

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO.1020/97.

Date of Decision. 30.7.98

Shri Jayawant Raghunath Mandke Petitioner/s.

Shri V. H. Kulkarni

Advocate for the  
Petitioner/s

v/s.

Union of India & Ors.

Respondent/s

Shri V. S. Masurkar - R. No. 1 to 5.

Advocate for the  
Respondent/s.

Shri S. S. Karkera - R. No. 6 to 9.

CORAM:

Hon'ble Shri D. S. Baweja, Member (A).

- (1) To be referred to the Report or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

abp.

*D. S. Baweja*  
(D. S. BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI-400 001.

ORIGINAL APPLICATION NO. 1020/97.

DATED THE 31/7 DAY OF JULY, 1998.

CORAM: Hon'ble Shri D.S. Baweja, Member (A).

Shri Jaywant Raghunath Mandke,  
S/o. Raghunath W Mandke,  
Retired from Naval Store Department,  
Ghatkopar, Mumbai - 400 086.  
Residing at - Aparna Apts, Ramdas Wadi,  
Murbad Road,  
Kalyan (M.S.) ... Applicant.

By Advocate Shri V.H. Kulkarni.

V/s.

1. Union of India,  
through The Secretary,  
Ministry of Defence,  
(Indian Navy),  
New Delhi - 110 001.
2. Controller of Defence Accounts,  
(Pensions), Allahabad,  
Pin Code.
3. Commodore Superintendent,  
Nagal Dockyard,  
Mumbai - 400 023.
4. Naval Store Officer (SDI),  
Naval Dockyard, Indian Navy,  
Mumbai - 400 023.
5. The Materials Superintendent,  
Naval Store Department,  
Material Organisation,  
Indian Navy, Ghatkopar,  
Mumbai - 400 086.
6. Union of India,  
through The Secretary,  
Ministry of Post & Communication,  
New Delhi-110 001.
7. Superintendent of Post Offices,  
Mumbai City Central Division,  
Mumbai - 400 001.
8. The Senior Superintendent,  
Mumbai City West Division,  
Dadar P.O. Bldg, IVth Floor,  
Dr. B. Ambedkar Rd, Mumbai-400 014.
9. The Post Master,  
Bhavani Shankar Road P.O.,  
Dadar, Mumbai-400 023. ... Respondents.

By Advocates: Shri V.S. Masurkar - R1 to 5.  
Shri S.S. Karkera - R6 to 9.

O R D E R

(Per Shri D.S. Baweja, Member (A))

The applicant was appointed as a Storeman under Commodore Superintendent, Naval Dockyard, Mumbai on 4.9.62 as per appointment order dt. 5.9.1962. The applicant claims that before being appointed in the Naval Dockyard, he was appointed as a Postman in the Department of Posts and Telegraphs w.e.f. 20.8.1958. After working for more than 3 years continuously, the services of the applicant were confirmed as per order dt. 1.9.1962. The applicant applied for the post of Storeman, Naval Dockyard through proper channel and joined the Naval Dockyard in continuation of the earlier service without any time gap. The applicant has retired from service on 1.3.1993. At the time of retirement, the applicant made a representation for counting his past service in the Department of Posts and Telegraphs as qualifying service for the purpose of Pension. The Controlling Office of the applicant i.e. the Naval Dockyard made a reference to the Posts & Telegraphs Department for furnishing the required certificate with regard to qualifying service. However, as per letter dt. 12.7.1994, Senior Superintendent of Post Offices, Mumbai City West Division, Dadar informed the Naval Dockyard that the records of the applicant for the concerned period has been lost. Thereafter, the applicant contacted the Presidency Postmaster, (Accounts Section) G.P.O., Mumbai. However, he did not get any response and thereafter a legal notice was issued to the Department of Posts (Respondent Nos. 6 to 9). Feeling aggrieved, the present O.A. has been filed on 13.11.1997 seeking following reliefs :

(a) Direct respondent Nos. 6 to 9 to declare

...3.

on affidavit that the record of service of the applicant from 20.8.1958 to 3.9.1962, including the Service Book and the like, has been destroyed and is not now available.

- (b) Direct respondent Nos. 6 to 9 to consider the old documents available with the applicant as genuine under the provisions of Section 90 of Indian Evidence Act and issue a service certificate for counting of service in the Department of Posts as qualifying service for the purpose of Pension.
- (c) Direct respondent Nos. 1 to 5 to allow full Pension benefits for the entire period counting service from 20.8.1958.

2. The main thrust of the applicant is that respondent Nos. 6 to 9 were required to preserve the record with regard to service rendered by applicant from 20.8.1958 to 3.9.1962. In case such records are not available, it is incumbent on the respondent Nos. 1 to 5 to take cognizance of the original documents concerning the appointment in the Department of Posts and Telegraphs and the appointment in the Naval Dockyard and take the entire period of this service for the purpose of qualifying service.

It is also an argument of the applicant that the applicant joined this service in the Naval Dockyard at the age of 27 years as against the age limit of 25 years which came to be allowed only if the applicant had joined the Naval Dockyard through proper channel.

3. On behalf of the respondents, separate written statement has been filed by respondent Nos. 1 to 5 and respondent Nos. 6 to 9. In the written statement of respondent Nos. 1 to 5, at the outset, it has been pleaded that the application suffers from delay and laches as the grievance pertains to the period of 1962

for which matter has been agitated only on 13.11.1997. As regards merit, the respondents have stated that the applicant was directly recruited as a Storeman in the Naval Dockyard and was governed by the existing terms and conditions of the service applicable to the post held by him. In the service record, there is no entry with regard to his earlier service in the Posts and Telegraphs Department and there is document to show that he had come on transfer from the said department through proper channel. It is also further contended that till March, 1993 the applicant did not disclose that he had rendered any service in the Department of Posts and Telegraphs before joining the Naval Dockyard. It was incumbent on the applicant to advise the office at the time of joining of his service, about the service rendered in any other Government Department before joining the Naval Dockyard and making a request for considering the service rendered for the purpose of pension with the required documentary evidence.

On a representation made by applicant, reference was made to the Posts and Telegraphs department who advised that no record for the period is available as the same has already been destroyed as per the existing rules. Keeping these facts in view, the respondents pray that applicant is not entitled for the reliefs claimed.

4. In the written reply of respondent Nos. 6 to 9 also, the plea of limitation has been taken up as the claim for counting the service rendered in the Department of Posts and Telegraphs has been made after a period of 30 years. Respondents have further submitted that as per preservance period laid down for various records as per Post and Telegraphs Manual Volume-i, no records for the period of 1958 to 1962 are available. In the absence

of the records, the claim of the applicant after a lapse of 30 years cannot be given with regard to qualifying service for the service claimed to have been rendered in the Department of Posts and Telegraphs.

The respondents have also strongly opposed the contention of the applicant with regard to issue of service certificate based on the original documents available with the applicant and taking them as genuine under the provisions of Section 90 of Indian Evidence Act, 1908. The respondents have further stated that Rule 4 of CCS (Pension) Rules provides for benefit of counting of past service for the purpose of Pension in case the employee had applied for the post under State or Central Government through proper channel and put in his resignation when he joined the new appointment. Rule 26(2) of CCS (Pension) Rules lays down the procedure to be followed for permitting of counting of the past service as qualifying service. It is further contended that even if the documents available with the applicant are taken as genuine, the applicant has not produced any documents to show that he had made the application through proper channel and had tendered technical resignation before joining the Naval Dockyard. The applicant has not produced any document to show that his resignation was accepted and the period of service in Department of Posts and Telegraphs was directed to be counted as qualifying service.

In consideration of these facts, the submissions made by the applicant are hypothetical in nature and based on the documents, the department cannot issue any service certificate and applicant cannot claim any right of counting the past service after a lapse of 30 years. In view of these facts, the respondent Nos. 6 to 9 pray that the application deserves to be dismissed.

5. The applicant has not filed any rejoinder to the reply filed by both the respondent Nos. 1 to 5 and 6 to 9.
6. Heard the arguments of Shri V.H.Kulkarni, learned counsel for applicant, Shri V.S.Masurkar for Respondent Nos. 1 to 5 and Shri S.S.Karkera proxy to Shri P.M.Pradhan for Respondent Nos. 6 to 9.
7. The main case of the applicant is that before joining the service in the Naval Dockyard from 4.9.1962, the applicant had worked in the Department of Posts and Telegraphs from 20.8.1958 till 3.9.1962 and he is entitled for counting this period of service as qualifying service for the purpose of Pension and he had applied through proper channel. Both the respondent Nos. 1 to 5, as well as, 6 to 9 have opposed the present application on the ground of being not maintainable due to delay and laches and also time limitation. From the facts of the case, it is noted that the applicant appears to have made representation with regard to counting his period of service in the Department of Posts and Telegraphs for the purpose of Pension only at the time of retirement in March, 1993. There is no whisper by applicant that at the time of joining service in the Naval Dockyard or subsequently at any time he represented the issue with regard to counting his previous service. Respondent Nos. 6 to 9 have stated that the old records for the period of service claimed in the Department of Posts and Telegraphs are not available as the records for the said period have not been preserved and destroyed as per the relevant rules laid down for preservation of the old records.

I have gone through the relevant rules brought out viz. Rule 69 of Posts and Telegraph Financial Hand Book Volume-I and Appendix-V and Rule 201 of Posts and

Telegraph Manual Volume-VIII. Keeping in view the provisions of these rules, I have no hesitation in accepting the contention of the Respondent Nos. 6 to 9. The applicant has put in claim for counting his service rendered in the Department of Posts and Telegraphs after a period of more than 30 years. The respondent Nos. 1 to 5 have also submitted that as per the service records, there is no entry with regard to his previous service and no documentary evidence is available on record to establish that he had applied through proper channel before joining in the Naval Dockyard.

The respondent Nos. 6 to 9 have also argued referring to Rule 14 and Rule 26 of CCS (Pension) Rules. These rules lay down the condition for counting of service in the previous Government Department for the purpose of Pension in the Department where the employee has taken appointment. On going through these rules, it is noted that at the time of appointment, the applicant was required to submit the technical resignation which was to be accepted by the Competent Authority indicating that the period of service rendered shall qualify for Pension in the Department where the employee is joining after resignation. This exercise of claiming benefit of previous service should have been carried out at the time of joining Naval Dockyard. If the benefit of this service was not claimed immediately at the time of joining, at least the same should have been claimed within a reasonable time. The claim made by applicant at the time of retirement after more than 30 years after leaving that Department without any explanation for the delay in claiming the benefit of this service is certainly hit by delay and laches and is also barred by limitation.

Keeping the above facts in view, I am inclined to accept the contention of the respondents that the present application is not maintainable on account of delay and laches and also being hit by limitation.

8. Coming to the merits of the claim, it is to be examined taking (a) the records of the period claimed by the applicant for the previous service rendered in the Department of Posts and Telegraphs are not available with the respondents and (b) the service record with the respondent Nos. 1 to 5 also does not show any evidence with regard to his previous service in the Department of Posts and Telegraphs. With this fact, situation emerging, the applicant has made a plea that the respondent Nos. 6 to 9 should take cognizance of the original record and original documents available with applicant and based on the same the period of service in the Department of Posts and Telegraph should be certified as qualifying service for the purpose of Pension.

9. The applicant during the course of hearing showed the originals of the Annexures 'A', 'B' and 'C' which deal with the appointment in the Posts and Telegraphs, subsequent confirmation and the appointment in the Naval Dockyard. The applicant has also pleaded that these documents should be treated as genuine as per the provisions of Section 90 of Indian Evidence Act, 1908 and the respondent Nos. 6 to 9 should issue certificate declaring the service in the Department of Posts and Telegraphs as qualifying service for his Pension. Respondent Nos. 6 to 9 have strongly contested this argument of the applicant stating that even if these documents are accepted as genuine, the same do not establish that the applicant had applied through proper channel and he had submitted his technical

resignation which was accepted by the Competent Authority.

10. Considering the facts of the case, I find force and substance in the contention of the respondent Nos. 6 to 9. The documents at Annexure A, B and C even if accepted as genuine will only establish that the applicant had worked in the Department of Posts and Telegraphs before joining the Naval Dockyard. For declaring this period of service qualifying for Pension in the Naval Dockyard, the crucial question is whether the applicant applied through proper channel and under the provisions of Rule 14 and 26 as referred to in CCS(Pension) Rules. From these two documents, no such link can be found. As stated earlier, the original service record of the applicant is available with the Naval Dockyard. Respondent Nos. 1 to 5 have stated in their written reply that there is no entry in the service record with regard to his previous service in the Department of Posts and Telegraphs. The Service Book was made available for examination and it is noted that the contention of respondent Nos. 1 to 5 is correct and there is no evidence on record to show that the applicant had rendered any service before joining the Naval Dockyard. If there is some entry in the Service Book of the applicant in Naval Dockyard of previous working period, then the matter would have been entirely different and perhaps with the documents available, some link could have been established that he came to be appointed through proper channel. The learned counsel <sup>also</sup> for the applicant, however, during hearing sought to make out a case that when the applicant had applied for the post through proper channel, at that time, he was 27 years of age and the recruitment age limit was 25 years.

Such an appointment could not have been possible until and unless he had applied through proper channel. As stated earlier, the applicant has made no mention of this in the O.A. No Rejoinder reply has also been filed. The applicant has not brought on record the relevant recruitment rules applicable at the time of appointment in the Naval Dockyard. In the absence of the relevant recruitment rules, it is difficult to accept the logic of the applicant with regard to making application through proper channel. The period of service in the previous department can be considered as qualifying service for Pension only if the employee had joined with permission of the Competent Authority and when the required conditions as per the extant rules had been fulfilled. In the absence of the original records with the respondent Nos. 6 to 9, Competent Authority cannot be directed to issue a certificate of service as claimed by the applicant. Even the original documents available with the applicant are not genuine, as they are not sufficient to establish that he had joined the Naval Dockyard after following the due process as per the Rules laid down. In view of these facts, the claim made by the applicant does not merit consideration.

II. In the result, the O.A. is devoid of merit and the same is accordingly dismissed. No orders as to costs.

*D.S. Baweja*  
(D.S. BAWEJA  
MEMBER (A))

B.