

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO.101 OF 2024
IN
WRIT PETITION NO.7104 OF 2014**

Narayan Dalai & Ors. ... Petitioners
V/s.
Union of India, Ministry of Defence
(Through Secretary of Defence)
& Ors. ... Respondents

AND

**REVIEW PETITION NO.102 OF 2024
IN
WRIT PETITION NO.7103 OF 2014**

V. K. Pandey & Ors. ... Petitioners
V/s.
Union of India, Ministry of Defence
(Through Secretary of Defence)
& Ors. ... Respondents

Mr. Salil Sagar, Senior Advocate a/w Mr. Ajeet Manwani & Mr. Sankalp Sagar i/by A & A Legal for the Petitioners in RPW No.101 of 2024 and RPW No.102 of 2024.

Ms. Neeta Masurkar a/w Mr. Dashrath A. Dube for the Respondent-Union of India in RPW No.101 of 2024 and RPW No.102 of 2024.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

**RESERVED ON : 10TH OCTOBER 2024
PRONOUNCED ON : 22ND NOVEMBER 2024**

P.C. : (PER ARIF S. DOCTOR, J.)

The captioned Review Petitions seek review of a common judgement dated 28th June 2024 ("the said Order") by which the captioned Writ Petitions filed by the Review Petitioners were dismissed. By the captioned Writ Petitions, the Review Petitioners, all of whom are employees of Naval Dockyard, had impugned Order dated 26th April 2013 of Central Administrative Tribunal, Mumbai.

2. Mr. Sagar, Learned Senior Counsel appearing on behalf of the Review Petitioners invited our attention to the said Order and pointed out that the same recorded a finding that the Petitioners had not challenged the validity of the Dockyard Temporary Memorandums (DTM's) before Central Administrative Tribunal, Mumbai (Tribunal) when infact Original Application No. 180 of 2004 (OA No. 180 of 2004) specifically contained

pleadings to this effect. He thus submitted that the finding of this Court that the Review Petitioners had not challenged the DTM's amounted to an error apparent on the face of the record.

3. Mr. Sagar then submitted that since this Court had observed that the Petitioners had not challenged the DTM's, this Court failed to consider the case of the Petitioners that the DTM's were (i) temporary in nature; (ii) valid only for one year and (iii) had not been approved by the Ministry of Defence. He submitted that failure to consider all of this, amounted to error apparent on the face of record. He thus submitted that it was on this basis that the Petition was dismissed on the ground of Limitation. It was thus he submitted that the present Review Petitions be allowed.

4. Ms. Masurkar, Learned counsel on behalf of the Respondent No. 1 submitted that the Petitioners' contention, basis which a review of the order dated 28th June 2024 had been sought was entirely misconceived. She then invited our attention to paragraphs 15 and 16 of the said Order, viz.

- "15. *She then submitted that the applicable rules in the present case were SRO No.150 of 2000 (Recruitment Rules) from which she pointed out that Column-11 of the said Rules provided that 60% absorption would be from ex-apprenticeship of designated trades and 40% by promotions failing which there would be direct recruitment. She submitted that the Admiral Superintendent in his capacity as "occupier" of Naval Dockyard under the Factories Act 1948, as "Employer" under Section 2(f) of the Apprentice Act 1961 and as per powers conferred vide letter of Ministry of Defence dated 14th November 1996 had the requisite powers to issue DTMs. She submitted that thus the Admiral Superintendent of Naval Dockyard being administrative authority had powers to issue administrative directions in the form of Dockyard Memorandum and thus the same had force of law according to Article 13(3) of the Constitution of India.*
16. *She then took pains to point out that this fact had specifically been recorded in the Impugned Order and pointed out that the Superintendent was a statutory authority and by powers delegated under the Naval Head Quarter Order dated 4th August 1979, and under the powers vested vide the said letter, the DTMs were issued by the Admiral Superintendent. She then took grave exception to the Petitioners' conduct to submit that the Petitioners had misled the Tribunal by showing only a copy of part of Naval Dockyard Standing Order to submit that the DTMs were applicable for only one year and that the DM 6/85 was permanent order approved by the head quarter and would thus be applicable. She submitted that the Naval Dockyard Standing Order used by the Petitioners was for internal management and had nothing to do with this matter or issue of gradation and assessment of apprentices."*

From the above she pointed out that this Court had specifically noted and dealt with the aspect of the validity of the DTM's. She

thus submitted that the Petitions had been disposed of after considering all the submissions of the Petitioners on the aspect of the validity of the DTM's and not solely on the ground of limitation as had been contented by Mr. Sagar. It was thus she submitted that there was no error in the said Order, much less any error which was apparent on the face of the record. She thus submitted no case for review of the said Order had been made out and that the present Review Petitions be dismissed.

5. After hearing Learned Counsel, we deem it fit to dismiss the Review Petitions for the following reasons: -

- A.** *First*, the entire premise on the basis of which the present Review has been sought for i.e. the said Order incorrectly records that the Petitioners had not challenged the validity of the DTM's before the Tribunal is entirely misconceived. The said Order was passed after considering the prayers which were sought for by the Petitioners before the Tribunal as also in the captioned Writ Petitions. The said prayers were only in respect of the applicability of DTMs and

not the validity of DTMs. It was in this context that it was noted in the Order under Review that the validity of the DTM's had not been challenged by the Petitioners. *Crucially*, the Petitioners have, even in the present Review Petitions in ground (a)¹ merely stated that the Petitioners had challenged the validity of the DTMs in the pleadings of OA No. 180 of 2004 and not in the prayers.

B. *Second*, it is crucial to note that even in the Writ Petitions filed by the earlier batches, the Order of this Court dated 10th April 2008 merely quashed the retrospective applicability of DTMs and the said fact was specifically recorded in the said Order. Hence, absent a specific prayer for quashing and/or setting aside the DTMs as being invalid, it cannot be said that the Petitioners had challenged the validity of

1 (a) *The Hon'ble Division Bench has categorically held that Petitioners had not assailed the validity of DTMs and the Powers of Respondents issuing DTMs. The Petitioners had before the Ld. Tribunal only sought declaration for implementation of DTMs to the Petitioners, but had not challenged the validity of DTMs either before the Ld. Tribunal or in present Writ Petition. This is a mistake/error apparent on the face of record as Petitioners in OA No. 180 of 2004 have challenged the validity of DTMs in their Pleadings.*

DTMs. *Additionally*, the said Order was passed after considering the fact that the Petitioners had not sought any prayer impugning the validity of the said DTMs but had only sought to quash and set aside the implementation of the same *qua* the Petitioners.

C. *Third*, the said Order was passed after taking into consideration the Order dated 10th April 2008 passed in Writ Petition No.638 of 2008 and noting that the same would not be applicable to the Petitioners on facts. It was thus that the Petitioners were held to be 'fence sitters' who had approached the Tribunal beyond the period of Limitation.

6. Hence, for the aforesaid reasons, we find that the Petitioners have failed to make out a case for the Review of the said Order. Thus, the Review Petitions are dismissed.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)