

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.176/96 and O.A.No.1456/96

Monday, this the 24th day of November, 1997.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

O.A.176/96 and O.A.1456/96

1. NG Sabu,
Radio Mechanic(Skilled),
Naval Ship Repair Yard,
Naval Base, Kochi-4.

2. P Rajeev,
Radio Mechanic(Skilled),
Naval Ship Repair Yard,
Naval Base, Kochi-4.

3. KX Maria,
Radio Mechanic(Skilled),
Naval Ship Repair Yard,
Naval Base, Kochi-4.

- Applicants

By Advocate M/s Santhosh and Rajan

Vs

1. Union of India represented by
Secretary,
Ministry of Defence,
New Delhi.

2. The Flag Officer Commanding-in-Chief,
Head Quarters,
Southern Naval Command,
Kochi-4.

3. The Chief Staff Officer(P&A),
Head Quarters,
Southern Naval Command,
Kochi-4-

4. KG Gopakumar,
Radio Mechanic(Skilled),
Radio Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-4.

- Respondents

5. Saphia Beevi,
Radio Mechanic(Skilled),
Radio Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-4.
6. Samuel Koshy,
Radio Mechanic(Skilled),
Radar Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-4.
7. C Poornachandra Kumar,
Radio Mechanic(Skilled),
Radar Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-4.
8. K Ramachandran Nair,
Radio Mechanic(Skilled),
Radar Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-4.
9. V Anandan Nair,
Radio Mechanic(Skilled),
Radio Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-4.
10. Kumari Usha,
Radio Mechanic(Skilled),
Radio Shop,
Naval Ship Repair Yard,
Naval Base, Kochi-4.

- Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC(for R.1 to 3)

By Advocate Mr KP Dandapani(for R.6 to 9)

By Advocate Mr M Girijavallabhan(for R.4, 5 & 10)

The applications having been heard on 6.11.97
the Tribunal on 24.11.97 delivered the
following:

O R D E R

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

The above two OAs have been heard together by
common consent. The applicants and the respondents
are identical in both the OAs. Essentially the same



grievances have been projected in these two OAs on the part of the same applicants against certain decisions taken by the same official respondents. Further, these grievances have arisen from the identical matter of allegedly delayed promotion granted to the applicants to the post of Radio Mechanic(Skilled) with effect from 23.1.95, ordered by the third respondent on behalf of the second respondent in both these cases.

2. The relief sought in OA-176/96 is essentially for impugning the order at A-3 in that O.A. which incorporates the said promotion dated 23.1.95. In OA-1456/96 the relief has been sought in the form of quashing the impugned orders at A-11, A-12 and A-13 in this latter OA. These latter impugned orders passed on behalf of the 2nd and 3rd respondents reject the representations respectively made by the three applicants against the allegedly wrong fixation of their seniority below the party respondents at 4 to 10 appearing as such in both the OAs. In fact, even this relief is contingent upon the success of the applicants' case that the order promoting them as Radio Mechanic(SK) under the second respondent with effect from 23.1.95 is incorrect and further that they should have been so appointed with effect from a date after 31.8.88 and when the vacancies first arose in

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the posts of Radio Mechanics(SK). In OA-176/96 the prayer is limited to this aspect of the matter; whereas the relief sought in OA-1456/96 goes beyond that point. It seeks refixation of the seniority for the applicants above the party respondents, based on the same principle as agitated for in the earlier OA-176/96. It specifically seeks to set right the inter se seniority between the party respondents vis-a-vis the applicants on the ground that the party respondents have been wrongly appointed to the post of Radio Mechanic(SK) earlier than 23.1.95, i.e., the date on which the applicants were so promoted. Thus in a sense the OA-176/96 is subsumed in OA-1456/96.

3. The main grounds urged by the applicants in support of their case are as follows: The applicants were recruited as Apprentices in 1987 for the Radio Radar Technician Course conducted by the Naval Shipyard Apprentices Training School, Naval Base, Cochin under the second respondent. They completed their training as Apprentices successfully on 31.8.88. However, when regular vacancies arose in the post of Radio Mechanic(SK) under the second respondent after 31.8.88, the second respondent filled up those regular vacancies by appointing the party respondents to those



posts. According to the applicants, this action on the part of the second respondent is against the recruitment rules read with Naval Headquarters letter dated 30.9.81 in terms of which ex-Naval Apprentices are required to be given priority over others for regular appointment to the post of Radio Mechanic(SK).

4. The applicants have further stated that in OA-436/90 before this Bench the applicants had earlier challenged the appointment of the party respondents as Radio Mechanics(SK). The Tribunal allowed the said OA and declared that the applicants should be considered for regular appointment to the posts of Radio Mechanics(SK) in preference to the party respondents and that the appointments made in favour of the party respondents earlier to the applicants were therefore invalid and struck down. The Judgement of the Tribunal in that OA further called upon the official respondents specifically to adjust the seniority of the applicants, allowing them precedence over the party respondents.

5. The order of the Tribunal in that OA, we observe, was however challenged before the Hon'ble Supreme Court and a stay was granted by the Apex Court against the order of termination of the services of

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the party respondents. Finally, the Apex Court passed an order saying that on account of the passage of time, it would be appropriate to make the services of the party respondents permanent if regular vacancies had arisen in the meanwhile. This order of the Hon'ble Supreme Court was dated 8.3.94. Subsequent to the passing of that order the applicants approached this Bench once again with a Contempt Petition(Civil) No.267/94 alleging that though the Tribunal had given a specific order on 31.1.91 in the earlier OA-436/90 for treating the applicants on a higher priority vis-a-vis the party respondents, the official respondents had not passed orders in compliance therewith. During the pendency of that Contempt Petition, the applicants were appointed as Radio Mechanics(SK) under the order dated 23.1.95 of the third respondent. That is the impugned order in OA-176/96, i.e. one of the two present OAs, as we have already observed. The CP(C)-267/94 was closed in the light of the reported compliance, in the form of appointment of the applicants as Radio Mechanics(SK), with the observation that if the applicants had any further grievances, they could submit representations to the official respondents.



6. In the meanwhile, the party respondents were served with notices terminating their services in the context of the appointment of the applicants to the posts of Radio Mechanics(SK). The party respondents then approached this bench in OA-1728/94 and OA-1743/94. The Tribunal in its judgement dated 31.2.97 allowed the OAs on the ground that since there were vacancies available after accommodating the applicants, and since those vacancies were adequate for regular appointment of the party respondents, the services of party respondents should not be terminated.

7. Based on the above developments in this case, the applicants have strongly contended that the impugned orders at A-11, A-12 and A-13 in OA-1456/96 rejecting their representations against the appointment of the party respondents on dates earlier than their appointment as Radio Mechanics(SK) should be set aside. They have further urged that they should be declared as eligible for appointment to the posts of Radio Mechanics(SK) as and when the vacancies arose after 31.8.88 and at least from the dates when the party respondents were appointed on a regular basis as Radio Mechanics(SK), with all the three applicants

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being declared as senior to the party respondents.

8. On behalf of the official respondents the claims of the applicants have been resisted. According to them the Hon'ble Supreme Court had directed the official respondents to make the services of the party respondents permanent against available vacancies. Since vacancies were actually available, the official respondents have been given regular appointments. Further this Tribunal in its order in OA-1728/94 and OA-1743/94, where the party respondents in these two cases were applicants, specifically directed that the services of the party respondents should not be terminated and they should be provided with regular appointments as Radio Mechanics(SK) as vacancies were reported to be clearly available.

9. According to the official respondents, the combined effect of these orders is that the appointments, which had been made in favour of the party respondents on a regular basis to the posts of Radio Mechanics(SK), could not be disturbed and therefore the official respondents have restored the party respondents to those earlier positions. Considering these very facts and circumstances, the official respondents have asserted, the

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representations made by the applicants against the restoration of the party respondents to the earlier positions and claiming seniority over the party respondents have been rejected. According to the learned counsel for the official respondents, this action on the part of the official respondents cannot therefore be faulted and should be upheld as valid and proper.

10. While corroborating the basic defence advanced on behalf of the official respondents, the learned counsel for the party respondents has stated that the earlier decision of this Tribunal in OA-436/90 where the Tribunal had clearly held that the inter se claims of the applicants visa-vis the respondents should definitely be in favour of the applicants and that the applicants should first be appointed against the regular vacancies in the posts of Radio Mechanics(SK) arising after 31.8.88, stood effectively modified by the order of the Hon'ble Supreme Court dated 8.3.94 referred to above and the order of the Tribunal in OA-1728/94 and OA-1743/94 delivered on 31.3.95 also mentioned above.

11. According to him, the claim of the applicants that they should have a preferential right vis-a-vis the party respondents for regular appointment to the

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posts of Radio Mechanic(SK), which became available after 31.8.88, vis-a-vis the party respondents, is not sustainable in the light of these orders. For, he has argued, under these orders the right of the party respondents to continue to hold the posts of Radio Mechanics(SK) with effect from various dates from ~~1989 49~~
~~1.9.89~~ onwards, i.e. on 25.5.89, 26.5.89, 3.11.89 and 1.6.90, was recognised and confirmed. Since further vacancies arose against which applicants could be appointed only at the beginning of 1995, the applicants were actually so appointed. The applicants cannot question the earlier appointment of the party respondents, by virtue of the order of the Hon'ble Supreme Court dated 8.3.94 and that of this Tribunal dated 21.3.95, he has urged. Learned counsel for the party respondents has also argued that just because the applicants successfully completed the course of training for Radio Radar Technician as Apprentices on 31.8.88, as conducted by the second respondent, they could not claim any absolute right of appointment to the posts of Radio Mechanic(SK) that were filled up on a regular basis after they so qualified themselves i.e. after 31.8.88. Therefore, the learned counsel for the party respondents has urged, the applicants cannot have any case in challenging the appointments made to the post of Radio Mechanic(SK) in favour of



the party respondents by the official respondents prior to January 1995, when the applicants were appointed to those posts.

12. We have carefully considered the facts and circumstances and the various developments that have taken place concerning the matter involved in these two OAs. We have also heard the arguments advanced by the learned counsel on behalf of the applicants, the official respondents and the party respondents.

13. In our opinion the matter critically turns on whether the clear direction given to the official respondents 2 and 3 by this Tribunal in OA-436/90 on 31.1.91 to the effect that the vacancies in the post of Radio Mechanics(SK) arising after 31.8.88 should first go to the applicants in terms of the specific provisions of the relevant recruitment rules read with the instructions issued by the Naval Headquarters, has either been modified by the subsequent order of the Hon'ble Supreme Court delivered in the Civil Appeal No.1509/93 filed by the party respondents against that order of the Tribunal and/or by the order of the Tribunal delivered in favour of the party respondents subsequently on 31.3.95 in OA-1728/94 and OA-1743/94 filed by the party respondents, who were the

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applicants therein. If no such modification can be found to have taken place, the case of the applicants will have to be allowed. If not, the reliefs sought by the applicants will have to be turned down.

14. In order to analyse the nature of the direction issued by the Tribunal in OA-436/90, it will be necessary to quote from that order. The operative part of that orders is as follows:

"5. In the conspectus of facts and circumstances, we allow the application and quash the appointment of respondents 4 to 10 in preference to the applicants and we direct the respondents 1 to 3 to appoint the applicants to the regular posts, if they are not otherwise unsuitable and then only to resort to the appointment of other persons as per the Recruitment Rules and to adjust their seniority accordingly."

(Underlined by us for emphasis)

It is evident from the above extract, that the order of the Tribunal did not leave anybody in doubt about the nature of the claim which it upheld for the applicants, namely, that the applicants should be appointed to the regular posts of Radio Mechanics(SK), subject to their suitability, by the official respondents in clear preference to the party respondents and further that their seniority should be adjusted accordingly.



15. It seems to us that there could be no reason for either the official respondents or the party respondents to construe the above order in any manner which can adequately justify the claim of the party respondents for protection of their position based on the earlier appointments made in their favour and as seniors to the applicants in the cadre of Radio Mechanics(SK) working under the official respondents.

16. The next question is whether the subsequent order passed in the Civil Appeal, filed by the party respondents, by the Hon'ble Supreme Court can be said to have modified the above position flowing from the said order of the Tribunal. In this context, it may be useful to quote the order of the Hon'ble Supreme Court in that Civil Appeal No.1509/93 which is quite succinct. That order reads as follows:

"After hearing learned counsel for both the parties we think the interests of justice will be met by issuing the following directions:

2. Having regard to the passage of time if there are vacancies the appellants may be made permanent as against those vacancies. Subject to this observation, the Civil Appeal is disposed of."

(Emphasis supplied)

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We are clearly of the opinion that the above order of the Apex Court is again quite unambiguous and unequivocal. According to us, it clearly makes the said Apex Court order passed in favour of the party respondents for being made permanent against vacancies in the cadre of Radio Mechanics(SK), evidently contingent on the availability of vacancies. But, in no way, it adjudicates upon the relative merits of the claims of the applicants vis-a-vis the party respondents for appointments to the same posts of Radio Mechanics(SK). Thus the higher priority already decided in favour of the applicants vis-a-vis the party respondents for those posts by this Bench in OA-436/90 remains unaffected. In other words, that inter se position as adjudicated by this Bench in the said OA-436/90 was left untouched by the Hon'ble Supreme Court.

17. Next we will have to turn to the order passed by this Bench in OA-1728/94 and OA-1743/94 where the party respondents herein were the applicants: We quote the relevant parts from paras 8, 12 and 13:

"..The whole thing hinges on the interpretation of the order that has been passed by the Tribunal in OA-436/90. The operative portion of the order passed has been extracted above under para-3. According to our opinion, the



order postulates that the applicants therein (Sabu N George, Rajeev.P, Sabu Francis, Maria KX) are entitled to be appointed in preference to the applicants. And for the purpose of making it convenient to appoint the said people, the respondents' appointments were quashed. The Tribunal further directed that the respondents 1 to 3 appoint the applicants to the regular posts, if they are not otherwise unsuitable...Therefore, the services of the applicants herein could be terminated only to the extent of accommodating the applicants in OA-436/90...

12. From the discussion made above, it was clear that out of the judgement of the Tribunal passed in OA-436/90, only three were to be accommodated and to accommodate the said persons, only three has to be displaced. The vacancy position clearly shows that more than three vacancies are there, and as such in pursuance of the directions given by the Supreme Court to make them permanent against those vacancies, it is not necessary to disturb any of the applicants at the present juncture.

13. We further direct the authorities to fix the seniority of the applicants according to law, after giving notice to parties who may be affected while so fixing.

14. With the above said directions, we allow the applications, but in the circumstances there will be no order as to costs."

(Emphasis supplied)

We have quoted extensively from the above order for the reason that this order of the Tribunal has been relied upon strongly by the official respondents in justifying the impugned orders at A-11, A-12 and A-13



in OA-1456/96 rejecting the prayer of the applicants for appointing them to the post of Radio Mechanics(SK) in preference to the party respondents and for treating them as senior to the party respondents. Similarly, the party respondents have also counted heavily on the effect of the above order of the Tribunal.

18. It is evident from the lengthy verbatim quotations of the relevant parts of that order that it did not by any means restore the party respondents, who were applicants in those two OA-1728/94 and OA-1743/94, to a position which can be considered as being on a higher plane, i.e. as senior to the applicants. On the other hand, that order explicitly recognises that admittedly there were vacancies available, as stated by the official respondents in those two OAs, and that the official respondents could accommodate the party respondents, after providing for the prior claim of the applicants, to the post of Radio Mechanics(SK). Therefore it held that the services of the party respondents were wrongly terminated by the official respondents. Doubtless the said order of the Tribunal then called upon the official respondents to determine the seniority according to law after giving

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notice to the parties who may be affected while fixing the seniority.

19. We have already observed that the Tribunal's earlier order in OA-436/90 determining the inter se position of the applicants vis-a-vis party respondents was in no way modified by the Hon'ble Supreme Court or by the latter order of the same Tribunal in OA-1728/94 and OA-1743/94. Therefore that direction of the Tribunal in OA-436/90 has certainly become a part of the law to be applied while determining the inter se seniority of the applicants and the party respondents. Any other interpretation of the direction issued by the Tribunal on 31.2.95 in those two OAs cannot be held as justified, or even warranted validly.

20. In the light of the detailed discussions made above and considering that the learned counsel for the applicants has not pressed for the relief sought in OA-176/96, which is to the effect that the applicants should be declared as eligible for appointment to the post of Radio Mechanic(SK) with effect from 31.8.88, we dispose of these two OAs with the following directions:

20. The order impugned at A-3 in OA-176/96 appointing the applicants to the post of Radio Mechanic(SK) on temporary basis with effect from

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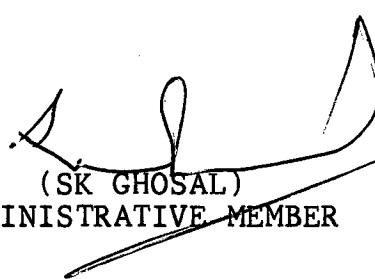
23.1.95 issued by the third respondent in that OA is quashed. Similarly, the impugned orders at A-11, A-12 and A-13 passed on behalf of the second and third respondents in OA-1456/96, rejecting the claims of the applicants individually for refixation of their seniority above the party respondents and confirming their appointment to the post of Radio Mechanic with effect from 23.1.95 only, are quashed. The official respondents are further directed to refix the seniority of the applicants above the party respondents, after first giving them the benefit of appointment to the posts of Radio Mechanic(SK) in preference to the party respondents, which became available after 31.8.88. Only thereafter the official respondents shall accommodate the party respondents against vacancies which were available in the post of Radio Mechanic(SK). In the process the official respondents shall place the party respondents junior to the applicants in these two OAs.

21. The refixation of seniority with all the consequential benefits in favour of the applicants in these two OAs should be completed during the next two months and the applicant should be informed accordingly within ten days thereafter.

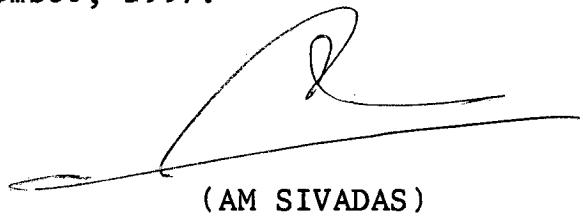
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23. With the above directions we allow OA-1456/96 and OA-176/96, the latter only partially. There will be no order as to costs.

Dated, the 24th November, 1997.



(SK GHOSAL)
ADMINISTRATIVE MEMBER



(AM SIVADAS)
JUDICIAL MEMBER

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