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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7632 OF 2017
WITH
CIVIL APPLICATION NO. 2161 OF 2017**

Union of India & ors. ...Petitioners
Vs.
Shri Vivek Vasant Ambre & ors. ...Respondents

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Mr. Rui Rodrigues a/w. Mrs. Neeta V. Masurkar and Mr. S.G. Thakur, Advocate for the petitioners-UI and for respondents – UI in Civil Application No. 2161/2017.

Mr. Ram Apte, Senior Advocate a/w. Mr. Saurabh Oka, Ms. Leena Shinde i/by Mr. Parth P. Shah, Advocate for the respondents and for applicants in Civil Application No. 2161/2017.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

**RESERVED ON : 22nd FEBRUARY, 2018
PRONOUNCED ON : 30th JULY, 2018**

JUDGEMENT (PER M.S.KARNIK, J.) :-

The petitioners – Union of India filed this petition challenging the common judgment and order dated 11th November, 2016 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in O.As. No. 343 of 2013, 475 of 2013,

517 of 2013 and 210 of 2015 concerning 74 respondents. These 74 respondents filed various O.As. before the Tribunal.

2. The facts of the case are as under :-

The respondents applied for unskilled labourers posts in response to the advertisement issued by the Naval Dockyard on 7th - 13th April, 2012. 325 posts were notified. On 6/12/2012, the petitioners conducted the physical test and interview. Despite completion of selection process no appointments were made till 1st November, 2013. On 1st May, 2013 a complaint was made regarding the selection process alleging various malpractices. A detailed inquiry was conducted and inquiry report dated 24th May, 2013 was submitted. The report did not reveal any malpractice. Thereafter, the petitioners introduced the fresh selection process which involved holding of written test. The respondents therefore filed various O.As. before the Tribunal challenging the holding of the written test. According to the respondents, this is a new selection process. According to the respondents, once the selection has commenced pursuant to an advertisement issued, the procedure

cannot be altered by introducing the written test which amounts to a new selection process altogether which is impermissible.

3. In an earlier round of litigation the Tribunal by judgment and order dated 19th August, 2015 set aside the entire selection process and directed the petitioners to conduct a new selection process. Consequent to the order passed by the Tribunal a fresh advertisement dated 21st - 27th November, 2015 for the very same number of vacancies was issued.

4. Some of the respondents (72 of them) filed Writ Petition No. 920 of 2016 in this Court challenging the order dated 19th August, 2015 passed by the Tribunal. The issuance of the fresh advertisement was also challenged. During the pendency of the petition, this Court was pleased to pass interim order directing the petitioners to keep 72 posts vacant. This Court disposed of the petition on 21/7/2016. The order dated 19/8/2015 of the Tribunal was set aside.

5. It is pertinent to mention here at this juncture that the order of this Court dated 21st July 2016 was not challenged

by the petitioners and thus the same became final. Upon remand the Tribunal by the impugned judgment and order dated 11th November 2016 was pleased to partly allowed the O.As. The petitioners were directed to finalize the selection process for the post of unskilled labour in accordance with the advertisement dated 7th - 13th April, 2012 by preparing and publishing the final merit list for 325 posts based on a combined merit list on the basis of physical test and interview conducted by them. The Tribunal was of the view that the attempt made by the petitioners to subsequently introduce the written test is illegal and invalid.

6. Learned Counsel for the petitioners Shri Rui Rodrigues assailing the order of the Tribunal contended that a decision was taken to scrap the selection process. According to him, OM dated 30th April, 2010 and OM dated 19th August, 2011 had prescribed minimum educational qualification of passing the 10th standard and conducting written test. Holding of written test is mandatory for the purpose of recruitment of Group 'C' in the Government of India. In his submission, therefore, holding

of written test of eligible candidates is mandatory. This condition was not followed in the advertisement dated 7th - 13th April, 2010 and therefore, the advertisement was against the public policy. He produced the decision taken to scrap the selection process which according to him is a final decision. On this basis it was contended by learned Counsel Shri Rui Rodrigues that having regard to the passage of time and further that the mandatory condition of the written test has not been followed while issuing the advertisement dated 7th - 13th April, 2012, it is necessary to scrap the entire selection process itself. He further submits that therefore there is no illegality in issuance of the subsequent advertisement introducing the written test. Learned Counsel Shri Rui Rodrigues submitted that this is a case where large scale malpractices have come to notice and entire selection process is tainted. He relied upon the decision of the Apex Court in the case of **Gohil Vishvaraj Hanubhai & others V. State of Gujarat & Others (JT 2017 (6) SC 1)** to submit that the impugned action of the petitioners was not in defiance of logic and was sustainable in the light of the

principles of Wednesbury unreasonableness.

7. Heard learned Counsel for the parties at some length.

8. To appreciate the controversy, it would be material to reproduce the reliefs sought in O.A.No. 343 of 2013 :

“a) Be pleased to admit the present Original Application and be pleased to give an opportunity of hearing to both the parties by issuing notice to the Respondents ;

b) Be pleased to declare that the impugned letter dated 06 June 2013 issued by the respondents (marked as Annexure A-1 hereto) is illegal, bad in law, arbitrary and contrary to The Central Civil Services (Class, Control & Appeal) Rules, 1966 as well as the SRO No. 43 dated 18th May, 2012 containing the Integrated Headquarters Ministry of Defence (Navy) Group 'C' Industrial Posts (Tradesman) Recruitment Rules, 2012;

c) Be pleased to declare that impugned action of the Respondents to change the selection procedure in the mid-stream is illegal and ultravires the fundamental rights of the applicants as the respondents have no locus to change the said selection procedure, as described;

d) Be pleased to declare that the impugned actions of the Respondents to withhold the result of the recruitment and

consequent grant of appointment on his suitable post, are illegal and contrary to the Central Civil Services (Classification, Control & Appeal) Rules as well as the SRO No. 43 dated 18 May, 2012 containing the 'Integrated Headquarters Ministry of Defence (Navy) Group 'C' Industrial Posts (Tradesman) Recruitment Rules, 2012 ;

e) Be pleased to quash and set-aside the impugned letter dated 06 June 2013 (marked as Annexure A-1 hereto) on the ground that the same is illegal, arbitrary and ultra-vires the fundamental rights of the applicants ;

f) Be pleased to pass/issue an appropriate order of mandatory directions to the Respondents to forthwith publish the result of the candidates and grant appointment/recruitment to the qualified candidates in accordance with the Central Civil Services (Classification, Control & Appeal) Rules as well as SRO No. 43 dated 18 May 2012 containing the 'Integrated Headquarters Ministry of Defence (Navy) Group 'C' Industrial Posts (Tradesman) Recruitment Rules 2012 ;

g) Be pleased to provide the costs of this Original Application, in favour of the applicant ;

h) Be pleased to make any other order deemed fit and proper, as the nature and the circumstances may require, in favour of the applicants.”

Thus, it is seen that the challenge in OA filed by the respondents was to the impugned action of the petitioners to change the

selection procedure mid-stream by introducing written test which was not stipulated by the advertisement. The relief claimed in other connected O.As. was to declare the list of successful candidates only on the basis of interview and physical test held on 18th December, 2012.

9. In the order dated 19th August, 2015 of the Tribunal, which was set aside by this Court by order dated 21st July, 2016 in Writ Petition No.920 of 2016, the Tribunal was pleased to observe in para 35 of the order that considering the facts that the petitioners have already decided to scrap the selection process and to go for a fresh selection process that the Tribunal then had while partly allowing the O.A. directed petitioners to conduct fresh recruitment. The Tribunal had also observed that since the petitioners have admitted to certain administrative and legal complications in the recruitment process, a fresh selection is warranted. The Tribunal, therefore, had permitted a fresh selection process.

10. As indicated earlier the respondents challenged the

order dated 19th August, 2015 passed by the Tribunal which order came to be set aside by this Court on 21st July, 2016. It would be material to quote the order passed by this Court which reads thus :-

“P.C. :

1] Though we had directed the respondents to file affidavit in reply pointing out whether any final decision has been taken by the respondents to scrap the selection process. The affidavit in reply does not make any assertive statement that the respondents had taken a final decision to scrap the selection process.

2] It is apparent therefore that despite an opportunity being given to the respondents to take a final decision, no such decision has been taken.

3] We are of the view that there is much substance in the submissions made by the learned counsel appearing on behalf of the petitioners that the Tribunal could not have set side the selection process on the basis of a tentative decision taken by the respondents no.1. Moreover, the respondents had not made any such prayer nor had filed any substantive reply seeking such relief and such relief could not have been granted in OA filed by the petitioners.

4] The impugned order therefore is set aside on this ground alone. The matter is remanded back to CAT. CAT shall consider the case of the petitioners and the respondents afresh on merits and in accordance with law

as expeditiously as possible and in any case within a period of twelve weeks from today.

5] Interim order to continue till the pendency of the OA before the CAT.

6] The petition is disposed of accordingly.”

11. The order passed by this Court on 21st July, 2016 was not challenged by the petitioners. It is thus seen that though the Tribunal in the order dated 19th August, 2015 prior to remand had accepted the stand of the petitioners that they had taken a decision to scrap the selection process and to go for a fresh selection and in that view of the matter had held that the fresh selection is warranted, however, this Court by the order dated 21st July, 2016 clearly held that the Tribunal could not have set aside the selection process on the basis of a tentative decision taken by the petitioners. It has further been observed that the petitioners had not made any such prayer nor had filed any substantive reply seeking such relief and such relief could not have been granted in OA filed by the respondents. It is in these circumstances that the order of the Tribunal dated 19th August, 2015 was set aside. Upon remand the Tribunal by the

impugned order dated 11th November, 2016 allowed the OA filed by the respondents.

12. The position that emerges is this Court by the order dated 21th July, 2016 in W.P.No. 920 of 2016 has already held that the Tribunal could not have set aside the selection process on the basis of a tentative decision taken by the petitioners. This Court further held that the petitioners have not made any such prayer nor had filed any substantive reply seeking such relief and such relief could not have been granted in OA filed by the respondents. The order of this Court in Writ Petition No.920 of 2016 now has attained finality. In our opinion, the petitioners not having challenged the order passed by this Court in Writ Petition No.920 of 2016, it is not possible for us to examine the same issue which has already attained finality. We therefore do not find any merit in this petition.

13. The petition is dismissed with no order as to costs.
C.A. disposed of.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)