

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos. 1100/95, 287/97, 469/97, 475/97 and 555/97

Monday, this the 27th day of April, 1998.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

O.A. No. 1100/95

K. Parvathy, Store Keeper,
Naval Stores Depot,
Cochin Naval Base.

...Applicant

By Advocate Mr M. Rajagopalan.

Vs

1. Flag Officer Commanding-In-Chief,
Headquarters, Southern Naval Command,
Cochin- 4.
2. Chief of Naval Staff,
Naval Headquarters,
New Delhi.
3. Shri S.K. Kashi, Store Keeper,
Naval Stores Depot(NSD),
Cochin Naval Base, Cochin- 4.

...Respondents

By Advocate Mr T.P.M. Ibrahim Khan, Sr.CGSC for R.1 & 2.

O.A.No.287/97

1. Lalitha R. Krishnan,
Lower Division Clerk,
Indian Naval Ship(INS),
Venduruthy.
2. K.K. Rohini,
Lower Division Clerk,
Indian Naval Ship (INS),
Venduruthy.
3. K.R. Smuathy,
Upper Division Clerk,
Indian Naval Ship (INS),
Venduruthy.
4. Omana Anthony,
Lower Division Clerk,
Indian Naval Ship (INS),
Venduruthy.
5. R. Rosamma,
Lower Division Clerk,
Indian Naval Ship (INS),
Venduruthy.



6. V.V.Eliyamma, Lower Division Clerk,
Indian Naval Ship (INS) Venduruthy.
7. A.A. Lathakumari, Lower Division Clerk,
Indian Naval Ship (INS) Venduruthy.
8. E.K. Valsala, Safaiwala,
Indian Naval Ship (INS), Venduruthy.
9. C.B. Sobhana, Lower Division Clerk,
Headquarters, Southern Naval Command, Kochi.
10. T.V. Mahalakshmi, Lower Division Clerk,
Headquarters, Southern Naval Command, Kochi.
11. T. Giriya, Lower Division Clerk,
Headquarters, Southern Naval Command, Kochi.
12. Kusumam Varghese, Lower Division Clerk,
Headquarters, Southern Naval Command, Kochi.
13. M.M. Bhaskara Kurup, Lower Division Clerk,
Indian Naval Ship, Dronacharya, Kochi.
14. C.C. Vincenssia, Upper Division Clerk,
Headquarters, Southern Naval Command, Kochi.
15. K.J. Lizy, Lower Division Clerk,
Headquarters, Southern Naval Command, Kochi.
16. C.K. Vasanthakumari, Lower Division Clerk,
Naval Store Depot (NSD), Kochi.
17. Salomi George, Lower Division Clerk,
Naval Store Depot (NSD), Kochi.
18. K.G. Manomani, Lower Division Clerk,
Naval Store Depot (NSD), Kochi.
19. C. Savithri, Upper Division Clerk,
Naval Store Depot (NSD), Kochi.
20. T. S. Kochammini, Upper Division Clerk,
Naval Store Depot (NSD), Kochi.
21. M.P. Annama, Upper Division Clerk,
Naval Store Depot (NSD), Kochi.
22. V. Sobhanamani, Lower Division Clerk,
Naval Store Depot (NSD), Kochi.
23. A. K. Remani, Upper Division Clerk,
Naval Store Depot (NSD), Kochi.
24. K.K. Suhasini, Lower Division Clerk,
Naval Store Depot (NSD), Kochi.
25. M.K. Ayyappan, Upper Division Clerk,
Naval Store Depot (NSD), Kochi.
26. M.G. Vijayakumari, Lower Division Clerk,
Naval Ship Repair Yard (NSRY), Kochi.
27. T.R. Rajendran, Lower Division Clerk,
Naval Armament Inspectorate (NAI), Kochi.

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28. O.T. Kanakambal, Upper Division Clerk,
Headquarters, Southern Naval Command, Kochi.
29. C.P. Bhargavi, Lower Division Clerk,
Indian Naval Ship (INS), Garuda, Kochi.
30. K.N. Chandrakala, Upper Division Clerk,
Naval Aircraft Yard, Kochi.
31. Usha Bai D. Pai, Lower Division Clerk,
Naval Aircraft Yard, Kochi.
32. N. Asha Vinod, Lower Division Clerk,
Naval Aircraft Yard, Kochi.
33. M.M. Alamelu, Tradesman SK (PP&L),
Naval Aircraft Yard, Kochi.
34. Vijaya Dilip, Lower Division Clerk,
Base Victualling Yard, Kochi.
35. A.N. Santha, Upper Division Clerk,
Base Victualling Yard, Kochi.
36. K.K. Purushothaman, Lower Division Clerk,
Headquarters, Southern Naval Command, Kochi.
37. Rajalakshmi T, Lower Division Clerk,
Naval Aeronautical Inspection Service(NAIS), Kochi.
38. UmambaThamburatti K, Lower Division Clerk,
Naval Aeronautical Inspection Service (NAIS), Kochi.
39. Mary M.A., Lower Division Clerk,
Base Victualling Yard, Kochi.
40. M.J. Visweswari, Stenographer,
Indian Naval Ship (INS) Garuda, Kochi.
41. K.P. Radha, Lower Division Clerk,
Headquarters, Southern Naval Command, Kochi.

...Applicants

By Advocate Mr V.B. Unniraj.

Vs.

1. Union of India,
represented by Secretary,
Ministry of Defence, New Delhi.
2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Cochin.
3. The Chief Staff Officer,
Personal & Administration,
Southern Naval Command,
Naval Base, Cochin.



...Respondents

By Advocate Mr T.P.M. Ibrahim Khan, Sr.CGSC.

O.A.No.469/97

K.T. Shanmugham, Store Keeper,
Naval Stores Depot,
Cochin Naval Base,
Southern Naval Command, Kochi- 682 004.

...Applicant

By Advocate Mr M. Rajagopalan.

Vs.

1. Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command, Kochi-4.
2. Chief of Naval Staff,
Naval Headquarters, New Delhi.
3. Union of India, represented by the Secretary,
Ministry of Defence, New Delhi.

...Respondents

By Advocate Mr T.P.M. Ibrahim Khan, Sr.CGSC.

O.A. No. 475/97

1. A. Ramakrishnan Nair, Store Keeper,
Naval Stores Depot, Cochin Naval Base,
Southern Naval Command, Kochi- 682 004.
2. S.K. Kasi, Store Keeper,
Naval Stores Depot, Cochin Naval Base,
Southern Naval Command, Kochi- 682 004.
3. G. Kochukuttan Pillai, Store Keeper,
Naval Stores Depot, Cochin Naval Base,
Southern Naval Command, Kochi- 682 004.

...Applicants

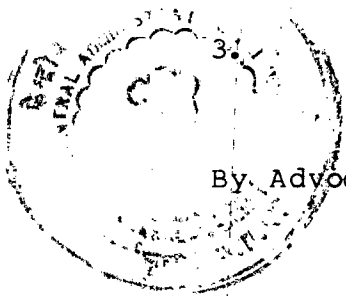
By Advocate Mr M. Rajagopalan.

Vs.

1. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi-4.
2. Chief of Naval Staff,
Naval Headquarters, New Delhi.
3. Union of India represented by the Secretary,
Ministry of Defence, New Delhi.

...Respondents

By Advocate Mr T.P.M. Ibrahim Khan, Sr.CGSC.



O.A. No. 555/97

1. K. Hareendran S/o P.K. Karunakaran,
Assistant Store Keeper,
Naval Store Depot, Naval Base, Cochin-4.
2. V. Bhuvanendran S/o K. Vasudevan Nadar,
Assistant Store Keeper,
Naval Store Depot, Naval Base, Cochin-4.

...Applicants

By Advocate Mr. V.R. Ramachandran Nair.

Vs.

1. Union of India represented by the Secretary,
Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff,
Naval Headquarters, New Delhi.
3. The Flag Officer Commanding-in-Chief,
Southern Naval Command, Naval Base, Cochin-4.
4. The Chief Staff Officer(Personnel & Administration),
Southern Naval Command,
Naval Base, Cochin -4.
5. The Controller Materials,
Naval Store Depot, Naval Base, Cochin-4.

...Respondents

By Advocate Mr S. Radhakrishnan, Addl.CGSC.

The applications having been heard on 31.3.1998, the
Tribunal delivered the following on 27.4.1998.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

All these original applications were heard together and
are disposed of by a common order as the question involved is
the same in all these applications.

Reliefs sought by the applicant in O.A.1100/95 are to:

"(a) Call for the records leading upto Ann.A6 and
quash Ann.A6 order,

(b) Direct the respondents to assign the applicant
seniority for promotion, counting her service from



the date of her first appointment as Officiating A.S.K. (Asst. Store Keeper) on 6.10.1997,

(c) Declare that the applicant is entitled to get her seniority for promotion, counting her casual service as A.S.K. (Asst. Store Keeper) and condoning the break in between two casual service,

(d) Declare that the applicant is senior to the 3rd respondent,

(e) Declare that the applicant is entitled to get her service counted from 11.3.1974, the date of her first casual appointment,

(f) To grant all consequential benefits,

(g) To grant such other relief deem fit to this Hon'ble Tribunal."

Reliefs sought by the applicants in O.A. 287/97 are to:

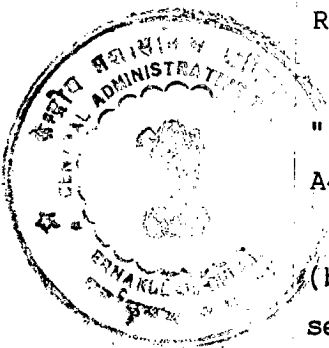
"(a) Call for the records relating to the issuance of Annexure A6 order and similar orders issued to other applicants in serial No/File No.CS 2695/43 and to quash the same.

(b) Issue such other orders or directions as this Hon'ble Tribunal deems fit and proper in the circumstances of the case."

Reliefs sought by the applicant in O.A. 469/97 are to:

"(a) Call for the records leading upto Annexure A4 and quash Annexure A4 order,

(b) Direct the respondents to regularise the service of the applicant from the date of his initial appointment on casual basis, condoning the



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break, if any, and to give all consequential benefits,

(c) Declare that the applicant is entitled to get his casual service regularised condoning the breaks in between the casual service as already directed by this Hon'ble Tribunal,

(d) Grant such other relief deem fit to this Hon'ble Tribunal."

Reliefs sought by the applicants in O.A. 475/97 are to:

"(a) Call for the records leading upto Annexure A4 and quash Annexure A4 order,

(b) Direct the respondents to regularise the service of the applicants from the date of their initial appointment on casual basis, condoning the break if any and to give all consequential benefits,

(c) To declare that the applicants are entitled to get their casual service regularised condoning the breaks in between the casual service as already directed by this Hon'ble Tribunal,

(d) To grant such other relief deem fit to this Hon'ble Tribunal."

Reliefs sought by the applicants in O.A.555/97 are:

"(i) To call for the records leading upto Annexure A14 and quash the same to the extent it affects the applicants.

(ii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

3. Applicants in these O.As are working under the departmental respondents. Prior to their regularisation there were several spells of break in their service. They approached this



Bench of the Tribunal earlier by filing O.A. Nos.434/89, 609/89 and 1408/92. O.A.No.1408/92 was disposed of directing the respondents therein to grant the applicants therein all the service benefits admissible to them as per judgment in O.A.434/89. The department issued orders implementing the directions issued by this Bench of the Tribunal in the said O.As. As per the said orders the department condoned the various spells of break. Subsequently, the department issued the impugned orders cancelling the earlier orders implementing the directions of the Tribunal stating that break exceeding 30 days at a stretch cannot be condoned as technical / artificial break.

4. Identical contentions are raised by the departmental respondents in all these original applications. According to departmental respondents, the direction of the Tribunal was to condone the artificial/technical break and not to condone all types of break. The department committed a mistake in condoning breaks exceeding 30 days, that the same was detected subsequently and on the examination of all these cases, the impugned orders were issued correcting the mistake.

5. Learned counsel appearing for the applicants in some of these original applications argued that the departmental respondents have dismissed the claim granted by this Bench of the Tribunal as if they are sitting in appeal against the decision of this Bench of the Tribunal. We are unable to agree with this argument. It is not the case of the departmental respondents sitting in appeal against the order passed by this Bench of the Tribunal. What they have done is setting right the mistake on realising the mistake committed by them.

The operative portion of the common order in O.A. Nos. 434/89 and 609/89 reads thus:

"Accordingly in continuation of our judgment dated 20.8.1990 by which the applicants were directed



to be regularised from the dates of their original appointment on a casual basis by condoning the breaks in service with all consequential benefits except that of seniority, we direct now that the benefit of seniority should also be given to them as from the dates of their original appointment on a casual basis."

6. According to the departmental respondents initially they committed a mistake without understanding the scope of the directions in the said order as to condonation of breaks and only later on they found out the mistake. Learned counsel appearing for the applicants argued that the directions was to condone the breaks in service and thereby it will mean all types of breaks. In para 14 of the said order it is stated thus:

"In the above circumstances and in conformity with the various decisions of the High Court of Andhra Pradesh, Hyderabad Bench, Calcutta Bench, Madras Bench and New Bombay Bench of this Tribunal, we allow this application in part with the direction that the respondents shall ignore the artificial or technical breaks in the casual services of the applicants and regularise them from the date of their initial appointment on a casual basis with all benefits due to them as per Ministry of Defence Letter No. 83482/ EC-4 /Org.4 (Civ)(d) / 13754 /D (Civ-II) dated 24.11.1967 as amended by corrigendum No. 13051 / OS-SC(ii) / 2968/ D(Civ-II) dated 27.5.1980."

The relevant portion of the order of the New Bombay Bench of the Tribunal also quoted in the order. It reads thus:

"Respondents shall give all benefits due to the applicants in both the cases as per the Ministry of Defence letter No. 83482 / EC-4 / Org.4 (Civ) (d) /13754/D(Civ-II) dated 24.11.1967 as amended by corrigendum No.13051/OS-SC(ii)/2968/D (Civ-II) dated 27.5.1980, from the dates on which the applicants were initially appointed on casual basis, by ignoring the artificial or technical breaks in their services."



7. An order is to be read as a whole. A portion of it cannot be dissected and read in isolation. Though the words "artificial" or "technical" breaks are not in the operative portion of the order, it can only be read and understood as condoning the artificial or technical breaks and not as condoning all types of breaks.

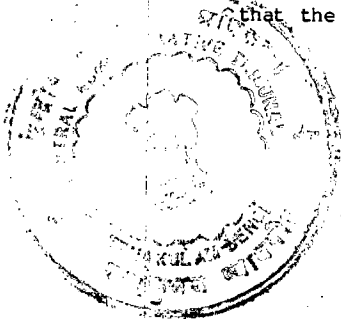
8. The Tribunal has not given any definition of artificial or technical break.

9. The department decided that break upto 30 days can be taken as technical or artificial break and in the case of female employees 90 days for maternity purpose.

10. Learned counsel for some of the applicants argued that the impugned orders are nothing but unsettling that which has been settled pursuant to the directions of this Bench of the Tribunal. Since the directions of this Bench of the Tribunal is only to condone artificial or technical break, and erroneously the departmental respondents condoned breaks that are not artificial and technical also, it cannot be said that the impugned orders unsettle the position that has been settled.

11. Learned counsel appearing in some of the O.As argued that break beyond 30 days is also nothing but technical or artificial break. If this argument is accepted, technical or artificial breaks will carry no meaning. Hence, this argument cannot be accepted.

12. Learned counsel appearing for the applicants in some of the original applications argued that even if the department decide now that only a break not exceeding 30 days can be considered as artificial or technical breaks, it cannot be applied retrospectively and could be applied only prospectively. Here there is no question of retrospective application. Without noting that the order of this Bench of the Tribunal was only to condone



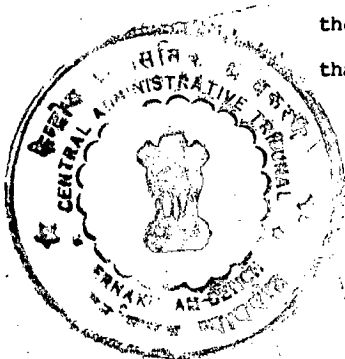
artificial or technical breaks, all types of breaks were condoned by the departments. On realising the mistake, the department has rectified the mistake now and has issued the orders impugned.

13. It was also argued by the learned counsel for the applicant in some of the O.As that the departmental respondents are estopped from taking a decision that breaks exceeding 30 days will not be artificial or technical breaks. The question of estoppel or promissory estoppel does not arise here since there was no assurance extended by the department to the applicants that all types of breaks will be condoned.

14. The question now to be decided is that whether a mistake committed by the departmental respondents can be rectified. A mistake may lead to an action being taken upon a wholly wrong basis so that some different action needs to be substituted.

15. Learned counsel appearing for the applicants in some of the O.As argued that the fixation of 30 days as artificial or technical break is arbitrary. If it is fixed as 20 days or 40 days also, the same argument can be put forward. We find no force in this argument. It is for the department to decide upto what number of days it can be considered as artificial or technical break.

16. It would have been better if the departmental respondents had avoided the mistake in the initial stage. The mistake on the part of the departmental respondents in the initial stage cannot entitle the applicants to say that that mistake should form a basis for granting them the reliefs sought for. A mistake committed by the department cannot furnish a valid or legitimate ground for the Court / Tribunal to direct the department to go on repeating that mistake.



17. The original decision taken by the departmental respondents in this case cannot be said to be irrevocable one since no question of legal right was determined by the departmental respondents in taking the original decision. What has happened is that while implementing the order of this Bench of the Tribunal, by mistake, they failed to notice that the breaks to be condoned are only artificial or technical breaks. When the departmental respondents knew the true fact they exercised their discretion to set right the mistake. We do not find anything that affect the duty of the departmental respondents to exercise their discretion to rectify the mistake when true facts appeared.

18. We find no merit in these original applications. Accordingly, all these applications are dismissed. No costs.

Dated the 27th of April, 1998.

Sd/-
S K GHOSAL
ADMINISTRATIVE MEMBER

Sd/-
A M SIVADAS
JUDICIAL MEMBER



CERTIFIED TRUE COPY

Date 4-5-98

Copy [Signature]

LIST OF ANNEXURES

1. O.A 1100/95

Annexure A-6 : Copy of the order No:SE/2077/DA 1929/93/KP
(Impugned Order) dated 27-4-95 issued by the 2nd respondent.

2. O.A 287/97

Annexure A-6 : Copy of the order No.CS 2695/43/278 dated
27-12-96 issued by Head Quarters, Southern
Naval Command, Kochi to KK Rohini Lower
Division Clerk, Indian Naval Ship, Venduruthy.

3. O.A 469/97

Annexure A-4 : Copy of Civilian Establishment List No.07/97
dated 5-2-97 NSD(K) Serial No.5 to the extent
of cancelling NSD(K) CE list 15/93 SL 84
(Relevant Portion) issued by Controller of
Materials Naval Store Depot Kochi-4- under the
Control of 1st respondent.

4. O.A 475/97

Annexure A-4 : Civilian Establishment List No.07/97 dated
5-2-97 (NSD (K) CE List 7/97 issued by the
Controller Materials under the 1st respondent
(Relevant Portion)

5. O.A 555/97

Annexure A-14: Copy of the relevant portion of the Civilian
Establishment List No.07/97 dated 5-2-97 issued
from the Naval Store Depot, Cochin.

