

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

16th
Dated this the ¹⁶ day of June, 2003 (16-6-2003)

Coram: Hon'ble Mr. V.K. Majotra - Member (A)
Hon'ble Mr. Shankar Raju - Member (J)

(1) O.A. 989 of 1999

Raghbir Om Prakash Singh & 76 others
(By Advocate Shri A.Thorat) - Applicants

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi -1.
2. Indian Naval Headquarters,
Parliament Street,
New Delhi -1.
3. Naval Dockyard,
Mumbai, Lion Gate,
400023.
4. Rear Admiral P.Jaitly
Admiral Superintendent,
Naval Dockyard,
Mumbai.
5. Deputy General Manager,
Personnel & Administration,
Naval Dockyard,
Mumbai.
6. Shri Manjot Singh,
Deputy General Manager,
Personnel & Administration,
Naval Dockyard,
Mumbai.
7. Cdr.Jugal Kishore,
O.I.C., Dockyard Apprentice School,
Manager Human Resources and Planning,
Naval Dockyard, Mumbai.
(By Adv. Shri V.S. Masurkar)

- Respondents

(2) O.A. 655 OF 2000

Shelendra Singh & 25 others
(By Advocate Shri Peter Lobo) - Applicant

Versus

1. Union of India,
New Delhi.

2. Indian Naval Headquarters,
New Delhi.
3. Naval Dockyard, Mumbai.
4. Rear Admiral P.Jaitly,
Admiral Superintendent,
Naval Dockyard, Mumbai.
5. Capt.K.K.Singh,
Personnel & Administration,
Naval Dockyard, Mumbai.
6. Manjot Singh,
Deputy Personnel Manager,
Naval Dockyard, Mumbai.
7. Cdr.Jugal Kishore,
O.T.C., Dockyard Apprentice School,
Manager, Human Resources &
Planning, Naval Dockyard,
Mumbai.
(By Adv.Shri V.S.Masurkar) - Respondents

(3) O.A.855 of 2000

Ripin Kumar Singh,
T.C.E.,
Fitter, Naval Dockyard,
Mumbai,
R/o C/o P.R.Tiwari,
E-301, 3rd Floor,
Badridham,E-Wing,
Titwala (North)Thane,
Pin Code 400 023.
(By Advocate Shri H.A.Sawant) - Applicant

Versus

1. The Officer-in-Charge
of Naval Dockyard Apprentice
School, Naval Dockyard,
Mumbai.
2. The Rear Admiral
Admiral Superintendent of
Naval Dockyard,Mumbai.
3. Union of India,
Acting through the Secretary,
South Block,
Ministry of Defence,
New Delhi.
(By Advocate Shri V.S.Masurkar) - Respondents

(4) O.A.857 of 2000

Birendra Singh Yadav,
Fitter,
Naval Dockyard, Mumbai,
R/o 689/6, NAO Chunabhatti
Tahsil Uran District Raigad,
Maharashtra.

(By Advocate Shri H.A.Sawant)

- Applicant

Versus

1. The Officer-in-charge of Naval Dockyard Apprentice School Naval Dockyard, Mumbai -23.
2. The Rear Admiral, Admiral Superintendent of Naval Dockyard, Mumbai.
3. Union of India, Acting through the Secretary, South Block, Ministry of Defence, New Delhi.
(By Advocate Shri V.S.Masurkar) - Respondents

(5) O.A. 858 of 2000

Avinash Nepalia,
Diesel Mechanic,
Naval Dockyard, Mumbai.
R/o C/o P.M.Madwe,
91/1, NAO Karanja,
Tahsil Uran, District Raigad,
(By Advocate Shri H.A.Sawant)

- Applicant

Versus

1. Officer-in-charge of Naval Dockyard Apprentice School, Naval Dockyard, Mumbai.
2. Rear Admiral, Admiral Superintendent of Naval Dockyard, Mumbai.
3. Union of India
Acting through the Secretary, South Block, Ministry of Defence, New Delhi.
(By Advocate Shri V.S.Masurkar) - Respondents

(6) O.A. 859 of 2000

1. Shri Krishnendu Saha.
T.C.E., Naval Dockyard,
Mumbai.
R/o Quarter M/21, MCH Colony,
Kanjurmarg,
Bhandup West, Mumbai;
(By Advocate Shri H.A.Sawant) - Applicant

Versus

1. The Officer-in-charge of
Naval Dockyard Apprentice,
School Naval Dockyard, Mumbai.
2. The Rear Admiral,
Admiral Superintendent of
Naval Dockyard, Mumbai.
3. Union of India,
Acting through the Secretary,
Ministry of Defence,
South Block, New Delhi.
(By Advocate Shri V.S.Masurkar) - Respondents

(7) O.A.860 of 2000

Naresh Kumar Tyagi.
T.C.E., Fitter,
Naval Dockyard, Mumbai.
R/o Qr.No.44/21 NCH Colony,
Kanjurmarg, West, Mumbai.
(By Advocate Shri H.A.Sawant) - Applicant

Versus

1. Officer-in-charge of
Naval Dockyard Apprentice
School Naval Dockyard, Mumbai.
2. The Rear Admiral,
Admiral Superintendent
of Naval Dockyard, Mumbai.
3. Union of India
acting through the Secretary,
Ministry of Defence,
South Block, New Delhi.
(By Advocate Shri V.S.Masurkar) - Respondents

(8) O.A.584 of 2001

A.K.Malik & 37 others.
(By Advocate Shri G.S.Walia) - Applicant

Versus

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1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi.
2. Chief of Naval Staff,
Naval Headquarters,
New Delhi.
3. Admiral Superintendent,
Naval Dockyard, Mumbai.
4. Deputy General Manager;
Personnel & Administration,
Naval Dockyard, Mumbai.
5. Cdr. Jugal Kishore,
or his Successor in Office,
Officer-in-charge,
Dockyard Apprentice School Manager,
Human Resources & Planning,
Naval Dockyard, Mumbai.
6. Personnel Manager,
Naval Dockyard, Liongate,
Mumbai.
7. Civilian Education Officer,
Dockyard Apprentice School,
Naval Dockyard, Liongate,
Mumbai.
(By Advocate Shri V.S. Masurkar)

- Respondents

(9) O.A.124 of 2001

Subesh S.M. & 37 others.
(By Advocate Shri G.S. Walia)

- Applicants

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Chief of Naval Staff,
Naval Headquarters,
South Block, New Delhi.
3. Admiral Superintendent,
Naval Dockyard, S.B.S.Road,
Naval Dockyard, Mumbai.
4. Dy. General Manager,
Personnel & Administration,
Naval Dockyard, S.B.S.Road,
Mumbai.

S. Cdr. Jugal Kishore,
or his Successor in Office,
Officer-in-charge/
Dockyard Apprentice School Manager,
Human Resources Naval Dockyard,
Liongate, SBS Road,
Mumbai.
(By Advocate Shri V.S. Masurakar)

- Respondents

O R D E R

By Hon'ble Mr. Shankar Raju, Member (J) -

Having regard to the identical facts and question of law involved, the batch of these cases is being disposed of by this common order.

2. These OAs can be divided for convenience into two sets.

In OA-989/99, OA-655/2000, OA-584/2001 and OA-124/2001 Dockyard Temporary Memorandum (DTM) 4/97 dated 16.1.1997 as well as DTM 35/97 dated 17.3.1997 and also DTM 117/99 dated 21.9.1999 are impugned. Applicants have sought quashment of these DTMs with further directions to respondents to implement Dockyard Memo (DM) No. 6/85 for all successful apprentices of the 58th, 59th and 60th ^{61, 62} batches of the Dockyard Apprentices School (DAS) with all consequential benefits of gradation, salary and increments from the date of their appointments, whereas in another set of OAs, i.e., OA No. 855, 857, 858, 859 and 860 of 2000 a challenge has been made to the criteria of allocation of marks of 10% quota with further direction to respondents, i.e., Officer Incharge to allot 5% marks out of 10% marks to applicants who are appointed after being imparted training as apprentices with all consequential benefits.

3. Applicants in the first set of OAs are those apprentices who in response to an advertisement issued in 1994-95 and 1996 for the 58th, 59th and 60-^{61, 62} batches of DAS and after an open competition have been admitted to NDA Schools under the

Apprentices Act, 1961. As the Dockyard comes within the ambit of the Act, they have been imparted training to fill up technical vacancies at NDA Schools. On qualifying the preliminary test and after physical and medical tests have been selected for these jobs. On final interview these candidates had signed the contract of apprentice training. At the time of giving consent DM 6/85 was in vogue to allocate grade to apprentice for employment on completion of training. On preparation of the final merit list applicants have joined DAS, Naval Dockyard on contract of apprenticeship training. In the aforesaid contract clause (e) which deals with the offer of suitable appointment in Grade-I or Grade-II depending on the merit of apprentice training has been deleted by respondents.

4. Applicants joined D&DA Schools in their respective grade and were trained. The training period is divided into four semesters, which consists of three internal semester and final examination. For technical training of duration of two years and for three year training course consist of six semesters out of which five internal and one final. Final examination is to be conducted by the NOVT. The charge regarding initiation of batch for training etc. is reproduced below:

I- The Two year Apprentice Training Course

Batch No.	Date of Joining	Date completion of 1st Semester	Date completion of the IIInd Semester	Date completion of the IIIrd Semester	Final Exam.
58th Batch	Apr. 95	Oct.95	March 96	Oct.96	Mar.97
59th Batch	Oct. 95	Mar.96	Oct. 96	Mar.97	Oct.97
60th Batch	Apr. 96	Oct.96	March 97	Oct.97	Mar.98

6. The weightage of terminal examination, final examination and overall conduct is to be assigned marks out of 100 in the ratio of 40:50:10. These 10 marks awarded by the Officer incharge by OAs is on the basis of several components and factors regarding overall performance of an apprentice. One more category is journeyman in HS Grade-I which was also abolished later on provides special training for a further period of one year at the end of which trade test was to be conducted as DM 9/73. Applicants who joined the Apprentice Schools in April, 1995, October, 1995 and April, 1996 respectively for 58th, 59th and 60th batches had completed the course exactly after two or three years as per the duration. Respondents by DTM 4/97 altered the grading system, superseding DM 6/85. The criteria laid down is tabulated as under:

AWARD	PERFORMANCE (TOTAL MARKS)		REQUIRED
Grade No. of Increments	1st Attempt	2nd Attempt	3rd Attempt
SKILLED 2	70 to 75% and above	-	-
SKILLED 2	70% to 74%	75% and above	-
SKILLED 1	65% to 69%	70% to 74%	-
SKILLED NTL	40% to 54%	55% to 69%	40% and above

7. Aforesaid DTM was further revised and amended through DTM 35/97 on 17.3.97 where the criteria was further changed as under:

Apprentices Act, 1961. As the Dockyard comes within the ambit of the Act, they have been imparted training to fill up technical vacancies at NDA Schools. On qualifying the preliminary test and after physical and medical tests have been selected for these jobs. On final interview these candidates had signed the contract of apprentice training. At the time of giving consent OM 6/85 was in vogue to allocate grade to apprentice for employment on completion of training. On preparation of the final merit list applicants have joined DAS, Naval Dockyard on contract of apprenticeship training. In the aforesaid contract clause (e) which deals with the offer of suitable appointment in Grade-I or Grade-II depending on the merit of apprentice training has been deleted by respondents.

4. Applicants joined D&DA Schools in their respective grade and were trained. The training period is divided into four semesters, which consists of three internal semester and final examination. For technical training of duration of two years and for three year training course consist of six semesters out of which five internal and one final. Final examination is to be conducted by the NCVT. The charge regarding initiation of batch for training etc. is reproduced below:

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6. The weightage of terminal examination, final examination and overall conduct is to be assigned marks out of 100 in the ratio of 40:50:10. These 10 marks awarded by the Officer Incharge by OAs is on the basis of several components and factors regarding overall performance of an apprentice. One more category is journeyman in HS Grade-I which was also abolished later on provides special training for a further period of one year at the end of which trade test was to be conducted as DM 9/73. Applicants who joined the Apprentice Schools in April, 1995, October, 1995 and April, 1996 respectively for 58th, 59th and 60th batches had completed the course exactly after two or three years as per the duration. Respondents by DTM 4/97 altered the grading system, superseding DM 6/85. The criteria laid down is tabulated as under:

AWARD	PERFORMANCE (TOTAL MARKS)		REQUIRED
Grade No. of Increments	1st Attempt.	2nd Attempt	3rd Attempt
SKILLED 2	70 to 75% and above	-	-
SKILLED 2	70% to 74%	75% and above	-
SKILLED 1	65% to 69%	70% to 74%	-
SKILLED NTL	40% to 54%	55% to 69%	40% and above

7. Aforesaid DTM was further revised and amended through DTM 3S/97 on 17.3.97 where the criteria was further changed as under:

AWARD PERFORMANCE (TOTAL MARKS) REQUIRED

Grade No. of Increments	1st Attempt	2nd Attempt	3rd Attempt
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SKILLED 2	70% to 75% and above	-	-
SKILLED 2	70% to 74% 75% and above	-	-
SKILLED 1	65% to 69% 70% to 74%	-	-
SKILLED NIL	40% to 54% 55% to 69%	40% and above	-

8. Applicants who had already passed the apprentice training, another DTM 117/99 was issued on 21.9.99 wherein the criteria had gone further changed. The basis of gradation was changed, the marks were enhanced, weighing factors were altered and final grading was changed and the percentage has been enhanced as compared to DM 6/85, which is tabulated as under:

S.No.	Total Performance (TP)	Grade Awarded for Employment as	Eligible Increments	Additional Increments
	1st Attempt	2nd/3rd Attempt		
I)	85 & above	-	H2	HSK II
II)	80 to 84.99	-	H1	HSK II
III)	70 to 79.99	-	H	HSK II
IV)	65 to 69.99	85 & above	S2	NIL
V)	50 to 64.99	70 to 84.99	S1	SKL
VI)	45 to 49.99	50 to 69.99	S	SKL
VII)	Below 45	Below 50	U	Unfit for Employment

As per the approved DM No.6/85, which has the approval of headquarters the gradation to allot grades, i.e., highly skilled grade-II and skilled grade with increments is tabulated below:

II - The three year Apprentice training Course

Batch No. Date of Date of completion of:

Joining Ist IIInd IIIrd IVth Vth Final

Seme-ster	Seme-ster	Seme-ster	Seme-ster	Seme-ster	Seme-ster
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58th Batch Apr.95 Oct.95 Mar.96 Oct.96 Mar.97 Oct.97 Mar.98

59th Batch Oct.95 Mar.96 Oct.96 Mar.97 Oct.97 Mar.98 Oct.98

60th Batch Apr.96 Oct.96 Mar.97 Oct.97 Mar.98 Oct.98 Mar.99

9. In the aforesaid DTM the new grading system revised in 1998 had been retrospectively made applicable to all the apprentices of 58th to 62nd batches as well as apprentices of 2001 batch onwards. Being aggrieved with the aforesaid change in the criteria and its retrospective application applicants espoused their cause for revision of pay scale and application of 1985 DM in so far as grading is concerned and by an order passed by Admiral Superintendent on 16.9.99 it has been communicated that the decision in the matter would be communicated shortly. As application of DTM has adversely affected applicants' grading and scale of pay and other service benefits and in absence of any decision taken by respondents the present OAs have been filed.

10. In so far as the impleadment of all applicants in one OA and an application to this regard under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987, at the outset the learned counsel stated that though there is no such application for such impleadment but as the present cause of action has arisen as an outcome of the policy decision taken by respondents they may be accorded permission to implead in one application subject to payment of court fee on behalf of all applicants.

11. Learned counsel for applicants at the outset states that respondents being the modal employer and State being a Welfare State applicants cannot be treated arbitrarily in violation of

the enshrined principles of equality and personal liberty contained in Articles 14, 16, 19, 20 and 21 of the Constitution of India. Learned counsel contends that as applicants have already qualified successfully the apprentice training and have been appointed the matter regarding their gradation, pay scales and further benefits are part of their conditions of service as the gradation arrived at and followed as per DTM 117/99 is the basis of their being designated as HS-II and Skilled grade with definite pay scale. Aforesaid DTM is a matter concerning recruitment and being a pre-recruitment process their grievance is well covered under Section 14 (1) (a) of the Administrative Tribunals Act, 1985 (hereinafter referred to as AT Act.)

12. One of the conditions put-forth is that at the time of joining training and even successfully qualifying the same, gradation was admittedly to be governed under OM 6/85 which was in vogue and on the understanding extended by respondents as to applicability of this memo for their gradation and further appointment process the respondents have applied retrospectively the DTM 117/99 to their detriment. As an administrative instruction issued by respondents, though it is not enforceable as per law because the earlier OM was issued on approval by headquarters office the DTM subsequently issued have no sanction of law and unapproved cannot be brought into operation and acted upon. By referring to the following decisions of the Apex Court it is contended that an administrative instruction cannot be acted retrospectively:

- i) Chandraprakash Madhavrao Dadwa and others v. Union of India & Others, 1999 SCC (L&S) 33.
- ii) R.L. Gupta & Another v. M.C.D., 1998 SCC (L&S) 532.
- iii) Food Corporation of India Etc. Etc. v. Om Prakash Sharma and Others, 1998 (2) SCGLJ 337.

13. In this conspectus it is stated that having passed the apprentice training their gradation should have been regulated and should be affected as per the OM in operation i.e. 6/85. Any and should be affected as per the OM in operation i.e. 6/85. Any DTM 119/97 would not be applicable retrospectively.

14. Another leg of argument is that respondents are bound by the doctrine of promissory estoppel as the doctrine has application against the government while exercising public duties. In this regard it is stated that once applicants have been allowed to join apprentice training the gradation should be on the basis of OM 6/85 which had an effect of grading them as HS-T with withdrawal of increments. The promise extended in the form of three gradation to be done as per OM 6/85 is to be carried out and as the OM is neither contrary to law nor beyond the authority of government is inforceable in law. He places reliance in support the decision of the Apex Court in Union of India v. T.E.C. ATR 1986 SC 806.

15. Another contention put-forth is invoking the doctrine of legitimate expectation. In this regard it is stated that an advantage accorded under the old policy, i.e., OM 6/85 for their gradation and increments raises a legitimate expectation and before adopting any new policy affecting this benefit the aggrieved persons should have been put to notice in consonance with the principles of audi alteram partem. For this reliance has been placed on the decision of the Apex Court in Navjyoti Coop. Group Housing Society and Others v. Union of India & Others, (1992) 4 SCC 477.

16. The learned counsel put-forth a proposition of law contending that once the selection process starts the criterial cannot be altered by the authorities in the middle or after the

process of selection. In this conspectus it is stated that once the DM 6/85 laid down elaborate method of gradation on the basis of marks laying down percentage criteria to grade apprentice for appointment the same cannot be altered after they had successfully completed the apprentice training and were appointed to a post. Reliance has been placed on decision of Apex Court in Maharashtra State Road Transport Corporation & Ors. v. Rajendra Bhimrao Mandve & Ors., 2002 (1) SCGLJ 17 as well as on a decision of the Apex Court in Gopal Krushna Rath v. M.A.A. Baig (dead) by Urs. and Ors. 1991 (1) SCGLJ 360. By referring to the reply of respondents it is stated that it has been admitted that grading system contained in DM 6/85 was replaced by DTM 4/97 and 37/97 and thereafter was further revised by DTM 117/99. It is further stated that respondents have admitted that DTM 117/99 issued on 21.1.99 was made applicable to apprentices of 58th, 59th, 60th and 61-62 batches with retrospective effect. It is further contended that applicants have not withheld the information of their appointment in 1999 to technical cadre against existing vacancies and by referring to the chart annexed at A-8 it is contended that grading as per DM of 85 would have placed them in higher skilled grade as well as would have accrued increments to them. By the aforesaid retrospective application of an administrative instruction monetary benefits have been abrogated. It is further stated that anomalies in DTMs issued in 1997 have been admitted by respondents. The respondents have justified revision of the grading as per Government of India's letter dated 14.11.96 but the same cannot be applied retrospectively as applicants who have been inducted in apprentice training when DM 6/85 was in vogue they cannot be divested away of their benefits on that pretext.

17. In so far as the second set of OAs is concerned, applicant after being imparted training have been alleged to be discriminated in so far as 10% marks to be awarded by Officer Incharge of NDA School. According to the learned counsel the aforesaid marks under the heading of conduct consist of conduct and discipline, school appointments, NCC camp certificates, sports, co-curricular activities and social service. According to applicants while awarding 10% marks the aforesaid factors are to be taken into consideration and there is an element of arbitrariness and discretion not being exercised judiciously though despite having certificate of NCC and sports this discretion has not been founded on any intelligible differential having nexus with the object sought to be achieved. The same does not pass the test of equality under Articles 14 and 16 of the Constitution of India. By the element of 5% marks out of 10% marks to applicants they have been deprived of their grade and monetary benefits, including seniority. Applicants are discriminated with batch Nos. 55 and 58 despite the incumbents are placed equal in all respects. The Officer Incharge with an oblique purpose has acted against the policy laid down. Learned counsel has also questioned the competence of Officer Incharge by contending that no delegation for award of marks has been made to him. If the performance is the criteria the discretion should be fair and as per the performance and material on record and the marks are to be allotted on overall achievements in NCC and sports and not according to the whims and fancies. Applicants have been singled out by awarding lesser marks under the guise of discretion which is not fair and unwarranted. It is contended that in OA-855/2000 despite having NCC and Sports .50% have been given under the discretionary quota to applicants. Applicants who secured aggregate marks of 58.9% in mid term and final examination have been awarded only .50% marks at rendum which made the grand total to 58.9% and applicant was accorded as

grading 'B'. Referring to OA-857/2000 it is stated that applicant got 57.22% in overall grading and discretionary marks were one which deprived him of grade 'A'. In OA-858/2000 applicant got 57.760 but 0% in assessment despite having requisite certificates within the components and factors to be considered. Similarly in OA-859/2000 applicant got 57.60% and only 1% in discretionary quota depriving him of grade 'A' and lastly in OA-860/2000 despite having requisite certificates what has been awarded to applicant in the discretionary quota is 0% whereas is total grading was 56 which has deprived him of grade 'A'.

18. On the other hand, learned counsel for respondents Sh. V.S. Masurkar contested the OAs and vehemently opposed the contentions. One of the preliminary objections taken is that under Rule 4 (5) (a) of the Rules ibid by contending that in absence of any application for impleadment in single application OAs are bad in law and can be sustained in so far as applicant No.1 Sh. R.O. Singh (OA-989/2000) is concerned.

19. Another contention put-forth is taking resort to Section 20 of the Apprentices Act, 1961 as to the jurisdiction of this court to entertain the grievance of applicants. By referring to the aforesaid provision it is contended that any disagreement or dispute between the employer and apprentices arising out of a contract of apprenticeship is to be referred to the Adviser for decision and thereafter the decision is appealable within 30 days to the Apprentice Council. As applicants have a dispute regarding gradation and grant of increments which is as per the contract of apprenticeship and is a dispute arising out of the contract the remedy lies before the appropriate forum and not before this Tribunal.

20. Another contention put forth is that before coming to this Tribunal applicants have not exhausted the alternate remedy available to them. As no representations have been filed, OAS are barred under Section 20 of the AT Act.

21. In so far as DTM and DM are concerned, it is stated that both are administrative instructions and are valid in law.

22. In so far as the status of apprentice is concerned, it is stated that not being a service matter as a apprentice is not a government servant any condition of contract cannot be enforceable before the court and by referring to the fact that only few people have been inducted in apprentice training there is no component of selection and the scope cannot be enlarged.

23. It is further stated that applicants have suppressed the fact of their appointment. By producing a chart it is contended by Sh. Masurkar that with regard to batches No.58 and 62 pertaining to the training of two and three years respectively what has been apprised is DTM issued vide No.4/97 which has superseded the earlier DM 6/85 and at the time of issue of DTMs 4/97 and 35/97 applicants were in training as apprentices and as a contract of apprentice respondents have every right to alter the gradation which is in the larger interest of requirement of Navy.

24. In the aforesaid conspectus it is stated that under the Apprentice Act, being statutory, one is not appointed during training and with no guarantee of employment and having no condition of service the gradation and increments cannot be assailed.

25. In so far as second set of OAs is concerned, it is contended that 10% evaluation at the discretion of Admiral Superintendent has been judiciously exercised keeping in view the conduct and performance of applicant and as the same has a nexus with the object sought to be achieved there is no infirmity in the same.

26. It is further stated that apprentices of the same batch who have joined the same training were covered by the similar conditions as such there is no discrimination at all.

27. In so far as revision of OTMs 4/97 and 35/97 is concerned, it is stated that these OTMs have regulated the apprentice training of applicants and they were recruited as apprentices to meet the statutory requirements of Apprentice Act, 1961 and not for employment, as after OTM of 1997 the batch 58, 59, 60 and 2001 who have passed the final NCVT examinations till April, 1999 with a view to ensuring justifiable grading of these apprentices strictly as per guidelines contained in Government of India MoO letter dated 14.11.96 and removing anomalies in OTM 35/95 a new OTM 117/99 issued on 21.9.99 was made applicable to apprentices retrospectively with a view to give higher grade to the apprentices who have secured more than 70% marks but were graded skilled with two increments. Learned counsel contended that an apprentice is not an employee as well as a worker and is paid only stipend and not wages. Those who are under training are apprentices only without any guarantee of employment.

28. In so far as retrospectivity is concerned, it is contended that where a rule or amendment is given effect to from the date when it is promulgated it would apply and affect persons who had joined training under the Act prior to the commencement

of the rules. Section 6 (6) of the Apprentice Act is prospective and accordingly the employer has the discretion to change the internal order pertaining to examination and grading.

29. According to respondents grading system contained in memo 6/85 was replaced by DTM 4/97, on their acceptance of employment pertaining to the batches 58 to 60. The anomaly contained in DTM 35/97 was removed by DTM dated 29.1.99. There has been a rational formula with an object sought to be achieved while awarding grading and is in consonance with the Government of India's guidelines.

30. One of the contentions put-forth is the locus standi of applicants to assail the DTMs as employment is dependent on successful completion of apprentice training. Accordingly, they cannot assail any grading system contained in the administrative order. This, in a nut shell, the stand taken by respondents.

31. We have carefully considered the rival contentions of the parties and perused the material on record.

32. In so far as the preliminary objection as to non-filing of an application for impleadment under Rule 4 (5) (a) ibid is concerned, though there is no application as such on record but this cannot be denied that the cause of action, reliefs sought are identical to all applicants. Mere non-filing of application is a technical flaw.

33. The object of seeking permission to file an application for maintaining in single application in respect of several applicants is that under Section 19 of the AT Act an aggrieved party can file an application and there is an element of generation of revenue by charging requisite fee, the aforesaid

objection can be over-ruled, as stated by applicants in the event the requisite court fee for remaining applicants is deposited with the Tribunal. However, all the requisite factors to maintain a single application exist on record. As case of applicants is good on merits in the larger interest of justice we are inclined to over-rule the aforesaid preliminary objection subject to the condition that applicants shall deposit with the Tribunal the requisite court fee in respect of each applicants except one.

34. As regards objection of jurisdiction and availability of statutory remedy under Section 20 of the Apprentice Act 1961 is concerned, what has been provided is referral of a dispute between the employer and the apprentices arising out of the contract to the Adviser. In the present OAs claim of applicants is directed against the retrospective application and alteration of grading system, during the training to the detriment of applicants. In the contract of apprenticeship though one of the clauses (d) and (e) envisage that it shall not be obligatory on the part of applicants to accept an employment under the employer and on successful completion of apprentice training after suitable appointment employer shall offer suitable appointment in Grades I and II. The aforesaid conditions have been suo moto deleted by respondents as reflected from the contract of apprenticeship annexed with the reply by the respondents. In our considered view there is not dispute as to the contract of apprenticeship but the dispute is the gradation given to applicants on their appointments and also the increments and abrogation of their monetary benefits. In our considered view appointment in process which carries an incumbent to the stage of being placed in the select list is to be treated as a matter concerning recruitment, including method providing induction to a person in public service is nothing but matter concerning

recruitment. This is not the case of respondents that they have accorded applicants on their appointment and accorded them increments on their own devise the method other than DM or OTMs. The Apex Court in K. Narayanan v. State of Karnataka, 1993 (5) SLR 290 while defining recruitment observed it to be an enlist man including providing for inducting a person in public service and appointment. The aforesaid OTMs on completion of the apprentice training provides grading applicants as highly skilled or skilled grade with consequent benefit of increment which is a process preceding appointment and is a part of recruitment process and can be equated with the selection process carried before enlistment of an incumbent in government service. As the process of gradation is continuing process leading to induction in government service it is to be treated as a pre-recruitment process and a matter concerning recruitment. By virtue of Section 14 (a) of AT Act as applicants are appointed against a civil post in matter of their recruitment and matters concerning recruitment this court has jurisdiction to entertain their grievance. The appointments of applicants on successful completion of their apprentice training is a result of gradation on which the definite pay scale and allowances and designation has been accorded. The objection put-forth cannot be countenanced and is accordingly over-ruled, as we are of the considered views that what has been inforceable is not the contract of apprenticeship but a matter concerning recruitment which is analogous to the selection process. Non-availing of remedy under Section 20 of the AT Act would not oust our jurisdiction. Had there been any other conditions in the contract on which a dispute had arisen the jurisdiction was that of Adviser. But as the dispute has not arisen out of contract to apprenticeship we have no jurisdiction to entertain the grievance of applicants.

35. In so far as the objection put-forth of not making a

representation and exhausting alternate remedy what has been provided under Section 20 of the AT Act is that a Tribunal shall not ordinarily admit an application unless it is satisfied that applicants have availed all the remedies available to them under the relevant service rules as to redressal of their grievance. Learned counsel of respondents has miserably failed to point out any service rules which provides a remedy to be exhausted before this court by applicants. Remedy which is available under the relevant rules is to be availed but if there is non, non-exhaustion of remedy would not debar our jurisdiction. However, we find that applicants through their representations have approached respondents and their cause was considered in emergent special meeting on 16.9.99 and a final order has been passed by the competent authority, i.e., Personnel Manager for Admiral Superintendent where the matter was stated to be under examination with communication of result shortly. As applicants has preferred representation and no action had been taken the objection taken under Section 20 of the A.T. Act is over-ruled.

36. In so far as the merits of the case and as to the objection of gradation and grant of increments not being the service condition are concerned, we find that on an all India basis competition applicants are being selected to undergo apprentice training. At the time of induction in ATS though they are governed by the Apprentice Act, 1961 but the instructions issued vide 6/85 the basis of their contract of apprenticeship and are the instructions to govern the gradation and allocation of skilled grade after completion of the training and final examination. This is in this conspectus respondents have made applicants understood to perform accordingly as per DM 6/85 in order to get gradation and increments. This DM which is an approved one and not a temporary having approved from the Headquarter, inter alia, includes within itself a detailed

procedure as to allocation of marks of te examination, final examination and conduct. It is on that basis a percentage has been arrived at to allocate grades to the apprentices of two and three years training alongwith the increments as per their performance and percentage acquired in the NCVT examination. It is also not disputed that when the batches 58, 59 and 60 had come to an end by declaration of result the temporary memo as amended, i.e., 4/97 and 35/97 had not come into existence. The aforesaid DM 6/85 envisage appointment on the basis of different grades based on overall performance during training. This clearly shows that appointment to a grade of apprentice is to be made as per the performance in the final examination in the light of grading arrived at in DM 6/85. The contentions put-forth by the respondents that apprentices remains as a non-employee till he is appointed and the method of internal assessment can be varied at any point of time till the training is over and appointment made cannot be countenanced. The DM 6/85 lays down requirements regarding qualifications for the purpose of appointment. Once the conditions and criteria for selection, i.e., a pre-recruitment process, method of recruitment has been laid down when applicants had joined training and passed it successfully and was in vogue at that time cannot be altered to their detriment after the selection process had started or it is in the middle of it. By amending memo 6/85 through 4/97 and 35/97 DTM and further by DTM 117/99 these requirements and the method of gradation has been altered to the detriment of applicants as on the basis of memo 6/85 which was put to their notice at the time of joining apprentice course applicants had performed accordingly and once secured marks which brought them to highly skilled grade this cannot be altered and applied retrospectively through a DTM which is only a temporary memo not having approval of the headquarters, the enforceability of which would not be valid. The Apex Court in Mandve's case (supra) held as follows:

"It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court to the extent it pronounced upon the invalidity of the circular orders dated 24.6.1996, does not merit acceptance in our hand and the same are set aside."

37. Moreover, in Gopal Krushna Rath's case (supra) following observations have been made by the Apex Court:

"6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirements regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise it would involve issuing a fresh advertisement with the new qualifications."

38. If one has regard to the aforesaid DM 6/85 by which a methodology has been adopted to grade applicants on the basis of their marks into highly skilled and skilled grade with consequent grant of increments which has been followed while they were appointed, by no stretch of imagination can be treated a process unconnected with the appointment or any condition as to the contract of apprenticeship if DMs laid down criteria to be followed for accord of grades the same is a matter concerning recruitment and analogous to the process of selection leading to appointment.

39. In so far as application of DTM 117/99 to the batches retrospectively is concerned, as provided under clause 9 (a) having issued the aforesaid DTM on 20.1.99 that too without approval of the competent authority being an instruction laying down criteria for appointment on the basis of apprentice training cannot be applied retrospectively. It is a settled principle of law that an administrative instruction or order cannot be applied retrospectively. The Apex Court in the case of Chandraprakash Madhavrao Dadwa (supra) held as follows:

"To put it in a nutshell, the change in the essential qualification made in 1990 or 1998 or the additional functions now required to be performed by the appellants could not retrospectively affect the initial recruitment of the appellants as Data Processing Assistants nor their confirmation in 1989. Recruitment qualifications could not be altered or applied with retrospective effect so as to deprive the recruits of their right to the post to which they were recruited nor could it affect their confirmations."

40. In B.L. Gupta's case the Apex Court made the following observations as to retrospectivity of the instructions by observing as follows:

"10. We are unable to agree with Shri Sanghi that by virtue of their length of service, while holding current duty charge as Assistant Accountants, his clients should be regularised in the said posts. Merely because the same posts have been upgraded from Senior Clerks to Assistant Clerks to Assistant Accountants, it would not mean that persons who were given the current duty charge could be regularised without any selection. The clients of Mr. Sanghi presumably hold lien in the posts of Senior Clerks. If they were to be regularised as Assistant Accountants, the effect would be that they would be promoted to the said posts. The Rules of 1978 prescribe the mode in which the promotions can be made. This mode has to be followed before the appointments would be made. If so statutory rules had existed, it may have been possible, though we express no opinion on it, that the existing incumbents may have been regularised. Where, however, statutory rules exist, the appointment and promotions have to be made in accordance with the statutory rules specially where it has not been shown to us that the Rules gave the power to the appointing authority of relaxing the said rules. In the absence of any such power of relaxation, the appointment as Assistant Accountant could only be made by requiring the candidates to take the examination which was the method which was prescribed by the 1978 Rules."

41. If one has regard to the aforesaid the criteria which was in vogue and remained effective till batches are complete and applicants have successfully passed NCTV should have been followed and an instruction which has no enforceability cannot be applied retrospectively, particularly to the detriment of applicants as by following the new criteria and altering the percentage they had been abrogated in their pay scale, grading as well as pay and allowances and as a civil consequence an opportunity was mandated which was deprived to them.

42. We have no hesitation to hold that application of DTM 117/99 upon applicants retrospectively through clause 9 (a) of the DTM is against law and applicants should have been graded and were to be accorded benefits and appointment as per DM 6/85.

43. The impugned action of the respondents in applying DTM 117/99 retrospectively is also an anti thesis to the cardinal principle of promissory estoppel and goes contrary to the legitimate expectation of applicants. In the beginning of the training applicants who have been extended promotions to be accorded as per DM 6/85 have been made to act upon it, as they had performed as per their capability having regard to the percentage for grading them skilled and unskilled. The aforesaid DM was the only criteria for gradation based on the percentage of marks. Having performed as such and secured marks and requisite percentage to be accorded highly skilled and skilled artisans with benefit of increments the promotions extended further cannot be defeated by application of retrospective administrative instruction. The doctrine of promissory estoppel is well explained in *Union of India v. Godfrey Philips India Ltd.*, AIR 1986 SC 806, where the following observations have been made:

"Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills case* (AIR 1978 SC 621((supra)), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public

authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills case (supra) and we find ourselves wholly in agreement with that has been said in that decision on this point."

44. If one has regard to the aforesaid respondents are estopped from acting detrimental to applicants' interest by altering criteria in the midst of the apprentice training of applicants. As applicants have been prejudiced and their rights are abrogated the same cannot be countenanced the doctrine of promissory estoppel is an equitable principle incorporating within itself the rule of ~~fair~~ play.

45. Moreover, the doctrine of legitimate expectation envisaged and imposes upon Government as an essence duty to act fairly by taking into consideration all relevant factors relating to the legitimate expectation. If the consistent past policy which was applicable upon apprentices has been changed which had an effect of depriving applicants what they had expected out of the past policy on the principle of audi alteram partem as the benefit advantage which was to be accrued, i.e., gradation with increments to applicants cannot be altered and in case of any adverse effect, an opportunity to show cause was mandated, which admittedly was not given to them. Applicants, in view of DM 6/85 have performed accordingly and acquired requisite percentage for appointment of highly skilled grade II by retrospective effect and modification of DM 6/85 have been accorded in lesser grades with loss of increments. This is against their legitimate expectation in view of having requisite percentage and in the light of grading system evolved in DM 6/85.

46. In so far second set of OAs is concerned, as per DM 6/85 as well as 117/99 the gradation consist of 40% internal assessment, 50% final examination and 10% for conduct and

discipline which is at the discretion of Officer Incharge, though there were several factors and components like sports NCC, extra curricular activities for awarding marks, we find that in all these OAs though possessing the requisite certificates in various fields, lesser marks have been awarded without considering certificates etc. It is a settled principle of law that discretion is to be exercised judiciously and while awarding marks which is at the discretion of respondents officer, before awarding the marks a transparent and justifiable assessment as per the requisite material to judge in different disciplines should have been adopted. Marks awarded and the certificates issued to applicants in various disciplines show contradiction and discrepancies which is an anti thesis to fair play and transparency in the action of the respondents. It appears that while awarding these marks a mechanical exercise has been done by the concerned officer and in that process various disciplines have not been looked into and assessed as per the availability of experience in these disciplines and performance on account of the certificates existing on record. To our considered view, though there is no unreasonableness in grading system in so far as 10 marks for conduct to be awarded by the Officer Incharge but the manner in which the marks have been awarded shows non-application of mind and arbitrariness, which cannot pass the test laid down under Article 14 of the Constitution of India.

47. Having regard to the aforesaid, first set of OAs is partly allowed. Clause 9 (a) in DTM 117/99 is quashed and set aside. Respondents are directed to re-consider the grading given to applicants as per DM 6/85 having regard to the marks secured in the final examination of apprenticeship and accordingly re-allocate from the date of appointment as per the grading to applicants as well as increments. In that event applicants shall also be entitled to all consequential benefits.

48. In the second set of OAs, however, finding no fault in the grading system as to award of 10% marks at the discretion of Officer Incharge directions are issued to review the marks awarded to applicants in 10% assessment as to conduct and re-consider allocation of marks as per various disciplines and possession of certificates by applicants and their performance. In the event the marks are enhanced applicants be suitably appointed to the grades with all consequential benefits. The aforesaid exercise shall be completed by the respondents within a period of six months from the date of receipt of a copy of this order. No costs.

Let a copy of this order be placed in the case file of each OA.

(Shanker Raju)
Member (J)

(V.K. Majotra)
Member (A)

'San.'

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

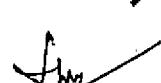
CP No.6/2004 in OA No.855/2000
CP No.14/2004 in OA No.857/2000
CP No.17/2004 in OA No.860/2000

5th Oct,04

None for applicant. Respondents by Shri
V.S.Masurkar.

Learned counsel for respondents submitted
a copy of order dated 19/8/2004 passed by the
High Court of Judicature at Bombay in Writ
Petition No.5073/2004 whereby the operation of
the Tribunal's order dated 16th June,03 has been
stayed.

In view of the above, notices on Contempt
Petitions 6/2004. 14/2004 and 17/2004 in OA
No.855/2000, 857/2000 and 860/2000 respectively
are discharged


(MUZAFFAR HUSAIN)
MEMBER(J)


(A.K. AGARWAL)
VICE CHAIRMAN

abp

order issued
on 18/10/04
K