SUPREME COURT OF INDIA

Union of India

Versus

Raj Kumar

&

Union of India

Versus

P. Yadav

(K.T. Thomas, D.P. Mohapatra and Ruma Pal, JJ.)

Civil Appeal No. 3345 of 2000 (Arising out of S.L.P. (C) No. of 9839 1999) &

Civil Appeal No. 3346 of 2000 (Arising out of S.L.P. (C) No. 16848 of 1999).

10.05.2000

JUDGMENT

D.P. Mohapatra, J. –

Leave granted.

2. 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 v. Union of India and others, 1997(1) SCC 366 : 1997(1) SCT 412 on the above question.

3. 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 Attomey 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 or 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.

4. 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 retiremental benefits as applicable to on the expiry of 15 years including 4 years training period."
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> 5. 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 and another v. Union of India and 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 Cheetah 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 prisoner 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.
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> 6. The factual position in the case of R.P. Yadav is similar on all material aspects excepting the difference as noted above.
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> 7. 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.

8. 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.

9. 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.

10. 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 enroled 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.

11. 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 any 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.

12. Chapter VI contains the provisions regarding service privileges.

13. In Chapter VII are included the provisions regarding pay, pension, etc. and maintenance of families.

14. 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.

15. 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.

16. Reliance has been placed on the Navy Order No. (Str.) 17 of 1994 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.

17. 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.

18. 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 sailor's 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)

19. 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.

20. 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-rengaged for."

21. 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 or 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.

22. 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.

23. 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 term 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.

24. 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 Regulations 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 of expertise and skill for which substantial amounts are spent from the exchequer.

25. 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.

26. 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.

Ruma Pal, J.

27. I have read the draft judgment prepared by my learned Brother Mohapatra, J. I wish to express my respectful inability to concur with the reasoning and the conclusion reached. In my opinion, the impuged deserves to be confirmed. Although the facts have been set out by Brother Mohapatra, J. as I have taken a different view, I have stated the facts which to my mind are relevant, again.

28. The respondents in both the appeals are sailors. Both joined the service of the Indian Navy as Artificer Apprentices for a period of 15 years from the date of their respective appointments. The question involved in both the appeals is whether the respondents can be compelled to serve beyond the period of their initial engagement.

29. The terms and conditions of service of sailors such as the respondents, are governed by the Navy (Ceremonial, Conditions of Service and Miscellaneous Provision) Regulations, 1963 (referred to as the `Regulations') which were framed under Section 184 of the Navy Act, 1957 (referred to as the Act).

30. Section 11 relates to the enrolment of sailors. Section 11(2) of the Act, as it stood at the material time and insofar as it is relevant, prescribed that :

"11. Enrolment -

(1) xxx xxx xxx

(2) No person shall be enrolled as a sailor in the Indian Navy for a period exceeding fifteen years in the first instance.....

(3) xxx xxx xxx"

Similarly, the Regulations contain corresponding provisions in Regulation 268(1) and Regulation 269[1A].

Reg. 268(1) says "Boys, Artificer Apprentices and Direct Entry Sailors shall be enrolled for Continuous Service as provided in sub-regulation (1) of Regulation 269."

31. In 1978, Reg. 269(1) was replaced by Reg. 269[1A]. It provides for - "New Entrants :

[a] Boys, Artificer Apprentice and Direct Entry Sailors may be enrolled for

a period calculated to permit a period of 15 years service to be completed from the date of enrolment or from the date of attaining the age of 17 years, which ever is later, provided their services are so long required."

32. At the end of the period of initial engagement or enrolment for continuous service, a sailor is entitled to be discharged. Thus Section 16 of the Act provides :

"Discharge on expiry of engagement. -

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

(a) xxx xxx xxx

(b) he is re-enrolled in accordance with the regulations made under this Act."

33. Re-enrolment of sailors such as the respondents is provided for in Regulation 268 Sub-regulations" (2) and (3) (a) & (b) :

"268. Engagements

(2) Re-enrolment of Continuous Service sailors shall be as provided in sub-regulation (3).

(3)(a) Except as provided in Regulation 270, Continuous Service men who, after completing the period of their initial Continuous Service enrolment, volunteer and are permitted to continue to serve, shall, subject to the provisions of Regulation 269(2), be enrolled by the Captain Naval Barracks, for a period not exceeding that required to complete the service necessary to qualify for the minimum pension. In exceptional cases, however, where the exigencies of the Service so warrant, the prior sanction of the Chief of the Naval Staff may be obtained instead for the re-enrolment of the sailor for a period not exceeding - 8 years.

3(b) Re-enrolment after completing the necessary qualifying service for minimum pension, shall normally be allowed for a period not exceeding 2 years at a time, subject to the proviso in explanation (ii). Such re-enrolment for the first spell of 2 years shall be made by the Captain Naval Barracks, Bombay, but further re-enrolment of two years at a time may be made by the Captain Naval Barracks with the prior approval of the Chief of the Naval Staff. In cases, however, where the exigencies of Service so warrant, re-enrolment on completion of the necessary qualifying service for minimum pension for a period not exceeding 5 years at a time may be made, subject to the proviso in Explanation (ii), by the Captain Naval Barracks, with the prior approval of the Chief of the Naval Staff."

(emphasis added)

34. The period of service necessary to qualify for pension is contained in Regulation 78 of the Service Pension and Gratuity Pension Regulations (Navy), 1964 :

"78. Minimum Qualifying Service for pension : Unless otherwise provided, the minimum service which qualifies for service-pensions is fifteen years."

35. Is clear from a reading of these provisions that (i) a sailor can initially be engaged for a maximum period of 15 years or for a lesser initial period and re-enrolled for the balance period of 15 years; (ii) if a sailor is initially engaged for 15 years he is entitled to get pension; (iii) that a sailor is entitled to ask for his discharge at the end of his initial engagement; (iv) any extension of a sailor's service beyond the period of 15 years can be made for two years at a time. Any re-enrolment for more than two years can be made if the exigencies of service so warrant and with the prior approval of the Chief of Naval Staff.

36. The procedure according to which a sailor may be re-engaged after the initial period of service has been provided by a Navy Order. Regulation 2(i) defines Navy Order as meaning "an order issued by the Chief of the Naval Staff". In terms of Navy Order No. STR. 17\94 both non-artificer\artificer sailors could apply for further re-engagement of service once their initial period of service was over subject to certain conditions. Relevant extracts of the paragraphs of the Navy Order are :

6. Occasions for Re-engagement. 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 (Commodore Bureau of Sailors).

(b) xxx xxx xxx

(c) xxx xxx xxx

7. Responsibility for ensuring Re-engagement.

(a) xxx xxx xxx 3t3_ Š

(b xxx xxx xxx

(c) Recommendations for re-engagement in all cases are to be forwarded to the Commodore, Bureau of Sailors, Bombay, in duplicate on the proforma produced at Appendix `A' to this order. As Expiry of Engagement Serial is published by CABS 24 months in advance the recommendations for re-engagement of sailors are to reach CABS well in time, but not later than 16 months prior to the date or release.

(d) xxx xxx xxx

xxx xxx xxx

8. Authority to grant re-engagement

(a) The Commodore Bureau of Sailors Bombay. The powers to grant re-engagement to sailors including sailors in low medical category, up to 25 years of service have been delegated to the Commodore, Bureau of Sailors, Bombay.

9. Period of Re-engagement.

(a) The sailors shall be re-engaged in spells of not exceedings three years and not less than one year provided it is not a course\deputation requirement. However, no sailor shall be re-engaged beyond the age of superannuation as specified in para 10 below.

(b) On completion of pensionable service the sailors will normally be re-engaged for the following periods :

(i) In spells of not exceeding 3 years at a time up to 25 years of service after expiry of initial engagement.

xxx xxx xxx

(c) Notwithstanding the above, the sailors of Artificer Cadre and Submarine Branch will be governed by separate re-engagement norms in force time to time. Sailors of Submarine Branch, on expiry of initial engagement, will be granted further re-engagement in the Submarine Cadre subject to availability of vacancies in the cadre. Otherwise, if re-engaged, they will be reverted to general service. Therefore, at the time of requesting for re-engagement, they are to give an undertaking as per Appendix `B' to this order that in case of Submarine Cadre becoming over borne (overborne ?) they are liable to be reverted to general service.

xxx xxx xxx

xxx xxx xxx

13. Unwillingness for Re-engagement. [Unwillingness for Re-engagement.

(a) 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 tto be retained with sailor's service documents and another forwarded to the Bureau of Sailors, Bombay.

(b) Requests for signing for further service from sailors who have once expressed unwillingness, are not to be entertained under any circumstances, e.g., changed domestic circumstances, loss of prospective employment opportunity etc. as this upsets manpower planning, recruitment and progress

of pension papers.

(c) However, sailors who have once expressed their unwillingness to sign an undertaking for further service and subsequently wish to re-engage 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. Short term re-engagements of one of nine months in order to earn pension of the rank will not be granted.]

16. Re-engagement on Compassionate Grounds. - 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 case, the welfare of sailors is also given due consideration to the possible extent.

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."

37. As already noted, both the respondents were initially appointed for a period of 15 years. R.P. Yadav (respondent in S.L.P. (C) No. 9839 of 1999) was appointed in January 1981 and Raj Kumar (respondent in SLP (C) No. 16848 of 1999) was appointed on 14.1.1983. Therefore, the period of 15 years as far as R.P. Yadav is concerned, was to expire on 31st January 1996 and as far as Raj Kumar is concerned it was to expire on 31st January, 1998. Of this period, both the respondents were required to and in fact served for 4 years in initial training.

38. Till 1996 the appellants proceeded on the basis that the period of training would not be counted in calculating the 15 years of service required to be completed for pension. On that basis two separate notices called the "Expiry of Engagement Serial" were issued to Yadav and Kumar two years prior to the completion of their service for which they were initially enrolled, indicating the dates of expiry of their engagements as 1996 and 1998 respectively and also mentioning that they should apply for re-engagement to qualify for pension. In other words although each of the respondents had put in 15 years of service, by excluding the 4 year training period they were told that they had each completed only eleven years of pensionable service and that:

"sailors not completing minimum pensionable service and (are ?) required to re-engage for the same."

39. Accordingly in terms of paragraph 6(a) of Navy Order STR 17\94 quoted earlier, the respondents applied for re-engagement for a further period of four years so that they could qualify for pension. Their re-engagement was also allowed by the appellants.

40. To use the appellants' language in their counter-affidavit before the High Court,

"The period of engagement in case of Artificer Apprentice after completion of the initial engagement had been fixed as 4 years in the first spell to enable them to complete pensionable service as per para 9 of No. (Str.) 17\94.

41. What is noteworthy is that no other reason, let alone, any "exigency of service" under Reg. 268(3)(b), was mentioned for re-engaging the respondents. But with this, according to the appellants' counter-affidavit to the writ petition, "the contract (of re-engagement) was complete."

42. On 28.1.1996, this Court in Anuj Dumar Dey and another v. Union of India and others, 1997(1) SCC 366 held that there was no basis for the appellants not counting the training period as service for the purpose of pension. It was said :

"The qualifying period for earning pension is service of 15 years under the Navy.....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."

43. In view of the decision in Anuj Kumar Dey's case, on 7.7.1997 R.P. Yadav wrote to the Directorate of Naval Design for cancellation of his application for re-engagement and for release from service as he had already completed the minimum pensionable service. R.P. Yadav's case was forwarded to the appellant No. 3 in the following language :

"It is understood that the sailor has already completed the requisite period towards pensionable service. It is therefore requested that the sailor be released from service at the earliest."

49. Similar prayer was made by Raj Kumar to the Director, Head Quarter Naval Technical Group who, while forwarding the request to the Commodore, Bureau of Sailors, "strongly recommended" that Raj Kumar's "re-engagement may be cancelled and he may be permitted to be released from the service as per present engagement i.e. on 15.1.1998".

45. Both the requests were turned down by the Commodore in substantially similar language. The letter of rejection as far as R.P. Yadav is concerned is dated 20.1.1998 and as far as Raj Kumar is concerned the rejection was on 11.1.1997. The ground of rejection being the same it is sufficient if the letter dated 11.1.1997, is quoted. It reads :

"It is intimated that above named sailor had requested for further re-engagement for 4 years to earn minimum pensionable service. Accordingly CABS approved his re-engagement and IN 441 (a) for the period of 15 Jan. 1998 to 31 Jan. 2002 was forwarded to HQ RTG (Banalore) and same was received duly signed by the sailor.

The cancellation of re-engagement for further service intimated vide your letter ibid is not in order and cannot be accepted. In this connection para 18 of No (Str) 17\94 is relevant.

In view of the above, it is stated that sailor's re-engagement for the period from 15 Jan. 1998 to 31 Jan. 2002 is final and cannot be changed at this stage."

46. Challenging the rejection of their requests for release from service, both the respondents filed two separate writ applications before the Delhi High Court. R.P. Yadav's writ application was allowed by a learned Single Judge on 23.10.1998. Raj Kumar's application was allowed by another learned Judge of the High Court on 4th May, 1999. By the separate decisions, the respondents were directed to be released from service. The appeals preferred from these decisions were dismissed by the Division Bench.

47. As already indicated, I am of the view that the learned Judges of the High Court were right in the view they took. But before giving my reasons, it needs to be recorded that R.P. Yadav has already been released on 31st January, 1999. The issue as far as he is concerned is academic. Indeed no one represented him while the appeal in which he is the respondent was being argued. But the issue remains alive in Raj Kumar's case as he has more than two years to serve in terms to the re-engagement.

48. The appellants have argued that the High Court's view is erroneous because it was contrary to paragraphs 7, 13, 16 and 18 of (Str.) Navy Order 17\94. It is further submitted that if release of all sailors similarly situated to Raj Kumar were allowed it would upset the man-power planning and might lead to a crisis as far as the country's defence was concerned. Their stand is that the re-engagement was valid and binding on Raj Kumar.

49. According to Raj Kumar he was legally entitled to be released after he had completed 15 years of service not only under the Act and Regulations but also under the Contract Act. It is the case of Raj Kumar in his writ petition that he agreed to be re-engaged was based on the misrepresentation on the part of the appellants to him that he had only completed 11 years of pensionable service and that he required another four years to earn the pension. As such, it was contended he had a right to rescind the contract under Section 19 of the Contract Act.

50. The primary issue is whether there was a valid re-engagement at all. The appointment of a government servant (or re-engagement as in this case) is based initially on contract although after appointment it is a question of status. [See : Roshan Lal Tandon v. Union of India, AIR 1967 SC 1889]. The re-appointment of Raj Kumar is thus subject to the provisions of the Contract Act. This is also how the appellants understood it. In their counter-affidavit filed before the High Court the appellants said :

"In the Navy, the service of sailors is contractual in nature and their

engagement is for a specified period only. As such the provisions of the Indian Contract Act are applicable and it is a well settled principle of law that "once an offer is accepted, it becomes a contract and the party making the offer cannot resile from the offer."

51. As a general principle, this is true but it is subject inter-alia to the exceptions recognised statutorily in Sections 19 to 30 of the Contract Act. Here we are concerned with Raj Kumar's plea to avoid the contract because it was based on misrepresentation by the appellants.

52. Misrepresentation has been defined in Section 18 of the Contract Act. For the purpose of this case, we need consider only the meanings ascribed to the word in sub-sections (1) and (3) of the Section. These read :

"Misrepresentation" means and includes - (1) the positive assertion, in a manner not warranted by the information of the person, making it, of that which is not true, though he believes it to be true."

(2) xxx xxx xxx

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement."

53. When consent to an agreement is caused by misrepresentation under Section 19 "the agreement is a contract voidable at the option of the party whose consent was so caused."

54. Thus, in Kalyanpur Lime Works v. State of Bihar, AIR 1954 SC 165, the Government of Bihar had entered into the lease in respect of certain mines with Kalyanpur Lime Works (KLW) after forfeiting an earlier lease granted in respect of the same mines in favour of Kuchwar Co. After the lease was executed between the Government and KLW, the forfeiture of Kuchwar's lease was held to be invalid by the Privy Council. KLW filed a suit against the Government asking for specific performance of the lease executed in its favour. The suit was resisted by the Government, inter-alia, on the ground that by reason of the Privy Council's decision, it could not have executed the lease in favour of KLW. The suit filed by KLW was decreed by the trial Court. On appeal, the High Court held that the contract was void under Section 20 of the Indian Contract Act as both parties were under a mistake of fact as regards the title of the Government to the subject matter of the proposed leases.

55. This Court found that pursuant to the decision of the Privy Council, Kuchwar Co. was re-instated into possession but surrendered it when the lease in its favour expired in the normal course. While negativing the view taken by the High Court, this Court said :

"We think that in the present case the Bihar Government could be taken to have represented to the plaintiff that they had the right to forfeit the lease of

the Kuchwar Company and grant a fresh lease to the plaintiff. The plaintiff no doubt believed in that representation and entered into the contract on that understanding. As a result of the decision of the Privy Council, however, the Bihar Government became incapable of making out the title which it asserted it had at the time of the contract. But its title was not wholly gone; it was restricted only by reason of the lease which had still several years to run. In these circumstances, it might have been open to the plaintiff to repudiate the contract if they so liked, but the defendant No. 1 could not certainly plead that the contract was void on the ground of mistake and refuse to perform that part of the agreement which it was possible for it to perform."

(emphasis added)

56. In the light of these observations, I would approve the reasoning of the Full Bench of the Delhi High Court in K.R. Raghava v. Union of India, 1979 Lab. I.C. 1294. In that case the petitioner was appointed to the Emergency Cadre of the Military Accounts Department. He executed a contract of service which was to continue initially for a period of 3 years. The contract was renewable. After the 3 year period expired the Government informed the petitioner that the Emergency Cadre was being wound up and that he would be retrenched but offered him permanent employment in a Class-II post in the Income Tax Department. Under the circumstances, the petitioner accepted the offer and was appointed as Income Tax Officer Class-II. However, the Emergency Cadre was not in fact wound up. The petitioner asked the Government to be allowed to continue in the Emergency cadre of the Military Accounts Department. The Government refused. The petitioner filed a writ petition claiming that the Government was under a duty to give an option to him to go back to the Emergency Cadre after the Government realised that the Emergency Cadre was not going to be wound up. The High Court while allowing the writ application said :

"The Emergency Cadre was added to the Military Accounts Department only due to the exigencies of the war. It was not meant to be permanent. The Government, however, made a wrong forecast that it would be wound up by 31.3.1952. This forecast was communicated to Shri Ranbir Chandra and others serving in the Emergency Cadre in 1950. Actually, the Emergency Cadre continued till 1957. It is obvious, therefore, that the representation made by the Government to Shri Ranbir Chandra was a "misrepresentation" within the meaning of S. 18(1) of the Indian Contract Act, 1982, because it was a positive assertion in a manner not warranted by the information of the Government of that which was not true, though the Government in 1950-51 believed it to be true. Shri Ranbir Chandra says that it was because of this representation that he had to accept his appointment to Income-tax Officer (Class II Grade III) service and this is also the conclusion of the UPSC. It must be held on this material that the consent of Shri Ranbir Chandra to accept the Class II appointment was "caused By misrepresentation" within the meaning of S. 19 of the Contract Act. This had a double result. Firstly, it became the duty of the Government to correct the misrepresentation which

had been made to Shri Ranbir Chandra as soon as the Government realised that the Emergency Cadre was not being wound up even by 31.3.1972. Secondly, it also became the duty of the Government to offer an option to Shri Ranbir Chandra to go back to the Emergency Cadre if he so desired."

57. The appellants by sending Raj Kumar the "Expiry of Engagement Serial" expressly represented to him that he had put in only 11 years of pensionable service and that he should apply for extension for four years to qualify for pension. It is on record that Raj Kumar agreed to be re-engaged to complete the period of pensionable service. The representation by the appellants was in fact wrong. It may be that the representation was bona fide, but it should be a misrepresentation nevertheless, and the agreement for re-engagement entered into on the basis of such a misrepresentation is avoidable at the instance of Raj Kumar.

58. If the re-engagement were sought to be avoided by the Government because of a wrong representation by Raj Kumar as to a material fact, there can be no doubt that the stand of the Government would be upheld.

59. I would therefore conclude that the High Court rightly held that Raj Kumar was entitled to avoid the contract of re-engagement under Section 19 of the Contract Act, his consent to the re-engagement having been obtained by a misrepresentation within the meaning of Section 18 of that Act. Raj Kumar having validly exercised the right, the appellants were bound to treat the re-engagement at an end and release him.

60. I am also of the view that the re-engagement is contrary to the Navy Act and the Regulations. It must be remembered that Raj Kumar had completed the necessary qualifying service for minimum pension. He was entitled to ask for his discharge under Section 16(a) unless he were re-enrolled in accordance with Regulation 268(3)(b).

61. As already noted any extension under Regulation 268(3)(b) could only be for a period of two years unless (i) the exigencies of service so warranted, and (ii) with the prior approval of the Chief of Naval Staff. It is the admitted case of the appellants, as noted earlier, that the re-engagement for four years was made only to enable the respondents to qualify for pension and for no other reason. This is also clear from the order of rejection quoted earlier. In the absence of any of the pre-conditions registered for re-engagement after a sailor had served for pension, the re-engagement of Raj Kumar was not in accordance with the Regulations. It is also not the case of the appellants that the prior approval of the Chief of Naval Staff was obtained.

62. If it is assumed that para 9 of (Str) Navy Order 17\94 was, as it were, a blanket prior approval for re-engagement for a period of 3 years, even so, the re-engagement for a period of four years was not in accordance with the Navy Order and therefore not in accordance with Regulation 268(3)(b) or Section 16(b) of the Navy Act. That being so, in terms of Section 16(a) of the Act, Raj Kumar was entitled to be released.

63. Reliance by the appellants on paragraphs 7, 13, 16 and 18 of (Str.) Navy Order 17\94 is misplaced. First, the Navy Order cannot override the Act or the Regulations. Second, none of the paragraphs relied on are relevant at all. Paragraphs 7 and 13 relate to the obligation on the part of the officers recommending re-engagement to complete the process two years prior to the expiry of the period of initial engagement because of the administrative difficulties which would otherwise be involved. They do not curtail the sailors' rights under Section 16(a) of the Navy Act. As far as paragraph 16 is concerned it deals with compassionate appointments and I have failed to see how it is at all material.

Paragraph 18 which was quoted by the appellants in the order of rejection, deals with a situation where there is a valid re-engagement. It does not apply when the re-engagement itself is invalid which, for the reasons stated by me earlier, is the situation in Raj Kumar's case.

64. In any event, paragraph 18 does not contain a complete embargo on release. The language is that "the engagement will generally not be cancelled due to any altered circumstances." In other words there is an element of discretion left to the concerned authorities to release a validly re-engaged sailor because of subsequent altered circumstances.

65. Now Raj Kumar had asked for release not only because he had served for 15 years, but also because his mother had died and there was no one to look after his aged father. The appellants, as is apparent from the letter rejecting Raj Kumar's application, appear to have proceeded on the basis that the embargo on release in Paragraph 18 was absolute and that there was no discretion in them to consider the personal reasons put forward by Raj Kumar for release. That the appellants have such a discretion is also clear from the non-obstante provisions of Regulation 280(2) which provides :

280(2) "Discharge shall not be claimed as a right, however, and nothing in these regulations shall interfere with the power of the Government to suspend discharge on compassionate grounds or to refuse discharge in a particular case."

66. This brings me to the third and final ground for rejecting the appeal. Acting on the basis that the re-engagement was valid, it must be held that the refusal to release was bad as it ignored the fact that the appellants had a discretion in the matter which they could have exercised. By proceeding on the basis that paragraph 18 of Navy Order (Str.) 17\94 was imperative and unconditional, the appellants failed to exercise the jurisdiction vested in them under Reg. 280(2) read with paragraph 18 itself. The failure is all the more patent in the light of the Commander's "strong recommendation" for Raj Kuamr's release.

Additionally the refusal of the appellants was arbitrary and violative of Article 14 of the Constitution because the appellants have released others whose cases were similar to Raj Kumar's. R.P. Yadav who had been re-

engaged to serve till 31st January, 2000 was released on 31st January 1999. Our attention was also drawn by Raj Kumar's counsel to the case of one Azad Singh Ruhil. Azad Singh had also approached the High Court for his release under Article 226. This was directed by the Learned Single Judge on 28th January, 1999. No appeal was preferred by the appellants from this order and Ruhil was released. The appellants have submitted a `note' after the arguments were concluded and judgment reserved, to the effect that since Ruhil had not signed the contract of re-engagement as Raj Kumar had, they had decided not to prefer an appeal. The reasoning is specious particularly in view of the stand taken by the appellants in their counter-affidavit before the High Court viz., that once the offer made for re-engagement by the sailor was accepted by the appellants the contract was complete and could not be rescinded.

68. I would, for all these reasons dismiss the appeals and, as far as Raj Kumar is concerned, with costs. I regret that by expressing my opinion in favour of dismissal of the appeals, I am differing with the views expressed by my learned Brothers. But I do so with respect and despite the impassioned submission made by the Learned Additional Solicitor General on behalf of the Government that the defence of the country would be jeopardised by a possible sudden efflux of trained personnel. Apart from the fact that this was not the ground stated by the appellants in the order of rejection, to accept this as a ground for allowing the appeal, in the view that I have taken, would be to decide the case not according to law but on policy. And, speaking for myself, I would rather the country's defence did not rest on unwilling shoulders.

Appeals dismissed.