

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 19th November, 2009*
Judgment Delivered on: 25th November, 2009

+ **WP(C) No. 8173/2008**

JAL DEV SINDHU Petitioner
Through: Ms.Geeta Luthra, Sr.Advocate
With Ms.Aakanksha Munjal, Adv.

Versus

UOI & ORS. Respondent
Through: Ms.Jyoti Singh, Advocate

WP(C) No. 714/2009

ANUPAM MAITY Petitioner
Through: Ms.Geeta Luthra, Sr.Advocate
With Ms.Aakanksha Munjal, Adv.

Versus

UOI & ORS. Respondent
Through: Ms.Jyoti Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J.

1. With the promulgation of the Coast Guard Act, 1978, a cadre of Coast Guards was created by hiving off a wing of the

Indian Navy. A distinct and separate service with a separate cadre was constituted. Various posts were notified and eligibility and service conditions thereto were notified.

2. Petitioners Jal Dev Sindhu and Anupam Maity were employed by the Coast Guards as Naviks on 30.1.1997 and 13.4.1997 respectively and were subsequently promoted to the post of Uttar Navik. They continued to work as Uttar Naviks till they were selected as Air Crew Men (Diver) and posted to said posts on 13.4.2002. The post of Air Crew Man (Diver) is a post under the Coast Guards. A similar post exists under the Indian Navy as well. When appointed as Air Crew Men (Diver) w.e.f. 13.4.2002, the notified Recruitment Rule stipulated that personnel appointed as Air Crew Divers would continue to work on said post till they remained physically fit and on being declared physically unfit would be posted back to the post which they held when they were appointed as Air Crew Divers.

3. It may be noted here that the pay of Air Crew Men (Diver) is the same as that of an Uttar Navik except that Air Crew Men (Diver) are paid some additional allowances and hence the gross pay of Air Crew Men (Diver) is more than Uttar Naviks.

4. The grievance of the petitioners is that on 28.10.2003 the terms and conditions for serving as Air Crew
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Men (Diver) was altered by issuing a notification mandating that henceforth persons appointed as or persons working as Air Crew Men (Diver) would serve initially for a period of 7 years extendable up to 10 years if being declared fit. Notwithstanding the person being fit even after 10 years, he would be posted back to the post held at the time he was appointed as an Air Crew Men (Diver). To put it simply, the petitioners claim a vested right in their favour on the premise that when they joined as Air Crew Men (Diver) the notified rule stipulated that as long as they remained fit they would work and perform duties of the post of Air Crew Men (Diver). A second contention is also advanced by the writ petitioners by bringing out that under the Indian Navy, till 28.4.2008 the eligibility condition for working as an Air Crew Men (Diver) was 7 years' service extendable up to 10 years on being declared medically fit, but with the promulgation of the notification on 28.4.2008 it was mandated that as long as they were fit, persons appointed as Air Crew Men (Diver) would function as such. In other words, whereas the Indian Navy reversed the existing service condition by extending the tenure till the incumbent remained fit, the Coast Guards did the reverse. It is alleged that both services i.e. the Indian Navy and the Coast Guards are services under the Union and hence it is claimed

that the same Master cannot discriminate against two sets of employees.

5. At the hearing of the writ petitions, Ms.Geeta Luthra learned senior counsel for the petitioners urged that when her clients opted for the cadre of Air Crew Men (Diver) no restriction of the duration of the duty was prescribed and for said reason her clients joined the said cadre with the expectation that they would be entitled to continue to perform said duty as long as they were fit; her clients underwent special training courses and were held out a promise that they would be paid special remuneration fixed to such duty in addition to the regular salary and in the midst of their service career, they cannot be asked to go back to the old cadre. With respect to the second plea of discrimination, it was urged that the Union cannot discriminate between two sets of employees in different organizations holding same posts.

6. In response, Ms.Jyoti Singh, learned counsel for the respondents urged that it is for the employer to decide the tenure of a particular post and if the employer decides to adopt a new policy in the matter of allotting a particular type of duty and curtail the tenure thereof, the employee cannot compel the employer to continue with the previous policy. The second plea predicated on discrimination was negated by urging that

equality of posts has not to be determined with reference to the nomenclature. The qualitative and quantitative test in relation to the duties performed determines equivalence, urged the learned counsel. It was highlighted that there are no pleadings in the writ petitions to bring home the qualitative and quantitative parity between same posts under the Indian Navy and Coast Guards. Learned counsel urged that whereas the Indian Navy was a fighting arm of the Armed Forces charged with the duty of defending the maritime boundaries of India, the duty of the Coast Guards was to patrol the maritime boundaries with the primary aim of preventing infiltration into the territorial waters of India.

7. It is apparent that in the Coast Guards' service there are various posts in the cadre, viz. Navik, Uttam Navik, Pradhan Navik, Adhikary, Uttam Adhikary etc. Naviks and Uttam Naviks, on completion of special training in Air Crew Diving can opt for special duty of Air Crew Diver and in such case, for doing a special job, a special additional pay is paid in addition to the regular scale of pay in the post held in the regular promotion cadre. In other words there is no separate cadre post of Air Crew Diver. The person concerned continues to hold the substantive post held by him with all benefits of the said post

and in addition receives a special pay for working as an Air Crew Diver.

8. It is settled law that no employee can claim a specific duty if the employer decides that no such duty should be assigned. Instant case is not a case of dismissal of service or reversion to a lower post. The writ petitioners who joined as Naviks were working as Uttam Naviks in the year 2002 when they were posted as Air Crew Divers. The petitioners continued to remain in their cadre and will in due course get further promotion in accordance with the service rules.

9. Why in the instant case, even in ordinary cases of ordinary service, no employee has a right to claim that a particular duty should be allotted to him. It is not the case of the petitioners that they have been reverted to an inferior post by way of the policy decision. As a result of the new decision, a particular duty of a special type previously entrusted to them would not be given to them.

10. Even if an employer decides to abolish a post, the employee cannot resist such action unless such decision is tainted with mala fide.

11. In the decision reported as (1968) 1 LLJ 576 SC Roshan Lal Tandon v. Union of India the petitioner joined the

Northern Railways as a skilled fitter on 6.3.1954. He was selected for the training for the post of train examiner, grade D, on 5.6.1958. At that time, promotions to grade C from grade D were to be based on seniority-cum-suitability. Subsequently, on 27.10 1965, the Railway Board issued a notification altering said position and fixing that only 20% of the posts in grade C were to be filled by the train examiners from grade D. Petitioner filed a writ petition challenging said notification on the ground that there was a contractual right regarding the conditions of service applicable to the petitioner at the time he entered grade D and the conditions of service could not be altered to his disadvantage by the notification issued by the Railway Board. Holding that the petitioner had no vested right in regard to the terms of his service, Supreme Court observed as under:-

“Once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government.”

12. In the decision reported as AIR 1973 SC 2641 N.Ramansatha Pillai Vs. State of Kerala, it was held that Government has a right to abolish or create posts and that the general rule of the doctrine of estoppel is not attracted in such a situation.

13. If the Government has the right to abolish a post, it would certainly have a right to curtail the tenure thereof.

14. The issue of parity has not to be determined with reference to the post held. The issue has to be determined with reference to the qualitative and quantitative test i.e. to compare the nature of duties, responsibilities etc. i.e. everything which relates to the quality and quantity of work before it can be said that two persons on the same post in different units of the Government are entitled to same service conditions.

15. No pleadings have been made in the two writ petitions showing that qualitatively and quantitatively the work performed by Air Men Crew in the Navy and the Coast Guard is the same.

16. We find no merit in the writ petitions which are dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

November 25 , 2009
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