

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. Nos.873, 884 and 894/2013

Date of CAV:08.01.2019.

Date of Order :13.03.2019.

O.A.No.873/2013:

Between :

1. K.Surya Prakash, s/o K.Surya Rao, aged 31 yrs,
D.No.45-42/2/1, Madheti Gardens, Akkayya Palem,
Visakhapatnam-16.
2. P.V.N.Raju, s/o P.Appa Rao, aged 30 yrs,
D.No.20-28-37, Peda Korada, Peda Gantyada,
Visakhapatnam-44.
3. J.Ramana, s/o J.Ramu Naidu, aged 31 yrs,
D.No.24-42-1/13, , VUDA Colony,
Vinayak Nagar, Peda Gantyada,
Visakhapatnam-44.
4. V.A.Srinu, s/o V.Guru Murthy, aged 30 yrs,
D.No.13-12-33, Arilova, Visakhapatnam-40.
5. M.S.Ganeswara Rao, s/o M.Sanyasi, aged 35 yrs,
Thimmaraju Eta Village, Thimmaraju Eta Post,
Munagapaka (MD), Visakhapatnam (DT)-531 033.
6. D.Ramesh Kumar, s/o D.Appa Rao, aged 30 yrs,
D.No.11-2-2, Kailash Nagar, Kanithi Road, Gajuwaka,
Visakhapatnam-26.
7. K.N.V.Ganesh, s/o K.Lakshmana Rao, aged 33 yrs,
D.No.10-74, Santa Bayalu, Munagapaka Post,
Munagapaka (MD), Visakhapatnam DT-531 033.
8. P.Siva Shankar, s/o P.Masenu, aged 31 yrs,
D.No.64-11-7/1, Srihari Puram, Old Ramalayam Street,
Malkapuram Post, Visakhapatnam-11.
(All the applicants are working as Unskilled Labourer
At INS Dega).

...Applicant s

And

1. Union of India, rep., by the Secretary,
M/o Defence, Govt. of India, South Block,
New Delhi.

2. The Chief of Naval Staff,
Integrated Headquarters (for COP),
M/o Defence (Navy), Room No.101,
D-11 Wing, Sena Bhavan,
New Delhi-110 011.

3. The Admiral Superintendent,
Naval Dockyard, Mumbai.

4. The Flag Officer, Commanding-in-Chief
For CSO (P&A), Headquarters,
Eastern Naval Command, Visakhapatnam.

5. Shri Gorle Appala Raju, occ:Skilled,
T.No.20320-H, C.No.203, SMU (Dept.),
Naval Dockyard, Visakhapatnam-14.

6. Shri Salapu Srinu, Occ:Skilled, T.Nof.20360-Z,
C.No.64-A, Weapon (Dept.), Naval Dockyard,
Visakhapatnam-14.

7. Shri Bhanumata Nayak, Occ:Skilled,
T.No.20277-K C.No.105, M (ID) (Dept.),
Naval Dockyard, Visakhapatnam-14.

... Respondents

Counsel for the Applicants ... Mr.K.R.K.V.Prasad

Counsel for the Respondents ...Mrs.B.Gayathri Varma, Addl.CGSC

O.A.No.884/2013:
Between :

1. D.Hema Prasad, s/o D.Appala Naidu,
Aged 33 yrs, Kandivaram Village,
Kandivaram Post, K.J.PUram (SO),
Visakhapatnam (DT)-531 028.

2. Shaik Sharief, s/o Shaik Kasim,
Aged 33 yrs, C/o Shaik Bahadoor,
D.No.49-42-20/1B, Chinnuru, Near
Masjid-E-Noor, Akkayyapalem,
Visakhapatnam-16.

3. D.B.Rangoli, s/o R.Appanna,
Aged 31 yrs, D.No.39-17-24, Manyam Street,
Madhava Dhara, Visakhapatnam-7.

(All the applicants are working as Unskilled Labourer
At NAD (V)).

...Applicant s

And

1. Union of India, rep., by the Secretary,
M/o Defence, Govt. of India, South Block,
New Delhi.

2. The Chief of Naval Staff,
Integrated Headquarters (for COP),
M/o Defence (Navy), Room No.101,
D-11 Wing, Sena Bhavan,
New Delhi-110 011.

3. The Admiral Superintendent,
Naval Dockyard, Mumbai.

4. The Flag Officer, Commanding-in-Chief
For CSO (P&A), Headquarters,
Eastern Naval Command, Visakhapatnam.

5. Shri Rokalla Hari Kumar, occ:Ammunition Mechanic-II,
T.No.2797, Section-ASW, NAD, Visakhapatnam,
Date of Joining:25-04-2013.

6. Shri Gavara Ravi, occ:Ammunition Mechanic-II,
T.No.2792, Section-ASW, NAD, Visakhapatnam,
Date of Joining:17-04-2013.

7. Shri Amujuru Naga raju, occ:Ammunition Mechanic-II,
T.No.2794, Section-ASW, NAD, Visakhapatnam,
Date of Joining:20-04-2013.

... Respondents

Counsel for the Applicants ... Mr.K.R.K.V.Prasad

Counsel for the Respondents ...Mr.T.Hanumantha Reddy, Sr.PC for CG

O.A.No.894/2013:
Between :

1. K.V.Ramana, s/o K.Sanyasi Rao, aged 32 yrs,
 2. B.Suryanarayana, s/o B.Govinda Rao, aged 31 yrs,
 3. B.Bhanoji, s/o B.Krishna Rao, aged 32 yrs,
 4. Kasi Vasu, s/o K.Prasada Rao, aged 32 yrs,
 5. Kasi Radha, d/o P.Narayana Rao, aged 29 yrs,
 6. P.S.Aruna, d/o B.Pentayya, aged 32 yrs,
 7. S.Hemalatha, d/o S.Venkata Rao, aged 28 yrs,
 8. M.Rama Krishna, s/o M.Somu Naidu, aged 29 yrs,
 9. Y.Srinivasa Rao, s/o Y.Simhachalam, aged 34 yrs,
 10. S.Siva Sankara Rao, s/o S.Chinnodu, aged 31 yrs,
 11. V.Ch.Sekhara Rao, s/o V.Laxmana Murthy, aged 31 yrs,
 12. Thadela Sridhar, s/o T.Malleswara Rao, aged 29 yrs,
 13. G.Avinash, s/o G.Guru Murthy, aged 30 yrs,
 14. S.Dharma Raju, s/o Hatakesam, aged 27 yrs,
 15. Galla Kanna Rao, s/o G.Appala Naidu, aged 31 yrs,
 16. B.Ravi Kumar, s/o B.V.Ramana, aged 30 yrs,
 17. Shaik A.K.Jilani, s/o Sk.Meera, aged 28 yrs,
 18. B.Vasu, s/o B.Sanyasi Rao, aged 31 yrs,
 19. Sunkari E.Raju, s/o S.Ramulu, aged 31 yrs,
 20. B.K.S.Kumar, s/o B.Appa Rao, aged 31 yrs,
 21. G.Nagaraju, s/o G.Durga Rao, aged 32 yrs,
- (All the applicants are working as Unskilled Labourer
 At INS Dega, INS, Ekasila, INS, Circars, INS Virbahu and
 INS Satavahana and NAD (V)).
- ...Applicants

And

1. Union of India, rep., by the Secretary,
 M/o Defence, Govt. of India, South Block,
 New Delhi.
2. The Chief of Naval Staff,
 Integrated Headquarters (for COP),
 M/o Defence (Navy), Room No.101,
 D-11 Wing, Sena Bhavan,
 New Delhi-110 011.
3. The Admiral Superintendent,
 Naval Dockyard, Mumbai.
4. The Flag Officer, Commanding-in-Chief
 For CSO (P&A), Headquarters,
 Eastern Naval Command, Visakhapatnam.

5. Shri Krishanasamy Vijayraj, occ:Skilled,
T.No.20404-Z, C.No.64. M (IT) Dept.,
Naval Dockyard, Visakhapatnam-14.

6. Shri Somudula Somasekhar, occ:Skilled,
T.No.20405-A, C.No.116. SAX (Dept.),
Naval Dockyard, Visakhapatnam-14.

7. Shri Lakey Dhananji, occ:Skilled,
T.No.20406-B, C.No.68. Weapon (Dept.),
Naval Dockyard, Visakhapatnam-14.

... Respondents

Counsel for the Applicants	... Mr.K.R.K.V.Prasad
Counsel for the Respondents	... Mrs.K.Rajitha, Sr.CGSC

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

Since the cause of action and the relief prayed for in all the 3 OAs is similar, all the 3 OAs are being disposed of by this Common Order.

2. 8 Applicants in O.A.No.873/2013, 3 Applicants in O.A.No.884/2013, and 21 Applicants in O.A.No.894/2013, have challenged the action of the Respondents in not restoring their rank/grade of Tradesman Skilled (SK) including pay with effect from their date of joining as Unskilled Labour (USL) in the establishment of the 4th respondent despite their initial recruitment and appointment in the grade of Skilled in Naval Dockyard,

Mumbai, before their transfers were effected, vide orders dated 01.07.2009, 01.07.2008 and 26.02.2010, 05.03.2010 and 26.03.2010 respectively from Mumbai Naval Dockyard to the HQ Eastern Naval Command, Visakhapatnam,

3. **Brief facts of the case:**

The applicants were initially recruited to the post of Tradesman (SK) in the pay scale Rs.3050-4590/- and were posted in existing vacancies against sanctioned posts upon successful completion of the National Apprenticeship at Mumbai Naval Dockyard Apprentice School. The applicants made a request for transfer from Mumbai Naval Dockyard to Visakhapatnam on compassionate grounds. Their request was processed in consultation with the Headquarters Eastern Naval Command (HQ ENC), Visakhapatnam. The applicants consented, as desired by the 3rd respondent, to downgrade their position with reference to their initial recruitment from Group-C post to Group-D post so as to be stationed in Visakhapatnam. On giving an undertaking to accept fresh appointment on transfer in the lower grade of Tradesman (Unskilled) and also agreeing that their past service and seniority in the in the Skilled grade in the Naval Dockyard, Mumbai, will not be counted for promotion, the applicants were transferred from Mumbai to Visakhapatnam. The undertaking states that the seniority in the Unskilled (USL) grade be counted from the date of reporting to the receiving unit. The transfers, therefore, were processed on the condition that the applicants submitted their willingness to join in USL with zero seniority and based on their irrevocable consent, transfer orders were issued for HQ ENC, Visakhapatnam.

4. It is the contention of the Counsel for the Applicants that the services of the applicants are now being utilized for performing unspecific jobs (Non-Technical Jobs). The applicant's have submitted representations dated 15.11.2012, 31.10.2012 and 20.11.2012 (OA.No.873/2013), 20.10.2012 (OA.No.884/2013) and 22.10.2012 to 24.12.2012 (OA.No.894/2013) that in respect of similarly situated employees different transfer orders were issued in the same grade as Skilled workers.

5. The Counsel for the Applicants has contended that the respondents forced the applicants to give their consent for a transfer to a lower grade post. However, since the applicants have been directly recruited to a higher post with a higher scale of pay, their Grade Pay cannot be reduced by such a transfer order.

6. The Counsel for the Applicants cited the transfer policy of the Ministry of Defence wherein/ transfer on compassionate ground from one establishment to other is allowed, but does not envisage accepting transfer to lower grade post and since there is no estoppels against illegality, the consent given by the applicants cannot come in the way of the claim of the applicants.

7. The Counsel for the Applicants has cited the judgment of the Hon'ble Supreme Court in *Satyendra Kumar & Others v. Raj Nath Dubey & Others*

in Civil Appeal Nos.4083-4084/2016, dated 06.05.2016, wherein it was held that –

“where the decision is on a pure question of law then a Court cannot be precluded from deciding such question of law differently. Such bar cannot be invoked either on principle of equity or estoppels. No equitable principle or estoppels can impede powers of the Court to determine an issue of law correctly in a subsequent suit which relates to another property founded upon a different cause of action though parties may be same. As explained earlier, in such a situation, the principle of res judicata is, strictly speaking, not applicable at all. So far as principle of estoppels is concerned, it operates against the party and not the Court and hence nothing comes in the way of a competent court in such a situation to decide a pure question of law differently if it is so warranted. The issues of facts once finally determined will however, stare at the parties and bind them on account of earlier judgments or for any other good reason where equitable principles of estoppels are attracted.”

8. The Counsel for the Applicants also cited the judgment of the Hon’ble Bombay High Court in *Veerappa R.Saboji v. Shri B.P.Dalal and Others* (1977 (1) SLR 470) in Special Civil Application No.188/1972, dated 04.03.1976, wherein it was held as follows:

“17. The counsel for the respondents have invited our attention to an undertaking given by the petitioner which reads:-

‘I understand that my employment under Government as Civil Judge (Junior Division) and Judicial Magistrate, First Class, is temporary and that my services may be dispensed with at any time without any notice and without any reason being assigned and I accept the employment on this basis.’

It was urged on the basis of this undertaking that this undertaking binds the petitioner and it was good till 1971. It is not possible to accept this contention. Any undertaking given by the petitioner which is contrary to the rules framed by the Government will not be binding on the petitioner. Nothing has been brought on record why such an undertaking was taken from the petitioner especially when the posts, at least most of them, were permanent and to which he could be appointed after his probationary period was over. It appears that such undertakings are taken from the employees who are appointed to posts which are temporary. In our opinion this undertaking cannot be of any assistance to the respondents in view Rule 4 (2) (iv) and the appointment letter and the number of permanent posts available at that time."

9. In the rejoinder in O.A.No.894/2013, the applicants have also cited the judgment of the Hon'ble Supreme Court in *Nyadar Singh & Another v. Union of India*, (1988 AIR 1979/1988 SCR Supl.(2) 546), wherein it was held that "*an employee shall not be downgraded to a post to which he was not appointed even in a disciplinary case*". The applicants' counsel stated that the said judgment is squarely applicable to the applicants herein and that being the settled position of law, transferring the applicants to a lower grade post than the one in which they were originally appointed suffers from serious illegality.

10. The Counsel for the Applicants also cited the OM dated 02.02.1989 issued by the Ministry of Defence, New Delhi, in regard to transfer of certain categories of Group-C and D employees of the Defence installations, wherein it is seen that there no condition has been laid down

that one should be posted to a grade to which such employees were originally appointed. Assuming that the applicants' contention is correct that their undertaking given is contrary to the rules, then the transfer orders will itself be illegal and void abinitio. The applicants then have to continue in their original place of appointment i.e., Naval Dockyard, Mumbai.

11. The Counsel for the Respondents, however, argued that the applications for transfer on compassionate ground received from Western Naval Command, Mumbai, were considered on –

- (a) Mutual basis in the same grade with zero seniority; or
- (b) subject to willingness to join the new unit as USL with zero seniority.

The above transfer policy was so framed so that it does not affect the promotional avenues of the personnel in the feeder grade for the post of Skilled, and since as per the SRO 150/2000 as amended vide 262/2002, vacancies in Tradesmen category are to be filled up by absorption failing which by Direct Recruitment. Many of the Apprentices of the Naval Dockyard Apprentice School could not be absorbed on completion of their training due to non-availability of vacancies in the said grade. Therefore, the request of the applicants cannot be considered for transfer in the said grade as personnel who have completed Apprenticeship training at Naval Dockyard Apprentice School, Visakhapatnam, were still awaiting consideration of their candidature. The feeder grade of Skilled under 40%

quota is Semi-Skilled worker with 4 years regular service and accordingly, 40% of the vacancies in the Skilled grade are filled up by the DPC by considering eligible Semi-Skilled workers in the feeder grade. Therefore, the request of the applicants for Direct Recruitment transfer to Skilled grade under 40% quota also cannot be considered and since Western Naval Command is a separate Naval Command, and such transfers are strictly not allowed but due to the request of the applicants for transfer on compassionate grounds, the requests were considered sympathetically subject to willingness to join the USL cadre with zero seniority. The office of Eastern Naval Command (ENC), conveyed the willingness given by the applicants to join USL with Zero seniority, which is irrevocable and if the applicants are transferred back to Mumbai in the same grade, their request for Skilled grade would be considered subject to feasibility.

12. The Counsel for the Respondents stated that the applicants were well aware of the conditions mentioned before accepting their transfer order and have been working in Visakhapatnam since July 2009. In fact, by filing OAs, it is tantamount to challenging their transfer orders, which were done at their own request/behest.

13. It is undisputed that the applicants were initially appointed to higher post after successful completion of their apprenticeship training. But their transfer to lower grade was agreed to since the applicants specifically

requested to be transferred on compassionate grounds to Visakhapatnam for various personal reasons. The posts to which the applicants were initially recruited were non-transferable and it was only at their specific request for transfer that their request was acceded to subject to the applicants giving an undertaking. The undertaking was given by the applicants on their own volition and there was no coercion. Moreover, the applicants are challenging the transfer order after a period of five years of their transfer. In O.A.No.884/2013, the date of transfer order is 2008, in OA.No.373/2013, the transfer date is dated 2009 and in OA.No.894/2013, the transfer order is 2010. As of date, more than 10 to 8 years have elapsed since the applicants were transferred and have been working in Visakhapatnam.

14. On perusal of the judgments, cited by the Counsel for the Applicants (supra), it is seen that the facts and circumstances in all the cases are entirely different. In *Satyendra Kumar & Others v. Raj Nath Dubey & Others* in Civil Appeal Nos.4083-4084/2016, dated 06.05.2016, it has been held that “*nothing comes in the way of a competent court in such a situation to decide a pure question of law differently if it is so warranted and in so far as the principle of estoppel is concerned, it operates against the party and not the Court*”. Para 10 (supra) discussed the contention of the applicants and assuming it is correct by them, then the transfer orders will be void abinito. Also in *Veerappa R.Saboji v. Shri B.P.Dalal and Others* (1977 (1) SLR

470), it is clearly stated that “*nothing has been brought out on record why such an undertaking was taken from the petitioner*”, whereas, in the instant case, it is clear that the undertakings were taken based on the specific requests for transfer on compassionate grounds.

15. In view of the above, the OAs are hereby dismissed. In case, the applicants desire to withdraw their undertaking, they may be posted back to the Naval Dockyard, Mumbai, within a period of one month. However, in case, they do not desire to withdraw the undertaking and having worked in Visakhapatnam since 2010 and 2013, they may be allowed to continue in Visakhapatnam on the existing terms and conditions. No order as to costs.

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 13th day of March 2019

DSN