

**COURT NO. 3, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
O.A. NO. 450 OF 2010**

**IN THE MATTER OF:**

**Ramphal Store Petty Officer** .....**Applicant**  
Through : Mr. Sukhjinder Singh, Counsel for the Applicant

Versus

**Union of India and Others** .....**Respondents**  
Through: Ms. Jyoti Singh, Sr. Advocate with Ms. Jagrati Singh,  
counsel for the Respondents

**CORAM:**

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 22.07.2011**

1. The OA was filed before this Tribunal on 29.07.2010.
2. The applicant vide his application has prayed that the impugned orders dated 12.06.2009 (**Annexure A-13**), dated 23.09.2009 (**Annexure A-17**) and dated 29.01.2010 (**Annexure A-19**) be quashed/set aside. The applicant has further prayed that he be declared to have passed out as Store Assistant I (SA-I) instead of Store Assistant II (SA-II). He further seeks to be allowed to maintain his original seniority i.e. w.e.f 19.05.1988 when he was enrolled. He has also prayed that his basic date consequent upon his change of branch to Store Assistant be recorded in the service documents as

19.05.1988 or as 09.07.1990 instead of 24.12.1990. The applicant further sought that his promotion be counted from the date of entry.

3. The brief facts of the case are that the applicant was enrolled in the Indian Navy on 19.05.1988. After basic training and with due service, he qualified to become Cook I on 23.05.1990. Meanwhile, he asked for a change of trade for becoming a Store Keeper. He was detailed for MER Test for two weeks in December, 1989. This was applicable to all the sailors who had applied for change of branch. He was duly qualified vide letter dated 30.12.1989 (**Annexure A-23**). He was then sent for trials to assess the suitability for Store Keeper. This was carried out by INS Valsura vide their letter dated 11.09.1990 (**Annexure R-17**). This certificate confirms that *"he was attached to the Ships Electrical Department from 27<sup>th</sup> March to 30<sup>th</sup> June, 1990 and it is certified that his performance was satisfactory and he was found suitable for conversion to Electrical Branch"*.

4. Thereafter the applicant submitted an application for change of branch on 20.08.1990 which was duly countersigned by his Commanding Officer (CO) on 11.09.1990. (**Annexure R-19**).

5. The applicant was detailed to attend at INS Hamla from 14.02.1991 to 22.06.1991 for change of his trade to that of Store Keeper Assistant (**Annexure A-3**). He was accorded eight weeks ante dated seniority as per Naval Instructions 2/S/1961 Para 20(7).

6. The applicant approached the higher authorities through his Unit on 08.01.1993 for fixing of seniority in which it was represented that his ante dated seniority was not granted vide Para 3 of the said letter which reads as under :

*“3. As per para 7 of articles 22 of NI 2/S of 61, the sailor is eligible for 8 weeks of ante dated seniority from the changed basic date recommended by the Commanding Officer. However, the changed basic date has not been mentioned in the sailor’s service documents.*

7. The letter invoked a response in the form of signal dated 12.02.1993 in which new basic date was given as 24<sup>th</sup> December, 1990 (**Annexure A-5**). A letter was written by the Base Logistics Office on 01.08.2008 (**Annexure A-6**) perhaps at the agitation of the applicant that his basic date should have been from 09.07.1990 instead of 24.12.1990. The relevant extracts of the letter dated 01.08.2008 are as under :

*“2. As per para 3 of NO 08/2001, the sailor on change of branch their seniority for promotion purposes would be basic date of the branch of the new branch with which the course whose basic date was 09 Jul 1990 (the date they reported at Chilka). However, the sailor’s basic date has been recorded as 24 Dec 1990 as communicated vide CABs letter DV/152072-W dated 04 Feb 1993.*

3. *The sailor also states that Vikas Yadav, SA-1 No. 156231-Y and Satish Kumar SA-I, No. 156804-Z are also change of branch sailors who have also gone under the same process but were passed out as SA-I on completion of SA-II 'Q' course. However, the above mentioned sailor was passed out as SA-II on completion of the SA-II 'Q' course.*

4. *In view of the above, it is requested that the following be reconciled at your end and be intimated to this office for information the sailor :-*

- (a) The basic date w.e.f. 09 Jul 1990 instead of 24 Dec 1990*
- (b) Rating the sailor as SA-I on passing out SA-II 'Q' course.*
- (c) Promotion effects after adjusting the date as per (b) above."*

8. The Bureau of Sailors (BOS) replied to the above letter vide their note of 23.10.2008 stating that vide Naval Instructions 2/96 Chapter II Para 7, the revised basic date has been fixed for the applicant as 09.07.1991. This was again followed up by a letter dated 19.11.2008 (**Annexure A-8**) stating that dates are not matching and, therefore, need to be reconciled. This letter also stated that the basic date is 24.12.1990.

9. The BOS vide letter dated 07.01.2009 (**Annexure A-9**) replied that "sailor's basic date as per the Bureau record is 09.07.1990 which will be counted towards all promotions of the sailor. The sailor's entry

*date 19.05.1988 will be counted for sailor's service and all other pensionary benefits".*

**10.** The applicant further agitated and after lot of correspondences the BOS vide their letter dated 31.03.2009 (**Annexure A-11**) finalized the dates as under :

*"2. The above mentioned sailor's basic date has been changed from 24 Dec 1990 to 09 Jul 1990.*

*3. With amended basic date the promotion dates of the sailor are required to be changed as given below :-*

<b>Sl.No.</b>	<b>Rank</b>	<b>Present w.e.f.</b>	<b>Amended w.e.f.</b>
(a)	SA-II	22 Jun 91	09 Jul 90 (Unpaid) 22 Jun 91 (Paid)
(b)	SA-I	24 Feb 93	09 Sep 92
(c)	Ag. LSA	24 Feb 96	09 Sep 95
(d)	Ag. SPO	01 Feb 01	01 Sep 2000

**11.** The BOS vide letter dated 12.06.2009 (**Annexure A-13**) having examined the case of De Novo decided as under :

*"4. Article 22, Para 7 of the NU 2/S/61 states that the seniority for promotion purpose in the new branch will be the date of transfer, anti-dated by 8 weeks in recognition of Part-I of New Entry Course. The sailor was transferred for the course commencing from 18 Feb 91 with antedate 08 weeks and his basic date is 24 Dec 1990, which is already mentioned in Page 4 of his Service Document.*

5. As per basic date given above, the sailor is due for promotion to SA-I and LSA as follow :-

- |     |   |             |
|-----|---|-------------|
| (a) | Basic Date and Rank date for SA-II                    | 24 Dec 1990 |
| (b) | Mandatory time for promotion to SA-I (i.e. + 3 Years) | 24 Dec 1993 |
| (c) | Seniority gained at Hamla & Unit (04+06 Months)       | 10 Months   |
| (d) | Due for Promotion to SA-I (24 Dec 1993 – 10 Months)   | 24 Feb 1993 |
| (e) | Due for Promotion to LSA 24 Feb 93 + 03 Years)        | 24 Feb 1996 |
| (f) | Future promotion as per roster                        |             |

12. The applicant continued to represent and also initiated a redressal of grievance which was turned down by MoD (Navy) letter dated 29.01.2010 (**Annexure A-19**). Thereafter, the applicant approached to the Tribunal.

13. Learned counsel for the applicant submitted that there are three issues before the court. The first being the fixation of seniority on transfer. He argued that he was governed by Para 272(5) of the Navy Regulations Part III read with Para 22/7 of NI 2/S/61. In that the applicant was entitled to get the basic date in the new branch from the date he qualified for the first course which held in December, 1989. Thereafter he successfully cleared an examination “Change of Branch Sailors” on 30.12.1989. Therefore, his seniority should be fixed from that date vide NI 2/S/61.

**14.** Learned counsel for the applicant further argued that the applicant had become Cook Class I on 23.05.2009. Thereafter he attended the conversion course at INS Valsura from 27.03.1990 to 30.06.1990. He was passed out as Store Keeper (Assistant) II. This was not in consonance with the Regulations of the Navy 1964. Para 273 (5) of the Regulations reads as under :

*“(5) Where necessary, the Chief of the Naval Staff shall issue instructions for the man to undergo a course of trial in the proposed new branch, the nature and duration of which shall be as directed by the Chief of the Naval Staff. Based on the results of the course and the other conditions in sub-regulation (4) being fulfilled, a final decision shall be conveyed by the Chief of the Naval Staff. Transfer shall generally be to the lowest rate in which men are normally entered in the new branch but this may be relaxed at the discretion of the Chief of the Naval Staff. If transferred in equivalent rate (but above O.D. rate) the effective date of transfer shall be the date of commencement of the Conversion Course. The effective date of transfer if in O.D. rate shall be the basic date of training of the batch with which a transferee is conjoined.”*

**15.** Learned counsel for the applicant further argued that the applicant should have been passed out as SA Class I since there is no provision in the Navy to revert a Seaman to a lower grade from sailor Class I to sailor Class II. He also drew our attention to the Naval Instructions of 2/96 in which at Sr no. 16 it reads as “Cook(O) I

Class is equivalent to Seaman-I Class. The remarks say that *"it will not be reduced in rank or reverted"*.

16. Learned counsel for the applicant stated that similarly situated batch-mates i.e. No. 174908W, 174696F and 174891F at INS Chilka were given basic seniority w.e.f. 09.07.1990 while he alone was given seniority w.e.f 24.12.1990 without any valid reason. Thus denying him the right of equality in comparison to his batch-mates.

17. Learned counsel for the applicant cited judgment of **Ram Ujarey Versus Union of India (1999) 1 Supreme Court Cases 685.**

He drew our attention towards paragraph no. 17 of the judgment wherein their Lordships opined that *"if the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant"*.

18. Learned counsel for the applicant cited another judgment of **Bhopal Singh and Others Versus Chatter Singh and Others AIR 2000 Punjab and Haryana 34** wherein their Lordships in paragraph no. 11 held that *"the emphasis on the premises of equity by the learned counsel for the petitioner is again misplaced. It is a settled canon of law that equity follows the law. Equity would tilt in favour of law and not against violation thereof. To claim equity, the petitioners must explain their above referred previous conduct which apparently*



*they have failed. Thus neither the principle of acquiescence or equity comes to the aid of the petitioners in the present case.”*

**19.** Learned counsel for applicant cited another judgment of **B.L. Sreedhar and Others Versus K.M. Munireddy (Dead) and Others** **AIR 2003 SC 578** wherein their Lordships in paragraph no. 26 held that *“Estoppel, then, may itself be the foundation of a right as against the person estopped, and indeed, if it were not so, it is difficult to see what protection the principle of estoppels can afford to the person by whom it may be invoked or what disability it can create in the person against whom it operates in cases affecting rights. Where rights are involved estoppels may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. It would be useful to refer in this connection to the case of Deputy Veeraraghava Reddi v. Depuru Kamalamma (AIR 1951 Madras 403)”*. Their Lordships further observed that *“of course, an estoppels cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. But where such is not the case a right may be claimed as having come into existence on the basis of estoppels and it is capable of being enforced or defended as against the person precluded from denying it”*.

**20.** Learned counsel for the respondents submitted that the contradictions given by the applicant are correct. However it has to be seen in a different context. The applicant was enrolled on 19.05.1988

as a Cook in Pay Group C as a “*Non Metric Entry*” Recruit. He was upgraded as Cook(O)-I on 23.05.1990.

**21.** Since the applicant wanted to upgrade himself on his request he applied for becoming a *Matric Entry Recruit* i.e. pay group B which any sailor who possess educational qualification for a higher branch can aspire for. He was required to qualify in the Matric Entry Recruitment examination (MER) at INS Chilka which he successfully qualified in December, 1989. Thereafter he underwent a Trade Suitably Trial at INS, Valsura from 27.03.1990 to 30.06.1990.

**22.** Having successfully qualified in the MER and suitability-trial at INS, Valsura, he applied for a change of branch on 20.08.1990. Consequent to his formal application for change branch, he was detailed on the conversion course at INS Hamla from 18.02.1991 to 22.06.1991. Having passed this course, he was finally designated as SA-II. His seniority in SA branch was calculated under NI 2/S/61 and he was given eight weeks of ante date and was thus fixed w.e.f. 24.12.1990, since at that time, he was governed by NI 2/S/61 his ante dated seniority was correctly given.

**23.** Learned counsel for the respondents further argued that the applicant agitated for re-fixation of his seniority which was initially not given to him due to oversight and it is borne out by his letter dated 08.01.1993 (**Annexure A-4**). Consequent to this representation his seniority for basic date was correctly fixed as 24.12.1990.

**24.** Learned counsel for the respondents further stated that in August, 2008 the basic date was again questioned by the authorities as applicant agitated for further revision of basic date to that of his enrolment. He had also contested that he should be promoted to be passed as SA-I. The case was examined by the authorities and vide letter dated 07.01.2009 it was mentioned that his basic date was 09.07.1990. This was further clarified vide their letter of 12.06.2009. **(Annexure A-13).**

**25.** Learned counsel for the respondents further argued that as regards the applicant's contention that he should be passed out as SA-I on 22.06.1991 is incorrect because as a Store Assistant he was in Pay Group B. While as Cook(O)-I he was in Pay Group C. As per NI 1/S/86, Class I of Pay Group C draws 960-20-1200 compared to Class II of Pay Group B who draws 960-20-1000. Therefore, the applicant is not being reduced in terms of grade and he is not suffering any financial loss. As such, he was correctly passed out as SA-II.

**26.** Learned counsel for the respondents stated that the names of the individuals named by the applicant in his arguments/annexures were direct entry 'MER' recruits. They were not "change of branch" cases. Some other individuals referred by the applicant are those individuals who have obtained the transfer in 2003 and thus were governed by NI 2/96.

**27.** Learned counsel for the respondents further argued that besides the initial fixation of seniority, the applicant was found guilty of misappropriation of Government property on 31.12.2006 and punished whereby he was reduced to rank from Store Petty Officer (SPO) on 11.01.2007. He was re-promoted as SPO on 14.07.2008.

**28.** Having heard both the parties at length and examined the documents and having bestowed our best consideration, we are of the opinion that the applicant was governed by instruction contained in NI 2/S/61. Para 22(7) of the NI 2/S/61 reads as under :-

*“(7) In cases other than those in 6(a) to (e). sailors transferred from one branch to another at their own request shall do so in the Ordinary rating. Their seniority for advancement purposes in the new branch will be the date of transfer, ante-dated by 8 weeks in recognition of Part I of New Entry Course. The date of transfer (for all purpose including pay) will be reckoned as follows :-*

- (a) Where a course is authorised : The date the course commences.*
- (b) Where a trial is authorised : The date of successful completion of the trial, or when a course follows a trial the date the course commences.*
- (e) In all other cases : The date of the Chief of the Naval Staff letter of approval.”*

**29.** Accordingly, he has been granted eight weeks of ante dated seniority w.e.f. 24.12.1990 since he had attended the conversion

course from 18.02.1991 to 22.06.1991. The contention of the counsel for the applicant as regards the date for calculation of the ante dated seniority from the date of MER Test or date of trade suitability trial does not sound logical. Because the applicant had formally applied for the conversion only on 20.08.1990 having successfully completed the MER Test and the trade suitability trial.

**30.** It is obvious that the authorities due to some error applied provisions of NI 2/96 which again says *"the seniority for promotion proposes in the new branch will be the basic date of training of the batch with which a transferee is conjoined"*. Therefore, the incorrect conversion of seniority by the authorities was examined vide their letter dated of 12.06.2009 (**Annexure A-13**). The point only remains whether such revision or change in the date of seniority can be effected without giving a show cause notice to the applicant. We have bestowed our best consideration to this issue and are of the opinion that such an inadvertent mistake which took place, need not to be held as a promissory estoppel. Since the individual should have been aware of the correct position of status as he had applied for a change of branch in 1990. To invoke the provision of NI 2/S/96 is not correct and though he has enjoyed privileges of having incorrect seniority fixed by the authorities which was from 09.07.1990 (**Annexure A-II**) does not mean that he continues to get an unfair advantage vis-a-vis his colleagues in the similar situation.

31. We have also considered the citations given by the applicant and we feel that in case of **Ram Ujarey Versus Union of India (Supra)** the issue was of having been given a promotion the individual was reverted and which should not have been done without giving an opportunity of hearing to appellant. In this case there was no promotion involved and also there was no reversion.

32. In case of **Bhopal Singh and Others Versus Chatter Singh and Others (Supra)** the promissory estoppels was followed in which the contract was not adhered to. In this case, the very fact that his seniority was incorrectly fixed was not actually a promissory estoppel. In case of **B.L. Sreedhar and Others Versus K.M. Munireddy (Dead) and Others (Supra)** the issue of estoppels was considered in the background of grading and deferring rights. In this case no such application has been made that any right of the applicant was denied and, therefore, cannot be applied in this case.

33. We have considered the issue of some other individuals, similarly situated, have been given seniority vis-a-vis the applicant. We opine that these individuals have not been impleaded, so we are not in a position to examine this averment. The respondents have clearly stated in their affidavit that these individuals are direct entry MER Sailors and others are those who changed his branch later and are thus governed by NI 2/96.

**34.** Regards the prayer of the applicant, that he be granted seniority from his original date of enrolment i.e. 19.05.1988, it suffers from delay and latches. The issue of seniority is clearly stated in the NI 2/S/61. Thereafter, several attempts were made at the applicant's behest to revise the date of seniority in the new branch. At no point of time did the applicant seek date of seniority w.e.f. 19.05.1988. Hence, seeking this date for seniority vide the OA on 29.07.2010 suffers from delay and latches, and cannot be entertained even without going into the merits of the case.

**35.** In view of the foregoing, we are of the opinion that no injustice has been caused to the applicant by fixing his basic seniority as 24.12.1990. Also that he has not been brought down by posting him out as SA-II. The case also does not indicate any denial of promissory estoppel nor does it show that the applicant was incorrectly reverted from promotion that was given to the applicant in normal course. As such, we are not inclined to interfere in impugned orders.

**36.** In view of the foregoing, the O.A. is dismissed. No orders as to costs.

**M.L. NAIDU**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on this 22<sup>nd</sup> day of July 2011**