

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Application No. 20/86

Shri Paramu Gopinathan Achary,
Flat No.11, Building No.'I',
Naval Civilian Housing Colony,
Powai, Bhandup,
Bombay - 400 078. .. Applicant

Vs.

1. The Secretary,
Ministry of Defence,
New Delhi.
2. Chief of Naval Staff,
Naval Head Quarters,
New Delhi - 110 011.
3. The Flag Officer,
Commanding-in-Chief,
Head Quarters,
Western Naval Command,
Shaheed Bhagat Singh Road,
Bombay - 400 023.
4. The Commanding Officer,
INS Shivaji, Lonavala,
Pune.
5. Chief Inspector of Naval Armament,
Naval Armament Inspectorate,
Naval Dockyard, Gun Gate,
Bombay-400 023.

.. Respondents

Coram: Vice-Chairman B.C.Gadgil
Member P.Srinivasan.

1. Shri K.P.V.Menon with
Shri S.K.Menon, Advocate
for applicant.
2. Shri J.F.Deodhar, Advocate
for respondents.

Judgment:

(Per P.Srinivasan Member)

Dated: 29th April 1986

There are three prayers in this application. Prayer (c), by which the Applicant wants us to set aside his transfer from Bombay to Vishakhapatnam no longer survives for consideration. When we heard the parties on the interim relief sought by the applicant on this prayer on 20.2.86, we indicated that we were not inclined to grant an indefinite stay as we were averse to interfere in routine administrative matters like transfers unless

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mala fides is clearly established. The applicant has been working with the respondents at the same station i.e. Bombay for over 20 years since December, 1965 and we were told on behalf of the respondents that the post at Vishakhapatnam which has been lying vacant for some time requires to be filled up in the public interest. The applicant thereupon gave a written undertaking before us that he would join at Vishakhapatnam by the 15th of May, 1986 and we directed the respondents to postpone implementation of the transfer till that date. With this, the matter of the applicant's transfer stands concluded.

2. In prayers (a) and (b), the applicant seeks redressal of his grievance arising out of what he considers to be a wrongful denial by the respondents of promotional opportunities due to him. We may now state the salient facts. The applicant joined the Indian Navy's shore training establishment at INS Shivaji, Lonavla as Junior Instructor in 1962. According to the then prevailing hierarchy in INS Shivaji, a Junior Instructor could be promoted as Senior Instructor and then as Leading Instructor. In 1965, the applicant ~~had~~ ^{had} answered an advertisement in the newspapers for the post of Joiner Ex-aminer in the Navy's Naval Armaments Inspectorate at Bombay. The pay scale of a Joiner Examiner at the time was the same as that of a Senior Instructor in INS Shivaji. He was duly selected. He assumed office as Joiner Examiner in the Naval Armaments Inspectorate at Bombay in December, 1965 and has continued to be in the same post and station till date.

3. According to the applicant, there were no promotional avenues open to him in the Naval Armaments Inspectorate from the post of Joiner Examiner. The Respondents deny this in their reply and state that he could have been considered for promotion if he had passed the requisite departmental examination held for the purpose from time to time. He had failed to do so inspite of several attempts. Be that as it may, the applicant says that he ^{came} ~~came~~ to know for the first time in 1977 that two major structural changes had taken place in the training establishment at INS Shivaji in 1966 and 1972 by which his erstwhile compeers there had benefitted substantially both in terms of emoluments and promotion opportunities. In 1966, the posts of Junior Instructor, Senior Instructor and Leading Instructor had been redesignated as Chargeman, Inspector and Foreman respectively and the pay-scales of all the posts revised upwards. The same posts were again

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redesignated in 1972 as Senior Chargeman, Foreman and Senior Foreman with a further jacking up of the pay-scales. It may, however be mentioned here that before a person working as Junior Instructor in 1966 could assume the new designation of Chargeman and draw the pay of the redesignated post he had to pass a qualifying examination. The Applicant felt that by leaving his old post of Junior Instructor at INS Shivaji and joining as Joiner Examiner in the Naval Armaments Inspectorate - albeit a post equivalent in pay-scale at the time to that of Senior Instructor in INS Shivaji - he had missed opportunities of advancement in his old establishment. He, therefore, sent a representation dated 18th May, 1977 to the Commanding Officer, INS Shivaji requesting that he be promoted to the post of Foreman with appropriate seniority. In a detailed reply dated 5.11.1977 to this representation (page 77 of the compilation) the Western Naval Command Headquarters (respondent No.3) in the application explained that a Junior Instructor before 1966, as the applicant was, had to pass a qualifying examination before being redesignated as Chargeman in the reorganisation of 1966 and before a Chargeman (further redesignated as Senior Chargeman in 1972) could become a Foreman after 1972 he had to pass another qualifying examination and as the applicant had not gone through all these stages, he could not be reabsorbed in INS Shivaji straightway as Foreman. He could, if he wished, revert to INS Shivaji in his old post of Junior Instructor and pass the qualifying examination for redesignation as Senior Chargeman to be considered thereafter for further promotion as Foreman after passing another qualifying examination. The applicant was not willing to revert to INS Shivaji as Junior Instructor but continued to represent by himself as well as through the Service Association (NAISA) of which he was President that he be posted as Foreman in INS Shivaji. All these representations were finally rejected by Naval Headquarters (respondent No.2) and the rejection was communicated to NAISA in a letter dated 9.7.1982 by the Naval Armament Inspectorate in the following words (page 125 of the Compilation)

"Sir,

1. Refer NAISA Bombay letter NAISA/IV/07 dt. 17 February '82 on the subject.

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2. An extract of Naval Headquarters decision, communicated vide HQ:WNC letter CS/3224 dated 3rd July '82 is appended below :

"Naval Headquarters have stated that the case of Shri P.Gopinath Achary, Joiner Examiner, was earlier examined in great detail and decision conveyed vide letter CP(NG)/3009 dated 19 Dec.81. The decision still holds good"

3. In this connection, this office letter BI/1041 dated 20 Jan 82, addressed to Shri PG Achary, Joiner Examiner, and copy endorsed to NAISA Bombay is also relevant.

Yours faithfully,

Sd/-
(DR Braganza)
Technical Officer (Mech)
for Senior Inspector of
Naval Armament"

It is against the above decision that

It is against the above decision that the applicant has come before this Tribunal.

4. When the application came up for hearing on 8.4.1986, we expressed a doubt as to whether we could entertain prayers (a) and (b) at all in view of Section 21 of the Administrative Tribunals Act, 1985, particularly Subsection (2) thereof, as the order complained against in these prayers was passed more than three years prior to the establishment of the Tribunal. We invited both the parties to address us on this aspect of the matter and adjourned the hearing for this purpose to 11.4.1986 and then to 23.4.1986. Having heard Counsel on both sides, we are now of the view that the Tribunal cannot entertain the grievance embodied in prayers (a) and (b) of the application for reasons to be stated presently.

5. Under Section 19 of the Administrative Tribunals Act, 1985, any person aggrieved by an order pertaining to any matter falling within the jurisdiction of this Tribunal can make an application to the Tribunal. Before doing so, however, he has to exhaust all remedies available to him under the relevant service rules (Section 20(1)). He will be deemed to have done so if a final order has been passed by the Government or other competent authority to whom he has made an appeal or representation as provided in the said service

rules(Section 20(2)(a) - we are not here concerned with clause(b) of the same subsection). Under Subsection⁽¹⁾ of Section 21, the application has to be made within one year of the date of the said final order. Now, the earliest date on which an application could have been made to the Tribunal is 1.11.1985 on which date the Tribunal came into existence. Therefore, in terms of Section 21(1)(a), no application can be made to the Tribunal against an order passed more than one year before 1.11.1985 i.e. on or before 31.10.1984. However, the position is modified to some extent by Subsection (2) of Section 21 which starts with the non obstante clause,"Notwithstanding anything contained in subsection(1)". Under the said Subsection(2),if the order complained against is made during the period of three years immediately preceding the establishment of the Tribunal(i.e. 1.11.1985)and one year had already ~~has~~ elapsed from the date of the order before 1.11.1985, an application can still be made to the Tribunal within six months from the date of its establishment. In other words, an application can be made to the Tribunal on or before 1.5.1986 against a final order passed at any time after 1.11.1982 except that - we are not concerned with this contingency in this case - where the period of one year after the date of the impugned order expires after 1.5.1986, the application can be made before such expiry. The combined effect of Subsection(1) and (2) of Section 21,therefore, is that no application can be filed before the Tribunal in respect of final orders passed prior to 1.11.1982 by the Government or other competent authority under the relevant service rules. Learned Counsel for the applicant urged that the Tribunal had full powers to admit applications made after the time limits specified in subsections (1) and (2) of Section 21 by virtue of subsection (3)thereof. In our views this does not help him. When in the first instance no application can be made at all, as in this case, the question of admitting a belated application does not arise. Subsection (3) of Section 21, by virtue of its initial non obstante clause no doubt displaces Subsections (1) and (2), but only to the extent that the time limits set in those Subsections can be extended by the Tribunal in deserving cases. But where, because the Tribunal came into existence only on 1.11.1985, a cause of action that arose

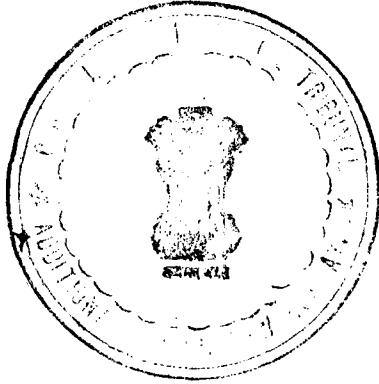
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long before that date cannot be brought before it at all under Subsections (1) and (2), it has no jurisdiction over the matter and so cannot admit it as a belated application under Subsection (3).

6. In the result, the application is dismissed with no order as to costs.

(B.C.GADGIL)
Vice-Chairman

P. Srinivasan
(P. SRINIVASAN) 29/4/1986
Member



Rec'd
for Joseph 29/4/86
use
[Responsible No 5]

Received. Please ~~return~~ 29/9/88
Applicant no. 3
Response no. 3
10654

Received for respondent
Copies sent to all Prof.
B. (P. 3706th)
S. J. S. A.