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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 319/92

Transfer Application No:

DATE OF DECISION: 19.1.1995

Shri M.R.Dalvi & Anr. Petitioner

Shri A.I.Bhatkar Advocates for the Petitioner

Versus

Union of India & Ors. Respondent

Shri V.S.Masurkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

(P.P.SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 319/92

Shri Manohar Raoji Dalvi & Anr.

... Applicants

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri A.I.Bhatkar
Advocate
for the Applicants

Shri V.S.Masurkar
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 19.1.1995

(PER: M.S.Deshpande, Vice Chairman)

The two applicants herein were appointed as Junior Time Keeper with effect from 19.4.1966 and 17.8.1966 respectively in the Time Keeping Department of the Naval Dockyard, Bombay. They were transferred to other office in 1989, those offices have been merged with the other department by the order dated 14.9.1966. The two applicants approached the Supreme Court by filing Writ Petition (Civil) No. 1261 of 1989 along with others. Their matter was decided along with Civil Appeal Nos. 552 to 554 of 1991 by the Supreme Court by the judgement delivered on 5.2.1991. The Supreme Court observed that:-

"the case of those Time Keepers who were serving as such in the Time Keeping Department, such as, the incumbents at serial Nos. 1 to 3, 8 and 12 (S.P.Jadhav, V.S.Khot, P.J.Rodrigues, B.J.Dhamba and V.S.Shinde), must be viewed differently. They belonged to a separate cadre of Time Keeper at the date of the issuance of the Presidential Order. Their terms and conditions of service could not be altered, varied or modified to their detriment without giving them an opportunity to exercise their option.

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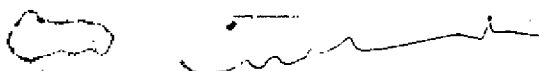
If their transfer outside the Time Keeping Department becomes possible by the merger of their cadre with the clerical cadre but the same entails civil consequences in the form of loss of overtime wages and bonus, justice demands that they must be given an option to choose which course is beneficial to them and if they decide or opt in favour of the status quo they must be allowed to continue as Time Keepers and not be transferred outside that department without their consent, because to do so would render the scheme vulnerable unless the department agrees to make good the economic loss suffered on transfer. Therefore, so far as those Time Keepers who were serving in the Time Keeping Department on and before the date of the implementation of the Presidential Order and who continue to serve in the same department are concerned, the department should give them an option if they are proposed to be transferred outside that department or the department should undertake to make good the economic loss which they are likely to suffer on transfer. Such a reading of the Presidential Order is permissible on the plain language of the order and saves it from being rendered vulnerable.

In the result we allow the appeals partly insofar as they concern the aforementioned five persons to the extent indicated above and dismiss them in respect of the remaining appellants."

With regard to the writ petitioners which admittedly included the present two applicants, it was said that:

"they are not shown to belong to the category of employees who were borne on the cadre of Time Keepers and were actually working in the Time Keeping Department on or before the issuance of the Presidential Order, their writ petition fails and is dismissed."

2. Shri Bhatkar for the applicants urged that the applicants were borne on the cadre of Time Keepers from 1966 and were there in the Time Keeping Department when the Presidential Order dated 14.9.1966 came to be passed and in view of the reasoning given by the Supreme Court in their judgement, they would be entitled to be given an option for continuing in the Time Keeping Department or the Government shall have to pay compensation for the





loss that they have suffered. Though that is so, in the final order which is passed with regard to the writ petitioners including the present applicants, it was made clear that they were not shown to belong to a category which was excluded and there the writ petition came to be dismissed. In view of the clear wording of the Supreme Court's order, it is not permissible for the applicant to approach us with the contention that the applicants' writ petition should not have been dismissed by the Supreme Court because in their statement there was a factual error. It is not open to us to entertain such a contention and the remedy of the applicant would not be by way of an OA. before us under the Administrative Tribunals Act by claiming a direction contrary to the final order of the Supreme Court.

3. The OA. is, therefore, dismissed.

(P.P.SRIVASTAVA)
MEMNER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.