

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.482/2017

Dated This The 9th day of November, 2017

**CORAM: HON'BLE SHRI A.J.ROHEE, MEMBER (J)
HON'BLE SHRI R.VIJAYKUMAR, MEMBER (A)**

1. Nilesh Gaikwad/Age 30 years Working in Naval Dock Mumbai as SK Residing at 317 – Sahyadri Niwas Dr. Maheswari Road, Nurbaug Naka Dongri, Mumbai – 400009.
2. Vinod N Dawale/Age 38 years Working in Naval Dock Mumbai as HSK-I Residing at Room No 404, A-Wing Kashist Darsan CHS, Tisgaon Kalyan (East) Dist. Thane Maharashtra-431306.
3. Mukesh M Lohar/Age 36 years Working in Naval Dock Mumbai as HSK-I Residing at A-Wing 001/ Rajeshwari Park CHS Shri Malanga Road, Kalyan (East) Dist Thane, Maharashtra- 421306
4. Renzy J Mudaliar/Age 38 Years Working in Naval Dock Mumbai as HSK-I Residing at 145/A, 4th Floor Laxmi Cottage, Dr. Ambedkar Road Parel, Mumbai – 400012.
5. Mukhtar A Shaikh/Age Working in Naval Dock Mumbai as HSK-II Residing at F/No – 101, 1st Floor, E-Wing Radhakrasha Park, Pislewadi Kalyan (E), Dist Thane, Maharashtra-421306
6. Seema L Patil/Age 48 years Working in Naval Dock Mumbai as MCM Residing at I 6/8 1 2, Yatish CHS Sardar Nagar No. 1, Sion Koliwada Mumbai – 400022
7. Nisha U Gawde Age 52 years Working in Naval Dock Mumbai as MCM Residing at 2/11, DP Jadhav Chawl Bhatwadi, Barve Nagar Ghatkopar (W), Mumbai -400084.
8. P C Mahapaua Age 28 years orkmg in Naval Dock Mumbai_as. L1SK-H Residing at room No.

P-12/li NCHC Ulhashnagar, Dist. Thane.

9. Uttam V Bhandri/Age 27 year Working In Naval Dock Mumbai as SKb Re51dmg at B. No. 16/33. Bdd Chawl NM Josh Marg, Lower Parel, Mumbai 400013

10. Nazir Khan/Age 23 years Working In Naval Dock Mumbai as SK Residing at A2, Hill No. 1, Near ShlV Mandir. SundarBaug, Kamam Kurla (W), Mumbai 400070

11. CP Madake/Age 23 years Working in Naval Dock Mumbai as SK Regiding at 303 Himsagar Apartment Malang Road, Kalyan (E) Dist. Thane, Maharashtra - 421306

12. P S Kute /Age 28 years Working in Naval Dock Mumbai as HSK-11 Residing at 13/301, Gayatri Enclave Medatiya Nagar, Bhayander (E) Dist Thane, Maharashtra-401 107.

13. Mahadev Padhy/Age 20 years Working in Naval Dock Mumbai as SK Residing at Devicharan Chawl No.8/19 Sakinaka, Mumbai - 400072

14. Vivek Uday Mhatre/Age 30 years Working in Naval Dock Mumbai as SK Residing at Zoting Mata Chawl, Room No 11 MG Road, Charkop, Kandivali Village, Mumbai - 400067

15. Ramchandra Rajage/Age 30 years Working in Naval Dock Mumbai as SK Residing at Khandla Chawl, Swadeshi Mill Rd Sion Chunabhatti, Mumbai - 400070.

16. A S Karade Age 32 years working in Naval Dock Mumbai as HSK-11 Residing at 8003, Kashish Darshan lisgaons Kalyan-(East), Dist lhane

17. Vishal Vittal Paste Age 35 years Working

in Naval Dock Mumhai as HSK-I Reslding at 202 - Aayush Apartment Ganesh Nlandir Road. 'Vlanda Titwala (E) Dist. Thane, Maharashtra.

18. Mahesh P Gite Age 34 years Working in Naval Dock Mumbai as SK Residingg at Plot No 6 15A 5 Prayag SCo. Nagan Nmaia Parishad Goregaon (East), Mumbai - 400065

19 Vilas J Ambole/Age 51 years Working in Naval Dock Mumbai as MCM Residing at 217 Manik CHS Ltd SJ Marg, Parel (W), Mumbai-400013.

20. S N Sarkale /Age 35 years Working in Naval Dock Mumbai as HSK-1 Residing at 8-303, Kashish Darshan Jan Mari Temple Tisgaon, Kalyan-(E) Dist. Thane, Maharashtra-421306.

21. Satish S Wavare/Age 49 years Working in Naval Dock Mumbai as HSK Residing at 277/14, Chandraml Society Sector-2, Charkop, Kandivali (West) Mumbai -400067

22. Narayan Panda/Age 37 years Working in Naval Dock Mumbai as HSK-1 Residing at 50/16, NCH Colony Kanjurmarg (West), Mumbai-400078.

...Applicants

(By Advocate Shri Vicky Nagrani

V/s.

1. The Union of India through the Secretary, Govt of India, Ministry of Defence South Block, New Delhi- 110011

2. The Secretary of Ministry of Personnel Public Grievances and Pension Department of Personnel & Training North -Block, New Delhi -110011

3. The Chief of the NaVal Staff For, Director of Civilian Personnel Integrated Headquarters. Ministry of Defence (Navy), 1st Floor. Annex Building Talkarora Sradium. New Delhi - 110001.

4. The Admiral Superintendent Lion Gazer Naval Dockyard Mumbai - 400 023.

...Respondents

(By Advocate Shri V.S.Masurkar)

Reserved on : 11.10.2017

Pronounced on : 09.11.2017

ORDER

Per : R.Vijaykumar, Member (A)

This application has been filed on 2.8.2017 seeking the following reliefs :-

"A) This Hon'ble Tribunal may graciously be pleased to call for the records of order dated 28.02.2017 ((Annexure A-1), order dated 15.03.2017 (Annexure A-2), panels for promotion dated 29.03.2017 (Annexure A-3), promotion orders dated 29.05.2017 (Annexure A-4), and DoPT OMs dated 13.08.1997 (Annexure A-5), 11.07.2002 (Annexure A-6) and 10.08.2010 (Annexure A-7) from the Respondents and after examining the same may be quash and set aside.

B) This Hon'ble Tribunal may further be pleased to direct the Respondents to conduct review DPC 2016-17 for promotion to the posts of Artisan Staff without applying reservation for SC/ST categories.

D) This Hon'ble Tribunal may further be pleased to direct the Respondents to discontinue reservation of SC/ST categories in promotion of Artisan staff to Technical Officers until the Government of India collect quantifiable data showing backwardness and inadequacy of representation of SC/ST class in public employment in addition to compliance of Article 335. Even if the Central Government has compelling reasons, as stated above, the government will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

(D) Cost of Application be provided".

2. Applicants have also filed an M.P. for permission to file joint application and this has been permitted in the circumstances although the applicants fall into different categories but the principles underlying their arguments are one and the same.

3. The applicants numbering 22 are employed in various categories of Artisans : Skilled (SK), Highly Skilled - II (HSK-II), Highly Skilled - I (HSK-I), Master Craftsman

{MCM} with the Naval Dockyard, Mumbai. They have objected to Dockyard Notice No.03/2017 panel for promotion from HSK-I to MCM for 2017-18; Dockyard Notice No.04/2017 panel for promotion from HSK-II to HSK-I for the year 2017-18; Dockyard Notice No.05/2017 panel for promotion to SK to HSK-II for the year 2017-18; the coupled Memorandum No.DYP/P/9103/HSK-I dt. 29.5.2017 for promotion in 2017-18 from HSK-II to HSK-I; and Memorandum No.DYP/P/9103/HSK-II dt. 29.5.2017 for promotion in 2017-18 from SK to HSK-II. Their objections have been rejected including by the Western Naval command stating that they are strictly following the orders issued by the Department of Personnel and Training in such matters relating to reservation promotions for SC/ST by which is meant the orders of 1997, 2002, 2010 along with the clarification based on the undertaking of the learned Solicitor General issued in 2016. The applicants have objected to the higher

proportions of SC/ST candidates accommodated within the sanctioned posts that are filled by promotion since the SC/ST candidates have been in the past and in the present order, been promoted against general vacancies and are, therefore, highly over represented. They have accordingly challenged the promotion panels and the promotion orders issued as above that has adopted the principles as set out in DoPT orders on and after 1997. These are orders of the DoPT dt. 13.8.1997, 11.7.2002 and 10.8.2010, including the last as clarified in 2016 by reference to the undertaking furnished by the learned Solicitor General to the Apex Court.

4. In this connection, the DOPT order dt. 13.8.1997 barely preceded the completion of 5 years from the orders of the Apex court in **Indira Sawhney Etc. vs Union Of India and Others.** decided on 16 November, 1992 (AIR 1993 SC 477), which permitted reservations in promotion for SC/ST up to 15.11.1997. The

DoPT order cited decided to continue reservations in promotion until representation of these categories met the prescribed levels of reservation. The order dt. 11.7.2002 dealt with SC/ST candidates promoted on their own merit. The order dt. 10.8.2010 adopted the decision of the Chennai Bench of this Tribunal in O.A. No.900/2005 dt. 31.1.2005 for dealing with SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications to the effect that such person should be accommodated against unreserved vacancies. The undertaking furnished by learned Solicitor General to the Apex Court centered around the limited point of accommodating SC/ST candidates promoted on merit against unreserved vacancies but left the issue of reservations in promotion for SC/ST intact.

5. The principal argument of the applicants is that the Apex Court in the case

of **M.Nagaraj & Others vs Union Of India & Others (2006 (8) SCC 212)** decided on **19 October, 2006**, upheld the three Constitutional Amendments that yielded Articles 16 (4), 16(4A) and 16(4B), but concluded that they only enabled the State to provide reservations for the compelling reasons of backwardness and inadequacy of representation while ensuring overall efficiency of the concerned State Administration. The Apex Court also laid down that if the State wished to make reservation for SC/ST in promotions and exercise such discretion, the State would have to collect quantifiable data showing backwardness of class and inadequacy of representation in addition to compliance of Article 335; not exceed the 50% ceiling limits for reservations; not obliterate the creamy layer distinction and not permit unlimited period of reservations. The applicants argue that the panel and

promotions made now are in clear violation of these directions of the Apex Court as now decided by a recent decision of the Hon'ble High Court of Delhi discussed later below.

6. This Tribunal heard the applicants' contentions as above and their request for a status quo on the orders and considering the circumstances ad-interim relief was granted ex parte and has continued from time to time until this date.

7. The respondents have replied objecting to the grant of Interim Relief and objected to any consideration of relief where the cause of action ranges from as far back as the years 1997 to 2017 since many of these issues would be stale. They have objected to the non-joinder of necessary parties such as the various persons included in the promotion panels and orders as respondents. Further, they have asserted that 22 applicants in this application were not eligible for the DPC held for the years 2017-18 and that they had

no cause of action for any relief. For instance, they have cited the case of the first applicant who has not completed 8 years of regular service and is, therefore, not eligible for promotion. They have also stated that they are abiding by the orders of the Integrated H.Q., Ministry of Defence and the DoPT and they are not proposing promotions of reserved category persons to unreserved posts and are, therefore, strictly following the undertaking given by the learned Solicitor General to the Apex Court. They have argued that the panels and the promotions made in the challenged orders followed these criteria and no reserved category person has been promoted to unreserved posts. With regard to the collection of data, they state that they have submitted necessary data to the DoPT and the process of compliance with the Judgment of the Apex Court of 1992 and 2006 is in progress. Therefore, they maintain that they

are in complete compliance with Apex Court and DoPT orders and that since the applicants are unaffected by the orders now challenged, they are not eligible to be considered for any kind of relief including I.R. For this purpose, they have annexed details of the applicants which show that they have been dealt with fairly strictly as per eligibility and that there could be no dispute. They have also annexed a statement which suggests that representation of SC/ST in Naval Dockyard, Mumbai is not sufficient and large number of vacancies continued to exist. They have accordingly prayed for vacating the Interim Relief which is affecting 750 persons all over the country and affecting the work in the Department.

8. In their rejoinder, the applicants have pointed out the admission of the respondents that the Government is still in the process of collecting quantifiable data required by the Apex Court in **M.Nagraj** case

(supra) and therefore, are in violation of these orders. Moreover, in the case where learned Solicitor General has given an undertaking on behalf of the Government if any promotions are granted to SC/ST candidates adopting DoPT's O.M. dt. 10.8.2010 as is being proposed in the impugned orders, all these promotions would have to be cancelled and review DPCs held in case the Government fails to win a favourable verdict.

9. The applicants urge that the respondents' promotion panels and orders are in violation of the existing orders and seek to provide reservations to SC/ST in promotion without consideration of the said undertaking and the directions of the Apex Court in various cases. They have cited specific cases of general category persons in the HSK-I list who have been superseded by lower ranking SC/ST candidates. Further, for different categories of employees who fall

within the overall category of HSK-I and HSK-II, they have shown a wide variation in proportion of SC/ST incumbents that range from zero percentage to 40% with an overall percentage of 18.99% in HSK-I to MCM promotion and 28.46% in promotion from HSK-I to HSK-I. These variations are, they have argued, arbitrary. They have also referred to the recent decision of the Hon'ble High Court of Delhi in **All India Equality Forum and Ors. v. Union of India Through its Secretary and Ors.** in W.P.(C) 3490/2010 dt. 23.8.2017 which has quashed DoPT's O.M. dt. 13.8.1997. These orders were the basis for granting reservation in promotions to SC/ST candidates indefinitely and these having now been quashed in the judgment cited supra, would need to be fully complied with by the respondents not only for the present panels and promotions, but from 13.8.1997 onwards. With regard to the argument that the respondents have not impleaded all the

necessary and relevant parties in their applications, it is mentioned that the applicants had filed two OAs 479/2017 and 482/2017 which were tagged for common hearing. In OA 479/2017 3 SC/ST candidates had been impleaded and I.R. had been granted by this Tribunal in both cases. Further, the applicants were contesting the promotional policy of the Government in reservations and for these reasons, it is not necessary to implead all the various affected parties although they were prepared to do so. As for the contentions of respondents that the applicants are not in the zone of consideration, the applicants argued that they are directly affected and will be affected by the continued action of respondents in granting promotion of SC/ST candidates in violation of the constitutional position as set out by various Courts.

10. In their sur-rejoinder, the respondents have urged withdrawal of Interim

Relief since it was affecting their work nationally considering that 750 promotions could not be carried out. They have urged that various cases in this matter are pending before the Hon'ble Apex Court for decision and once these become available, respondents would abide by those orders and that they were only following the extant instructions of DoPT in addition to complying with the undertaking by the Learned Solicitor General before the Apex Court. The respondents again insist that the applicants are ineligible at the moment and therefore, their application for relief is merely hypothetical and is liable to be rejected.

11. We have carefully considered the matter. A bare perusal of the promotional panel and the promotion orders contained in Annexures A-3 and A-4 show that distinctions have been made between General Candidates, OBC, SC, SCB, and ST candidates. A few SC candidates are mentioned well in the

beginning of the panels with the remarks "against SC vacancy" and towards the end of the list with the same remark for SC-B and ST candidates in the category of HSK-II promotional panel. There is also an extended panel which continues beyond the 280 names in the main panel which contains only General and OBC candidates. The panel for Skilled to HSK-II intermingles SC/ST and General candidates and does not give any indication as to whether these were done on merit or based on reservations. Similarly, the promotional orders follow these panels and suffer from the same disability as seen in the context of the orders of the Hon'ble High Court of Delhi quashing DoPT O.M. dt. 13.8.1997. By their own admission, the respondents say that they have followed the orders of the DoPT of 1997, 2002 and 2010 and 2016 and do not deny that the panels/orders include considerations based on reservations by which junior SC/ST candidates have

overtaken seniors in the General category. However, these very orders have been overturned by the orders of the Hon'ble High Court of Delhi as all of the later orders follow upon the order of 1997. As pointed out by the applicants, the promotions that contemplated reservation for candidates by inclusion in panels or during actual promotion, affect their prospects directly and are in conflict with the order of the High Court of Delhi (supra). Therefore, their need for relief through this application cannot be denied.

12. In the circumstances, it would be appropriate to quash the impugned promotional panels and orders of promotion that have followed the orders of the DoPT commencing from the order in O.M. No.36012/18/95-Estt. (Res.) Pt.II dt. 13.8.1997 and its consequential clarificatory O.Ms. in the following years. The respondents are directed to prepare fresh promotional panels

and decide promotions strictly on the basis of seniority and merit in accordance with rules and then to implement any preferences in the reservation categories in conformity with the Constitution, the orders of the Hon'ble Supreme Court in **Indira Sawhney** and **M.Nagraj cases** (supra) and the recent orders of the Delhi High Court in **All India Equality Forum and Ors.** W.P. No.3490/2010. There shall be no order as to costs. M.A. 543/2017 stands disposed of.

(R.Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J)

B.

