



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7103 OF 2014
WITH
INTERIM APPLICATION NO.993 OF 2024**

01. V. K. Pandey,
T. No. 11801-B, Electrical Fitter,
SK, Manager Yard Services,
C. No. 64, Naval Dockyard, Mumbai
02. Vijay Asawale,
T. No. 11794-R, Electrical Fitter,
SK, Manager Electrical Power System,
C. No. 78, Naval Dockyard, Mumbai
03. Dipak Kumar,
T. No. 11797-H, Electrical Fitter,
SK, Manager Electrical Power System,
C. No. 44, Naval Dockyard, Mumbai
04. Y. Ramesh,
T. No. 11798-L, Electrical Fitter,
SK, Manager Electrical Power System,
C. No. 44, Naval Dockyard, Mumbai
05. I. P. Rao,
T. No. 11824-E, Electrical Fitter,
SK, Manager Electrical Power System,
C. No. 46, Naval Dockyard, Mumbai
06. K. V. Ramu,
T. No. 11799-N, Electrical Fitter,
SK, Manager Electrical Power System,
C. No. 44, Naval Dockyard, Mumbai
07. G. D. M. Reddy,
T. No. 11822-T, Electrical Fitter,
SK, Manager Yard Services,
C. No. 67, Naval Dockyard, Mumbai

08. S. G. Prasad,
T. No. 11802-H, Electrical Fitter,
SK, Manager Yard Services,
C. No. 64, Naval Dockyard, Mumbai
 09. Swarup C. Padte,
T. No. 11826-M, Control Fitter,
SK, Manager Electrical Power System,
C. No. 48, Naval Dockyard, Mumbai
 10. Suman Kumar,
T. No. 11836-T, Engine Fitter,
SK, MAST, C. No. 29, Naval
Dockyard, Mumbai
 11. R. Satyanarayana,
T. No. 11813-R, Engine Fitter,
SK, MAST, C. No. 29, Naval
Dockyard, Mumbai
 12. S. M. Gaur,
T. No. 11837-A, Engine Fitter,
SK, MAST, C. No. 31, Naval
Dockyard, Mumbai
 13. Sachin Chavan,
T. No. 11812-M, Engine Fitter,
SK, MAST, C. No. 29, Naval
Dockyard, Mumbai
- ... Petitioners

V/s.

01. Union of India,
Ministry of Defence,
(Through Secretary of Defence)
South Block,
New Delhi – 110 011
02. Chief of Naval Staff,
Naval Headquarters,

Sena Bhavan,
New Delhi – 110 001

03. Admiral Superintendent of
Naval Dockyard,
S.B.S. Road, Lion Gate,
Naval Dockyard,
Mumbai 400 023
04. Assistant General Manager,
(Personnel and Administrative,
S.B.S. Road Lion Gate,
Naval Dockyard, Mumbai 400 023
05. Manager Personnel Services,
S.B.S. Road Lion Gate,
Naval Dockyard, Mumbai 400 023
06. Officer-in-Charge,
Dockyard Apprentice School,
S.B.S. Road Lion Gate,
Naval Dockyard, Mumbai 400 023 ... Respondents

**AND
WRIT PETITION NO. 7104 OF 2014
WITH
INTERIM APPLICATION NO.994 OF 2024**

01. Narayan Dalai,
T. No. 12026-B, Pipe Fitter-
Skilled Manager Systems
C. No. 76, Naval Dockyard, Mumbai
02. Indranil Chattopadhyay,
T. No. 12021-E, Plater-
Skilled Manager Fabrication
C. No. 10, Naval Dockyard, Mumbai
03. M. Kasi Appa Rao,
T. No. 12020-A, Plater-
Skilled Manager Fabrication

C. No. 13, Naval Dockyard, Mumbai

04. M. S. Wagh,
T. No. 12113-N, Plater-
Skilled Manager Fabrication
C. No. 11, Naval Dockyard, Mumbai
05. G. U. Pawar,
T. No. 12120-K, Plater-
Skilled Manager Fabrication
C. No. 11, Naval Dockyard, Mumbai
06. K. M. Wakode,
T. No. 12076-L, Plater-
Skilled Manager Fabrication
C. No. 11, Naval Dockyard, Mumbai
07. Manoj Kumar,
T. No. 12077-N, Plater-
Skilled Manager Integrated Repair Shop
C. No. 101, Naval Dockyard, Mumbai
08. D. N. Solanki,
T. No. 12121-M, Plater-
Skilled Manager Integrated Repair Shop
C. No. 101, Naval Dockyard, Mumbai
09. Sukanta Mehta,
T. No. 12078-T, Plater-
Skilled Manager Fabrication
C. No. 11, Naval Dockyard, Mumbai
10. Dilip K. Singh,
T. No. 12075-H, Plater-
Skilled Manager Fabrication
C. No. 10, Naval Dockyard, Mumbai
11. Tapas Ranjan Panda,
T. No. 12019-K, Plater-
Skilled Manager Fabrication
C. No. 11, Naval Dockyard, Mumbai

12. Bhushan M. Bagwe,
T. No. 12084-K, Shipwright-
Skilled Manager Dry Dock & Hull
Preservation, C. No. 21,
Naval Dockyard, Mumbai
13. Chukka V. Reddy,
T. No. 12083-E, Shipwright-
Skilled Manager OUT,
C. No. 22, Naval Dockyard, Mumbai
14. S. Ramesh Kumar,
T. No. 12022-K, Shipwright-
Skilled Manager OUT,
C. No. 22, Naval Dockyard, Mumbai
15. Sanjay Ranjan,
T. No. 12082A, Shipwright-
Skilled BVY, Naval Dockyard, Mumbai
16. B. R. Konkire,
T. No. 12024-R, Shipwright-
Skilled Manager Dry Dock & Hull
Preservation, C. No. 21,
Naval Dockyard, Mumbai
17. M. B. S. Hari S. Krishna,
T. No. 12088-B, Shipwright-
Skilled Manager OUT
C. No. 22, Naval Dockyard, Mumbai
18. G. V. S. Rao,
T. No. 12086-R, Shipwright-
Skilled Manager OUT
C. No. 22, Naval Dockyard, Mumbai
19. Manab Das,
T. No. 12023-M, Shipwright-
Skilled Manager OUT
C. No. 23, Naval Dockyard, Mumbai
20. M. D. Feroj Alam,

- T. No. 12097-E, Pipe Fitter-
Skilled Manager Systems
C. No. 37, Naval Dockyard, Mumbai
21. Milind Amrute,
T. No. 12096-A, Pipe Fitter-
Skilled Manager Systems
C. No. 76, Naval Dockyard, Mumbai
22. Shaji P. A.,
T. No. 12095-T, Pipe Fitter-
Skilled Manager Systems
C. No. 37, Naval Dockyard, Mumbai
23. Rajesh Babu T. D.
T. No. 12093-L, Pipe Fitter-
Skilled Manager Systems
C. No. 76, Naval Dockyard, Mumbai
24. Girish Kumar T. S.
T. No. 12092-H, Pipe Fitter-
Skilled Manager Systems
C. No. 37, Naval Dockyard, Mumbai
25. Wilson M. O.
T. No. 12027-H, Pipe Fitter-
Skilled Manager Integrated Repair Shop
C. No. 101, Naval Dockyard, Mumbai
26. Rakesh Kumar
T. No. 12099-M, Pipe Fitter-
Skilled Manager Systems
C. No. 37, Naval Dockyard, Mumbai
27. Maheshwar Panigrahi
T. No. 12094-N, Pipe Fitter-
Skilled Manager Integrated Repair Shop
C. No. 101, Naval Dockyard, Mumbai
28. R. S. Kadu
T. No. 12091-B, Pipe Fitter-
Skilled Manager YAS

C. No. 63, Naval Dockyard, Mumbai

29. Rajeshwar Ram
T. No. 12098-K, Pipe Fitter-
Skilled Manager Systems
C. No. 76, Naval Dockyard, Mumbai
30. Poshan Ray
T. No. 12017-A, Moulder-
Skilled Manager G E S
C. No. 41, Naval Dockyard, Mumbai
31. Pankaj Kumar
T. No. 12014-L, Moulder-
Skilled Manager G E S
C. No. 41, Naval Dockyard, Mumbai
32. Sukesh Kumar Singh
T. No. 12067-K, Moulder-
Skilled Manager G E S
C. No. 41, Naval Dockyard, Mumbai
33. Manoranjan Parida
T. No. 12013-H, Moulder-
Skilled Manager G E S
C. No. 41, Naval Dockyard, Mumbai
34. Kanhaiya Mishra
T. No. 12068-M, Moulder-
Skilled Manager G E S
C. No. 41, Naval Dockyard, Mumbai
35. Pravesh Kumar
T. No. 12071-M, Moulder-
Skilled Manager G E S
C. No. 41, Naval Dockyard, Mumbai
36. S. Kumar Chaurasia
T. No. 12016-T, Moulder-
Skilled Manager G E S
C. No. 41, Naval Dockyard, Mumbai

37. S. K. Senapati
T. No. 12064-T, Moulder-Skilled Manager G E S
C. No. 41, Naval Dockyard, Mumbai
38. A. T. Suryavanshi
T. No. 12108-H, Crane Operator-Skilled Manager Yard Utility,
C. No. 65, Naval Dockyard, Mumbai
39. S. K. Bhalerao
T. No. 12028-L, Crane Operator-Skilled Manager Yard Utility,
C. No. 65, Naval Dockyard, Mumbai
40. K. K. Rao
T. No. 12107-B, Crane Operator-Skilled Manager Yard Utility,
C. No. 65, Naval Dockyard, Mumbai
41. Neeli N. Shridhar
T. No. 12085-M, Shipwright-Skilled Manager OUT,
C. No. 23, Naval Dockyard, Mumbai ... Petitioners

V/s.

01. Union of India,
Ministry of Defence,
(Through Secretary of Defence)
South Block,
New Delhi – 110 011
02. Chief of Naval Staff,
Naval Headquarters,
Sena Bhavan,
New Delhi – 110 001
03. Admiral Superintendent of
Naval Dockyard,
S.B.S. Road, Lion Gate,
Naval Dockyard,

Mumbai 400 023

04. Assistant General Manager,
(Personnel and Administrative,
S.B.S. Road Lion Gate,
Naval Dockyard, Mumbai 400 023
05. Manager Personnel Services,
S.B.S. Road Lion Gate,
Naval Dockyard, Mumbai 400 023
06. Officer-in-Charge,
Dockyard Apprentice School,
S.B.S. Road Lion Gate,
Naval Dockyard, Mumbai 400 023 ... Respondents

Mr. Salil Sagar, Senior Advocate a/w Sankalp Sagar, Faizal Vora, Ajeet Manwani, Prasanna Lakshmi, Avinash Manwani for the Petitioners in both the Writ Petitions.

Ms. Neeta Masurkar a/w Dashrath A. Dubey for Respondent-Union of India in both the Writ Petitions.

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

**RESERVED ON : 21st MARCH, 2024
PRONOUNCED ON : 28th JUNE, 2024**

JUDGMENT : (PER ARIF S. DOCTOR, J.)

1. Since the facts and the issues which arise for determination in both the captioned Writ Petitions are essentially the same, both Writ Petitions were heard together

and are being disposed of by this common order. For convenience Writ Petition No.7103 of 2014 is treated as the lead Petition and thus reference to facts shall be as set out in the pleadings of Writ Petition No.7103 of 2014.

2. The Petitions impugn an order of the Central Administrative Tribunal ("the Tribunal") dated 26th April 2013 by which the Tribunal has dismissed two Original Applications ("OAs") filed by each set of the Petitioners in the captioned Writ Petitions. Original Application No. 180 of 2004 was filed by the Petitioners in Writ Petition No. 7103 of 2014 and Original Application No. 178 of 2004 was filed by the Petitioners in Writ Petition No. 7104 of 2014.

3. Before advertng to the rival contentions, it is useful to set out the following facts, viz.

i. The Petitioners are all employees of the Naval Dockyard, Mumbai. The Naval Dockyard from time-to-time issues advertisements for Recruitment of Apprentices for Naval Dockyard Apprentice School, Bombay. Those interested in

apprenticeship, then enroll in the Dockyard Apprentice School (DAS) which imparts training to such candidates interested in taking up employment with the Naval Dockyard. It is essential to set out the following dates pertaining to the Petitioners in each of the Petitions, viz.

Relevant Date	Writ Petition No. 1703 of 2014	Writ Petition No. 1704 of 2014
Advertisement	September 1997	September 1997
Joining DAS	1 st April 1998	1 st April 1998
Completion of Training	31 st March 1999	31 st March 2000
Absorption as Regular Employees	19 th July 1999	10 th July 2000

- ii. The DAS provides training of one year or two years duration depending upon the trades in which the apprentices were enrolled. The gradation of employees etc. is done on the basis of Dockyard Memorandum issued by Respondent No. 3 i.e. the Admiral Superintendent of Naval Dockyard from time to time. Respondent No. 3 had issued the following Dockyard Memorandum ("DM") and Dockyard Temporary Memorandums ("DTM") viz.

DM No.	Issued on	Valid till
6/85	14 th January 1985	16 th January 1997
DTM No.	Issued on	Valid till
4/97	16 th January 1997	17 th March 1997
35/97	17 th March 1997	21 st September 1997
117/99	21 st September 1999	Vide order dated 16 th June 2003 in OA 989 of 1999 the retrospective effect i.e. prior to 21 st September 1999 was held invalid.

- iii. It appears that the Respondents retrospectively applied DTM 117/99 to the apprentices of batches AA 58 to 62, the same was thus challenged by batches AA 58 to 62 Apprentices who filed OA No. 989 of 1999 and the other connected OAs in which they *inter alia* sought implementation of DM 6/85. The Tribunal by and order dated 16th June 2003 passed in the said OA's No. 989 of 1999 and the other connected OAs *inter alia* held that the

DTM 117/99 could not be applied retrospectively and after rendering detailed findings, disposed of OA No. 989 of 1999 and the other connected OAs by giving a direction to apply DM 6/85 to the Applicants in OA No. 989 of 1999 and the other connected OAs.

- iv. It was in this backdrop that the Petitioners then vide a representation dated 18th August 2003 addressed to Respondent No.3 *inter alia* sought gradation of Petitioners as per the order of the Tribunal dated 16th June 2003 passed in OA No. 989 of 1999 and the other connected OAs i.e. that DM 6/85 be made applicable to the Petitioners as well. It appears that the Respondents did not respond to this representation, and hence the Petitioners approached the Tribunal by filing the abovementioned OAs (OA No. 178 of 2004 & OA No. 180 of 2004) in which they essentially sought (a) quashing and setting aside application of DTM No. 4/97, 35/97 and 117/99 and (b) that the Respondents apply/implement DM No. 6/85 to the Petitioners as well.

- v. The Respondents, thereafter, challenged the order of the Tribunal dated 16th June 2003 passed in OA No. 989 of 1999 and the other connected OAs by filing a Writ Petition No.638 of 2004 in this Court. This Court, by an order dated 10th April, 2008 disposed of the said Writ Petition by upholding the order of the Tribunal dated 16th June 2003 passed in OA No. 989 of 1999 and the other connected OAs. It is not in dispute that the Respondents thereafter accepted the order of this Court and accordingly issued a Corrigendum (being Corrigendum No.392 of 2009) by which Respondent No.3 applied DM 6/85 in respect of ex-apprentices of batch No.60 only.
- vi. The Tribunal then vide an order dated 26th February, 2010 allowed the OAs filed by the Petitioners. The Respondents challenged the said order by filing Writ Petition No.10050 of 2010. The said Writ Petition was heard and disposed of by an order dated 21st March 2012 by which the Petitioners' OAs were remitted back to the Tribunal for *de novo* consideration. The Tribunal thereafter heard the Petitioners' OAs afresh, and vide the Impugned

Order, dismissed the same by *inter alia* holding as follows
viz.

"31. in original application 178/2004 and 180/2004, applicants had joined the apprentice school on April 01, 1998. Understandably, in all other cases on hand, the applicants had joined the training course much later, in April 1999. Still worse, applicants in original application 576/2009 had joined a one-year course (IT-04) only on April, 01, 2000, whereas the applicants in original application 716/2011 had joined the IT-04 batch only on April, 16, 2001. Thus it is clear that when the applicants in all these cases joined the apprentices school, DM 6/1985 was never in the picture. It has ceased to be operative with effect from January 16, 1997. Therefore, the applicants cannot be heard to say that DM 6/1985 should have been made applicable in their cases, in view of the order passed by this Tribunal and as confirmed by the High Court in the cases referred to earlier. At the risk of repetition, it may yet again be stated that DTM 4/1997, 35/1997 and 117/1999 were never quashed by this Tribunal. Only clause 9 (a) of DTM 117/1999 was set aside and that too to the extent it gave retrospectivity to the DTM 117/1999 in the case of applicants in those cases.

32. ... the applicants in original application 178/2004 and 180/2004 are also not entitled to get any relief as claimed by them for the reason that they had joined the dockyard on completion of their apprenticeship course sometime in June to July, 2000 and 1999 respectively. The gradation system as applicable at the relevant point of time were applied in their cases. They had filed these Original Application in 2004. In any view of the matter, these applicants are also not entitled to contend that DM 6/1985 should have been made applicable in their cases."

4. It is in the backdrop of the aforesaid facts that the present Writ Petition has been filed in which the Petitioners have sought the following reliefs (in Writ Petition No. 7103 of 2014) viz.

"(a) That this Hon'ble Court will be pleased to issue Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, direction or Order, calling for the records and proceedings of O.A. No. 180 of 2004 on the file of Central Administrative Tribunal, Mumbai Bench and after going through the legality or otherwise thereof this Hon'ble Court will be pleased to quash and set aside Judgment & Order dated 26.04.2013

passed by the Central Administrative Tribunal, Mumbai Bench in O.A. No. 180 of 2004.

(b) That this Hon'ble Court will be pleased to issue Writ of Mandamus or a Writ in the nature of Mandamus or any other Order directing the Respondents to apply the gradings stipulated in DM 06/85 to the Petitioners & grant them suitable grade in appointment with Naval Dockyard since their appointment on 19.07.1999.

(c) That this Hon'ble Court will be further pleased to direct the Respondents to grant all the consequential benefits to the Petitioners including arrears of pay & promotions after treating them as appointed to the Post as per the terms of DM 06/85."

Submissions of Mr. Salil Sagar, on behalf of the Petitioners.

5. Mr. Sagar, Learned Senior Counsel at the outset submitted that the order of the Tribunal dated 16th June, 2003 passed in OA No.989 of 1999 and other connected OAs was a judgement *in rem* and it was thus that the same would be applicable to the Petitioners as well. He submitted that just as DTM 117/99 was held to be inapplicable to the apprentices in

OA No. 989 of 1999 and other connected OAs the same would apply to the Petitioners who were also similarly situated as the apprentices in OA No. 989 of 1999 and other connected OAs. He submitted that since the order of the Tribunal dated 16th June 2003 passed in OA No. 989 of 1999 and other connected OAs was a judgment in rem the same would be applicable to the Petitioners even if they had not approached the Court. He submitted that a judgement in rem would thus apply to all similarly situated persons. In support of his contention, he placed reliance upon the following judgments of the Hon'ble Supreme Court in the case of *Deccan Paper Mills Company Limited vs. Regency Mahavir Properties and others*¹ and *State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others*².

6. Mr. Sagar then pointed out that the Petitioners being entitled to the applicability/benefits of the said judgment of the Tribunal dated 16th June 2003 passed in OA No. 989 of 1999 and other connected OAs had made a representation to the Respondents on 18th August 2003. He submitted that since the

¹ (2021) 4 SCC 786

² (2015) 1 SCC 347

Petitioners had not received any response, the Petitioners had filed their respective OAs on 17th February 2004. He then placed reliance upon Section 20(2)(b)³ and Section 21⁴ of the Administrative Tribunal Act, 1985 ("the said Act"), and pointed out that there was no delay since the cause of action accrued to the Petitioners on 18th August 2003 i.e. the date on which the Petitioners made their representations to the Respondent and the OAs were thus within time. He then submitted that since the order of the Tribunal dated 16th June, 2003 was a judgement *in rem* and the Petitioners were being discriminated against and the same was a continuing wrong hence the question of limitation did not arise. He submitted that the Petitioners were not fence sitters but had acted immediately on becoming aware of the order of the Tribunal dated 16th June

³ **20. Applications not to be admitted unless other remedies exhausted.—**

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a)

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3)

⁴ **21. Limitation.—**(1) A Tribunal shall not admit an application,—

(a)

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

2003. In support of his contention, that the order dated 16th June, 2003 being a judgement in rem, the question of delay would not arise, he placed reliance upon a judgment of the Hon'ble Supreme Court in the case of *Chairman/Managing Director, Uttar Pradesh Power Corporation Limited and others vs. Ram Gopal⁵* and a judgment of the Delhi High Court in the case of *Union of India & Another vs. Ved Prakash⁶*.

7. Mr. Sagar then took pains to point out that the Petitioners were on par with batches 60 and 62 who were also beneficiaries of the order dated 16th June 2003. To support this contention, he pointed out the following (i) that the Petitioners had studied together with the students of batches 60 and 62; (ii) that batches 60 and 62 had passed out from the DAS in May 1999 and May 2000 respectively and the Petitioners had also passed out in May 1999 and May 2000 respectively (ii) that the Respondents had prepared a Common Merit List of batch 60 and batch 62 with the Petitioners in batch IT-01(1 year training) and batch IT-01(2 years training) respectively ; and (iv) that the candidates of batches 60 and the Petitioners

⁵ (2021) 13 SCC 225

⁶ ILR (2009) VI Delhi 448

in IT-01 batch were absorbed into the employment on same day i.e. 19th July 1999. He then submitted that the Respondents had not denied the details provided by the Petitioners to show similarity between the Petitioners and batches 60 and 62. He also pointed out that the Respondents had treated the Petitioners equally to batches 60 and 62 while issuing appointment letters, assigning duties, and even granting promotions. He submitted that in so far as batch 62 was concerned, some of the applicants in OA 989 of 1999 and other connected OAs also joined apprenticeship training on 1st April 1997 i.e. after issuance of DTM 35/97 on 17th March 1997 and, the apprenticeship training of batch 62 was completed along with that of the Petitioners in batch IT-01 (2 year training) and batch IT-02 (1 year training) i.e. on 31st March 2000. He then submitted that the present Petitioners had appeared with batch Nos. 60 and 62 in 70th and 72nd All India Trade Test respectively and were given similar certificates. He thus submitted that the Petitioners were similarly situated with batch no. 60 and 62 and thus could not be discriminated against by the Respondents. In support of his contention that those who are similarly situated ought to be given parity, he

placed reliance upon the judgments of the Supreme Court in *Punjab State Electricity Board and another Vs. Thana Singh and others*⁷ and *State of Madhya Pradesh and others Vs. Ramesh Chandra Bajpai*⁸.

8. He then invited our attention to the letter dated 8th February 1980 to submit that Respondent No.2 had vide the said letter provided that the candidates with (i) two years ITI training plus one year base repair training at DAS (ii) one year ITI training plus two years base repair training at DAS were equal to the three years apprenticeship training and such candidates with such qualification would be eligible for the recruitment post for which 36 months of apprenticeship qualification as prescribed.

9. He then submitted the Tribunal had completely erred and misdirected itself in equating the Petitioners with batch IT-03 since batch IT-03 had (i) joined apprenticeship training in April 2000 i.e. after DTM 117/1999 was notified; and (ii) OA No. 576 of 2009 was filed by batch IT-03 in the year 2009

⁷ (2019) 4 SCC 113

⁸ (2009) 13 SCC 635

which was after eight years of those apprentices joining DAS. He thus submitted that these facts were completely different from the facts in the Petitioners' case because (i) the Petitioners had joined training at DAS in April 1998 which was before DTM 117/1999 was notified and (ii) the Petitioners' OAs were filed within limitation since the Petitioners had made representation on 18th August 2003 which had never been decided.

10. Mr. Sagar then submitted that the issue that DTM 117/1999 was not approved by the Ministry of Defence, whereas DM 6/85 was infact approved by the Ministry of Defence, was settled and had attained finality, the benefit of which had been granted to the Applicants in OA No.989 of 1999 and other connected OAs. In support of his contention that once an issue has been decided and attained finality, the doctrine of issue of estoppel would be applicable, he placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Bhanu Kumar Jain Vs. Archana Kumar and another*⁹. It was thus that Mr. Sagar submitted that the Tribunal

⁹ 2005 (1) SCC 787

had gravely erred in dismissing the Petitioners' OAs and submitted that the present Petition ought to be allowed.

Submissions of Ms. Neeta Masurkar, on behalf of the Respondents.

11. At the outset Ms. Masurkar, submitted that the Petitioners' contention that the Petitioners were similarly situated with the Applicants in OA No. 989 of 1999 and other connected OAs was entirely misconceived. She pointed out that the Petitioners belonged to IT-01 and IT-02 batches whereas the Applicants in OA No. 989 of 1999 and other connected OAs were from batch AA 58, 59, 60, 61 and 62 who were infact not similarly situated to the Petitioners. In support of her contention and in order to highlight the differences between the Petitioners and the individuals with whom the Petitioner claimed parity, she tendered a chart which set out as follows :-

BATCH	JOINED	PASSED	DTM IN FORCE ON JOINING	DTM IN FORCE ON PASSING	DTM APPLIED EARLIER	DTM APPLIED NOW AS PER COURT DIRECTIV E FOR PROSPEC TIVE APPLICAT ION	RELATED COURT CASES

(APPRENTICESHIP ACT) AA BATCHES OF APPRENTICESHIP)							
56 3YR	Apr-94	Apr-97	06/85	35/97	06/85	DTM 06/85 dated 14 Jan 85	
56 2YR	Apr-94	Apr-96	06/85	06/85	06/85	DTM 06/85 dated 14 Jan 85	
57 3YR	Oct-94	Dec-97	06/85	35/97	06/85	DTM 06/85 dated 14 Jan 85	
57 2YR	Oct-94	Dec-96	06/85	06/85	06/85	DTM 06/85 dated 14 Jan 85	
58 3YR	Apr-95	Apr-98	06/85	35/97	117/99	DTM 06/85 dated 14 Jan 85	(i) OA Nos. 989/99, 655/00, 584/01 and 124/01 – Allowed by CAT, Mumbai vide Order dated 30 Jun 03. (ii) WP No.437/03 filed by UOI dismissed by Hon'ble High Court of Bombay vide Judgment dated 10 Apr 08. Case implemented.
58 2YR	Apr-95	Apr-97	06/85	35/97	117/99	DTM 06/85 dated 14 Jan 85	
59 3YR	Oct-95	Dec-98	06/85	35/97	117/99	DTM 06/85 dated 14 Jan 85	
59 2YR	Oct-95	Dec-97	06/85	35/97	117/99	DTM 06/85 dated 14 Jan 85	
60 3YR	May-96	May-99	06/85	35/97	117/99	DTM 06/85 dated 14 Jan 85	
60 2YR	May-96	May-98	06/85	35/97	117/99	DTM 06/85 dated 14 Jan 85	
61 3YR	Oct-96	Dec-99	06/85	117/99	117/99	DTM 06/85 dated 14 Jan 85	

62 3YR	Apr- 97	May- 00	35/97	117/99	117/99	DTM 35/97 dated 17 Mar 97	
IT BATCHES OF APPRENTICESHIP							
IT-01 (1 YR)	Apr- 98	May- 99	35/97	35/97	117/99	DTM 35/97 dated 17 Mar 97	(a) OA No.360/09, OA No.370/09, OA No.371/09, OA No.178/04 – Dismissed vide CAT, Mumbai Order dated 26 Apr 13. (b) Current Writ Petitions.
IT-01 (2 YR)	Apr- 98	May- 00	35/97	117/99	117/99	DTM 35/97 dated 17 Mar 97	
IT-02 (1 YR)	Apr- 99	May- 00	35/97	117/99	117/99	DTM 35/97 dated 17 Mar 97	
IT-02 (2 YR)	Apr- 99	May- 01	35/97	117/99	117/99	DTM 35/97 dated 17 Mar 97	
IT-03 (1 YR)	Apr- 00	May- 01	117/99	117/99	117/99	DTM 117/99 dated 21 Sep 99	(a)_ OA No.576/09 dismissed by CAT, vide Order 26 Apr 13.
IT-03 (2 YR)	Apr- 00	May- 02	117/99	117/99	117/99	DTM 117/99 dated 21 Sep 99	(b) WP No.9662/14 – Dismissed vide Order dated 26 Feb 16 (c) SLP (C) No.21936 of 16 filed in Supreme Court – Pending.

From the said chart Ms. Masurkar pointed out that it was apparent that the present Petitioners and the Applicants in OA No. 989 of 1999 and other connected OAs were not similarly situated because there was a difference in (i) the dates of their

joining DAS (ii) the dates of passing entrance examination (iii) the eligibility criteria and educational qualification prescribed in the advertisement issued pursuant to each batch in DAS at entrance examination of DAS.

12. She also pointed out that the Petitioners in the present case as also the Applicants in OA 989 of 1999 and other connected OAs had different duration of training including apprenticeship training on ships. She submitted that the mode of gradation in each trade was also different and based on their marks obtained and internal assessment done on the basis of the various DM/DTM which were applicable on the dates of joining of DAS. She took pains to point out that educational qualification required for apprenticeship before 16th January 1997 was of matriculation and 8th standard passed which was enhanced to ITI vide order of Ministry of Defence dated 14th January 1996 and that such candidates were given rebate/reduction in training period and that the practical training period was reduced to one year and two years respectively. Basis this she submitted that it was inconceivable for the Petitioners to contend that they were similarly situated

as the Applicants in Applicants in OA No. 989 of 1999 and other connected OA's.

13. She then pointed out that the DM 6/85 had infact ceased to exist on 16th January 1997 when DTM 4/97 came into force. She pointed out that DTM 4/97 was then further amended by DTM 35/97 and that the DTM 117/99 was thereafter issued on 21st September 1999 which superseded the earlier DTMs issued. She submitted that vide clause 9(a) of DTM 117/99 the same was given retrospective effect and it was only the retrospective application/effect of the said DTM 117/99 that was struck down by the Tribunal and nothing else. She took pains to point out the Tribunal had not in any manner held that the DTM's were not valid and/or Respondent No. 3 did not have the power to issue the same. She submitted that it was thus that the question of judgment of the Tribunal dated 16th June 2003 being applicable to the Petitioners in the present Petition did not arise since the same was infact not a judgment in rem but applied only to applicants in OA 989 of 1999 and other connected OAs. She submitted that validity of DTMs not being set aside, the same continued to be applied from the dates on which they were notified/came into force.

14. She then submitted that the concession was given to batch AA-60 due to the fact that they had only few months of apprenticeship left when DM 6/85 was superseded by DTM 35/97. She pointed out that when batch AA-60 joined the DAS, DTM 35/97 did not exist whereas when the Petitioners i.e. IT-01 and IT-02 joined DAS, the DTM 35/97 was very much in force. She pointed out that batch AA-60 was in the last semester and hence applying DTM 35/97 would have had an adverse impact hence the claims of other batches i.e. AA 58, 59, 61 and 62 were merged by Tribunal and affirmed by this Court. She also pointed out that the training period of batch AA-60 was for two years and three years whereas in Petitioners' case (batch IT-01 & IT-02) the training period was of one year and two years respectively. She submitted that therefore even the practical training given to the Petitioners was different.

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.

17. She then submitted that the Petitioners' contention that the Order dated 16th June 2003 was an order in *rem* was plainly incorrect. In support of her contention she invited our attention to the order dated 10th April 2008 passed in Writ Petition No.638 of 2004 and pointed out that the same in paragraph 22 thereof specifically recorded as follows :-

"10..... Therefore, even if subsequent DTMs could be valid in respect of persons joining as Apprentices after issuance of these DTMs, such DTMs could not be given retrospective effect in respect of Apprentices who had already joined when DM 6/85 was in force."

Basis this she submitted that it was clear that the said order was not an order *in rem* and would thus be applicable only to those batches who had approached the Tribunal in OA No.989 of 1999 and connected OAs which were disposed of by order dated 16th June 2003 and that the Petitioners could not claim any parity, since as per the date when the present Petitioners joined DAS, DM 6/85 did not exist and DTM 35/97 was in force.

18. Ms. Masurkar submitted that even otherwise the Petitioners were guilty of delay and latches in approaching the Tribunal. She pointed out that the Petitioners had waited for the result in OA 989 of 1999 and other connected OAs and thus were clearly fence sitters. She pointed out that the Petitioners approached the Tribunal by filing their respective OAs on 16th February 2004 which was after a delay of five years from the date of joining of Naval Dockyard. She submitted that there was no explanation whatsoever for this delay as to why the Petitioners waited long to challenge the applicability of DTMs.

19. She then pointed out that the Petitioners had unconditionally accepted their respective letters of appointment without any demur or protest, and it was only after a period of

five years of joining Naval Dockyard, they raised an objection for the first time. She submitted that the OAs had been filed well after the period of limitation as prescribed under Section 21 of the Administrative Tribunal Act, 1985 and thus the observations made in the Impugned Order on the aspect of delay were perfectly justified. In support of her contention that the Petitioners were fence sitters who had waited for the outcome of OA. No. 989 of 1999 and connected OAs and thus could not be given benefit arising from the order of the Tribunal dated 16th June, 2003 she placed reliance upon a judgment of the Hon'ble Supreme Court in the case of *U.P. Jal Nigam and anr. Vs. Jaswant Singh and Anr*¹⁰.

20. She submitted that the Tribunal had correctly rejected the O.A.'s filed by the Petitioners and thus submitted that, the present Petitions also deserved to be dismissed.

Reasons and Conclusions

21. We have heard Learned Counsel for the Parties, considered their rival contentions as also the case law cited by

¹⁰ (2006) 11 SCC 464

them. The sum and substance of the Petitioners' case is that DM 6/85 ought to have been applied to the Petitioners as well, in the same manner that it was applied to the Applicants in OA No. 989 of 1999 and other connected OAs. We are afraid we cannot accept the Petitioners contention for the following reasons, viz.

- A. The only issue which was decided by the Tribunal by the order dated 16th June, 2003 was the issue of the retrospective applicability of DTM 117/99 where the Tribunal held that the same could not be applied retrospectively. It is crucial to note that the Petitioner had not before the Tribunal assailed the validity of the DTMs and/or the power of Respondent No. 3 to have issued them. Thus, the Petitioners had before the Tribunal only sought a declaration that the implementation of DTMs to the Petitioners was unjust, unfair, arbitrary and unreasonable in light of the order dated 16th June, 2003 but had not challenged the validity of the DTMs either before the Tribunal or in the present Writ Petition.

- B. The order dated 16th June, 2003 does not in any manner hold that Respondent No. 3 did not have the power to issue the DTMs and/or that they were in any manner void. This being the case, it is not in dispute that DM 6/85 had ceased to operate on 16th January 1997 and subsequent thereto DTM No. 4/97 and 35/97 had come into force on 16th January 1997 and 17th March 1997 respectively. It is not in dispute that the Petitioners joined the DAS on 1st April 1998 on which date DM 6/85 had admittedly ceased to exist. Thus, given that the Petitioners have not challenged the validity of any of the DTMs nor have any of the DTMs been held to be invalid, save and except that DTM 117/99 cannot be retrospectively applied, we fail to see on what basis the Petitioner could claim that DM 6/85 would be applicable to the Petitioners who admittedly joined the DAS after DM 6/85 had ceased to operate.
- C. Additionally, even if we were to accept that the order dated 16th June 2003 is in order in *rem*, the same would

not in any manner, in our view, advance the case of the Petitioners since the said order only holds that DTM 117/99 could not be made retrospectively applicable. Further the order dated 16th June 2003 has to be read in conjunction with the order dated 10th August 2008 passed in Writ Petition No.638 of 2008 in which this Court held as follows :-

"10.....In view of this, it may be held that super session of DM 6 of 85 was not valid, at least in respect of apprentices, who had entered into apprenticeship contract when DMs 6/85 was in force. Therefore, even if subsequent DTMs could be valid in respect of persons joining as apprentices after issuance of these DTMs, such DTM could not be given retrospective effect in respect of apprentices who had already joined when DM 6/85 was in force."

Thus, based on the above observations, we find that it is not open to the Petitioners to contend that the Order of 16th June, 2003 would *ipso facto* be applicable to them. We fail to see how the same would apply to the

Petitioners since as noted above, the validity of DTM No. 4/97 and 35/97 which were issued after DM 6/85 and before DTM 177/97 have not been challenged much less set aside as already noted above, the only claim of the Petitioners is that DM 6/85 be applied to them, thus even if we accept that the order of 16th June, 2003 was an order *in rem*, the same would only be confined to the issue of retrospective applicability of DTM 117/99 and not that DM 6/85 would *ipso facto* be applicable to the Petitioners.

D. Additionally, we find that the Petitioners were clearly fence sitters who approached the Tribunal only after the judgement of the Tribunal dated 16th June 2003. This is admittedly after over a period of 5 years in case of the Petitioners in batch IT-01 and 4 years in case of Petitioners in batch IT-02 from the date of their joining the Naval Dockyard. Thus, we find that the Tribunal has in the Impugned Order correctly held as follows, viz.

"31.....The Applicants in Original Application 178/2004 and 180/2004 are also not entitled

to get any relief as claimed by them for the reason that they had joined the Dockyard on completion of their apprenticeship course sometime in June to July, 2000 and 1999 respectively. The gradation system as applicable at the relevant point of time were applied in their cases. They had filed these original Application in 2004. In any view of the matter, these Applicants are also not entitled to contend that DM 6/1985 should have been made applicable in their cases. Having regard to the entire facts and circumstances of the case we do not find any merit in any of the contentions raised by the Applicants.”

It is settled law that only making representations does not extend the Limitation and considering the fact that Petitioners had approached the Tribunal after 5 (IT 01 batch) and 4 years (IT 02 batch) i.e. beyond period of Limitation prescribed therefore, judgments in ***Chairman/Managing Director Uttar Pradesh Power Corporation Limited and Others*** (supra) and ***Ved Prakash*** (supra) would be of no assistance to the Petitioners.

E. On the issue of parity, we find the Petitioners' contention that they were on par and/or similarly situated as batch 60 and 62 to also be untenable. The Petitioners have claimed parity with batch 60 and batch 62 despite the fact that (i) Batch AA 60 joined DAS in March 1996 i.e. before DTM 35/97 came into force whereas the Petitioners joined DAS on 1st April 1998 i.e. after DTM 35/97 came into force; (ii) the corrigendum No.392 of 2009 issued by the Respondent No.3 was only for batch 60 (iii) Batch 62 being an Applicant in OA 989 of 1999, DM 6/85 was applied purely as a concession to batch 62 for the reason that they approached the Tribunal without any delay. Additionally, it appears that in the case of batch 62 advertisement for recruitment of apprentice in DAS was published on 17th August 1996 i.e. when DM 6/85 was in force; whereas in the case of the Petitioners an advertisement for recruitment of apprentice in DAS was published on 6th September 1997 by which date admittedly DM 6/85 had ceased to exist. It is crucial to note that (i) the dates of joining DAS and (ii) the dates of passing entrance examination of the Petitioners and

batches 58 to 62 are also different. Therefore, batches AA 58 to 62 which filed OA 989 of 1999 and other connected OAs from which the Petitioners are seeking parity from were on a different footing than the Petitioners hence the judgments in *Punjab State Electricity Board* (supra), *Ramesh Chandra Bajpai* (supra), *Deccan Paper Mills Company Ltd.* (Supra) and *Arvind Kumar Shrivastav* (supra) would be of no assistance to the Petitioners.

22. Thus for the above reasons, we find no infirmity in the Impugned Order and the present Petitions are dismissed.

23. In view of the dismissal of the present Petitions the captioned interim applications do not survive and the same are disposed of accordingly.

24. There shall be no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)