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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.430/87,
Tr. Application No.431/87,
Tr. Application No.433/87.

I. Tr. Application No.430/87:

Shri Shankar Pandurang Jadhav
and 54 others. ... Applicants.

V/s.

1. Vice Admiral S.Mukherjee,
Flag Officer,
Commanding-in-Chief,
Western Naval Command,
Head Office,
Bombay.

2. Union of India,
Indian Navy. ... Respondents.

II. Tr. Application No.431/87:

Shri Ramesh Mahadeo Sawant. ... Applicant

V/s.

1. Mrs.M.Fernandes,
Civilian Gazetted Officer,
Naval Command,
Bombay.

2. G.V.D'Costa,
Civilian Gazetted Officer,
Western Naval Command,
Bombay.

3. Rear Admiral,
Admiral Superintendent,
Naval Dockyard,
Bombay.

4. Shri R.C.Chavan,
Western Naval Command,
Shahid Bhagatsingh Road,
Bombay.

5. Union of India,
Indian Navy. ... Respondents.

III. Tr. Application No.433/87:

Shri Rajaram Dinkar Jawkar. ... Applicant.

V/s.

1. Shri J.N.Sharma,
Officer of the Material
Superintendent,
Ghatkopar,
Bombay.

2. Shri A.G.N.Thakur AC(DM)
Naval Store Depot,
Ghatkopar,
Bombay.

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3. Vice Admiral S.Mukherjee,
Western Naval Command,
Bombay.

4. Shri R.G.Chavan,
Western Naval Command,
Bombay.

5. G.V.D'Costa,
Western Naval Command,
Bombay.

6. Union of India. ... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearance:

Shri R.C.Kotiankar,
advocate(for Shri M.I.Sethna)
for the respondents.

Oral Judgment:-

(Per Shri M.B.Mujumdar, Member(J)) Dated: 9.10.1989

By this common judgment we are disposing of Transferred Applications No.430/87, 431/87 and 433/87 because the facts and the points involved are practically the same. These Transferred Applications were originally filed in the High Court of Bombay as Writ Petitions No.2159/85, 862/85 and 2035/85, respectively.

2. Transferred Application No.430/87 is filed by Shri S.P.Jadhav and 54 others while Transferred Applications No.431/87 and 433/87 are filed by Shri R.M.Sawant and Shri R.D.Jawakar respectively.

3. It is the case of the applicants that they are working in the Time Keeping Department in the Naval Dock Yard and as such their duty consists of supervision of in and out mustering of industrial/ non-industrial employees, maintenance of muster rolls, disbursement of salaries, forwarding overtime

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statements, etc. The working hours are 45 hours in a week, i.e. 8 hours on a normal working day and 5 hours on Saturdays. As Time Keepers they are entitled to overtime payment at double the rate of their salary and to receive every year Productivity Linked Bonus which varies from year to year. According to them if they are transferred from their present cadre of Time Keepers to another cadre, they would not be entitled to either this overtime payment or Productivity Linked Bonus.

4. The applicants in Transferred Application No.430/87 were appointed between 1960 to 1970. Most of them were appointed as Lower Division Clerks (LDC) but some were appointed as Junior Time Keepers (JTK) and three as Peons. The dates of appointments and the post to which they were appointed are given in the table attached as Exhibit 'A' to the application. Shri R.M.Sawant, the applicant in Transferred Application No.431/87, was appointed as LDC in May, 1969. Shri R.V.Jawakar the applicant in Transferred Application No.433 was appointed as LDC in November, 1969.

5. By order dated 17.4.1985 Shri R.M.Sawant is promoted as officiating Upper Division Clerk (UDC) and transferred from Naval Dockyard to Naval Pay Office. He has challenged that order. Shri R.D.Jawakar is transferred on promotion as UDC from Material Organisation, Bombay to Headquarters, Western Naval Command, Bombay by order dated 5.10.1985 and he has also challenged that order. No orders have been issued transferring Shri S.P.Jadhav and the 54 others but as they apprehend that they may be transferred at any time they have filed the application.

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6. By interim orders dated 5.11.1985 and 22.11.1985 the High Court had restrained the transfer of Shri S.P.Jadhav and 54 others, i.e. the applicants in Transferred Application No.430/87. Similarly by order dated 30.4.1985 the transfer of Shri R.M.Sawant i.e. the applicant in Transferred Application No.431/87 was stayed by way of interim relief. There is some interim order passed by the High Court in Shri Javakar's case (Transferred Application No.433/87) also but that is not relevant at this stage. The applicants have in all the cases challenged their transfers from the cadre of Time Keepers to the cadre of ordinary clerks and requested for writ of mandamus against the respondents for withdrawing their letter dated 20.11.1984.

7. The respondents have resisted the applications by filing their written statements.

8. Applicants No. 1, 6, 31 and 53 from Transferred Application No.430/87 and Shri R.M.Sawant the applicant in Transferred Application No.431/87 are present. They have requested for adjournment of the cases as their advocate could not come to the Tribunal. But we have rejected their request as the cases are old and stay is operating against the respondents. We have heard some of them and we have also heard Shri Kotiankar (for Shri M.I.Sethna) for the respondents. We have also gone through the papers carefully and we are deciding all the cases on merits.

9. In order to understand the dispute it is necessary to refer to some orders and judgments. The first letter that needs to be referred to is the letter dated 14.9.1966 issued by the Under Secretary

to the Government of India in the Ministry of Defence.

It reads as follows:-

"To:

The Chief of Naval Staff
(with 40 spare copies)

Subject: AMALGAMATION OF TIME KEEPERS CADRE WITH CLERICAL CADRE

....

Sir,

I am directed to convey the sanction of the President to the merger of the cadre of Time Keepers with the clerical cadre in all Naval Establishments. Consequent on this merger, Senior Time Keepers will be redesignated as Upper Division Clerks and Junior Time Keepers as Lower Division Clerks. The authorised ratio of 1:4 between UDCs and LDCs will be maintained after this merger but where because of the merger and redesignation of Senior Time Keepers as Upper Division Clerks, the number of Upper Division Clerks exceeds the authorised ratio, no reversions will be made and the excess vacancies of Upper Division Clerks will be adjusted against vacancies of Upper Division Clerks becoming available by way of increase in Establishment, retirement etc.

2. The existing pay of the Time Keepers will be protected and they will continue to draw increments in the new cadre on the due dates.

3. Any subsidiary instructions regarding seniority, promotion etc. will be issued by you.

4. This letter issues with the concurrence of Ministry of Finance (Defence/Navy) vide their u.o. no.3161 NA dated 31.8.1966."

10. The next order which is relevant in this case is the order dated 5.12.1966 issued by Headquarters, Western Naval Command. That order is as follows:-

"AMALGAMATION OF THE TIME KEEPERS CADRE WITH THE CLERICAL CADRE.

....

In accordance with the Govt. of India, Ministry of Defence letter no.CP(A)/4895/NHQ/8634/D/N-II dated 14th September, 1966 the Cadre of Time Keepers will be merged with that of LDC/UDC with effect from 1st December,1966.

2. This merger is intended only to give promotion to the Time Keepers along with the LDC/

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UDC. Their duties, terms and conditions of service will remain the same and their hours of work will also continue to be 45 in a week.

3. Consequent upon the issue of this order and in order to distinguish them from the UDC/LDC and UDC(S)/LDC(S) the suffix "T" will be added after their designation. All records and correspondence relating to them should also be indicated by this suffix."

11. One Shri Thoppil Ramakrishnan who was appointed as JTK in 1953 and was promoted as UDC (Time Keeper) in April, 1967, was in August, 1980 transferred as UDC in the spare parts distribution centre of the Naval organisation. He challenged the transfer by filing Writ Petition No.1065/80 in the High Court of Bombay. The High Court allowed the petition by judgment delivered on 1.3.1984. The judgment shows that his main submission was that the Time Keepers constitute a special cadre and a Time Keeper cannot be transferred from that special cadre to the more general cadre of UDC's or LDC's. He had relied on the order dated 5.12.1966 which we have quoted above. The High Court pointed out that it was apparent from the letter dated 14.9.1966 that prior to the sanction of the President to their merger, the cadres of Time Keepers and of the clerical staff were separate. The High Court added that the clarification in the letter dated 5.12.1966 shows that the merger was intended only to make available to the Time Keepers the avenues of promotion that were open to the LDCs and UDCs and that the letter 'T' was to be suffixed after the designation of Time Keepers. From this and the contents of that letter the High Court concluded that there was no complete merger of the two cadre, namely,that of Time Keepers and that of the other clerical staff.

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12. In another judgment delivered on the next day, i.e. on 2.3.1984, the same view was taken. That was the judgment in Writ Petition No.1066/80 filed by one Shri Chob Singh Tomer who was initially appointed as Civilian School Master in the Navy in 1953. From December, 1971 he was working as UDC (Time Keeper). He was transferred to the post of UDC by order dated 24.8.1980 and had challenged that transfer in the writ petition. The judgment shows that the learned counsel for the respondents had contended that the letter dated 5.12.1966 which was issued by the Flag Officer Commanding-in-Chief, Western Command was beyond his powers. In other words, he was not competent to issue that order. But this point was not taken in the affidavit in reply and hence the High Court refused to take cognisance of it.

13. After the above judgments were delivered, by order dated 27.8.1984 Flag Officer Commanding-in-Chief, Western Naval Command cancelled the order dated 5.12.1966 which, as mentioned earlier, had been treated by the Bombay High Court as a clarification of the merger order dated 14.9.1966. The cancellation order dated 27.8.1984 is as follows:-

" CIVILIAN ESTABLISHMENT ORDER PART II OF 1984

No.50/84

AMALGAMATION OF THE TIME-KEEPERS CADRE WITH THE CLERICAL CADRE

1. Ministry of Defence letter CP(A)/4895/NHQ/8634/D(N-II) dated 14 Sep 66 is reproduced as Annexure I to this order for information.

2. This Headquarters Civilian Establishment

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Order Part II of 1966 No.6 dated 05 Dec 66 and 50/80 dated 23 Aug 80 are hereby cancelled.

Sd/-
(GV D'Costa)
Civilian Gazetted Officer
Staff Officer (Civilians)
for Flag Officer
Commanding-in-Chief

CS/I/3935

Headquarters
Western Naval Command
Shahid Bhagat Singh Road,
Bombay - 400 001

Date: 27 Aug 84."

14. This cancellation order dated 27.8.1984 was amplified by another order dated 20.11.1984. This later order dated 20.11.1984 is as follows:-

" Headquarters,
Western Naval Command
Shahid Bhagat Singh Road,
Bombay 400 001.

CS/I/4265 20 Nov. 1984

The Admiral Superintendent, Naval Dockyard, Bombay.
The Materials Superintendent, Naval Store Depot, Bombay.
The Commanding Officers, in Ships Tahir
The Senior Inspectors of Naval Armament, Naval Armament Inspectorate Bombay Khadki

AMALGAMATION OF THE TIME KEEPERS/ SHOP CLERKS WITH CLERICAL CADRE

...

1. Refer to this Headquarters CED part II No.50/84 dated 27th August 1984.

2. It is requested that Clerks (T)/Clerks(S) where borne may be re-designated as UDC/LDC. It is also requested that the suffix "T" and "S" of all such individuals may be removed from all records.

Sd/-
(G.V.D'Costa)
Civilian Gazetted Officer,
Staff Officer(Civilians)
for Flag Officer
Commanding-in-Chief."

15. Hence what is in force now is the merger order dated 14.9.1966 which has not been challenged in this