

Supreme Court of India

Shankar Pandurang Jadhav And Ors. ... vs Vice-Admiral, Flag Officer, ... on 5 February, 1991

Equivalent citations: 1991 SCR (1) 219, 1991 SCC (2) 209

Author: Ahmadi

Bench: Ahmadi, A.M. (J)

PETITIONER:

SHANKAR PANDURANG JADHAV AND ORS. ETC>

Vs.

RESPONDENT:

VICE-ADMIRAL, FLAG OFFICER, COMMANDING-IN-CHIEF AND ORS. ETC.

DATE OF JUDGMENT 05/02/1991

BENCH:

AHMADI, A.M. (J)

BENCH:

AHMADI, A.M. (J)

RAMASWAMI, V. (J) II

FATHIMA BEEVI, M. (J)

CITATION:

1991 SCR (1) 219

1991 SCC (2) 209

JT 1991 (1) 301

1991 SCALE (1) 123

ACT:

Service and Labour Law: Transfer-Naval Dockyard-Time Keepers Cadre-Entitled to benefits of over-time and productivity linked bonus-Merger with clerical cadre- To provide avenues of promotion-Transfer to other ministerial departments entailing loss of benefit of over-time and bonus-Transfer resisted-Held that employees who were serving the Time Keeping Department before the merger order not to be transferred without their consent-Those joining after the merger order have no right to resist transfer.

Service law-Presidential order merging Time Keepers Cadre with Clerical Cadre-Subsequent Order issued by the Western Naval Command-Inconsistency if any to be ignored as it could not alter or modify the Presidential Order-To be read harmoniously with the President Order.

HEADNOTE:

The appellants and Writ Petitioners are serving the Time Keeping Department of the Naval Dockyard, Bombay under the control of the Western Naval Command. With a view to removing the stagnation in the cadre of Time Keepers for lack of promotion avenues, the Government of India, Ministry of Defence, by its letter dated 14.9.1966 addressed to the

Chief Naval Staff conveyed the sanction of the President to the merger of the Time Keepers Cadre with the Clerical Cadre in all Naval establishments. Consequent to this merger the Jr. Time Keepers were to be re-designated as Lower Division Clerks and Sr. Time Keepers as Upper Division Clerks. A few days thereafter the office of the Rear Admiral, Western Naval Command, issued a letter dated 5.12.1966 which reads as under:

".....
.....

2. This merger is intended only to give promotion to the Time Keepers along with the LDC/UDC. Their duties, terms and conditions

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of Services will remain the same and their hours of work will also continue to be 45 in a week.

3. Consequent upon the issue of this order and in order to distinguish them from the UDC/LDC and UDC(s)/LDC(s) the suffix "T" will be added after their designation.

As per their conditions of service the employees serving in the Time keeping Department were entitled to the benefit of over-time and productivity-linked bonus but those belonging to the clerical cadre working in the Administrative Offices of the Dockyard were not entitled to these benefits.

One Thoppil Ramakrishnan on being transferred in August 1980 as UDC(T) in the Spare Parts Distribution Centre, challenged his transfer by a Writ Petition in the High Court of Bombay wherein he contended that as he was initially appointed Jr. Time Keeper and promoted as UDC(T) in 1967 he belonged to a special cadre and could not be transferred to the general cadre as that would entail loss of benefit of over-time and bonus. The High Court treating the letter dated 5th December, 1966 as merely clarificatory, held that there was no complete merger of the two cadres and on the statement of the counsel for the petitioner that the petitioner will not claim the benefit of promotion in the clerical cadre, allowed the writ petition quashing the transfer order.

Realising the situation created by its letter of 5th December, 1966 the western Naval Command cancelled the said letter and consequently inter-se transfer became possible. Thereafter, some employees in the Time Keeping Department were transferred by orders dated 17.4.1985 and 5.10.1985. The affected employees filed a Writ Petitions in the High Court which were later transferred to the Central Administrative Tribunal. The Tribunal came to the conclusion that after the cancellation of the Order dated 5.12.1966, the field was held by the Presidential Order dated 14.9.1966, that under the merger Scheme envisaged by the said order the employees in the Time Keeping Department no longer belonged to a separate Cadre and as such the Authorities were entitled to transfer them to

other ministerial branches. The Petitions were accordingly dismissed by a common judgment dated 9th October, 1989. This judgment is assailed by the concerned employees in the appeals before this court. One Writ Petition has also been filed by some other

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employees apprehending similar transfers.

Allowing the appeals partly insofar as they relate to five employees who belonged to the separate cadre of the Time Keeping Department at the date of issuance of the Presidential Order and dismissing the same in respect of the remaining appellants and also dismissing the Writ Petition, this Court,

HELD: The letter of 14th September, 1966 clearly refers to the Presidential sanction "to the merger of the cadre of Time Keepers with the clerical cadre in all Naval establishments". Consequent on this merger, the Junior Time Keepers were to be redesignated as Lower Division Clerks and the Senior Time Keepers as Upper Division Clerks. There is nothing in this letter to convey that they were to retain their identity as Time Keepers.[227E]

The subsequent order of 5th December, 1966 issued by the Western Naval Command could not alter this Presidential Order. If that subsequent order was found to be inconsistent with the Presidential Order, it had to be ignored for the simple reason that the Officers of the Naval establishment were not competent to alter, vary or modify a Presidential Order. [228B]

It is difficult to understand how those who entered the Time Keeping Department after the merger order, can refuse to go on transfer on the plea that they would suffer a financial loss. They can have no right to the post in the Time Keeping Department. So long as they are there and are discharging the functions of the Time Keeper, they would be entitled to the special benefit of over-time and bonus but on that plea they cannot contend that they are not transferable to the ministerial posts. We have, therefore, no hesitation in concluding that those who joined the Time Keeping Department after the Presidential Order became effective, have no right to continue in that department merely because their transfer would entail economic loss since they are governed by the merger scheme which had become operative before their entry in that department. They were borne on the common cadre and were never members of the original Time Keepers Cadre. [229G-230B]

So far as those Time Keepers who were serving in the Time Keeping Department on and before the date of implementation of the Presidential Order and who continue to serve in the same department are concerned, the department should give them an option if they are proposed to be transferred outside that department or the depart-

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ment should undertake to make good the economic loss which they are likely to suffer on transfer. [230F-G]

The State of Kerala v. M.K. Krishnan Nair & Ors., [1973] 1 SCC 552, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil appeal Nos. 552-554 of 1991.

From the Judgment and Order dated 9.10.1989 of the Central Administrative Tribunal, New Bombay in Transfer Applications No. 430, 431 and 433 of 1987.

B.K. Mehta, C.P. Pandey, M. Chopra and V.S. Sharma for the Appellants.

K. Lahiri, Ms. Kittu Kumaramangalam and Ms. Sushma Suri (NP) for the Respondents.

The Judgment of the Court was delivered by AHMADI, J. Special leave granted The appellants and the writ petitioners are presently serving in the Time Keeping Department of the Naval Dockyard, Bombay, which is under the administrative control of the Vice-Admiral, Flag Officer, Commanding-in-chief, Western Naval Command, Bombay. In the said department there are several posts of Junior Time Keepers and only two posts of Senior Time Keepers. Since the promotional posts were limited in number there was stagnation at the base level of Junior Time Keepers. With a view to removing this stagnation, the cadre of Time Keepers was sought to be amalgamated with the clerical cadre in the same department. On 14th September, 1966, the Under Secretary to the Government of India, Ministry of Defence, wrote a letter to the Chief of Naval Staff on the subject of amalgamation of the Time Keepers cadre with the clerical cadre. The text of the letter reads as under:

"Sir, I am directed to convey the sanction of the President to the merger of the cadre of time keepers with the clerical cadre in all Naval Establishments. Consequent on this merger, Senior Time Keeper will be redesignated as Upper Division Clerks. The authorised ratio of 1:4 between UDCs and LDCs will be maintained after this merger but where because of the merger and redesignation of Senior Time Keepers as Upper Division Clerks the number of Upper Division Clerks exceeds the authorised ratio, no reservations will be made and the excess vacancies of Upper Division Clerks will be adjusted against vacancies of Upper Division Clerks becoming available by way of increase in Establishment, retirement, etc.

2. The existing pay of the time keepers will be protected and they will continue to draw increments in the new cadre on the due dates:

3. Any subsidiary instructions regarding seniority promotion etc. will be issued by you.

4. This letter issue with the concurrence of Ministry of Finance (Defence/Navy) vide their u.o. no. 3161 NA dated 31.8.1866."

A few days later another letter dated 5th December, 1966 was issued by the office of the Rear Admiral, Western Naval Command, Bombay, on the same subject which reads as under; "In accordance with the Govt. of India, Ministry of Defence letter No. CP(A)/4895/NHQ/8364/D/N-II dated 14th September 1966 the Cadre of Time Keepers will be merged with that of LDC/UDC with effect from 1st December, 1966.

2. This merger is intended only to give promotion to the Time Keepers alongwith the LDC/UDC. Their duties, terms and conditions of service will remain the same and their hours of work will also continue to be 45 in a week.

3. Consequent upon the issue of this order and in order to distinguish them from the UDC/LDC and UDC(s)/LDC(s) the suffix "T" will be added after their designation. All records and correspondence relating to them should also be indicated by this suffix".

The employees working in the Time Keeping Department were entitled to the benefit of over-time and productivity linked bonus since they were considered to belong to the industrial wing. Lower Division Clerks and Upper Division clerks belonging to the clerical cadre who were working in different administrative offices of the Naval Dockyard were not entitled to this benefit. Therefore, when one Thoppil Ramakrishnan was transferred in August, 1980 as UDC(T) in the Spare Parts Distribution Centre, he challenged his transfer by filing a Writ Petition No. 1065/80 in the High Court of Bombay on the ground that since he was appointed as Junior Time keeper in 1953 and was promoted as UDC(T) in 1967 he belonged to a special cadre and could not be transferred to the general cadre as that would entail loss of the benefit of over-time and productivity linked bonus. His petition was allowed by the High Court by the judgement and order dated 1st March, 1984. The High Court, treating the letter of 5th December, 1966 as clarificatory, concluded that the merger was intended for the sole purpose of making available to the Time Keepers avenues of promotion in the clerical cadre but their terms and conditions of service were to remain in tact and it is for that purpose that they were to be designated by the suffix "T". The High Court, therefore, held that there was no complete merger of the two cadres. The High Court, however, realised that Time Keepers could not be given promotion to more responsible assignments unless they received the required experience of administrative work normally available to Lower Division Clerks and Upper Division Clerks, but rested content on the statement made by the counsel for the petitioner that the petitioner will not claim the benefit of promotion in the clerical cadre. On this statement the High Court made the rule absolute. Against this judgement a Letters Patent Appeal was filed but without success. Another Writ Petition No.1066/80 files by Chob Singh Tomar was similarly disposed of by the same learned Judge on the next day i.e. 2nd March 1984.

Both the above Judgement were mainly based on the language of the letter of 5th December, 1966. Realising the difficulty created by the said letter, the Flag Officer, Commanding-in-Chief, Western Naval Command, Bombay, cancelled the said letter by his communication dated 27th August, 1984. The subsequent communication reads as under:

"1. Ministry of Defence Letter CP(A)/4895/NHQ/8634/D(N-II) dated 14 Sep. 66 is reproduced as Annexure I to this order for information.

2.This Headquarters Civilian Establishment Order Part II of 1966 No.6 dated 05 Dec. 66 and 50/80 dated 23 Aug. 80 are hereby cancelled."

By a subsequent letter dated 20th November, 1984 it was further directed that the suffix "S" and suffix "T" should be removed from all records and the incumbents should be redesigned as LDCs/UDCs. On the cancellation of the letter of 5th December, 1966 and the removal of the suffix "T", what survived was only the merger order of 14th September, 1966. Consequently inter-se transfers from the Time keeping Department to the various administrative departments of the Naval Dockyard became possible. Thereupon, R.A. Sawant and R.D. Jawakar who were working in the Time Keeping Department were transferred on promotion as UDC by orders dated 17th April, 1985 and 5th October, 1985 respectively to other administrative departments of the naval establishment. These transfers triggered off certain writ petitions in the High Court of Bombay. On the constitution of the Central Administrative Tribunal for that area, those writ petitions were transferred to the Tribunal for disposal in accordance with law. The Tribunal by its impugned common judgement dated 9th October, 1989 came to the conclusion that after the cancellation of the order dated 5th December, 1966 the field was held by the Presidential Order referred to in the letter of 14th September, 1966. The Tribunal held that the employees in the Time Keeping Department no longer belonged to separate cadre and the authorities were entitled to transfer them to the other ministerial branches in the Naval establishment under the Merger Scheme. In regard to the judgements delivered by the High Court of Bombay on 1st and 2nd March, 1984, it opined that on the cancellation of the order of 5th December, 1966 those decisions had lost their force and the question had to be answered solely on the basis of Presidential Order referred to in the letter of 14th September, 1966. In this view of the matter the Tribunal dismissed the applications and vacated the interim orders. It is against the said judgement of the Tribunal that the aforesaid appeals have been filed.

Certain other employees who apprehended transfer from the Time Keeping Department to other administrative departments in the Naval establishment approached this Court directly by way of a writ petition. Their contention is identical to the contention raised in the appeals preferred against the impugned order of the Tribunal. We will, therefore, dispose of the appeals as well as the writ petition by this common judgement.

Mr. Mehta, the learned counsel for the appellant- petitioners contended that the employees working in the Time Keeping Department of the Naval establishment perform duties which are distinct from ordinary clerical duties and therefore they constitute a separate and distinct cadre to which are attached certain additional monetary benefits, such as, over-time payment, productivity linked bonus, etc., which would be lost to them if they are transferred to other administrative departments of the naval establishment. He submitted that since the Junior Time Keepers did not have sufficient avenues for promotion and were stagnating at the base level and the Senior Time Keepers had no promotional avenue altogether, their grievance was sought to be redressed by providing them further avenues of promotion under the Presidential Order, without depriving them of their identity and special benefits available as belonging to the industrial wing of the establishment. According to him the Presidential Order of merger contained in the letter dated 14th September, 1966 was issued for this limited purpose only of giving the Time Keepers an opportunity of career advancement

which was available to their counter-part in the administrative (Non-industrial) departments of the Naval establishment but it was never intended to deprive them of the additional monetary benefits to which they were entitled as belonging to the industrial wing. In other words according to Mr. Mehta the merger of the Time Keepers' cadre with the clerical cadre was only notional and limited to opening avenues for promotion for the former but there was no actual merger in the sense of the Time Keepers losing their identity and that is why in the subsequent letter of 5th December, 1966 the department rightly observed that their duties, terms and conditions of service will remain the same and their hours of work will continue to be 45 in a week and they should be distinguished by the use of the suffix "T" after their designation. The cancellation of the order of 5th December, 1966 by the subsequent order of 22nd August, 1984 does not alter the situation contended Mr. Mehta and, therefore, said he, the Tribunal was in error in coming to the conclusion that the earlier two decisions of the Bombay High Court had lost their force. He, therefore, submitted that the Tribunal's approach was clearly erroneous and this Court must correct the same.

Mr. Lahiri, the learned counsel for the department contended that the Presidential Order referred to in the letter of 14th September, 1966 had merged both the cadres and the Time Keepers were, therefore, redesignated as Lower Division Clerks and Upper Division Clerks. He submitted that there was no indication in the Presidential Order that these Time Keepers who were redesignated as LDCs/ UDCs will continue to constitute a separate cadre and yet be entitled to promotion in the clerical cadre. He, therefore, submitted that the subsequent order of 5th December, 1966 was issued on an erroneous reading of the Presidential Order and when the department realised the mistake after the High Court's judgements, it promptly cancelled the said order and restored the position as on the issuance of Presidential Order. He, therefore, submitted that the Tribunal was right in coming to the conclusion that as the High Court's judgements were based on the subsequent order of 5th December, 1966 and the same was since cancelled, the judgements no longer held the field and the appellants- petitioners were not entitled to the benefit thereof. He further pointed out that under the Presidential Order the 'pay' of the Time Keepers has been protected and therefore, they can have no cause to complain but such of those LDCs/UDCs who are posted in the Time Keeping Department are allowed to draw overtime wages as well as bonus admissible under the relevant law. These benefits are attached to the post and not the individual and the one who is manning the same is entitled to them and not others. He, therefore, submitted that this Court should not interfere with the view taken by the Tribunal and should dismiss these appeals as well as the writ petition.

We have carefully considered the contentions urged before us by the learned counsel for the contesting parties. The letter of 14th September, 1966 clearly refers to the Presidential sanction "to the merger of the cadre of Time Keepers with the clerical cadre in all Naval establishments". Consequent on this merger the Junior Time Keepers were to be redesignated as Lower Division Clerks and there Senior Time Keepers as Upper Division Clerks. There is nothing in this letter to convey that they were to retain their identity as Time Keepers. The letter further states that their entry into the clerical cadre should not disturb the authorised ratio of 1:4 between UDCs and LDCs but where because of the merger and redesignation of Senior Time Keepers as UDCs, the numbers of UDCs exceeds the authorised ratio, there should be no revision but in the excess should be adjusted against vacancies becoming available by way of increase in establishment, retirement, etc. Paragraph 2 of that letter states that the existing pay of the Time Keepers will be protected and they

will continue to draw increments in the new cadre on the due dates. It is clear from the above text of the letter of 14th September, 1966 that the intention was to merge the cadre of Time Keepers with the clerical cadre and to adjust the imbalance. If any, caused on account of such merger in a manner so as not to disturb the authorised ratio. The pay and increments of the Time Keepers were protected by the said order. There can, therefore, be no doubt that the plain language of the Presidential Order as reproduced in the letter of 14th September, 1966, clearly manifests an intention to merge the existing Time Keepers' cadre with the clerical cadre, albeit with a view to opening avenues for promotion for the Time Keepers. The subsequent order of 5th December, 1966 issued by the Western naval Command could not alter this Presidential Order. If that subsequent order was found to be inconsistent with the Presidential Order, it had to be ignored for the simple reason that the officers of the Naval establishment were not competent to alter, vary or modify a Presidential Order. The interpretation placed on that subsequent letter by the Bombay High Court in the judgements delivered on 1st and 2nd March, 1984 does give the impression that the High Court thought that there was no complete merger and the personnel meaning the Time Keeping Department retained their identity and were, therefore, entitled to the additional benefits of over-time and productivity linked bonus. After the judgements were delivered the department instead of approaching this Court thought it wise to undo the mischief by cancelling the subsequent order of 5th December, 1966 which was the source of trouble. Since the conclusion reached by the High Court was based on the language of the subsequent order of 5th December, 1966, the Tribunal was not bound to follow the same on the cancellation of that order. We may also state, with respect to the learned judge in the High Court, that we find it difficult to persuade ourselves to his point of view for diverse reasons. Firstly, the plain language of the text of the Presidential Order manifests a clear intention to merge the cadre of Time Keepers with the clerical cadre on the establishment. Secondly, the subsequent order of 5th December, 1966 had to be read consistently with the Presidential Order as to fulfil the purpose or objective and not to impede or stifle it. Thirdly, even if the subsequent order was found to be inconsistent with the Presidential Order in certain respects, the inconsistency had to be ignored for the obvious reason that the officer issuing the order could not have altered or modified the Presidential Order and lastly, if there was any confusion caused by the subsequent order it should have been read harmoniously with the Presidential order Order so as to advance its objective or merger of the Time Keepers' cadre with the clerical cadre.

In order to appreciate Mr. Mehta's contention that by the Presidential Order only a notional merger for the limited purpose of providing the Time Keepers with promotional avenues was intended and not actual merger so as to deprive the Time Keepers of their distinct identity, it is necessary to realise that the sole purpose of the exercise indisputably was to make career advancement possible for the Time Keepers. At the time of issuance of the Presidential Order there were only two layers in the Time Keeping Department of the establishment. The base-level which was fairly large comprised Junior Time Keepers and above them were Senior Time Keepers. Since there were only two posts of Senior Times Keepers, the prospects of promotion for Junior Time Keepers were very dim. As there was no further promotional avenue for the Senior Times Keepers, the mobility was restricted and they too suffered on that account. There was, therefore, large scale stagnation and with a view to overcoming the same the question of merger of the Time Keepers' cadre with the clerical cadre was examined. On the same being found feasible, the Presidential Order came to be issued. The High Court realised that if the Time Keepers do not gather sufficient exprience of administrative work

they would not be able to handle responsible work at higher levels in the hierarchy and hence their movement to the ministerial posts is absolutely necessary. But the High Court resolved this situation by obtaining a statement from the incumbent that he would not claim the benefit of promotion to which he may otherwise be entitled by reason of the merger policy. Would this advance the policy of merger or fulfil the purpose of opening avenues of promotion for the Time Keepers? If the mobility from Time Keepers' post to the clerical post is halted on account of the former's unwillingness to move to the clerical side to gain experience and equip himself to discharge higher responsibilities in future merely to retain the monetary benefit accruing from overtime wages and bonus, it is difficult to understand how even the limited objective of providing promotional avenues to Time Keepers would be satisfied. And it is all the more difficult to understand how those incumbents who entered the Time Keepers Department after the Presidential Order became effective can claim that they have a vested right to continue in the department because they would suffer a monetary loss if they are transferred to the clerical posts. The list Annexure C to the appeals would show that except for those at serial Nos. 1 to 3, 8 and 12, the rest of the incumbents had either joined as LDC in the Time Keeping Department after the Presidential Order became effective or had been transferred to that department from the other administrative departments where they were working as LDCs. It is difficult to understand how those who entered that department after the merger via the other administrative branches of the establishment can refuse to go back on the specious plea that they would suffer a financial loss. They can have no right to the post in the Time Keeping Department. So long as they are posted there and are discharging the functions of the Keeper they would be entitled to overtime wages and bonus but on that plea they cannot contend that they are not transferable to the ministerial posts on the establishments. We have, therefore, no hesitation in concluding that those who joined the Time Keeping Department after the Presidential Order became effective, either by a direct posting in that department as LDC or on transfer to that department, have no right to continue in that department merely because their transfer would entail economic loss since they are governed by the merger scheme which had become operative before their entry in that department. They were borne on the common cadre and were never members of the earlier Time Keeper's cadre.

But the case of those Time Keepers who were serving as such in the Time Keeping Department, such as, the incumbents at serial Nos. 1 to 3, 8 and 12 (S.P. Jadhav, V.S. Khot, P.J. Rodrigues, B.J. Dhamba and V.S. Shinde), must be viewed differently. They belonged to a separate cadre of Time Keepers at the date of the issuance of the Presidential Order. Their terms and conditions of service could not be altered, varied or modified to their detriment without giving them an opportunity to exercise their option. If their transfer outside the Time Keeping Department becomes possible by the merger of their cadre with the clerical cadre but the same entails civil consequences in the form of loss of overtime wages and bonus, justice demands that they must be given an option to choose which course is beneficial to them and if they decide or opt in favour of the status quo they must be allowed to continue as Time Keepers and not be transferred outside that department without their consent, because to do so would render the scheme vulnerable unless the department agrees to make good the economic loss suffered on transfer. Therefore, so far as those Time Keepers who were serving in the Time keeping Department on and before the date of the implementation of the Presidential Order and who continue to serve in the same department are concerned, the department should give them an option if they are proposed to be transferred outside that department or the department should undertake to make good the economic loss which they are likely to suffer on transfer. Such a

reading of the Presidential Order is permissible on the plain language of the order and saves it from being rendered vulnerable. See: *The State of Kerala v. M.K. Krishnan Nair & Ors.*, [1978] 1 SCC 552 at 571.

In the result we allow the appeals partly insofar as they concern the aforementioned five persons to the extent indicated above and dismiss them in respect of the remaining appellants. Since the writ petitioners are not shown to belong to the category of employees who were borne on the cadre of Time Keepers and were actually working in the Time Keeping Department on or before the issuance of the Presidential Order, their writ petition fails and is dismissed. There will, however, be no order as to costs in the appeals as well as the writ petition.

Petition & Appeals dismissed