

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1460/95

Date of Decision 2nd May 1996

N.A. Mujwar & 39 ors. Petitioner

Mr. D.V. Gangal Advocate for the Petitioner.

Versus

U.O.I. & 5 ors. Respondent

Mr. V S Masurkar Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S. Hegde, Member (J)

The Hon'ble Mr. M.R. Kolhatkar, Member (A)

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


Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI-1

ORIGINAL APPLICATION NO. 1460/95

DATED: THIS 2nd DAY OF May 1996

Coram: Hon.Shri B.S. Hegde, Member (J)
Hon.Shri M.R. Kolhatkar, Member (A)

1. N.A. Mujwar, Serang
working under Coast Wing Boat Pool
INS TRATA, Colaba, Mumbai 5
residing at Devnor Municipal
Colony, New Bldg. No.14
Room No.19, Gowandi,
Mumbai 43
2. N.A. Majawar, Serang
3. M.H. Malpekar, Serang
4. D. Prasad, Serang
5. G.G. Walawalkar, Serang
6. N.T. Faki, Serang
7. G.K. Chunekar, E.D.II
8. M. Das, E.D.II
9. A.B. Mungekar, E.D.II
- 10 A.U. Mukadam, E.D.II
- 11 L.A. Mirkar, E.D.II
- 12 A.K.A. Pawaskar, E.D.II
- 13 R.P. Singh, ED Ist class
- 14 U.K. Dutta, E.D. ¹Ist class
- 15 D.A. Kotwarkar, Sukhani
- 16 Ali Baba Sain, Sukhani
- 17 Rameshwar, Sukhani
- 18 K.N. Kalekar, Sukhani
- 19 Ramdeo Sigasum, Lascar Ist class
- 20 E.K. Nath, Lascar Ist class
- 21 P H Dhabolkar -do-
- 22 C A Toli -do-
- 23 M B Adkar -do-
- 24 H N Waghare -do-
- 25 S G Hadikar -do-
- 26 P S Keluskar -do-

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27 H S Keshav, Lascer Ist Class
28 M A Karim Kassim -do-
29 R H Maniyar -do-
30 R N Tiwalakar -do-
31 L H Chowgule -do-
32 N R Dhoke -do-
33 N D Revandkar -do-
34 Khedu Ram -do-
35 P P Kemurlekar -do-
36 M D Parab -do-
37 B M Dharankar -do-
38 A L Paradkar -do-
39 C V Dediya Topass
40 M K Solanki -do-

All the applicants are working
as Personnel of Coast Wing Boat Pool,
Colaba, Mumbai 5 on INS TRATA

(By Advocate Mr. D.V. Gangal)

..Applicants

V/s.

1. Union of India through
Secretary, Ministry of
Defence, South Block,
New Delhi
2. Chief of Naval Staff
Naval Headquarters,
New Delhi.
3. The Flag Officer Commanding-in-Chief
Western Naval Command, Fort,
Bombay 1
4. Admiral Supdt. Naval Dockyard,
Fort, Bombay
5. Commanding Officer,
INS Agni Bahu, Colaba,
Bombay 400005
6. Commanding Officer, INS Trata,
Colaba, Bombay 400005.

(By Mr. V.S. Masurkar, Counsel)

..Respondents

O R D E R

(PER: B.S. Hegde, Member(J))

In this O.A. the applicants have pleaded for promotion to various posts such as Sukhani, Tindal, Lascar First Class, Topass, Engine Drivers 1st Class etc., has not been granted as per the Naval Headquarters Policy Order dated 11.05.1982. The policy orders have been bye-passed by the lower authorities thereby it is not open to the lower authorities to contravene the direction of the higher authorities. It may be recalled that while granting ~~interim~~ orders, the Lt. Counsel for the applicant had prayed that pending hearing and final disposal of the O.A. the respondents be restrained from granting the promotion to any of the Yard craft personnel to any of the posts mentioned in prayer (a). However, after hearing the Lt. Counsel for the Applicants the Tribunal directed the Respondents to go ahead with the ~~examination~~ or interview that may take place and publish the result but the promotion is not to be given till next date. Leave to amend the O.A. was granted with a direction to the applicants to give a copy of amended O.A. to the respondents. Notice to respondents returnable on 22.12.95 for admission and decision on interim relief.

2. All the applicants are working as personnel of Coast Wing Boat Pool, Colaba, Bombay, I.N.S. Trata. The grievance is 39 personnel of ~~Coast~~ Wing Boat Pool are transferred from INS Trata to Naval Dockyard Bombay by order dated 16.12.94, despite that

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order, the applicants continue to work under INS Trata. The main thrust of the argument of the applicant's Ld. Counsel is ~~that~~ the applicants are granted seniority and promotion as per letter dated 11.5.82 by clubbing the staff of the Boat Crew and Yard Craft Crew. Annexure-3 states that the Civilian Boat Crew/Yard Craft Personnel borne in the different Naval Establishments of Western Naval Command be brought on common roster for the purpose of promotion and confirmation etc. The common roster will be controlled by the Admiral Superintendent, Naval Dockyard, Bombay. This will come into force from 1.7.82. The cadre of the applicants have been granted promotions to the various posts of Master, Sukhani, Tindal, Lascar, Topass, Engine Driver etc., and this Pooled basis continued till 1993. Since 1994 promotions have been withheld ~~and the~~ Respondent No.4 has separated the seniority list from of Coast Wing Boat Pool. Crew of the Captain of the Yard Craft working under the 4th Respondent. According to the Ld. Counsel for the Applicant this is violatiye of Articles 14 and 16 of the Constitution of India. The Coast Wing Boat Pool crew is presently attached to the Commanding Officer of the INS Trata and INS Agni Bahu.

3. In reply, the respondents have denied the various contentions raised by the applicant and raised priliminary objection that the joint application is not maintainable in view of Rule 4(5)(a) of the C.A.T. Procedure Rules, 1987, wherein it is clearly stated that notwithstanding anything contained in sub-rules

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(1) to (3), the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter. (b) such permission may also be granted to an association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories of persons on whose behalf it has been filed, provided that at least one affected person joins such an application. Therefore, the application filed by the applicants is not maintainable in law because they belong to different posts/cadres. Ld. Counsel for the respondents draws our attention to the prayers clause and submits that even the prayers made by the applicant are not specific and vague, prayer 8(b) makes it clear that the applicants are seeking promotion to various posts and on this ground ~~also~~ the application is not maintainable. The Ld. Counsel for the Respondents submits that till 30.6.82 Unit Roster for holding the DPC unitwise was in vogue, but on the request of Union and the Workers to give the Workers of all Units equal opportunity for promotion~~s~~avenues, the Unit Roster was changed to the Common Command Roster thereby bringing 78 Boat Crew Staff in various grades on the common panel alongwith the Yard Craft personnel of Naval Dockyard, Bombay. However, the Common Command Roster did not work satisfactorily as most of the workers did not go on transfer on promotion and refused their promotions as a

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result of this a number of promotional vacancies remained unfilled, affecting operational efficiency of the Naval units. Therefore, the Common Command Roster neither became successful and popular with the workers nor was found convenient and productive by the administration. Accordingly, the Unions and the Workers requested for review of the policy of Common Command Roster for reverting back to the Unit Roster for actual better promotion prospects for the larger population of the workers. After a detailed discussion with the Unions and the Workers, the Common Command Roster has been reverted back to the Unit Roster w.e.f. 9.11.95 for the good of the larger population of workers and for better productivity. Further, it is submitted that 11 disciplines of applicants have filed this O.A. and each discipline has different recruitment rules for promotion and the prayers made by the applicants are vague and since different disciplines and various posts are involved, the application filed by the applicants is nothing but a public interest litigation and no specific averment is made as to how their seniority and promotion has been affected etc., and they have not made out any case for interference by the Tribunal. The applicants have made representation in 27.11.95 and the O.A. is filed on 13.12.95 i.e., before expiry of period mentioned in the A.T. Act, thereby the application filed by the applicant is premature and not maintainable

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4. In the light of the aforesated pleadings, we have heard the arguments of the Ld. Counsel for the parties and perused the pleadings. Ld. Counsel for the applicant vehemently argued that the Respondents should adhere to the policy decision given by the Headquarters Office and they cannot change the Common Command Roster to Unit Roster without prior approval of the Headquarters and Respondent No.4 is not authorised to change the policy decision of the Naval Head Quarters. On perusal of the various prayers made by the Ld. Counsel for the Applicant, we are of the opinion, that the prayers made by the applicant are not consequential in nature and no details have been given in the application in what way their seniority has been affected, how it is to be treated as common cause of action. Admittedly, the grievance of the applicants varies as the applicants belong to different categories and they are governed by different recruitment rules. In view of Rule 4(5)(a) of the A.T. Act Procedure Rules, unless the cause of action is common it is not permissible to allow persons to file joint application. Though the applicants have filed an application for allowing them to file a joint application, the same has not been allowed so far. In our view, the application is not maintainable as joint application as the cadres are different and the reliefs are different. The O.A. is also premature inasmuch as the applicants have not exhausted the statutory remedy u/s. 20 of the A.T. Act. It is seen from prayer 8(b) they are seeking promotion to different

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posts and it cannot be treated as common cause of action by any stretch of imagination.

5. Ld. Counsel for the applicant contended that the instructions issued by the Naval Head Quarters regarding Common Command Seniority is under Article 309 of the Constitution and is a statutory rule and it is not permissible for the lower authorities to change the same. The Ld. Counsel for the Applicant was asked to furnish necessary details to prove that the Instructions issued by Naval Head Quarters are under Rule 309 of the Constitution. The Ld. Counsel for the Applicant was unable to furnish any details or rules and only averred that they are statutory rules. Therefore, we are of the opinion, that mere assertion ^{by} the Ld. Counsel for the applicants cannot be treated as a binding force and in our view, it is an administrative instruction which can be changed in the facts and circumstances of the case.

6. ^{W.A.} The Rejoinder ^{by} filed by the applicant on 19.4.96, just three days before hearing of the O.A., ¹⁸ ~~is~~ is amazing to see that the Rejoinder has been signed only by five persons whereas the O.A. is signed by 39 applicants.

7. Since the applicant has not made out any ^{by} prima facie case, for our interference ~~and~~ ⁱⁿ ~~order~~ ^{to} granting any relief, and since we had by the interim order directed the respondents to go ahead with the interview and
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publish the result but the promotion is not to be given till next date and since we do not see any merit in this application, we therefore, direct the Respondents to go ahead with the appointments as per the result of the examination held and based on the recommendations of the D.P.C.

8. Before parting with this case, we would with great reluctance like to refer to the attitude of the Ld. Counsel for the Applicants Mr. D V Gangal, during the course of hearing of this application. When we had asked Mr. Gangal, Ld. Counsel for the Applicants, to read the interim order passed by the Tribunal on 14.12.95, he appears to have stated "he is not bothered about what the Tribunal has stated in the interim order but he is concerned with the prayers made in the O.A. which should be granted." To this observation, his colleague Mr. Krishna who was sitting next to him objected whereupon the Ld. Counsel for Applicants shouted at him. When we asked the Ld. Counsel for Applicants Mr. Gangal to repeat the observation, he did not do so. The statement made by Ld. Counsel for Applicants Mr. Gangal, if true, needless to mention, is a direct attack on the Presiding Officers. Since he did not repeat what he apparently stated earlier the matter was not proceeded with further. However, we are compelled to note that the manner in which Mr. Gangal behaved with his colleague during the course of arguments in the Court was most reprehensible and

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if permitted would seriously impair the public image and scandalise the judicial system. Court has the duty of protecting the interest of the public in the due administration of justice and so it is equally entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interferred with by any one. The Apex Court, has observed in the case of Mr. Mishra, the then Bar Council President of the Supreme Court, "brazenness is not outspokenness and arrogance is not fearlessness and use of ~~tempe~~temperate language is not servility and courtsey and politeness are not lack of dignity." A Lawyer has to be gentleman first. Under the Advocates Act, an Advocate is required to maintain high moral, ethical and professional standards. We say no more in the matter in the hope that there would be improvement and we shall not be driven to take the extreme step.

9. Since we have already stated that the O.A. is not maintainable both on point of Joint Application and on merits, the O.A. is liable to be dismissed at the admission stage itself. Since the Ld. Counsel have argued the case extensively, in our view, the O.A. can be disposed of at the admission stage and accordingly we dismiss the O.A. In the facts and

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circumstances of the case the applicants are directed to pay costs quantified at Rs.1,000/- (Rupees one thousand only) which should be paid within two months from the date of receipt of a copy of this order, because we find that the petition filed by the petitioners is frivolous and tantamounts to [redacted] public interest litigation which this Tribunal cannot entertain. O.A is dismissed accordingly.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

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