

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00606/2017

Friday, this the 29th day of November, 2018

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

1. M.V.Jose,
aged 58 years,
S/o M.C.Vareed
Mechanic, Air Engineering,
Naval Aircraft Yard, Kochi-682 004,
residing at Mazhuvanchery House,
Vattapparambu P.O., Kodassery,
Kurumassery – 683 579.
2. C.S.Gopi,
Aged 53 years,
S/o A.Sivaraman,
Painter, Base Victualling Yard,
Naval Base, Kochi – 682 004,
residing at Choloth House,
VME Ward-5, Vaikom.
3. P.Raju,
Aged 55 years,
S/o Pazhani,
MTS, Industrial Heavy Electrical Shop,
Naval Ship Repair Yard, Kochi-682 004.
residing at Alanthodu House,
Thachankodu P.O., Palakkad.
4. K.V.Krishnan,
Aged 54 years,
S/o Ariyan,
Trademan Mate (TDM),
Material Organisation, Kochi-682 004.
residing at Kokkayil House, Kottam PO.,
Kozhikode District – 673 307.

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5. K.V.Karunkaran,
Aged 53 years,
S/o Velayudhan,
Engine Fitter,
Naval Ship Repair Yard,
Nava Base, Kochi-682 004,
residing at Koduvelippadi House,
Thabore P.O., Poothenkutty-683 577.Applicants

(By Advocate Mr.B.Unnikrishna Kaimal)

V e r s u s

1. The Union of India,
Represented by the Secretary,
to Government of India,
Ministry of Defence,
New Delhi – 110 001.

2. The Flag Officer Commanding-in-Chief,
Headquarters, Southrn Naval Command,
Kochi – 682 004.

3. The Chief Staff Officer (P&A),
Headquarters, Southern Naval Command,
Naval Base, Kochi – 682 004. ...Respondents

(By ACGSC, Mrs.Mini R. Menon for Respondents)

This application having been heard on 21st November 2018, the Tribunal
on 29th November, 2018 delivered the following :

O R D E R

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.606/2017 is filed by the applicants, aggrieved by their non-inclusion under CCS (Pension) Rules, 1972. The detailed reliefs sought in the OA are as follows:

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- i) issue an order declaring that the applicants are entitled to pensionary benefits under the CCS (Pension) Rules, 1972.
- ii) issue an order to refund to the applicants the amounts recovered from the applicants towards contribution to the New Pension Scheme with 6% interest within a reasonable time period as deemed fit.
- iii) Such other order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

and

- iv) to issue an order declaring that the deemed date of appointment of the applicants for the purpose of CCS (Pension) Rules, 1972 would be 11.1.2002 without any right for back wages and seniority.

2. The 1st Applicant is presently working as Mechanic, Air Engineering (Skilled Tradesman) in the Naval Aircraft Yard (NAY), Kochi. The 2nd Applicant is presently working as Painter (Skilled) Base Victualling Yard, Kochi-4. The 3rd applicant is presently working as MTS (Industrial) (Unskilled) under Naval Ship Repair Yard, Kochi-4. The 4th applicant is presently working as TDM (Unskilled), Material Organisation (MO), Kochi-4 and the 5th applicant is presently working as Engineering Fitter (Skilled), Naval Ship Repair Yard, Kochi-4.

3. Pursuant to a notification issued by the 3rd respondent inviting applications for the post of Unskilled Labourers under the respondent organisation the applicants applied through Employment Exchange in June, 1997 and were subjected to interview and medical examination in July-August, 1997. When the selection was completed the applicants found a place in the list finalised for making appointment against 60 vacancies

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available during 1996-97. A copy of the select list is at Annexure A2. As appointment took longer than expected, some of the selected candidates approached the respondents and was given a reply that due to a ban imposed by the Naval Headquarters against fresh recruitment, the vacancies of Unskilled Labourers are kept unfilled. However, after stating this, when the 3rd Respondent initiated steps for fresh recruitment, the applicants along with others filed OA No.450/1999 and OA No.768/1999 before this Tribunal seeking setting aside of notification issued for fresh recruitment and to quash the individual communications sent to the applicants cancelling their selection. The two OAs were disposed of by this Tribunal by a common order dated 19.09.2000. In the said order this Tribunal observed as follows:

"In the conspectus of facts and circumstances, we allow the applicants. We set aside Annexures A4 to A12 in OA No.450/1999 and Annexures A1 to A3 and A4 in OA No.768/1999 to the extent it relates to the vacancies for which the applicants were selected and direct the respondents to consider the appointment of the applicants as unskilled labourers in the existing vacancies and to appoint them if they are found otherwise not unsuitable for such appointment The above action should be completed and resultant orders issued as expeditiously as possible at any rate within a period of one month from the date of receipt of a copy of this order (emphasis supplied). There is no order as to costs."

4. The respondents sought more time for implementing the decision of this Tribunal and when granted further two months time, approached Hon'ble High Court of Kerala by filing OP No.32536/2000. Using the stay order issued by the Hon'ble High Court staying the Tribunal's order, the respondents proceeded with further steps for selecting fresh recruits on

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the basis of the notification which had been set aside by this Tribunal. But the OP came to be dismissed by the Hon'ble High Court vide judgment dated 12.10.2001 with the following observations:

“Considering the facts and circumstances of the case we are of the view that the Tribunal was justified in giving direction to the Naval Administration to recruit the persons included in the list which have already prepared. We find no infirmity in the said finding of the Tribunal. We make it clear that the existing vacancies would be filled only from the select list already prepared which included the names of the applicants. If there are remaining vacancies, the same could be filled up by the selection now undertaken by the Naval Administration”

(Emphasis supplied)

5. The applicants filed Miscellaneous Applications in the said OAs seeking a direction to the respondents to implement the order of the Tribunal. The respondents approached the Tribunal again seeking extension of time of three months further for implementing the decision and were granted the same. The respondents used this time to file C.M.P. 884/2002 before the Hon'ble High Court seeking clarification on the steps to be taken. Hon'ble High Court on 3.1.2002 directed that:

“..... the select list as directed in the judgment (Annexure A4) would be given effect to strictly on the basis of merit”.

6. Finding no action on the part of the respondents to comply with the order even after expiry of the extended time period, the applicants filed Contempt Petitions No.2/2002 and No.22/2002. This Tribunal ruled in the Contempt Petition on 7.8.2002 as follows:

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“..... either in the order of the Tribunal or in the order of the Hon'ble High Court there was no directions to give effect to the select list in any manner other than in the order of merit. Therefore the order of the Hon'ble High Court of Kerala in C.M.P.884/2002 also does not modify the Tribunal's order. Further the doctrine of merger is not attracted when the Hon'ble High Court dismissed or disposed of the OP. Since the doctrine of merger is not attracted and what is enforceable is the Tribunal's order, we reject the argument that the Contempt Petition (Civil) could not lie”.

7. The Tribunal came to the *prima facie* conclusion that the respondents were guilty of contempt of the Tribunal's direction and decided to proceed against the Vice Admiral Harinder Singh, Flag Officer Commanding-in-Chief, Southern Naval Command and Commodore Stanley Alan O' Leary, Chief Staff Officer, Southern Naval Command, Kochi. The respondents there upon again approached Hon'ble High Court in OP No.23389/2002 seeking a writ of prohibition restraining the Tribunal from proceeding further with the Contempt Petitions. The Hon'ble High Court dismissed the same adjudging that:

“Considering the facts and circumstances of the case, we find no reason to interfere with the order of the Tribunal”.

A copy of the Hon'ble High Court dated 25.10.2004 allowing time up to 31.12.2004 for complying the orders passed by the Tribunal and the Hon'ble High Court, is at Annexure A8.

8. Left with no alternative the respondents appointed the applicants as Temporary Unskilled Labourers dated 29.12.2004 as per the order

No.CS.2702 dated 29.12.2004 and posted them at INS Venduruthy and INS Garuda against the existing vacancies. The case of the applicants is that having been selected as early as in 1997 against the vacancies of 1995-96 and 1996-97, they could finally secure appointments only on 29.12.2004 due to the protracted and multiple legal proceedings entered into by the respondents before this Tribunal and Hon'ble High Court of Kerala. The applicants have been put to great distress and were denied their right by the inordinate delay for which the respondents are solely responsible. Being at the fag end of the in service, having joined very late in the employment, they have little to aspire for except their retiral benefits. Now they find themselves included in New Pension Scheme on the plea that they are appointed after the introduction of the new scheme which came into effect from 1.1.2004.

9. The applicants submitted representations before the concerned authorities to treat them to be deemed to have been appointed atleast along with the other four applicants in OA No.450/1999. In the said representation they further stated that the request is only for notional appointment so that they could be part of the more beneficial CCS (Pension) Rules, 1972 and they do not propose to claim any seniority on the basis of such deemed appointment. These representations, and others that followed, elicited no response from the respondents.

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10. This Tribunal in OA No.446/2011 had considered similar case wherein the applicant was given ante dated appointment from 21.8.2001 although he was physically appointed after introduction of New Pension Scheme. A copy of the said order is at Annexure A14.

11. Per contra, through a brief reply statement filed on behalf of the respondents, it is averred that the appointment of applicants occurred after the cut off date for the introduction of the New Pension Scheme and thus the applicants are only eligible for the benefits under the said scheme. The NPS has been introduced by the Government of India, Ministry of Finance through Gazette Notification dated 22.12.2003 and makes it mandatory for all new recruits of Central Government Service from 1.1.2004. As is known, this is a contributory scheme wherein the Government employees are also expected to contribute to their pension fund.

12. The sustained fight before this Tribunal and the Hon'ble High Court of Kerala between the applicants and the respondents organisation is admitted. It is maintained that the applicants could not be appointed in the first instance due to the ban on fresh appointments ordered by Naval Headquarters. After directions were issued by this Tribunal and the Hon'ble High Court, the respondents had implemented the order and given appointment. The delay in appointing the applicants was not deliberate and had been necessitated by both the parties approaching legal fora. This delay

hence cannot be considered as unnecessary.

13. We have heard Shri B.Unnikrishna Kaimal, learned Counsel for the applicants and Smt.Mini R. Menon, learned ACGSC for respondents. The issue involved in the OA is not a complex one. The applicants had been found fit to be adjusted against the vacancies of Unskilled Labourers that occurred during 1995-96 and 1996-97. The inopportune ban on fresh appointments came in the way of the applicants obtaining posting. As the applicants pushed for appointment, a protracted battle ensued before this Tribunal and the Hon'ble High Court. Finally with the Hon'ble High Court fixing a firm time line the issue was decided and appointment orders were issued on 29.12.2004, whereby it came about that the applicants would be eligible only under the NPS applicable for all appointees after 1.1.2004.

14. The applicants through MA No.1261/2018 have produced a copy of the judgment dated 27.3.2017 of the Hon'ble High Court of Delhi in W.P.(C) No.2810/2016, a true copy is at Annexure A15. It is ordered therein that the respondents shall treat the petitioners in the case who were appointed on 17.3.2005 as member of the Old Pension Scheme under the CCS (Pension) Rules, 1972, relying on the judgment delivered by the same court in the following cases which directed the petitioners who had joined service after 1.1.2004 to be given the benefit of Old pension Scheme.

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WP(C) 5400/2010 – Avinash Singh Vs. UOI
WP(C) 327/2012 – Navin Kumar Jha Vs. UOI
WP(C) 5830/2015 – Shoorvir Singh Negi Vs. UOI

Hon'ble High Court allowed the prayer of the petitioners. This judgment squarely covers the issue being considered in this OA.

15. Facts being so, we allow the OA and order that reliefs prayed for is to be granted to the applicants in full. They shall be considered as having been appointed from 11.1.2002 without claim on any backwages or seniority. There shall, however, be no order of paying interest for the contribution already made to the New Pension Scheme. This shall be returned to the applicants within six months on receipt of a copy of this order. No costs.

(Dated this the 29th of November 2018).

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00606/2017

1. **Annexure A1** – True copy of the appointment order dated 29.12.2004 issued by the 3rd respondent to the applicants.
2. **Annexure A2** – True copy of the select list for the post of Unskilled Labourers
3. **Annexure A3** – True copy of the common order dated 19.9.2000 of this Hon'ble Tribunal in O.A.Nos.450/1999 & 768/1999.
4. **Annexure A4** – True copy of the judgment dated 12.10.2001 of the Hon'ble High Court of Kerala in OP No.32536/2000.
5. **Annexure A5** – True copy of the order dated 30.10.2001 of this Hon'ble Tribunal in MA No.944/2001 in OA 450/1999 and M,.A.No.906/2001 in OA 768/1999.
6. **Annexure A6** – True copy of the order No.CS2702 dated 10.1.2002 issued by the 3rd respondent.
7. **Annexure A7** – True copy of the order dated 7.8.2002 of this Hon'ble Tribunal in C.P.C2/2002 & 22/2002.
8. **Annexure A8** – True copy of the judgment dated 25.10.2004 of the Hon'ble High Court of Kerala in OP.23389/2002.
9. **Annexure A9** – True copy of the representation dated 17.4.2017 submitted by the 1st applicant before the Chief Staff Officer (P&A), southern Naval Command.
10. **Annexure A10** - True copy of the representation dated 26.4.2017 submitted by the 2nd applicant before the Flag Officer Commanding-in-Chief, Headquarters, Southern Naval Command.
11. **Annexure A11** –True copy of the representation dated 25.4.2017 submitted by the 3rd applicant before the Flag Officer Commanding-in-Chief, Southern Naval Command.
12. **Annexure A12** – True copy of the representation dated 17.2.2012 submitted by the 4th applicant before the Flag Officer Commanding-in-Chief, Southern Naval Command.
13. **Annexure A13** – True copy of the representation dated 25.4.2017 submitted by the 5th applicant before the Flag Officer, Commanding-in-Chief.

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14. **Annexure A14**– True copy of the order dated 26.8.2011 of this Hon'ble Tribunal in OA 446/2011.
15. **Annexure R1** – Copy of GOI, Ministry of Finance, Department of Economic Affairs Gazette Notification dated 22 Dec 03.
16. **Annexure R2** – Copy of Ministry of Finance, Dept of Expenditure OM F.No.1(7)(2)/2003/TA/19 dated 14 Jan 04.
17. **Annexure R3** – Copy of order in CMP 884 of 2002 dated 03 Jan 02.
18. **Annexure R4** - Copy of DOPT OM No.20011/1/2006-Estt(D) dated 03 Mar 08.
19. **Annexure A15** – True copy of the judgment dated 27.3.2017 of the Hon'ble High Court of Delhi in WP(C) 2810/2016.
