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

Original Application No.507/89

Shri A.K.Pingle & 3 others. ... Applicants

v/s.

The Flag Officer, Commanding-in-chief,
Western Naval Command,
Head Quarters,
Western Naval Command,
Shahid Bhagatsingh Marg,
Bombay - 400 001, and another ... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Mr.M.V.Palkar,
advocate for the
applicant and
Mr.V.S.Masurkar,
Counsel for the
Respondents.

Oral Judgment:

(Per Shri M.Y.Priolkar, Member(A)) Dated: 7.9.1989

The grievance of the applicants in this case is that they had been transferred by order dated 21.6.1989 of Western Naval Command from the posts of Lower Division Clerks (LDCs) in the Industrial units in the Navy like the Naval Dockyard, to clerical posts outside such industrial units, thus depriving them of Productivity Linked Bonus as also Overtime at higher rates resulting in drop in their emoluments. They have approached this Tribunal for quashing and setting aside this transfer order on the ground that they were appointed as Shop Clerks and the present transfer order will have the effect of adversely affecting their service conditions.

2. The respondents have filed their written reply opposing the application. I have also heard today Mr.M.V.Palkar, learned advocate for the applicants and Mr.V.S.Masurkar, learned Counsel for the respondents.

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3. Mr.Palkar arguing on behalf of the applicants has based his case on the following five contentions. First, he states that the applicants were appointed as LDCs(S) in industrial units and have continued as such right from their appointment, which was on various dates between 1972 to 1975, and, therefore, it is not open now to the respondents to transfer them to non-industrial establishments with different services conditions. In support of this contention Mr.Palkar has relied on High Court judgments in Writ Petitions No.2035/85 and 2159/85 (which have since been transferred to this Tribunal and numbered as Tr. Applications No.430/87 and 431/87 and are still pending for final decision).

4. According to the respondents, however, the shop clerks cadre was amalgamated with the general cadre of clerks by a Presidential order dated 10th November, 1961 (Exh.R-1). This order is reproduced below:

> "Subject: AMALGAMATION OF SHOP CLERKS' CADRE WITH THE GENERAL CADRE OF CLERKS
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> Sir,
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> I am directed to convey the sanction of the President to the amalgamation of Shop Clerks' cadre with the general cadre of clerks in the Indian Navy. The posts of Shop Clerks will be deemed as addition to the posts of clerks and Shop Clerks will be eligible for promotion to higher grades in the clerical cadre."

It will be observed ~~from~~ that this amalgamation order is an unconditional one and the natural result would be that after the amalagamation, all the members of the amalgamated cadre, whether working as shop clerks in industrial units or as clerks outside such industrial units should be eligible to hold any post included in the amalgamated cadre, whether in industrial or non-industrial establishments. Mr.Palkar, however, argued that this amalgamation order was only for the purpose of making the shop clerks eligible for promotion to higher grades in the clerical cadre to which they were not entitled

prior to amalgamation. I do not see any substance in this contention as there is nothing in this order of amalgamation to suggest that the intention behind the amalgamation of the two cadre is merely to make the shop clerks also eligible for promotion to higher grades in the clerical cadre. If this had been the intention, there was possibly no need for any amalgamation order, as the purpose could have been served by an order merely making the shop clerks cadre eligible for those promotional posts as an additional feeder cadre. It looks to me that it would have been patently unfair to the non-industrial clerks who had a separate distinct cadre earlier, if after amalgamation, they were not made eligible for appointment as shop clerks, but shop clerks could affect adversely their promotional prospects by sharing their promotion posts. Obviously any amalgamation of two cadres can be only as a two way traffic, if it is to be fair to both sides. Since shop clerks are made eligible for higher promotions, as members of the amalgamated cadre, the intention must obviously be to make the general clerks eligible for posting as shop clerks, by transfering the latter if necessary, as non-industrial clerks.

5. The reliance placed on the High Court judgments by Mr.Palkar does not also appear to be justified. Firstly, the High Court Judgments are merely by way of interim orders, and what is more important, the petitioners in both the High Court cases had been appointed much earlier to the amalgamation orders which were issued in 1961 for the shop clerks and 1966 for the Time Keepers, whereas the applicants here have been appointed between 1972 to 1975 that is, long after the amalgamated cadre had already been formed.

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6. The second contention of the learned advocate for the applicants was that the addition of suffix(S) to the LDCs is a positive indication that they are a distinct category of clerks within the cadre and their service conditions cannot be altered by transferring them to other posts where the same perquisites are not available. The two perquisites mentioned by him are (i) higher rate of Overtime Allowance and (ii) the Productivity Linked Bonus which is available only in workshops.

7. Mr.Masurkar contended that since the Presidential order dated 10.11.1961 is an unconditional one, it was not open for a lower authority like Flag Officer,Commanding-in-Chief, Bombay to alter it by making this further additions of (S) and (T) in the designations of LDCs and retaining their hours of work and other service conditions. However, according to him, the basic order still remains valid even after the addition and the only purpose served by suffixing (S) is to indicate the present posting of the concerned employee viz. either within the Naval Dockyard workshop or outside it.

8. In any case, in my view, even if these two items of remuneration viz. Productivity Linked Bonus and Overtime Allowance (OTA) are affected by a transfer, it cannot be considered that the service conditions have been altered. Admittedly, there is no change in the basic pay admissible to the employees. Overtime allowance in the industrial workshop is stated to be at double the normal rate but the workshop employees have to put in 45 working hours per week and they work 6 days a week. The OTA for other employees is at normal rates during working days and double the rates only on Sundays and Holidays. But in their case, the working hours per week are only 40 and they enjoy a 5 day week. The higher rate of overtime

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is thus compensated by less working hours and 5 day week. It can, therefore, hardly be considered that this is a factor adversely affecting service conditions particularly since there is no guarantee in either case about any minimum quantum of OTA, which will entirely depend upon the staff strength and the workload in the different establishments and only if the employees work overtime.

9. Similarly, from a statement produced on behalf of the respondents showing comparative figures of payment of Productivity Linked Bonus for shop clerks and ad hoc ex-gratia payment for others, it is seen that in the three years of 1982-83, 1984-85 and 1986-87, bonus/ex-gratia paid was the same for both the categories of employees. It was more for shop clerks in 1983-84 i.e. 22 days' salary for shop clerks against 18 days for others but less for shop clerks in 1985-86 i.e. 15 days for the shop clerks against 23 days for the others. In 1987-88, however, the shop clerks got a bonus of 34 days whereas ex-gratia payment for others was of only 27 days. The important point to remember, however, is that, here again there is no right or guarantee of any minimum productivity linked bonus which depends on the actual extent of higher work output as compared to the base level or threshold level decided earlier in advance. As the actual experience of the last 5 years thus shows that there is only a marginal difference between the bonus paid to the shop employees and the ex-gratia paid to the others, this again cannot be considered to be a service condition which will be adversely affected after the transfer of an employee from industrial shops to other establishments. The contention of the applicants that transfer outside the workshop will alter the service conditions has, therefore, to be rejected.

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10. Mr.Masurkar also stated that they have made enquiries with other naval establishments in India and have ascertained that while the Presidential order dated 10th November, 1961 has been altered to some extent by adding the suffix (S) only by the local officer, namely, the Flag Officer Commanding-in-Chief, Western Naval Command in Bombay, in other Naval Dockyards the amalgamation order has been implemented in full without any alteration.

11. The third contention of Mr.Palkar was that although the suffix (S) has been removed by an order in 1984, the Flag Officer Commanding-in-Chief who issued that order was not competent to do so and in any case, it would not wash out the effect of the High Court Judgments quoted by him. As discussed earlier, the High Court Judgments are merely by way of interim orders and the final decision is still to be given, and both the Writ Petitions have been since transferred to this Tribunal and are pending. In any case, the Presidential order dated 10th November, 1961 amalgamating the cadres does not impose any stipulation regarding distinct categorisation of shop clerks. Even if it is assumed that a local officer is the authority competent to make minor reasonable changes because of local conditions/functional requirements, it must be held that he is also equally competent to delete those changes or make further changes, if these are warranted, in his opinion, by the changed circumstances. The basic fact remains that the petitioners have all been appointed between 1972 to 1974 as LDCs(S) when the amalgamation order had been issued in 1961 and they cannot now make a grievance of the transfers which are permissible after the amalgamation order. Mr.Masurkar also mentioned that a number of shop employees have been and are being regularly transferred outside the shops after the amalgamation order and by and large the transferred

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employees have moved to different units, although a few of them have approached the Courts, but the petitions are still pending.

11. The next contention on behalf of the applicants was that these transfers are neither on promotion posts nor their juniors have been transferred first and, therefore, these transfers are to be considered as arbitrary and inequitable. The justification for the transfers is, however, provided in the communication dated 21.4.1987 (Ex-R-2) addressed by Headquarters, Western Naval Command to all the Establishments/ Units of Western Naval Command, Bombay. This communication lays down guidelines for transfers of civilian staff. It is mentioned that this general policy for transfers has been arrived at after discussion and consensus in the Joint Consultative Machinery (JCM). Basically, the accepted policy now is to transfer all the employees who have completed the tenure of 10 years or more service in a particular unit. Apparently, such policy of rotational transfers is followed in almost all Government departments. It is, no doubt, a salutary principle to transfer employees periodically so that they do not develop vested interests in any particular post. This is all the more important where dealings with the public are involved and also in sensitive establishments like Defence where the present applicants are working. The principle of juniors going out first may apply perhaps in cases of retrenchment or even transfers outside the station, but here is a case where the transfer is admittedly within the same establishment or within other units in Bombay city itself. Just because there could possibly be a marginal loss in emoluments by way of likely reduction of overtime allowance and bonus for a few individuals, it will be difficult for the Tribunal to hold that the transfer guidelines are inequitable, particularly when these guidelines have been evolved after

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consultation with JCM in which all recognised unions of employees are represented. In any general policy decision of this type, it is difficult to satisfy all sections of employees. The best that can be done is to secure a general acceptance of the guidelines by at least the majority of the employees likely to be affected. This seems to have been done in this case and I see no compelling reason why this Tribunal should interfere in this policy decision of the Western Naval Command Headquarters.

12. Lastly Mr.Palkar also raised the question of applicability of Industrial Disputes Act to the applicants. According to him, it is only because of the enactment of Administrative Tribunals Act that the applicants have been denied the opportunity of seeking redress of their grievance under the machinery of the Industrial Disputes Act. Mr.Palkar claimed that under the Industrial Disputes Act, industrial employees cannot be transferred to units where they would be classified as non-industrial employees. But he was not able to show any rule or authority for this contention. This is also the first time that he raised this contention during the final hearing. There is neither any reference to this in the original application nor has he filed any supplementary affidavit or rejoinder. Mr.Masurkar stated that the Naval establishments are exempted from the provisions of Industrial Disputes Act, Since this contention is being raised on behalf of the applicants for the first time and, moreover, since Mr.Palkar has not been able to show any provisions in the Act or Rules or any other authority in support of his contention, I do not consider it necessary to go into this contention raised by Mr.Palkar, keeping in view the statement of Mr.Masurkar that the applicants are outside the purview of the Industrial Disputes Act or the machinery laid down therein.

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13. On the basis of the foregoing discussion, I do not see any merit in this application which is accordingly dismissed. The interim relief granted by this Tribunal on 6.7.1989 stands vacated. The parties will bear their respective costs.

(M.Y.PRIOLKAR)
MEMBER(A).

Judgment dtd. 7/9/89
Send to parties
on 25/9/89.

25/9/89

Judgement dt. 7989 served
on Applicant on 26.9.89

3/10/89

Review Petition No.
25/89.

11/12/89