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REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2147 of 2011
T.S. Das and Ors. â¬ ¦..Appellants
Vs.
Union of India and Anr. â¬ ¦â¬ ¦Respondents
With
Civil Appeal No.8566 of 2014
J U D G M E N T
A.M.KHANWILKAR, J.
These appeals emanate from the divergent relief claimed by the original applicants before the Armed Forces Tribunal (Appellants in Civil Appeal No. 2147 of 2011 and Respondents in Civil Appeal No. 8566 of 2014), which, however, involve overlapping points for consideration. Hence, we deem it apposite to dispose of both these appeals analogously, by this common judgment.

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2. Civil Appeal No. 2147 of 2011 arises from an order passed by the Armed Forces Tribunal, Principal Bench, New Delhi, in Original Application No. 182 of 2009 dated 4 th February, 2010. The Tribunal has rejected the claim of the applicants therein for grant of a â¬ SSpecial Pensionâ¬ \235. In Civil Appeal No. 8566 of 2014 the decision of the Armed Forces Tribunal, Regional Bench, Chennai, in O.A. No.83 of 2013 dated 22 nd April, 2013, is challenged by the Union of India. In that case, the Tribunal acceded to the claim of the applicants therein for grant of a â¬ SReservist Pensionâ¬ \235.
3. Admittedly, the applicants before the Tribunal in both cases were appointed as Sailors in the Indian Navy before 1973. The appointment letter noted that the concerned applicant was engaged as a Sailor for 10 years active service and 10 years on Fleet Reserve Services thereafter, if required. The applicants were continued for a brief period beyond the initial term of 10 years in active service/engagement and discharged without drafting them to Fleet Reserve Services. Thus, each applicant was discharged by the Indian Navy after July, 1976, on completion of their active service and was paid gratuity. As the Tribunal granted relief to similarly

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placed persons by directing the Authorities to grant Reservist Pension/Special Pension, even these applicants moved the Tribunal for a similar relief.
4. The 38 applicants in O.A.No.182/2009 (appellants in C.A.No.2147/2011) had initially approached the High Court of Delhi by way of a Civil Writ Petition No.4805/2008, to issue direction to the competent Authority to grant special pension to them under Regulation 95 of the Navy (Pension) Regulations, 1964 (hereinafter referred to as â¬ SPensionâ¬ \235 Regulations). The High Court vide order dated July 8, 2008 directed the competent Authority to examine the claim of the said applicants for grant of a special pension. The competent Authority after examining the matter rejected the claim of the said applicants vide a speaking order dated 30 th September 2008. The competent Authority held that the said applicants were discharged from service after completion of their initial engagement and were not drafted to the Fleet Reserve, as they were not required. That fact was mentioned in the discharge slips issued to them. The competent Authority also held that Regulation 95 of the Pension Regulations was inapplicable to the

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said applicants as they were not discharged as a measure of reducing the strength of the establishment of the Indian Navy or of any re-organization. Instead, they were discharged after completion of engagement period in terms of Section 16 of the Navy Act, 1957.

The applicants then approached the Armed Forces Tribunal, Principal Bench, New Delhi by way of O.A. No. 182/2009 which, however, was dismissed on 4 th February 2010. The Tribunal held that the applicants were discharged from service after completion of 10 years period of engagement. They had no right to be drafted on the Fleet Reserve. Reliance placed by the applicants on Regulation 269 of the Navy Ceremonial, Conditions of Service and Miscellaneous Regulations, 1963 (hereinafter referred to as the â¬ SConditions of Service Regulationsâ¬ \235), was negatived by the Tribunal on the finding that the said provision is only an enabling provision and vests discretion in the Authority to draft the concerned Sailor on Fleet Reserve. The Tribunal held that Regulation 95 was not applicable to the case of the applicants who were discharged from service after completion of 10 years of engagement. Accordingly, the original application filed by the said applicants was dismissed being

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devoid of merit. Against that decision, the appellants in C.A. No. 2147/2011 have approached this Court.

5. In the companion appeal filed by the Union of India being C.A.No. 8556/2014, the Armed Forces Tribunal, Regional Bench, Chennai, however, has allowed the original application filed by the three applicants. The Tribunal directed the competent Authority to grant Reservist Pension to the said applicants payable from three years prior to the filing of the original application i.e. from 29 th October 2009 and to adjust the service gratuity and the Death-cum-Retirement-Gratuity (DCRG) already paid to those applicants from the arrears. The Tribunal while dealing with the claim of Reservist Pension held that on expiry of the engagement of active service, the applicants ought to have been drafted on the Fleet Reserve Service as per the original engagement of service. Reliance placed by the Union of India on the other decision of the Tribunal of Regional Bench of Kochi dealing with similar issue, has been brushed aside by the Tribunal by invoking the principle of equitable promissory estoppel. The Tribunal concluded that the three applicants were entitled for grant of Reservist Pension as per

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Regulation 92 of the Pension Regulations. The Tribunal also accepted the alternative prayer of the said applicants for grant of Special Pension as specified in Regulation 95 of the Pension Regulations on the ground that because of the Government Policy dated 3 rd July 1976 of reducing the strength of establishment or re-organising any ships or establishments resulting in paying off, the applicants were not drafted on the Fleet Reserve Service. The Tribunal, further, noted that the applicants could be given only one of the above pension and finally concluded that they were entitled for Reservist Pension.

6. The applicants who had claimed Special Pension as per Regulation 95 of the Navy (Pension) Regulations, 1964, contended that because of the change of Policy vide notification dated 3 rd July, 1976, it entailed in discontinuation of the Fleet Reserve Service. Thus, in terms of Clause (i) of Regulation 95, they were entitled for a Special Pension.

7. According to the original applicants, they had signed a contract to serve with the Navy for 10 years in active service and 10 years in Fleet Service. They were under bonafide belief that they

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would be allowed to complete their pensionable service i.e. 10 years in active service and 10 years in Fleet Reserve. Even the official document in the shape of service certificate would reinforce this position. They submit that if they were allowed to complete the term of service, as mentioned in the certificate of service, they would have become entitled for Reservist Pension in terms of Regulation 92 of the Pension Regulations. In any case, on account of

re-organisation of the Naval Establishment by abolishing the establishment of Fleet Reserve, it inevitably resulted in reduction of the total strength of the Indian Navy w.e.f. 3 rd July 1976. That was the sole reason for not drafting the applicants to the Fleet Reserve Service. As a result, the applicants in any case were entitled to a Special Pension under Regulation 95 of the Pension Regulations. In that, all the Sailors in active service during 3 rd July 1976, were discharged because of the Government Policy, who, otherwise, were entitled to be transferred to Fleet Reserve Service, as per their initial term of engagement. Abolition of Fleet Reserve Service in terms of Government Policy amounts to reduction of strength of establishment of the Indian Navy or reorganization of establishment to that extent. Reliance is placed on the exposition in the case of

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D.S. Nakara & Ors. vs . Union of India [1] to contend that pension payable to a Government employee is earned by rendering long and efficient service and, therefore, can be said to be a deferred portion of the compensation for service rendered. That cannot be denied to the original applicants on the basis of Government Policy dated 3 rd July 1976. Taking any other view would mean that the said policy is made applicable retrospectively even to the case of the applicants who were already in service with assurance that they would remain in active service for 10 years and 10 years after in Fleet Reserve. The Government Policy dated 3 rd July 1976, if made applicable to the applicants and similarly placed persons would result in changing their service conditions to their detriment. That is impermissible, as expounded in the case of BCPP Mazdoor Sangh & Anr. vs. NTPC & Ors. [2] and Union of India & Ors. vs. Asian Food Industries [3] . Section 184-A of the Navy Act, 1957 forbids giving retrospective effect to a Regulation which prejudicially affects the interests of any person. It is contended that Regulation 269 of the Conditions of Service Regulations read with the provisions of

1 AIR 1983 SC 130
2 AIR 2008 SC 336
3 (2006) 13 SCC 542.

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the Pension Regulations make it amply clear that every Sailor who had served in the Indian Navy before or after the amendment of Conditions of Service Regulations or coming into force of the Government Policy w.e.f. 3 rd July 1976, was entitled for a pension. The fact that Government decided to discontinue the Fleet Reserve Service ought not to impinge upon the salutary rights of the Sailors in active service to get pension. The applicants have supported the reason given by the Tribunal, that the principles of equitable promissory estoppel would apply to the fact situation of the present case. According to the applicants, the Government has adopted a pedantic approach in giving narrow interpretation to the expression â¬ Sif requiredâ¬ \235 occurring in Regulation 269(1). If that interpretation is to be accepted, the Regulation would be hit by Article 14 of the Constitution of India. In that, the Government would reserve its right to keep the Sailors on Reserve Fleet Service, but would leave no option to the Sailors who would be bound by the contractual obligation as per the original service conditions to remain on Fleet Service for 10 years after completion of 10 years of active service. The discretion provided to the Government, as per the interpretation given to the expression â¬ Sif requiredâ¬ \235 would be hit by

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the principle of contra proferentum , as observed in the case of Central Inland Water Transport Corporation vs. Brojonath

in view of unequal bargaining power. The Department being a Welfare State cannot be heard to adopt such argument as canvassed with reference to the expression â¬ Sif requiredâ¬ \235. The Government cannot be heard to deny pensionary benefits to the Sailors who were in active service at the relevant time when the Government Policy came into force for disbanding the Fleet Reserve Service. It is one thing to say that the Government has discretion to discontinue or re-organise its establishment, but that cannot be done at the cost of the rights of the Sailors, in particular pensionary benefits. It was argued that on conjoint reading of the provisions of Service Conditions Regulations and the Regulations for India Fleet Reserve, it would be amply clear that when the Sailor does not express his unwillingness to continue after active service of 10 years it would follow that he has been taken on the Fleet Reserve Service. In substance, the argument is that the applicants had an accrued and vested right to get Reservist Pension and that cannot be taken away much less by an amendment to the Regulations or a
4 (1986) 3 SCC 156

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Government Policy to discontinue the Fleet Reserve Service. Reliance is placed on the decisions in Union of India vs. Asian Food Industries 5
, Dakshin Haryana Bijli Vitran Nigam vs. Bachan Singh 6
and in Sonia vs. Oriental Insurance Co. 7
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Appellant No. 36 (In C.A.No.2147/2011) has additionally submitted that he was recruited as a direct entry Sailor on 7 th
February, 1950
and on completion of 10 years of active service was drafted to the Fleet Reserve for second leg of compulsory 10 years Fleet Reserve. He was discharged from the Fleet Reserve on 30 th
March 1967
unilaterally by the respondents. By that time, he had completed combined 17 years 01 month and 26 days of service. Relying on Clause (2) of Regulation 92 of the Pension Regulations, it is contended that he was discharged from the Reserve Fleet otherwise than at his own request; and, therefore, was entitled to Reservist Pension. The fact that he had not made any request for early discharge has been admitted by the Department in its letter dated 8 th
May 2014 and yet he has been denied the benefit of Reservist Pension, unlike extended to Sailors similarly situated.
5 (2006) 13 SCC 542
6 (2009) 14 SCC 793
7 (2007) 10 SCC 627

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8. Per contra , it is submitted on behalf of the Union of India that the period of engagement for continuous service of Naval Person in the Indian Navy including their terms and conditions for continuous service in the Indian Reserve Fleet and also entitlement for grant of Reservist Pension is governed by Regulation 268 and 269 of the Conditions of Service Regulations and also Regulation 92 and 95 of the Pension Regulations and Regulation 6 of the Indian Fleet Reserve Regulations. Since the original applicants were enrolled as Sailors prior to 3 rd
July 1976, on completion of 10 years
of continuous service, their service could be drafted on Fleet Reserve Service only if required, for a further period of 10 years in the Indian Fleet Reserve, as per Regulation 269(1). But, due to discontinuation of Fleet Reserve Service w.e.f. 3 rd
July 1976 the
original applicants were not and could not have been drafted to Indian Fleet Reserve. The enrollment in the Indian Fleet Reserve is governed by the Fleet Reserve Act of 1940. It is neither a matter of right nor automatic. As per Regulation 6 of Indian Fleet Reserve

Regulations the entries in the service certificate relied on by the original applicants were made at the time of enrollment only to indicate that a Sailor will serve 10 years active service followed by

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10 years Fleet Reserve, if required. Such entry cannot create any right in favour of the Sailor to be drafted on the Indian Fleet Reserve. Regulations adverted to by the original applicants was an enabling provision and not the condition of contract or any promise made to the Sailor that he will be compulsorily drafted to the Fleet Reserve. There is no deeming provision in that behalf in any of the Regulations governing the service conditions of the Sailors. Majority of the Sailors opted to take discharge after completion of 10 years of active service. Those who volunteered to be drafted to the Fleet Reserve were considered by the Department on case-to-case basis subject to fulfilling the requisite requirements therefor. Only such Sailors who had completed the 10 years of active service and 10 years of Fleet Reserve Service, as per the Regulation, were entitled for minimum pension. The original applicants were not drafted to the Fleet Reserve due to discontinuation of Fleet Reserve w.e.f 3 rd July 1976. Resultantly, none of the original applicants were eligible for Reservist Pension. It is contended that this view has been taken by the Armed Forced Tribunal in Case No. T.A.492/2009 (Niranjan Chakraborty, Ex-L/TEL No.92171) decided on 10.02.2010, in O.A.No.84/2010 (Ramachandran Pillai, Ex-SEA I,

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No.88568) decided on16.05.2011, in O.A.No.42/2012 (Mangala Prasad Choubey, Ex-LS,No.94834) decided on 19.06.2013, in O.A.No.08/2013 (Ex Navy Direct Entry Artificer Association & Ors.) decided on 22.01.2014, in O.A.No.02/2014 (SS Bansure, Ex-SEA I,No.84001) decided on 18.06.2014. The decision in the case of Niranjan Chakraborty has been affirmed by this Court in SLP (C) No.19790/2001 decided on 13 th January 2014. Hence, the issue stood concluded against the original applicants. The decision of the Armed Forces Tribunal, Regional Bench at Chennai, which is impugned in the present appeal, therefore, deserves to be overturned following the dismissal of the appeal by this Court against the decision of the Armed Forces Tribunal, New Delhi in T.A. No. 492/2009 dated 10 th February 2010. The principle of equitable promissory estoppel invoked by the Tribunal in the impugned judgment is inapplicable to the present case, keeping in mind the express provisions in the extant Regulations regarding the service conditions of the original applicants. The original applicants cannot be heard to claim any right to be transferred to the Reserve Fleet or for that matter being automatically transferred thereat. For, unless the Sailor is drafted to the Reserve Fleet by an express order

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of the Competent Authority the question of entitlement to Reservist Pension in terms of Regulation 92 would not arise. The plea of equitable promissory estoppel cannot be pursued as there cannot be estoppel against law (Union of India and Another vs. Dr. S. Baliar Singh 8
; Union Public Service Commission vs. Girish Jayanti Lal Vaghela and Others 9
.) Reliance is also placed on the decision of the Constitution Bench in Roshan Lal Tandon vs. Union of India 10
which has taken the view that the terms and conditions of service of Government Servants can be unilaterally altered by the Government and there is no vested or contractual right of the Government servant. Further, the legal position of a Government servant is more of a status, than of contract; and the hallmark of status being a relationship of rights and duties imposed by the public law and not by agreement of parties. It is further

submitted that the original applicants (respondents in C.A. No. 8556/2014) were given an option to continue in Naval Service for extended term following the discontinuance of Reserve Service, but all of them gave unwillingness and hence they were discharged on

8 (1998) 2 SCC 208
9 (2006) 2 SCC 482
10 AIR 1967 SC 1889

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completion of period of engagement. Having opted to take discharge, those applicants in any case cannot claim relief of grant of pension as per the relevant Rules. With regard to the scope of Regulation 95 of the Pension Regulation, it is submitted that the effect of Government Policy manifested in the Notification dated 3 rd July 1976, was not to reduce the strength of the establishment of the Indian Navy or for that matter re-organisation of the establishment as such. It was also not a case of paying off. In that, the applicants were discharged on completion of their active service. For being a case of paying off, the Sailors whilst in service were required to be removed/ discharged because of discontinuance or closure of the Indian Fleet Reserve. Merely because of discontinuation of Fleet Reserve, persons affected may not become entitled to a Special Pension. Only if such re-organization results in paying off of any ships or any establishments, Clause (ii) of Regulation 95 would come into play. Accordingly, it is submitted that even the relief of grant of a Special Pension, is devoid of merit.

9. We have heard the learned counsel appearing for the concerned parties at length. It is not in dispute that the applicants

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before the Tribunal were engaged as Sailors before 1973. The provisions concerning commissions, appointment and enrolments is found in Chapter IV of the Navy Act, 1957 (hereinafter referred to as â¬ SAct, of 1957â¬ \235). Section 9 of the Act of 1957 provides for the eligibilities for appointment or enrolment in the Indian Navy or Indian Naval Reserve Forces. The terms and conditions of service of Sailors, as mentioned in Section 11 of the Act of 1957 are such as may be prescribed. Sub-Section (2) thereof provides for the term of a Sailor in the Indian Navy for a period of 10 years in the first instance. That was subsequently increased to 15 years. By a further amendment in 1987, the said term has been increased to 20 years w.e.f. 09.09.1987. Section 12 of Act of 1957 is about the validity of enrolment as a Sailor. It postulates that the incumbent shall be deemed to have been duly enrolled and shall not thereafter be entitled to claim his discharge on the ground of any irregularity or illegality or any other ground whatsoever. Chapter V of the Act 1957 deals with conditions of service of Officers and Sailors. Section 14 stipulates that 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 discharged, dismissed with disgrace, retired,

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permitted to resign, or released. Section 14 to 17 which may have some bearing on the matter in hand, read thus:

â¬ S14. Liability for service of officers and sailors .-(1) 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 with disgrace, retired, permitted to resign, or released.

(2) No officer shall be at liberty to resign his office except with the permission of the Central Government and no sailor shall be at liberty to resign his post except with the permission of the prescribed officer.

(3) The acceptance of any resignation shall be a matter within the discretion of the Central Government or the officer concerned, as the case may be.

(4) Officers retired or permitted to resign shall be liable to recall to naval service in an emergency in accordance with regulations made under this Act, and on such recall shall be liable to serve until they have been duly discharged, dismissed, dismissed with disgrace, retired, permitted to resign, or released.

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

(2) Subject to the provisions of this Act and the regulations made thereunder-

(a) the Central Government may dismiss or discharge or retire from the naval service any officer or sailor;

(b) the Chief of the Naval Staff or any prescribed officer may dismiss or discharge from the naval service any sailor.

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

(a) such expiration occurs during active service in which case he shall be liable to continue to

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serve for such further period as may be required by the Chief of the Naval Staff; or

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

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

Provided that where a sailor is serving overseas at the time he becomes entitled to be discharged, he shall be returned to India for the purpose of being discharged with all convenient speed, and in any case within three months of his becoming so entitled.

Provided further that where such enrolled person serving overseas does not desire to return to India, he may be discharged at the place where he is at the time.

(2) Every sailor discharged shall be entitled to be conveyed free of cost from any place he may be at the time to any place in India to which he may be at the time to any place in India to which he may desire to go.

(3) Notwithstanding anything contained in the preceding sub-section, an enrolled person shall remain liable to serve until he is duly discharged.

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

(a) The authority terminating his service;

(b) the cause for such termination; and

(c) the full period of his service in the Indian Navy and the Indian Naval Reserve Forces.â¬ \235

Section 15 provides for the tenure of Officers and Sailors which is subject to the provisions of the Act and the Regulations made

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thereunder. The Regulations regarding conditions of service as framed under the Act of 1957, are the Naval Ceremonial Conditions of Services and Miscellaneous Regulations, 1964. Regulations 268 deals with engagements including all Direct Entry Sailors. Regulation 269 deals with continuous service. Regulation 269 as applicable at the relevant time when the applicants were appointed before 1973, as extracted in the judgment of the Tribunal in T.A. No.492 of 2010, read thus:

â¬ S Regulation 269:

Continuous service . (1) Old [Entrants] Boys, Artificer Apprentices and Direct Entry sailors may be enrolled for a period calculated to

permit a period of 10 yearsâ¬ "! service to be completed from the date of attaining 17 years of age or from the date of being [ranked] in the Manâ¬ "!s [rank] on successful completion of initial training, whichever is later, provided their services are so long required .
Continuous Service sailors of all Branched shall be liable, if required , for a further 10 yearsâ¬ "! service in the Indian Fleet Reserve, subject to the provisions of the Regulations for the Indian Fleet Reserve.â¬ \235
(emphasis supplied)
Regulation 269 as amended reads thus:
â¬ S269. Continuous Service .-[(1) Old [Entrants] Boys, Artificer Apprentices and Direct Entry sailors may be enrolled for a period calculated to permit a period of 10 yearsâ¬ "! service to be completed from the date of attaining 17 years of age or from the date of being [ranked] in the Manâ¬ "!s [rank] on successful completion of initial

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training, whichever is later, provided their services are so long required .
Continuous Service sailors of all Branches shall be liable, if required , for a further 10 yearsâ¬ "! service in the Indian Fleet Reserve, subject to the provisions of the Regulations for the Indian Fleet Reserve.
[(1A) New Entrants.-(a) Boys, [***] and Direct Entry sailors may be enrolled for a period calculated to permit a period of 15 yearsâ¬ "! service to be completed from the date of enrolment or from the date of attaining the age of 17 years, whichever is later, provided their services are so long required.]
[(aa) Artificer Apprentices and Direct Entry (Diploma holders)
Artificers may be enrolled for a period of 26 years to be completed from the date of enrolment or from the date of attaining the age of 17 years whichever is later, provided their services are so long required.â¬ \235]
(b) All new entrants with 15 yearsâ¬ "! or 20 yearsâ¬ "! initial engagement, as the case may be, are to sign a declaration that they shall be liable to resign a declaration that they shall be liable to recall to active service after release upto two years in case of Non-Artificers and three years in case of Artificersâ¬ \235] :
Provided that during the said period they shall not be required to undergo refresher training or be entitled to any retaining fee, but when recalled they shall be entitled to normal pay and allowances:
Provided further that if recalled they shall be liable to serve for so long as their services are required:
Provided also that sailors released prematurely from service at their own request shall also be liable to active service upto the period stated above.
(1B)(a) In case of the existing sailors, their period of engagement shall be governed by sub-regulation (1), except that they shall not be transferred to Fleet Reserve.
(b) The existing Fleet Reservists shall not be required to undergo refresher training but shall be entitled to the retraining ree till they are wasted out.

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(IC) Persons joining service on or after 3 rd July, 1976
shall be deemed the New Entrants.]
(2) No sailor shall be re-enrolled unless he fulfills the following conditions:-
(a) Out of the three annual assessments immediately preceding re-enrolment, he must have had at least two assessments of character and efficiency not below â¬ ÜVGâ¬ "! and â¬ ÜSatâ¬ "!, respectively.
(b) Must be recommended by his Captain as in all respects suitable to continue in Service.
(c) Must have been declared medically fit for satisfactorily carrying out the duties required of him.â¬ \235

(emphasis supplied)
Other relevant Regulation dealing with conditions of service of Sailors, is Regulation 279. It provides for discharge. The same reads thus:
â¬ S279. Discharge â¬ SS.N.L.R.â¬ \235-(1) Discharge S.N.L.R. (Service no longer required) shall not be considered as a punishment but only as the appropriate method of dispensing with the services of a man:
(a) who is surplus to requirements,
(b) whose retention would be to the detriment of the Service but who has not recently committed a specific offence for which dismissal would be an appropriate punishment in addition to any other sentence awarded.
(c) On whom an adverse report has been forwarded in the post-enrolment verification report.
(2) Subject to the provisions of sub-regulation (1), if the retention of any sailor is considered undesirable on grounds of conduct or character, a report, accompanied by his Service Documents, shall be forwarded to the Administrative Authority, with a recommendation that the man be discharged â¬ ÜService No Longer Requiredâ¬ "!.

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(3) In all cases of recommendations for discharge of sailors as â¬ ÜService No Longer Requiredâ¬ "! except those who are to be discharged as being surplus to requirements, Captains shall establish clearly the fact that the sailor recommended for discharge has been given suitable warning and opportunity to improve. Evidence to this effect shall accompany the recommendation. In exceptional cases, when in the opinion of the Captain, the retention of a sailor is clearly undesirable, a recommendation may be forwarded and discharge may be approved although the sailor has not previously been warned.
(4) The Administrative Authority, if satisfied that discharge â¬ ÜService No Longer Requiredâ¬ "! is appropriate, shall forward the application to the Chief of the Naval Staff through Captain Naval Barracks with his recommendation. It is essential. The manâ¬ "!s Service Documents completed up-to-date shall accompany the application for discharge.
(5) Abroad, sailors recommended for discharge â¬ ÜService No Longer Requiredâ¬ "! shall not be sent home until the approval of the Chief of the Naval Staff for discharge has been received. If in the interim, the man is transferred to another ship, the Service document sent with the man shall be annotated to the effect that an application for his discharge has been made and a copy of the application shall accompany his papers.â¬ \235
Indeed, Regulation 279 providing for discharge can be invoked before the expiration of tenure of service.
10. Besides these Regulations, we shall now advert to the Pension Regulations framed in exercise of powers conferred by the Act of 1957, known as the Navy (Pension) Regulations, 1964. Regulation 92 deals with Reservist Pension and Gratuity which reads thus:
â¬ S92. Reservist pension and gratuity .-(1) A reservist who is not in receipt of a service pension may be granted, on completion of the prescribed naval and reserve qualifying service of ten years

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each, a reservist pension of rupees eleven per mensem or a gratuity of rupees nine hundred in lieu of pension.
(2) A reservist who is not in receipt of a service pension and whose qualifying service is less than the period of engagement but not less than fifteen years may, on completion of the period of engagement or on earlier discharge from the reserve otherwise than at his own request, be granted a reservist pension at rupees ten per mensem or a gratuity of rupees seven hundred and fifty in lieu of pension.
(3) Where a reservist elects to receive a gratuity in lieu of pension under this regulation, the amount of gratuity shall, in no case, be less than the service gratuity that would have accrued to him

under regulation 89 based on the qualifying service in the Indian Navy, had he been discharged from the active list.
Explanation.- The option The option to draw a gratuity in lieu of pension shall be exercised on discharge from the reserve, and the option once exercised shall be final; no pension or gratuity shall be paid until the option has been exercised.â¬ \235
Regulation 95 deals with Special Pension and Gratuity to Sailors which reads thus:
â¬ S95. Special pensions and gratuity to sailors-When admissible .-A special pension or gratuity may be granted at the discretion of the Central Government, to sailors who are not transferred to the reserve and are discharged in large numbers in pursuance of Governmentâ¬ "!s policy-
(i) of reducing the strength of establishment of the Indian Navy; or
(ii) of re-organisation, which results in paying off of any ships or establishments.â¬ \235
Regulation 6 of Regulations of the Indian Fleet Reserve, framed under the Indian Naval Reserve Force (Discipline) Act, 1939 reads thus :

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â¬ S6. Claim to join fleet Reserve â¬ No man can claim to join the fleet reserve as a right.â¬ \235
Re: Reservist Pension
11. We shall first deal with the question regarding entitlement to claim Reservist Pension. Sub-Clause (1) of Regulation 92, throws some light on this aspect. It provides that a â¬ SReservistâ¬ \235 who is not in a receipt of Service Pension, be granted Reservist Pension on completion of the prescribed Naval and Reserve Service of 10 years each. None of the applicants claim that they are entitled for Service Pension, nor have they been so granted. The eligibility of grant for Reservist Pension is upon completion of the prescribed Naval and Reserve qualifying service of 10 years each. It is not in dispute that each of the applicants completed the prescribed Naval Service of 10 years in the first instance, also known as active service or engagement. It is also not in dispute that there is no formal order issued by the Competent Authority to draft the services of the concerned applicant on the Fleet Reserve Service after completion of 10 years of active service in the first instance.

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12. As a matter of fact, the issue under consideration was the subject matter before the Armed Forces Tribunal, Principal Bench, New Delhi in T.A. No.492/2009. The Tribunal after analyzing the relevant provisions observed as follows:
â¬ S9. It is an admitted position that the petitioner was not inducted for a Fleet Reserve Service. He has filed a Discharge Certificate and profile of his service on record and Service Certificate which does not show that the petitioner was engaged for a Fleet Reserve Service at all or not. However, learned counsel for the petitioner submitted that when he entered into the service at that time as per rule 10 years of regular service and 10 years of fleet reserve service and out of that five years service should be counted for the purpose of qualifying service for pension. It is true at relevant time when petitioner was inducted into service there was requirement of keeping the incumbent in fleet reserve, therefore, respondents are bound by the service conditions prevailing at that time and they must give 5 years benefit of fleet reserve service. It is true that we would have certainly acceded to the request but a difficulty arose that Regulation 269 clearly contemplates that incumbent can be kept for reserve fleet, if required . This Government policy to keep in fleet reserve was discontinued in the year 1976. The Regulation 269 clearly contemplates that incumbent can be kept in fleet reserve, if required that means this is enabling provision giving liberty to respondents to keep the incumbent in fleet reserve, it does not confer any right on the petitioner that he must be necessarily kept in fleet reserve. This is the discretion of the respondents that if they required, they keep the man in fleet reserve and if they find

that they do not require the incumbent for fleet reserve, the incumbent cannot as a matter of right seek writ of mandamus, he has no statutory right to be kept in fleet reserve. The expression â¬ Sif requiredâ¬ \235 makes abundantly clear that discretion is with the respondents to keep the incumbent in fleet reserve or not. Since this policy has been discontinued in 1976, henceforth there is no provision to keep the incumbent in fleet reserve. Petitioner was discharged in the year 1978. He knew the provision at that time also that he is not kept in fleet reserve. Therefore, petitioner cannot get the benefit of 5 years of service out of 10 years of fleet reserve

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service so as to complete 15 years of qualifying service for pension.â¬ \235

13. This view taken by the Tribunal was challenged before this Court by way of SLP(Civil) No. 19790/2010 which, however, was dismissed on 13 th January 2014. The said order reads thus:

â¬ SHeard.

We see no reason to interfere with the impugned order. The special leave petition is dismissed.

We however make it clear that this order shall not prevent the petitioner from making an appropriate representation to the competent authority for grant of special pension in terms of the Regulation 95 of the Navy (Pension) Regulation, 1964.

Mr. Mohan Jain, learned ASG submits that in case such a representation is made, the same shall be examined by the competent authority and appropriate orders passed in accordance with law. That statement is recorded.

We make it clear that we have expressed no opinion about the merits of the claim that the petitioner proposes to make for payment of special pension. The matter is left entirely to the competent authority to decide the same in accordance with law. In case the competent authority takes an adverse view of the matter, the petitioner shall have the liberty to seek redress against the same in appropriate proceedings before the appropriate forum. No costs.â¬ \235

14. It is justly contended by the Department that after the aforesaid decision of the Tribunal having been affirmed by this Court, the opinion of the Tribunal in the impugned judgment to the contrary may be treated as impliedly overruled. Nevertheless, we

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may examine the correctness of the approach of the Tribunal in the impugned judgment.

15. In absence of an express order of the Competent Authority to take the applicants on the Fleet Reserve Service, the moot question is: whether the applicants can be treated as deemed to be in the Fleet Reserve Service on account of the stipulation in the appointment letter - that on completion of 10 years of Naval Service as a Sailor, they may have to remain on Fleet Reserve Service for another 10 years. That condition in the appointment letter cannot be read in isolation. The governing working conditions of Sailors must be traced to the provisions in the Act of 1957 or the Regulations framed thereunder concerning service conditions. From the provisions in the Act of 1957, there is nothing to indicate that the Sailor after appointment or enrolment is â¬ Sautomaticallyâ¬ \235 entitled to continue in Fleet Reserve Service after completion of initial active service period of 10 years. The provisions, however, indicate that on completion of initial active service of 10 years or enhanced period as per the amended provisions is entitled to take discharge in terms of Section 16 of the Act. The applicants assert that none of

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the applicants opted for discharge. That, however, does not mean that they would or in fact have continued to be on the Fleet Reserve Service after expiration of the term of active service as a Sailor. There ought to have been an express order issued by the competent Authority to draft the concerned applicant in the Fleet Reserve

Service. In absence of such an order, on completion of the term of service of engagement, the concerned sailor would stand discharged. Concededly, retention on the Fleet Reserve Service is the prerogative of the employer, to be exercised on case to case basis. In the present case, however, on account of a policy decision, the Fleet Reserve Service was discontinued in terms of notification dated 3 rd
July, 1976. The said notification reads thus:
â¬ S No.AD/5374/2/76/2214/S/D (N.II),
Government of India,
Ministry of Defence,
New Delhi, the 3 rd
July, 1976.
To,
The chief of the Naval Staff (with 100 spare copies)
Sub.:- CONDITIONS OF SERVICE OF SAILORS.
Sir,
I am directed to state that the President is pleased to approve the following modifications in the conditions of Service of sailors:-
a) Initial Period of Engagement:- Be entrolled for 15 years.
b) Educational Qualification at Entry:- Be raised to Matriculation or equivalent in the case of Direct Entry sailors of Seaman and Marine Engineering branches and Bo Entry sailors of all branches.

c) Ages of Entry:- The age of entry for Boys be revised to 16-18 years and that for Direct Entry sailors to 18-20 years.
d) Compulsory Age of Retirement:- Subject to the prescribed rules, the age of compulsory retirement for sailors of all ranks upto and including CPO rank will be 50 years. The compulsory retirement age of MCPO I/II will remain 55 years.
e) Time Scale Promotion to Leading Rank:- Seaman First Class and equivalents will be promoted to the Leading rank on completing of 5 years service in manâ¬ "!s rank subject to passing the prescribed examination. The date of implementation of this provision will be promulgated by Naval Headquarters.
f) Transfer to Current Fleet Reserve:- Transfer of sailors into the Fleet Reserve to be discontinued. The Existing Fleet Reservists will not be required to undergo refresher training but will be paid the retaining free till they are wasted out.
g) Recall to Active Service:- (i) All new entrants with 15 years initial engagement and such of the existing sailors, who re-engage to complete time for minimum pension, to sign a declaration that they will be liable to recall to active service, after release upto two years in case of Non-Artificers and three years in case of Artificers. During this period they will not be required to undergo refresher trainings or be entitled to any retraining fee, but when recalled they will be entitled to normal pay and allowances. If recalled they would be liable to serve for so long as their services are required.
(ii) Sailors released prematurely from Service at their own request will also be liable to recall to active service upto the period stated above.
h) Regrouping and Remustering of sailors:- Future entrants (Both Boy and Direct Entry) in Seamen and ME Branches will be on Group â¬ ÜBâ¬ "! Scale of Pay. Serving sailors in these branches including Regulating Branch, who are matriculate or equivalents will also be remustered to Group â¬ SBâ¬ \235 scale pay with effect from 1 st April, 1976. Those, who attain this qualification later, will also be remustered to Group â¬ ÜBâ¬ "! scale of pay, as and when they so qualify. Remustering will invariably be effective from the first of the month in which it occurs.
2. Administrative instructions, if any, will be issued by the Naval Headquarters.
3. Appropriate Government Regulations/Orders will be amended in due course.
4. This issues with the concurrence of Ministry of Finance (Def) vide their u.o. No.452/NA/S of 1976.
Yours faithfully,

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Sd/-
(P.S. Ahluwalia)
Under Secretary to the Gov. of India

16. As per this policy, the initial period of engagement was enhanced to 15 years. At the same time the transfer of Sailors to Fleet Reserve was discontinued. This is made amply clear in Clause (f) of the policy. The second part of the same clause pertains to â¬ SExisting Fleet Reservistâ¬ \235, who were to be paid the retaining fee till they are wasted out.
17. As noted hitherto, none of the relevant provisions even remotely suggest that the Sailor is â¬ Sautomaticallyâ¬ \235 transferred to the Fleet Reserve Service. Whereas, it is expressly provided that on expiration of the term of service of engagement the Sailor would be placed on Fleet Reserve Service only if an express order in that behalf is passed by the Competent Authority to draft him on the Fleet Reserve and not otherwise. Section 16 of the Act, merely gives an option to the Sailor to take a discharge after expiration of term of service of engagement. It is not a deeming provision that if such option is not exercised by the concerned Sailor, he would be treated

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as having been drafted on the Fleet Reserve Service for another 10 years â¬ Sautomaticallyâ¬ \235.
18. Regulation 269, spells out the conditions of service. It reinforces the position that the services of a Sailor would be continued â¬ Sso long requiredâ¬ \235 or â¬ Sif requiredâ¬ \235. The second part of
Clause (1) of that Regulation uses the expression â¬ Sif requiredâ¬ \235, for
further 10 years service in the Indian Fleets Reserve, subject to the provisions of the Regulations for the Indian Fleet Reserve. This view taken by the Tribunal (Principal Bench, New Delhi) in T.A. No.492 of 2009 commends to us.
19. As aforesaid, on introducing the new policy on 3 rd July, 1976,
the Fleet Reserve was discontinued and instead the Sailors in service at the relevant time were given an option to continue in active service for a further term of 5 years. Some of the Sailors opted to continue till completion of 15 years, who, then became eligible for â¬ SService Pensionâ¬ \235 having qualifying service.

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20. The quintessence for grant of Reservist Pension, as per Regulation 92, is completion of the prescribed Naval and Reserve qualifying service of 10 years â¬ Seachâ¬ \235. Merely upon completion of 10 years of active service as a Sailor or for that matter continued beyond that period, but falling short of 15 years or qualifying Reserve Service, the concerned Sailor cannot claim benefit under Regulation 92 for grant of Reservist Pension. For, to qualify for the Reservist Pension, he must be drafted to the Fleet Reserve Service for a period of 10 years. In terms of Regulation 6 of the Indian Fleet Reserve Regulations, there can be no claim to join the Fleet Reserve as a matter of right. None of the applicants were drafted to the Fleet Reserve Service after completion of their active service. Hence, the applicants before the Tribunal, could not have claimed the relief of Reservist Pension. The Tribunal (Regional Bench, Chennai) in O.A. No. 83 of 2013, however, granted that relief by invoking principle of equitable promissory estoppel and legitimate expectation in favour of the applicants. The Tribunal, in our opinion, committed manifest error in overlooking the statutory provisions in the Act of 1957 and the relevant Regulations framed thereunder, governing the conditions of service of Sailors. The fact

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that on completion of 10 years of active service, the Sailor could be taken on the Fleet Reserve Service for a further period of 10 years

cannot be interpreted to mean that the concerned Sailor had acquired a legal right to join the Fleet Reserve Service or had de jure continued on Fleet Reserve Service for a further 10 years after expiration of the initial term of active service/engagement. There is no provision either in the Act of 1957 or the Regulations framed thereunder as pressed into service by the applicants, to suggest that drafting of such Sailors on Fleet Reserve Service was â¬ Sautomaticâ¬ \235 after expiration of their active service/enrolment period. Considering the above, it is not necessary to burden this judgment with the decisions considered by the Tribunal on the principle of equitable promissory estoppel and legitimate expectation, which have no application to the fact situation of the present case.

21. The original applicants contend that if the Government Policy dated 3 rd July, 1976 is applied to the serving Sailors, inevitably, will result in retrospective application thereof to their deteriment. That is forbidden by Section 184-A of the Act. This argument does not commend to us. In that, the effect of the Government Policy is to

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disband the establishment of the Reserve Fleet Service with effect from 3 rd July, 1976. As found earlier, drafting of Sailors to the Reserve Fleet Service was not automatic; but dependent on an express order to be passed by the competent Authority in that behalf on case-to-case basis. The Sailors did not have a vested or accrued right for being placed in the Reserve Fleet Service. Hence, no right of the Sailors in active service was affected or taken away because of the Policy dated 3 rd July, 1976. Even the argument of the original applicants that the interpretation of expression â¬ Sif requiredâ¬ \235 occurring in Regulation 269(1) bestows unequal bargaining power on the Government is devoid of merits. The validity of Regulation 269(1) was not questioned before the Tribunal nor any relief was claimed in that behalf. Therefore, this argument is unavailable to the original applicants. In any case, on a conjoint reading of the Regulations governing the Service Conditions of the Sailors and more particularly having noticed that it is the prerogative of the Government to place the Sailors to the Fleet Reserve Service; and at the same time option was given to the Sailors to opt for discharge in terms of Section 16 of the Act, we fail to understand as to how such dispensation can be termed as

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unequal bargaining power. The consequence of not placing the concerned Sailor to the Fleet Reserve Service may result in deprivation of Reservist Pension. However, original applicants may be entitled to get a Special Pension under Regulation 95 of the Pension Regulations, being a separate dispensation for such Sailors, unless discharged by way of punishment under Regulation 279.

22. Accordingly, we hold that none of the applicants before the Tribunal are entitled for Reservist Pension in terms of Regulation 92 of the Naval (Pension) Regulations, 1964. The Tribunal has relied on other decisions of other Benches of the same Tribunal, which for the same reason cannot be countenanced.

Re: Special Pension

23. The next question is whether the Sailors appointed before 1973 were entitled for a Special Pension, in terms of Regulation 95 of the Pension Regulations. Indeed, this is a special provision and carves out a category of Sailors, to whom it must apply. Discretion is vested in the Central Government to grant Special Pension to such Sailors, who fall within the excepted category. Two broad

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excepted categories have been noted in Regulation 95. Firstly, Sailors who have been discharged from their duties in pursuance of the Government policy of reducing the strength of establishment of the Indian Navy; or Secondly, of reorganization, which results in

paying off of any ships or establishment. In the present case, Clause (i) of Regulation 95 must come into play, in the backdrop of the policy decision taken by the Government as enunciated in the notification dated 3 rd July, 1976. On and from that date, concededly, the Fleet Reserve Service has been discontinued. That, inevitably results in reducing the strength of the establishment of the Fleet Reserve of the Indian Navy to that extent, after coming into force of the said policy. None of the Sailors have been or could be drafted to the Fleet Reserve after coming into force of the said Policy - as that establishment did not exist anymore and the strength of establishment of the Indian Navy stood reduced to that extent. Indisputably, the Sailors appointed prior to 3 rd July, 1976, had the option of continuing on the Fleet Reserve Service after expiration of their active service/empanelment period. As noted earlier, in respect of each applicants the appointment letter mentions the period of appointment as 10 years of initial active

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service and 10 years thereafter as Fleet Reserve Service, if required. The option to continue on the Fleet Reserve Service could not be offered to these applicants and similarly placed Sailors, by the Department, after expiration of their empanelment period of 10 years or less than 15 years as the case may be. It is for that reason, such Sailors were simply discharged on expiration of their active service/empanelment period. In other words, on account of discontinuation of the Fleet Reserve establishment of the Indian Navy, in terms of policy dated 3 rd July, 1976 it has entailed in reducing the strength of establishment of the Indian Navy to that extent.

24. That takes us to the case of Appellant No.36 (in C.A. No.2147 of 2011). The said appellant asserts that he was discharged from the Fleet Reserve unilaterally by the Department. By that time, he had completed combined 17 years 1 month and 26 days of service, for which reason was entitled to Reservist Pension under Regulation 92(2) of the Pension Regulations. The said appellant is relying on communication dated 8 th May, 2014 in support of this contention. Since this appellant was not in active service when the Government

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Policy dated 3 rd July, 1976 came into being and claims to have been discharged from the Fleet Service on 30 th March, 1967, would be free to make representation to the competent Authority. It is for the competent Authority to examine the factum as to whether the discharge was unilateral and not at the request of the said appellant and including whether he would be entitled for Reservist Pension in terms of Regulation 92(2) of the Pension Regulations. We may not be understood to have expressed any opinion with regard to the questions that may require consideration by the competent Authority in that regard.

25. Thus understood, all Sailors appointed prior to 3 rd July, 1976 and whose tenure of initial active service/empanelment period expired on or after 3 rd July, 1976 may be eligible for a Special Pension under Regulation 95, subject, however, to fulfilling other requirements. In that, they had not exercised the option to take discharge on expiry of engagement (as per Section 16 of the Act of 1957) and yet were not and could not be drafted by the competent Authority to the Fleet Reserve because of the policy of discontinuing the Fleet Reserve Service w.e.f. 3 rd July, 1976. The cases of such

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Sailors (not limited to the original applicants before the Tribunal) must be considered by the Competent Authority within three months for grant of a â¬ SSpecial Pensionâ¬ \235 from three years prior to the date of application made by the respective Sailor and release payment after giving adjustment of Gratuity and Death-cum-Retirement-Gratuity (DCRG) already paid to them from arrears. They shall be entitled for interest @ 9% P.A. on the arrears, till the date of payment.

26. The appeals are disposed in the above terms with no order as to costs. Application for impleadment is also disposed of.

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(T.S.Thakur)

â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦.. J.
(A.M.Khanwilkar)

â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦.. J.
(Dr. D.Y. Chandrachud)

New Delhi,
Dated: 27 th
October, 2016

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ITEM NO.1A COURT NO.2 SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s). 2147/2011

T.S.DAS & ORS. Appellant(s)

VERSUS

UNION OF INDIA & ANR. Respondent(s)

WITH

C.A. No. 8566/2014

Date : 27/10/2016 These appeals were called on for pronouncement of judgment today.

For the appearing parties :-

Mr. Rameshwar Prasad Goyal,Adv.

Mr. Shreekant N. Terdal,Adv.

Mr. Prashant Bhushan, Adv.

Mrs. Anil Katiyar,Adv.

Mr. Nishe Rajen Shonker,Adv.

Mr. Gajendra Khichi, Adv.

Mr. Atul Kumar, Adv.

Mr. S.K. Verma, Adv.

Mr. Bijup P. Raman, Adv.

Mr. Niranjan Chakraborty, Adv.

Hon'ble Mr. Justice A.M. Khanwilkar pronounced the judgment of the Bench comprising of Hon'ble the Chief Justice, His Lordship and Hon'ble Dr. Justice D.Y. Chandrachud.

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The appeals are disposed of with no order as to costs in terms of the signed reportable judgment.

The application for impleadment is also disposed of.

[SUKHBIR PAUL KAUR] [SNEH BALA MEHRA]
A.R.-CUM-P.S. ASSISTANT REGISTRAR

(Signed reportable judgment is placed on the file)