

PETITIONER:
ANUJ KUMAR DEY & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 28/11/1996

BENCH:
J.S. VERMA, SUHAS C. SEN

ACT:

HEADNOTE:

JUDGMENT:
(With Writ Petition (C) No. 831 of 1993 and Writ Petition
(C) Nos. 293, 752 & 601 of 1994)

J U D G M E N T

SEN, J.

Anuj Kumar Dey, the appellant herein, joined Indian Navy as Artificer Apprentice on 12th August, 1971. On 17th August, 1971 the statutory oath of allegiance was administered to him. He claims that his service in the Indian Navy must be calculated from that date, that is, 17th August, 1971. ON 11th August, 1975 the appellant's training as Artificer Apprentice was over. Immediately thereafter, he was advanced to Electrical Artificer Vth Class on 12th August, 1975. Various promotions were given to the appellant thereafter from time to time. On 31st January, 1988 the appellant was released from the Navy. The dispute in this case is about the entitlement of the appellant to get pensionary benefits for his service under the Navy. According to the appellant, he has served the Navy for more than fifteen years which must be counted from 17th August, 1971 when he was administered oath of allegiance. According to the respondents, the four years spent by the appellant as Artificer Apprentice was training period only and, therefore, the service of the appellant commenced only on 12th August, 1975 when he was appointed Electrical Artificer Vth Class, after completion of his training as Artificer Apprentice on 11th August, 1975. The question is whether this period of four years, 17.8.71 to 11.8.75 during which the appellant was undergoing training as Artificer Apprentice under the Navy, should be counted in the period of service rendered by the appellant.

Before going into the merits of the case, it will be necessary to refer to the relevant provisions of the Navy Act, 1957 and also to some of the Regulations framed under the said Act:-

THE NAVY ACT, 1957
CHAPTER - I
PRELIMINARY

3. In this Act, unless the context otherwise requires:-
(16) 'officer' means a commissioned

officer and includes a subordinate officer but does not include a petty officer;

(17) 'petty officer' means a sailor rated as such and includes a chief petty officer and a master chief petty officer

(20) 'sailor' means a person in the naval service other than an officer;

CHAPTER - IV
COMMISSIONS, APPOINTMENTS AND
ENROLLMENTS

9. (1) No person who is not a citizen of India shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except with the consent of the Central Government:

10. (1) Officers other than subordinate officers shall be appointed by commission granted by the President.

(3) Subordinate officers shall be appointed in such manner and shall hold such rank as may be prescribed.

11. (1) Save as otherwise provided in this Act, the terms and conditions of service of sailors, the person authorised to enrol for service as sailors and the manner and procedure of such enrolment shall be such as may be prescribed.

(2) No person shall be enroled as a sailor in the India Navy for a period exceeding twenty years in the first instance;

12. Where a person after his enrolment has for a period of three months from the date of such enrolment been in receipt of pay as a sailor, he shall be deemed to have been duly enrolled and shall not thereafter be entitled to claim his discharge on the ground of any irregularity or illegality in his engagement or any other ground whatsoever; and if within the said three months such person claims his discharge, no such irregularity or illegality or other ground shall, until such person is discharged in pursuance of his claim effect his position as a sailor in the naval service or invalidate any proceedings, act or thing taken or done prior to his discharge.

13. Every officer and every sailor shall, as soon as may be, after appointment or enrolment make and subscribe before the commanding officer of the ship to which he belongs, or the prescribed officer on oath or affirmation in the

following form that is to say:-

I..... do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the naval service and go wherever ordered by sea, land or air, and that I will observed and obey all commands of the President and the commands of any superior officer set over me, even to the peril of my life".

14. Liability for service of officers and sailors-(1) Subject to the provision 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.

15. Tenure of service of officers and sailors.-(1) Every officer and sailor shall hold office during the pleasure of the President.

16. Discharge on expiry of engagement.- Subject to the provisions of Section 18, a sailor shall be entitled to be discharged at the expiration of the term of service for which he is engaged unless-

17. (1) A sailor entitled to be discharged under section 16 shall be discharged with all convenient speed and in any case within one month of his becoming so entitled:

(4) Every sailor who is dismissed, discharged, retired, permitted to resign or released from service shall be furnished by the prescribed officer with a certificate in the language which is the mother tongue of such sailor and also in the English language stating forth-

(a) the authority terminating his service;

(b) the cause for such termination; and

(c) the full period of his service in the Indian Navy and the Indian Naval Reserve Forces.

Apart from the aforesaid provisions of the Navy Act, by Section 184 the Central Government has been empowered to make regulations in respect of, inter alia, "the terms and conditions of service, the pay, the pensions, allowances and other benefits of persons in the naval service, including special provision in this behalf during active service". In exercise of this power, the Central Government has framed the regulations called "the Navy (Pension) Regulations, 1964", 'Service in the Indian Navy." Chapter III of the

Regulations deals with Sailors. In this Chapter, Regulation 69(2) deals with Service Pension and Gratuity of the Sailors. Regulation 78 lays down, "Unless otherwise provided, the minimum service which qualifies for service pension is fifteen years." Regulation 79 is important for the purpose of this case and lays down. "All service from the date of enrolment or advancement to the rank of ordinary sea-man or equivalent to the date of discharge shall qualify for pension or gratuity". Regulation 261 deals with recruitment and provides:-

"261. RECRUITMENT - (1) The Chief of Naval Staff may recruit sailors required for the service.

(2) recruitment of sailors shall be made through boy entry, artificer apprentice entry and direct entry as necessary. The recruitment shall be carried out by the Recruitment Organisation established for the purpose and by any other authority as may be decided upon by the Chief of the Naval Staff from time to time. Persons authorised to enrol sailors, the manner, procedure and terms and conditions of enrolment shall be as laid down in the appropriate Regulations."

Regulations 290 and 291 are also important for the purpose of this case and are as under:-

"290. AWARD OF GOOD CONDUCT BADGE - GOOD CONDUCT BADGE shall not be awarded or restored as a matter of course merely because a man has avoided serious punishments. If the Captain is satisfied that a man is fully qualified in accordance with regulations 291 to 293 and sub-regulation (1) of regulation 294 and is deserving of the award a badge shall be conferred, when due, under provisions of this regulation. The maximum number of badges that a sailor may earn during his service shall be three.

291. SERVICE QUALIFICATION - (1) Before a sailor can be considered for the award of a Good Conduct Badge, he must have completed the following periods:

For 1st Good Conduct Badge ... 4 years.

For 2nd Good Conduct Badge ... 8 years.

for 3rd Good Conduct Badge ... 12 years."

The first question in this case is whether the appellant can be regarded as a "Sailor". The argument on behalf of the respondents has been that the appellant was undergoing training as an Artificer Apprentice. He could not be treated as a Sailor during this period of training. It was only when he was advanced to Electrical Artificer Vth Class after completion of his training that he became a Sailor.

Various provisions of this Act and the regulations set out hereinabove, do not support this contention. The

definition of 'sailor', as given in Section 3(20), is of wide amplitude and means "person in the naval service other than an officer". The provisions of Sections 9, 10 and 11 of the Act go to show that an officer, who is not a subordinate officer, is 'appointed' by commission granted by the President. Subordinate officers may be 'appointed' in the prescribed manner, but the sailors are 'enrolled' in the Navy. The Chapter Heading is Commissions. Appointments and Enrollments. Section 13 lays down that every officer and every sailor shall, as soon as may be possible after appointment or enrolment, make and subscribe an oath on affirmation in the prescribed form.

These statutory provisions go to show that a person can join Indian Navy as an officer or a sailor. An officer and a petty officer have been defined in subsections (16) and (17) of Section 3 and any person who is other than an officer and is in naval service has been defined as a sailor. The appellant was not an officer. He had joined Indian Navy and immediately after his enrolment he was made to take oath which every officer and every sailor under Section 13 is bound to take. Moreover, Regulation 261 clearly lays down that recruitment of sailors shall be made through boy entry, artificer apprentice entry and direct entry as officer. Therefore, the fact that the appellant was enrolled as an Artificer Apprentice, does not in any way go to show that he was not a sailor and was not serving the Navy as a sailor.

Section 12 lays down that where a person after his enrolment has for a period of three months from the date of such enrolment been in receipt of pay as Sailor, he shall be deemed to have been duly enrolled. Now, there is no dispute that the appellant had received pay regularly after his enrolment. It has been contended on behalf of the respondents that the appellant was allowed an allowance during the term of the training. The case of the appellant is that he used to get a fixed pay during the period of the training. The fact that he used to get a fixed pay does not go to show that he did not receive pay regularly after his enrolment.

The position becomes even clearer if a reference is made to Section 13 which provides that every officer and every Sailor shall as soon as may be after the appointment or enrolment make and subscribe an oath or affirmation in the prescribed form. This is something which only an officer or a Sailor is required to do. There is no dispute that the appellant was administered oath. This could only be done under the Act if he was either an officer or a Sailor. If the contention of the respondents that the appellant was not even a "Sailor" during the period of training, then it has not been explained why he was administered oath.

The next objection was that even if the appellant could be treated as a sailor, he could not be said to have been in the service of the Navy during the period of training. This argument is also unacceptable in the facts of the case and in view of the provisions of the Act and the Regulations.

In the prescribed form of oath that was administered to the appellant, he had to swear ".....I will, as in duty bound, honestly and faithfully serve in the naval service". It is clear that the appellant was enrolled as a Sailor, took oath as a Sailor and drew salary as a Sailor and was in the service of the Navy as a Sailor during the period of undergoing training as Artificer Apprentice.

The qualifying period for earning pension is service of 15 years under the Navy. Having regard to the facts of the case and the documents annexed to the appeal, there is little doubt that the training period as Artificer

Apprentice will have to be included in the computation of the qualifying period of service. Regulation 79 lays down that all service from the date of enrolment or advancement to the rank of ordinary sea-man or equivalent to the date of discharge shall qualify for pension or gratuity. Therefore, the date of advancement is not the only starting point for computation of the qualifying period of service. In the case of the appellant the date of enrolment should be the material date. He was administered oath as a Sailor even before the date of his advancement to the rank of Electrical Artificer Vth Class. In fact, the Discharge Certificate issued by the Navy to the appellant is to the following effect and puts the matter beyond any doubt:-

"This is to certify that ANUJ KUMAR DEY, CHIEF ELECTRICAL ARTIFICER (AIR), NO. 052264-H has served in the Indian Navy from 12 AUGUST 1971 to 31ST JANUARY, 1988 as per details overleaf."

This is a statutory certificate which has to be given under sub-section (4) of Section 17 of the Navy Act. The discharge Certificate must state the full period of service in the Indian Navy. According to the calculation made by the Navy itself, this period of service is more than the qualifying period of 15 years.

Not only that. In the details that had been given along with the Discharge Certificate, it has been mentioned that "Joined on 12th August, 1971. released on 31st January, 1988." The Date of Attestation in the Indian Navy is given as "17th August, 1971 (Oath of allegiance taken)". This is a certificate given by the Indian Navy in accordance with requirement of Section 17.

There is another document described as "Certificate of the Service" where Period of Engagement has been shown as twelve years (from 16.8.75 to 15.8.1985 and from 16.8.85 to 31.1.1988). On behalf of the respondents, strong reliance has been placed on this document. However, this document does not say that the appellant was in service for twelve years only. This is an entry in a column headed "Period of engagement". In fact, in the very next page of that document, details of the service of the appellant and Substantive Rank held by him have been given. There, it has been shown that the appellant was serving in the ship "VALSURA" in the Substantive Rank Art. (App) from 12th August, 1971 to 27th November, 1973. It has also been recorded in that document that the oath of allegiance was taken on 18th August, 1971. In the column headed "Good Conduct Badges", it has been shown that the appellant was awarded Good Conduct Badges in August, 1975, August, 1979 and August, 1983. That document was given to show "Character and Efficiency on 31st December yearly, on final discharge and other occasions prescribed by regulation". It appears that in the yearly column on and from 31st December, 1971 to 31st December, 1988 (the date of discharge), every year the appellant's character has been certified as V.G. (Very Good). Under Regulation 291, these badges can be awarded only after completion of four years (first badge). 8 years (second badge) and 12 years (third badge) of service. It has been laid down under Regulation 290 that "the maximum number of badges that a sailor may earn during his service shall be three".

All these facts and the various provisions of the Act and the Regulations leave no room for doubt that the appellant even during the period he was working as Artificer Apprentice was in the service of the Navy, was given Good

Conduct Badges for this service and four years' service was counted from the year 1971. The Discharge Certificate which is a statutory document clearly records that he has served in the Indian Navy from 12th August, 1971 to 31st January, 1988. The respondents after granting all these certificates and badges, cannot be heard to say that the appellant had not put in the qualifying period of service of fifteen years and, therefore, was not entitled to get pension.

Our attention was drawn to a judgment of Andhra Pradesh High Court in the case of H.S. Sarkar v. Union of India & Ors. 1994 (2) An W.R. 221, where it was held that "it does not stand to reason that when the training period of four years is reckoned for the purpose of computation of 15 years for retiring a person., the same is not reckoned for the purpose of pension..... Payment of only a consolidated pay during the training period and not regular scale of pay is immaterial in so far as the computation of the period is concerned".

We are of the view that the Division Bench of the High Court was in error in holding that the period of four years when the appellant was employed Artificer Apprentice could not be counted for computation of the qualifying period of pension.

For the reasons stated hereinabove, the appeal is allowed. The judgment of the High Court dated 17th July, 1991 is set aside. There will be no order as to costs.

WRIT PETITION NOS. 831/93, 293, 752 AND 601/94

In view of our above judgment in Civil Appeal No. 1110 of 1992, these writ petitions are also allowed with no order as to costs.