

PETITIONER:
UNION OF INDIA & OTHERS

Vs.

RESPONDENT:
R.P. YADAV

DATE OF JUDGMENT: 10/05/2000

BENCH:
K.T.Thomas, D.P.Mohapatro

JUDGMENT:

D.P. MOHAPATRA, J.

Leave granted.

The question that arises for determination in these appeals is whether an Artificer Apprentice of Indian Navy who has been given a re-engagement for a certain period after obtaining his consent for it is entitled to withdraw the consent and demand his release from the force as of right? Another question which also arises is what bearing the decision of this Court in Anuj Kumar Dey and Another vs. Union of India and others 1997 (1) SCC 366 on the above question.

In the appeal arising from SLP (C) No.9839 of 1999, the respondent R.P. Yadav has already been released from the force in compliance with the direction of the Delhi High Court in the impugned judgment. Indeed in the Order dated 14-2-2000, this Court recorded the submission of Mr. Soli J. Sorabjee, learned Attorney General for India, that so far as the respondent R.P. Yadav is concerned, the Union of India is only interested in having the question of law decided and even if it is decided in favour of the Union of India, they will not deny the benefit which R.P. Yadav has claimed in this petition. The period of re-engagement granted in the case of R.P. Yadav has also expired. But in the case of Raj Kumar, the respondent in the appeal arising from SLP (C) No. 16848 of 1999, the period of re-engagement granted to the said respondent is due to expire on 31st January, 2002. Therefore, it will be convenient to refer to the relevant facts in the case of Raj Kumar that is the civil appeal arising from SLP (C) No.16848 of 1999.

Raj Kumar was appointed as an Artificer Apprentice in the Indian Navy on 14-1-1983. The period of initial engagement of 15 years expired on 31-1-1998. Before expiry of the said period he exercised option for re-engagement for a further period of four years and signed the requisite papers on 26-4-1996. The option was accepted and re-engagement till 31-1-2002 was approved by the competent authority. On 9-4-1997, the respondent made a request for withdrawal of his option for re-engagement and cancellation of the order. The request was turned down by the authority vide the rejection order dated 11-6-1997. He filed the writ

petition, CW No. 3833 of 1997, before the Delhi High Court seeking the following reliefs:

"[i] issue a writ of certiorari or any other appropriate writ, order or direction quashing the impugned order dated 11- 06-97.

[ii] issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to release the petitioner on the scheduled date of 31- 01-98 and grant him the pension and other retirement benefits as applicable to on the expiry of 15 years including 4 years training period".

The main contention raised by the respondent in support of his case was that he had given his option for re-engagement under the impression that the period of 4 years of initial training after appointment was not to be counted for the purpose of qualifying service for pension and therefore he has to serve for four years more to earn pension under the rules. This Court in A.K. Dey & another vs. Union of India & others (supra) ruled that the period of initial training is also a part of qualifying service for the purpose of pension. The contention by the respondent was that in view of the change in the legal position brought about the decision of this Court, it is no more necessary for him to continue in service and he should be released from the force with all retiral benefits with immediate effect. A learned single Judge of the High Court of Delhi by the Judgment dated 4th May, 1999, accepted the case of the respondent, allowed the writ petition and issued the direction, "the respondents shall release the petitioners and send them to Commodore, Bureau of Sailors Chhetah Camp, Mankhurd, Mumbai-400 088, within 3 months for this purpose". The learned Judge further ordered that the respondents shall pass appropriate orders releasing the petitioner granting him all retiral benefits. The respondents in the writ petition filed letters patent appeal, LPA No. 327 of 1999, challenging the above judgment/order of the learned single Judge. The appeal was dismissed by a Division Bench of the High Court by the Judgment dated 3-8-1999, which is under challenge in the present appeal filed by the respondents of the writ petition.

The factual position in the case of R.P. Yadav is similar on all material aspects excepting the difference as noted above. The case of the respondents in the writ petition, shortly stated, was that an Artificer Apprentice who is granted re- engagement for a certain period after obtaining his consent cannot subsequently resile from it and cannot claim release from the force as a matter of right. It was the further case of the respondents that the decision of this Court in A.K. Dey (supra) has no bearing on the controversy raised in the case.

On the case of the parties gist of which has been stated above, the points formulated earlier arise for determination. The thrust of the contentions of Shri Altaf Ahmed, learned Additional Solicitor General was that the practice prevailing in the Navy is to ask for option of the Artificer Apprentice concerned, his option for re-engagement much before (one year) completion of the initial period of engagement (fifteen years then) so that the

authorities may have sufficient time to collect informations about the vacancy position and proper planning for maintaining the strength of the Naval Force can be made well in time. This, according to the learned counsel is necessary to keep the force in readiness for any eventuality. Elucidating the point, the learned counsel submitted that if the case of the respondent is accepted then an Artificer Apprentice who is a 'Sailor' as held by this Court in A.K. Dey (supra), can just walk out of the force at any time according to his sweet will and such a situation will seriously erode the discipline and efficiency of the Navy.

Shri K.G. Bhagat, learned counsel appearing for the respondent, on the other hand, contended that in A.K. Dey (supra), this Court has held that the period of initial training of four years as an Artificer Apprentice is to be taken into account for the purpose of determining the qualifying service for pension which under the service rules/regulations is 15 years. This position came to the knowledge of the respondent and the authorities concerned only after the Judgment in A.K. Dey's case was rendered. The position of law laid down by this Court is binding on the authorities concerned and therefore they cannot stand on the way of release of the respondent from the force on completion of 15 years which is also the qualifying service for pension. The learned counsel further contended that it is how the matter has been understood by officers of the department which is evident from the letter HQNTG/3/ADM[S]/I of the Director(ADL) dated 9-4-1997, recommending the case of the respondent for release.

In our view the answer to the first question rests on the interpretation of relevant provisions of the Navy Act, 1957, The Navy (Discipline and Misc. Provision) Regulation 1965 and Navy Order No. Stp 17 of 1994 regarding re-engagement of 'Sailors' (RP/0805/93). In Section 3 (20) "sailor" is defined as a person in the naval service other than an officer. In Section 11, it is laid down inter alia, that no person shall be enrolled as a sailor in the Indian Navy for a period exceeding 15 years (subsequently amended as 20 years) in the first instance. In Section 14(1) it is provided that subject to the provisions of sub-section (4), officers and sailors shall be liable to serve in the Indian Navy or the Indian Naval Reserve Forces, as the case may be, until they are duly discharged, dismissed, dismissed with disgrace, retired, permitted to resign, or released. In sub-section (2), it is laid down inter alia that no sailor shall be at liberty to resign his post except with the permission of the prescribed officer.

Chapter V contains the provisions regarding conditions of service. In Section 15, which deals with tenure of service of officers and sailors it is declared in sub-section (1) that every officer and sailor shall hold office during the pleasure of the President. In sub-section (2), it is laid down that subject to the provisions of this Act and the regulations made thereunder, - (a) the Central Government may discharge or retire from the naval service any officer; (b) the Chief of the Naval Staff or any prescribed officer may dismiss or discharge from the naval service any sailor. In Section 16, it is provided inter alia that a sailor shall be entitled to be discharged at the expiration of the term of service for which he is engaged unless - (a) such expiration occurs during active service in

which case he shall be liable to continue to serve for such further period as may be required by the Chief of the Naval Staff; (b) he is re-enrolled in accordance with the regulations made under this Act. Section 17 which makes provision as to discharge provides in sub-section (1) that a sailor entitled to be discharged under Section 16 shall be discharged with all convenient speed and in an case within one month of becoming so entitled. In sub-section (3) of the said section it is laid down that notwithstanding anything contained in the preceding sub-sections, an enrolled person shall remain liable to serve until he is duly discharged. This provision is made subject to Section 18 which makes provision regarding savings of powers of dismissal by Naval tribunals. Chapter VI contains the provisions regarding service privileges. In Chapter VII are included the provisions regarding pay, pension, etc. and maintenance of families. Chapter VIII contains the provisions regarding articles of war. In Section 41, it is provided inter alia that every person subject to naval law, who (a) deserts his post shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Chapter XX which deals with provisions regarding regulations provides in Section 184 (1) that the Central Government may, by notification in the official Gazette, make regulations for the governance, command, discipline, recruitment, conditions of service and regulation of the naval forces and generally for the purpose of carrying into effect the provisions of this Act.

Reliance has been placed on the Navy Order No. (Str.)17 of w1994 by learned Additional Solicitor General in which are contained the provisions regarding re-engagement of sailors. In introduction to this Navy Order it is stated inter alia that the period of enrollment in respect of non Artificer /Artificer sailor and terms and conditions governing their further re-engagement of service have been laid down in this Navy Order. In clause (4) it is declared grant of re-engagement is subject to service requirement, and is not to be construed as a matter of right. Depending upon the requirement of service a sailor can be re- engaged only if he fulfills the conditions set out in clause (4). The criteria for re-engagement are provided in clause (5) of the Order.

In clause (6) it is laid down that a sailor is required to exercise his option for re-engagement for further service on the following occasions : (a) On receipt of Expiry of Engagement Serial from CABS. (b) On selection for higher rank professional courses/specialist courses/non-professional pre-promotion courses in India (c) On selection for Deputation for new acquisitions/ courses postings abroad.

In clause (13) provision is made, inter alia, that on publication of Expiry of Engagement Serial if a sailor does not wish to re-engage for further service a certificate of unwillingness as per Appendix 'D' to this order is obtained from him. A copy of this certificate is to be retained with sailors service documents and another forwarded to the Bureau of Sailors, Bombay. Under sub- clause (c) of this Regulation it is provided that sailors who have once expressed their unwillingness to sign an undertaking for further service and subsequently wish to be re-engaged on

promotion, will be considered for re-engagement only if they are willing to sign for a minimum period of two years, provided the request is put up at least nine months prior to the date of release. In the said provision it is expressly declared that "short term re-engagements of one to nine months in order to earn pension of the rank will not be granted". (emphasis supplied).

In clause (16) of the order it is made explicit that re-engagement is a service requirement, therefore, there is no provision to give re-engagement to sailors only on compassionate grounds; however, while reviewing the re-engagement cases of deserving cases, the welfare of sailors is also given due consideration to the possible extent. Clause 18 of the Naval order which is important for the purpose of the present case reads as follows:

"18. Cancellation of Re-engagement. Once re-engagement has been granted to a sailor consequent to his willingness, the engagement will generally not be cancelled due to any altered circumstances affecting the sailor. The sailor will be required to serve upto the period re-engaged for.

The provisions of the Naval Str.17, leave no manner of doubt that re-engagement of sailors can neither be claimed by a sailor as a matter of right nor can cancellation of re-engagement and release from the force be claimed by a sailor as a matter of right. It is to be decided by the competent authority keeping in view the relevant factors, the most important one being the service requirements.

From the conspectus of the relevant provisions of the Act, the Regulations and the Navy Orders including those noted above, the position is manifest that the Naval Service is to be maintained as a highly disciplined service always kept in readiness to face any situation of emergency. The personnel of the naval service are provided with various facilities and privileges different from those available to other civil services.

As noticed earlier in Section 16 of the Act a provision is made that a sailor shall be entitled to be discharged at the expiration of the terms of service for which he is engaged. One of the circumstances when this general rule shall not apply is that he is re-enrolled in accordance with the requirements made in the Act. No provision in the Navy Regulations, 1965, has been brought to our notice which expressly or by implication provides that a sailor can at any time during the subsistence of period of re-engagement demand release from service. On the contrary a fair reading of the provisions of the Regulations shows that a very high standard of discipline is to be maintained by members of the Naval Force including sailors. Under Regulation 127 sailors who may have quit their ships without leave, or have overstayed their leave or have improperly absented themselves when detached on duty, and who may be apprehended before the expiration of seven days, beyond the precincts of a dockyard or other government establishment in which they may have been employed, shall be treated either as absentees or as deserters, according to the circumstances which are to be judged by their respective commanding officers. From provisions in the Regulations it is also manifest that stringent measures of punishment are

prescribed for any act of indiscipline. It is also a matter of common knowledge that the Naval Force which is entrusted with the sacred duty of guarding the shores of the country against any form of aggression should be a highly disciplined and efficient service.

An incidental question that arises is whether the claim made by the respondents to be released from the force as of right is in keeping with the requirements of strict discipline of the Naval Service. In our considered view the answer to the question has to be in the negative. To vest a right in a member of the Naval Force to walk out from the service at any point of time according to his sweet will is a concept abhorrent to the high standard of discipline expected of members of defence services. The consequence in accepting such contention raised on behalf of the respondents will lead to disastrous results touching upon security of the nation. It has to be borne in mind that members of the defence services including the Navy have the proud privilege of being entrusted with the task of security of the Nation. It is a privilege which comes the way of only selected persons who have succeeded in entering the service and have maintained high standards of efficiency. It is also clear from the provisions in Regulations like Regulation 217 and 218 that persons who in the opinion of the prescribed authority, are not found permanently fit for any form of naval service may be terminated and discharged from the service. The position is clear that a sailor is entitled to seek discharge from service at the end of the period for which he has been engaged and even this right is subject to the exceptions provided in the Regulations. Such provisions, in our considered view, rule out the concept of any right in a sailor to claim as of right release during subsistence of period of engagement or re-engagement as the case may be. Such a measure is required in the larger interest of the country. A sailor during the 15 or 20 years of initial engagement which includes the period of training attains a high degree expertise and skill for which substantial amounts are spent from the exchequer.

Therefore, it is in the fitness of things that the strength of the Naval Force to be maintained is to be determined after careful planning and study. In a situation of emergency the country may ill afford losing trained sailors from the force. In such a situation if the sailors who have completed the period of initial engagement and have been granted re-engagement demand release from the force and the authorities have no discretion in the matter, then the efficiency and combat preparedness of the Naval Force may be adversely affected. Such a situation has to be avoided. The approach of the High Court that a sailor who has completed 15 years of service and thereby earned the right of pension can claim release as a matter of right and the authority concerned is bound to accept his request does not commend us. In our considered view, the High Court has erred in its approach to the case and the error has vitiated the judgment.

At this stage it will be relevant to deal with the contention which has been raised on behalf of the respondents that they agreed for re-engagement only for the reason that they were not eligible to receive pension under the Navy (Pension) Amendment Regulations, 1982, and since that position no longer holds good in view of the decision of this Court in Anuj Kumar Dey's case (supra) they are

entitled to withdraw the option given by them earlier. This contention is wholly unacceptable and has to be rejected. Reasons for which a sailor may exercise option for re-engagement may be very many. Such reasons will vary from person to person. No provision in the Act or Regulation has been placed before us which shows that the sailor is required to state the reason in support of the option given by him for re-engagement. Therefore, the reason which played in the mind of the sailor concerned to exercise option in favour of re-engagement is not relevant for determination of the question raised in the case. In that view of the matter the decision of this Court in Anuj Kumar Dey's case (supra) is of little assistance to the respondents in the case. All that was decided by this Court in that case is that the training period as Artificer Apprentice, will be included in the computation of the qualifying period of service for earning pension for the reason that during the period of training as Artificer Apprentice the sailor was in the service of the Navy. This Court did not consider any other question which may have a direct or indirect bearing on the controversy raised in the present case. It follows that the decision of this Court in Anuj Kumar Dey's case (supra) cannot provide a legitimate basis for claim of the respondents to be discharged from the Naval force as a right.

In the result the appeals are allowed. The Judgment of the learned single Judge of the High Court in C.W.P. No. 3833/97 dated 4.5.99 as confirmed by the Division Bench of the High Court of Delhi in L.P.A.No.327 of 1999 and C.W.P. No. 1368/98 as confirmed in L.P.A.No. 579/98, are set aside. There will however, be no order as to costs.