Obj. in OA 351/94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001

O.A.Nos. 1318/93; 351/94 AND 957/95

DATED : WEDNESDAY THE 14TH JANUARY, 1997

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri M R Kolhatkar, Member(A)

O.A.No. 1318/93:
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1. Ashok Narayan Naik
2. Deepak Chandrakant
3. Santosh Rama Naik
4. Ankush Rama Sawant
5. Jusjus Mario J. Gonsalves
6. Shubhash Vasant Chari
7. Sandesh Govind Naik
8. Manohar Shaba Naik
9. Paresh Damodar Kavlekar
10 Bosco D.L.Rodrigues
11 Navin Mahadeo Achrekar
12 Jose Caitan D'Sa
13 Sadanand Purshottam Verlekar

(By Adv. Mr. V M Kanade) ..Applicants in O.A.No.1318/93

Applicants for Inspection

V/s.

1. Union of India
through Respondent No.3

2. The Flag Officer Commanding
Goa Area H.Q.
Vascoda Gama
Goa

3. Director of Logistic Support
Naval Headquarters
Sena Bhavan, New Delhi

(By Adv. Mr. V S Masurkar, Central Government Standing Counsel) ..Respondents

O.A.No.351/94:
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1. Ashok S. Padelkar
2. D M Kadam
3. K B Ghadge
4. Ganpat Sakharam Daphale
5. Thomas Vincent D'Souza
6. Sushil S. Prabhu
7. S A Nair
8. Vijay Keshav Khorawa
9. Kamlesh Vasant Dalvi
10 A E Timmanapyati

11 Harish K. Thakkar
12 Ambika Prasad Pandey
13 Anil Parshuram Chavan
14 D D Bhatt
15 B K Mahadik
16 A D Sawant
17 Ramchandra Madhukar Hadkar
18 Eknath Govind Malgundkar
19 Khule Sharad Laxman
20 P N Bobhate
21 V R Jadhav
22 S L Karnik
23 Subhash Prahakar Parab
24 Arvind Parshuram Kamble
25 P T Bhosle
26 Pradeep Atmaram Shetye
27 Sunil Vinayak Karnik
28 V B Gholkar
29 S B Khadanga
30 Dodti Thomas Peter
31 V R Shinde
32 S L Kadam
33 P. Kumar
34 M D Bhogle
35 K D Vanarse
36 P R Ghadigaonkar
37 R M Karane
38 V S Kangne
39 R A Thakur
40 S B Shelke
41 K S Padval
42 V D Salian
43 P J D Wartika
44 M G Kadam
45 H S Gogate
46 T B Moraes
47 R N S Yadav
48 R C Yadav
49 V A Bhilare
50 M A A Rehman Shaikh
51 S. Srithar
52 B S Lobo
53 P R Sheshadri
54 G D Manvikar

all employed as ASK/SK in
Naval Stores Dept., Mumbai
(By Adv. Mr. V M Kanade) ..Applicants
in O.A.No.351/94

V/s.

1. Union of India
through Secretary,
Ministry of Defence
South Block, New Delhi 1

2. The Flag Officer Commanding

Goa Area H.Q.
Vascoda Gama
Goa

3. Director of Logistic Support
Naval Headquarters
Sena Bhavan, New Delhi

4. The Flag Officer Commanding
-in-Chief, Head Quarters
Western Naval Command
Shahid Bhagat Singh Marg
Mumbai 400001

(By Adv. Mr. V S Masurkar, Central Government Standing Counsel) ..Respondents

O.A.No. 957/95:
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1. S.P.Desai
2. Y S Korgaonkar
3. P A Sawant
4. A D Mhatre
5. Mrs. V P Shringarpure
6. Mrs. S S Sahastrabudhe
7. V R Khedekar
8. H K Amrute
9. P S Worlikar
10 M A Sawant
11 K D Kale
12 S B Bangar
13 G A Patil
14 V N Patil
15 S A Nawar
16 R R Parab
17 K C Kuriakose
18 R S Ghag
19 Smt. S R Nagarkar
20 Smt. M M Deolekar
21 Smt. Usha S. Kanvinde
22 A L Desai
23. Smt. Sheetal S. Shirgaonkar
24 Smt. Pranoti R. Date
25 Smt. Nilima Natarajan
26 Smt. M Y Worlikar
27 Smt. Lalita K. Keny
28 Smt. V R Jaitu
29 Miss. S R Patil
30 U H Patil
31 Udresh Rai
32 Kanchan Ram
33 Smt. A H Ranadive
34 P. Babu
35 C B Desai
36 G T Ransing
37 Ajay D. Kuchewar
38 P L Arland

39 H D Mondkar
40 Uday A. Malgundkar
41 Anivash R. Kadam
42 George Philip
43 M. Shasidharan
44 P D Gaikwad
45 S P Pawaskar
46 S V Koyande
47 R S Kalsekar
48 M A Jenson
49 R P Dhuri
50 D N Jalgaonkar
51 A K I Shaikh
52 Smt. S M Salvi
All are woking at
Material Organisation
Naval Store Depot
Ghatkopar(W)
Mumbai 400086
(By Adv. Mr. V M Kanade) ..Applicants in O.A.N.957/95

V/s.

1. Union of India
through Respondent No.3

2. Director of Logistic Support
Naval Headquarters
Sena Bhavan, New Delhi

3. Flag Officer Commanding
-in-Chief, HQ
Western Naval Command
Shahid Bhagat Singh Marg
Mumbai 400001
(By Adv. Mr. V S Masurkar, Central Government Standing Counsel) ..Respondents

OPEN COURT ORDER

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[Per: R G Vaidyanatha, Vice Chairman]

1. These three cases are filed by the officials of Navy seeking regularisation of their services and for consequential benefits. The Respondents have filed reply

opposing the applications. We have heard the learned counsel appearing on both the sides.

2. All the applicants in these three cases came to be appointed on casual basis in Naval Stores both at Mumbai and Goa. Their services had not been regularised till the date of the applications and they contend that they were appointed on regular basis against regular posts after following regular procedure and that they are entitled to be confirmed and regularised from the date of their initial appointment.

3. In our view we need not go into detailed allegations of the pleadings of both sides in view of subsequent events. It is now brought to our notice that all the applicants in these cases have been regularised except applicants Nos. 11 and 12 in O.A.No. 1318/93 i.e., Navin Mahadeo Achrekar and Jose Caitan D'Sa. We will consider the case of these applicants separately. As for as the other applicants are concerned the main prayer in the applications is that their services be regularised and since the respondents have passed regularising their services except the two officials referred to above, the only grievance of the applicants is about seniority. The learned counsel for the applicant Mr. Kanade contended that though the applicants services have been regularised recently, during the pendency of the O.As., they are entitled to get seniority from the date of their initial

appointment. On the other hand Shri Masurkar, learned counsel for the respondents contended that the seniority counts only from the date of regularisation and not from the date of initial appointment.

4. Applicants' counsel invited our attention to the decision of the Apex Court in AIR 1990 SC 1607 [THE DIRECT RECRUIT CLASS-II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS Vs. STATE OF MAHARASHTRA AND ORS]. There the dispute was about inter-se seniority between the Direct Recruits and the Promotees. The Supreme Court has observed that when the appointments were made in accordance with the rules seniority counts from the date of such appointment and not from the date of confirmation. In our view this decision may not be applicable to the facts of the present case since there is no dispute between the Direct Recruits and Promotees in the present case. On the other hand we may refer to a recent decision of the Supreme Court in 1996(1) SC SLJ 221 [CHIEF OF NAVAL STAFF & ANOR. Vs. G. GOPALAKRISHNA PILLAI & ORS] which is directly on the point. This decision has referred to the earlier decision of Constitution Bench of the Apex Court in DIRECT RECRUIT CLASS-II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS Vs. STATE OF MAHARASHTRA AND ORS] and other cases. It is pointed out that when the appointment is ad hoc and ultimately the ad hoc appointment is regularised then the seniority counts from the date of regularisation and not

from the date of initial appointment. It is interesting to notice that this decision was in respect of appointment of Assistant Store Keeper in Goa in Naval Stores. We have already pointed out that all the applicants in these applications are appointed in Naval Stores Department and hence this decision is directly on the point and is applicable to all the applicants in these cases. Therefore, this decision clearly holds that the seniority counts from the date of regularisation.

5. Learned counsel for the respondents also invited our attention to an unreported judgment of this Tribunal dated 21.2.1995 in OA No.865/90 and 877/90 [NAGARAJA Vs. UNION OF INDIA & ORS.] to which one of us was a party (Hon.Mr. M R Kolhatkar). This Bench has referred to number of decisions on the point including the DIRECT RECRUITS case and considered the facts of the cases and came to the conclusion that the seniority counts from the date of regularisation and not from the date of initial appointment. It is interesting to notice that the facts of O.A.877/90 are directly applicable to the facts of the present case since even in that case the applicant was appointed as casual employees in the Naval Stores and all the present applicants were also appointed on casual basis in the Naval Stores. Therefore both on facts and law the decision in O.A. No.877/90 is directly attracted to the present case. This Tribunal has clearly held that the seniority counts only from the date of appointment on

regular basis and not from the date of initial appointment.

6. For the above reasons we hold that the applicants are entitled to count their seniority only from the date of their regularisation and not from the date of their initial appointment. We may also refer to the order dated 23.6.1995 which is now produced by the applicants where it is clearly mentioned that the applicant have been absorbed on regular basis with effect from 1.6.1995. Therefore, the order is very clear and indicated that regularisation is only from 1.6.95. Hence the applicants cannot claim any seniority from the date of their initial appointment. It may be that their previous services prior to 1.6.95 is available to the applicants for the purpose of pension, gratuity, leave etc., but there is no application so for as the question of seniority is concerned.

7. As for as the applicants 11 and 12 i.e., Navin Mahadeo Achrekar and Jose Caitan D'Sa in O.A.No.1318/93 are concerned, admittedly their services are not yet regularised which is still pending consideration of the department. Learned counsel for the respondents pointed out that the cases of these two applicants could not be regularised since they have not exercised any option for being posted anywhere in the Western Zone. We cannot find fault with the department if they have not

regularised the services of Applicants 11 and 12 in O.A.No.1318/93 since they have not exercised their option to work any where in the Western Zone, but only direct the respondents to consider the case of applicants 11 and 12 and pass appropriate orders of regularisation as per rules. They may also take into consideration whether it would be possible to accommodate them at Goa or else they can be posted any where in the Western Zone. We consider four months time would be reasonable for the respondents to regularise and post the applicants 11 and 12.

8. Another grievance made by the learned counsel for the applicant is that some arrears are not paid and further no payments are made on the basis of 5th Pay Commission Report. Learned counsel for the respondents submitted that it may take some time because lot of calculations are involved. Respondents to take a decision in this matter within four months from to-day.

9. In the result all these three O.As. are allowed as follows:

(i) In all the three O.As. the Respondents are directed to exercise pay fixation under the old scale and new scale and payment of arrears to the applicant within a period of six months from to day, if not already paid.

(ii) The request of the applicants' claiming seniority from the date of initial appointment is rejected. It is hereby declared that the applicant are entitled to seniority from the date of regularisation and not from the date of initial appointment.

(iii) In O.A. No. 1318/93 the respondents are directed to consider the case of applicants 11 and 12 i.e., Navin Mahadeo Achrekar and Jose Caitan D'Sa about their regularisation and passing appropriate orders of posting within a period of four months from to-day.

(iv) In the circumstances of the case there would be no order as to costs.

(M R Kolhatkar)
Member(A)

(R G Vaidyanatha)
Vice Chairman

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