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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.680 of 1995

DATE OF ORDER: 4th March, 1998

BETWEEN:

1. S.Narasimha Murthy,
2. S.Sreenivas,
3. H.Ismail,
4. KVSS Vara Prasad,
5. B.Maheswara Rao,
6. T.S.Amarnath,
7. Manohar Srihari Dadmal,
8. N.Venkateswara Rao,
9. D.Senthil Kumar.

.. APPLICANTS

AND

1. The Admiral Superintendent,
Naval Dockyard,
Visakhapatnam,
2. The Manager (Personnel),
Naval Dockyard,
Visakhapatnam.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.P.KRISHNA REDDY

COUNSEL FOR THE RESPONDENTS: Mr.N.V.RAGHAVA REDDY, Adl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

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Heard Ms.Sharada for Mr.P.Krishna Reddy, learned counsel for the applicants and Mr.N.V.Raghava Reddy, learned standing counsel for the respondents.

2. There are 9 applicants in this OA. All of them had passed ITI in various trades. In response to the Naval Dockyard, Visakhapatnam paper notification, they had submitted applications for Apprentice Training in January, 1991. They were selected and recruited in the Naval Dockyard Apprentice School, Visakhapatnam as Apprentices in various non-designated trades with effect from 30.3.91 for training for a period of one year. The applicants wrote examination for joining^{the} training on 23.3.91. As the training was over by 29.3.92 and results were published on 2.4.92, they joined immediately thereafter. As per the Dockyard Permanent Order No.12/86 bearing Sub Code.90-A, Sl.No.228 (Page 25 to the OA) those Apprentices on their having been declared successful in All India Trade Test conducted by the National School of Training for Vocational Trades and Final Test conducted by the Naval Dockyard, Visakhapatnam, will be posted following the criteria laid down in that Dockyard Permanent Order. As per that order, successful candidates in the first attempt obtaining 75-79% will be taken as HSK Gr.II without increment. That order was issued because of the Ministry's order NO.DY/0442/NHO/1928/DOITI/D(11-II) dated 21.11.1986. Subsequently, local instructions were issued whereby successful candidates in the first attempt qualifying with 75% and above marks will be construed as having qualified HSK Gr.II and would be given two increments on appointment as Skilled. The applicants in this OA who applied for the Apprenticeship Training in the month of January 1991 for which examination was held on 23.3.91 had declared passed

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in the examination and they commenced their training from 30.3.91 which was over by 29.3.92 and were appointed as Skilled staff with two increments as per the letter dated 21.3.91 (Page 22 to the OA). It is stated that the applicants were appointed as Skilled with two increments as they joined only on 2.4.92 after the issue of the order dated 21.3.91. The first applicant represented his case for upgradation of his designation from Skilled to HSK Gr.II from the date of his initial appointment by his representation dated 8.3.95 addressed to R-I. But his representation was rejected by the order No.PIR/1106/REP dated 10.4.95 (Page 10 to the OA). In the rejection order it is stated that "the Dockyard Permanent Order No.12/86 dated 3.12.86 quoted by Shri S.N.Murthy was superceded on and from 21 Mar 91 by Dockyard Permanent Order 04A/91 dated 21 Mar 91. Hence the question of extending the prospectus contained in Dockyard Permanent Order 12/86 to Shri S.N.Murthy who was inducted as Apprentice on 30 Mar 91 does not arise." It is stated that similar representations were also filed by the other applicants in this OA.

3. This OA is filed for setting aside the impugned order No.PIF/1106/REP Dt.10.4.95 and similar orders issued to the other applicants and for consequential direction to the respondents to implement the Ministry of Defence letter NO.DY/0442/NGO/1928/DOITI/D(11-II) dated 21.11.86 and Dockyard Permanent Order No.12/86 dated 3.12.86 and further direct the respondents to absorb the applicants in HSK Gr.II from the date of appointment and give them all consequential benefits including arrears of salary,

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seniority in HSK Gr.II.

4. The learned counsel for the applicants relied on the judgment of this Tribunal in OA 327/92 decided on 9.6.94. The applicants therein were also appointed as Trade Apprentices and they were also appointed in accordance with the criteria laid down in the letter dated 21.3.91. The applicants in that OA prayed for appointment in accordance with the Dockyard Permanent Order No.12/86 issued in accordance with the Ministry of Defence letter dated 21.11.1986. This Tribunal after going through the various contentions raised has held that the applicants in that OA ^{were} ~~are~~ eligible to get the relief asked for in that OA provided the post of HSK Gr.II was available on the date when they were to be appointed in the designated trades and the applicants were also given the difference in pay through out that period.

5. The case of the applicants was rejected on the basis that the applicants were appointed much later to the issue of the letter dated 21.3.91 i.e, they were appointed on 2.4.92 and hence the order which was in force on that date is applicable to the applicants in this OA. The contention that the impugned order dated 21.3.91 is a nonest was also considered by the Tribunal in the earlier OA 327/92. The learned counsel for the applicants submitted that the order dated 21.3.91 was issued by the local administration, namely, R-1 and that order does not have the sanction of the Ministry of Defence and hence only the order No.12/86 dated 3.12.86 which was issued in accordance with the Ministry's letter dated 21.11.86 is applicable to the applicants herein.

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6. The above said contention has already been answered by this Tribunal in the earlier OA 327/92. The reasoning given by this Tribunal in adhering to the earlier order No.12/86 is as follows:-

"The permanent order No.04/A of 1991 was issued only on 21.3.1991. No amendment by way of Executive instruction can be issued so as to affect the vested right. Hence, it has to be stated that the case of the applicants has to be considered in accordance with Dockyard Permanent Order No.12 of 1986 dated 3.12.1986 read with letter dated 21.11.1986 of the Ministry and not as per Dockyard Permanent Order NO.04/A of 1991 dated 21.3.1991."

From the above, it is clear that the order dated 21.3.91 did not have sanction of the Ministry as is evident from the observations made by this Tribunal in the earlier OA 327/92. Hence it has to be held that though the applicants were appointed much later than 21.3.91, their cases cannot be rejected as the order dated 21.3.91 is nonest and the order No.12/86 dated 3.12.91 holds ^{the} ~~to~~ field. Hence the applicants herein have to be given the same relief, as was given in OA 327/92.

7. The applicants filed their representation for posting them as HSK Gr.II only in March 1995 and that representation was disposed of by the letter dated 10.4.95 (Page 10 to the OA). When we questioned the learned counsel for the applicants whether it is a belated representation and hence whether the applicants were entitled for full difference of pay throughout from the date

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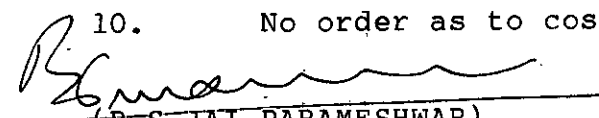
of their joining, the learned counsel for the applicant brought to our notice that the delay was not on their ^{part} ~~count~~ but on ~~the~~ account of the Administration. It is stated in para 6(c) of the affidavit that the respondents have informed the applicants that the case of the applicants will be considered after the disposal of the OA 327/92. That OA was disposed of on 9.6.94 and they got rejection order on 10.4.95. Immediately, thereafter, they ^{have} approached this Tribunal by filing this OA on 9.5.95. Hence it is stated that there was no delay on their part in filing this OA.

8. In view of the above submission, we are of the opinion that the applicants are also eligible to get the arrears, if any, following the same order for payment of arrears in the case of the applicants in OA 327/92.

9. In view of the above, the OA is disposed of with the following direction:-

All the applicants or such of the applicants on the basis of their seniority to the extent of vacancies in HSK Gr.II have to be appointed as HSK Gr.II with effect from the date of their joining after passing the training examination and of course if there were no such vacancies available on that date, this OA stands dismissed. But in case vacancies in HSK Gr.II were available as on that date, the applicants are entitled to the difference in pay throughout.

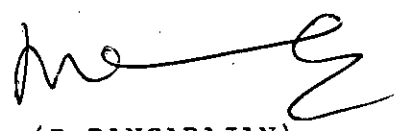
10. No order as to costs.

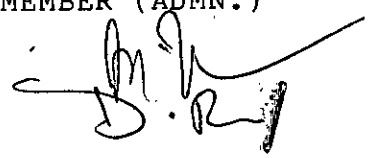

(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

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DATED: 4th March, 1998
Dictated in the open court.

vsn


(R. RANGARAJAN)
MEMBER (ADMN.)



DA.680/95

Copy to:-

1. The Admiral Superintendent, Naval Dockyard, Visakhapatnam.
2. The Manager (Personnel), Naval Dockyard, Visakhapatnam.
3. One copy to Mr. P.Krishna Reddy, Advocate, CAT., Hyd.
4. One copy to Mr. N.V.Raghava Reddy, Addl.CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One copy to duplicate.

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J)

DATED: 4/3/98

ORDER/JUDGMENT

M.A./R.A/C.A.NO.

in

O.A.NO. 680/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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