3(a) Photo copy of the order No.CP (NC)/2853 dated 27.2.98 issued by Director Civilian Personnel.

Annexure.R3(b): Photo copy of letter No.CP(NC)/6001/DR dated 2.5.1994 issued by Dy. Director Civilian Personnel.

Annexure.R3(C in OA. 450/99): Photo copy of the letter No.CP(NG)/6001/R dated 2.5.1994 issued by Chief of Naval Staff.

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