

ITEM NO.101

COURT NO.5

SECTION XVI

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

Civil Appeal No(s). 6616/2008

RAJESH KUMAR

Appellant(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(with office report)

WITH

SLP(C) No. 27982/2010

(With Interim Relief)

SLP(C) No. 3945/2014

(With Interim Relief and Office Report)

Date : 24/09/2014 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
HON'BLE MR. JUSTICE PRAFULA CHANDRA PANT

For Appellant(s)	Mr. Mahabir Singh, Sr. Adv. Mr. Yatendra Sharma, Adv. Mr. Abhishek Jain, Adv. Ms. Preeti Singh, Adv. M/s. Ap & J Chambers, Adv.
	Mr. Santhash Krishnan, Adv. Mr. Hari Kumarji, Adv. Mr. A. Venayagam Balan, Adv.
	Mr. Prashant Kumar, Adv.
For Respondent(s)	Mr. P.S. Patwalia, ASG. Mr. R. Balasubramaniun, Adv. Mr. Anil Kaushik, Adv. Mr. Arvind Bambhoo, Adv. Ms. Sunita Rani Singh, Adv. Mr. D. S. Mahra, Adv.
	Mr. B. V. Balaram Das, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

In C.A.No. 6616/2008

The appeal is dismissed.

In SLP(C)NOS. 27982 of 2010 and 3945 of 2014

The Special Leave Petitions are dismissed.

(SUMAN WADHWA)  
AR-cum-PS

(USHA SHARMA)  
COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICITON

CIVIL APPEAL NO. 6616 OF 2008

RAJESH KUMAR

...APPELLANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

WITH

SPECIAL LEAVE PETITION (C) NOS. 27982 OF 2010 AND 3945 OF 2014

O R D E R

This appeal has been preferred by the appellant- Rajesh Kumar against the judgment dated 9<sup>th</sup> July, 2007, passed by the Division Bench of the High Court of Calcutta, Circuit Bench at Port Blair. By the impugned judgment the Division Bench reversed the finding of the learned Single Judge and allowed the appeal preferred by the respondent-Union of India.

The factual matrix of the case is as follows:

2. The appellant was initially appointed as Navik (G.D.) w.e.f. 11<sup>th</sup> July, 1991 in the Coast Guard service. He successfully completed the Trade Training in Seaman Ship and various other courses. During his tenure at ICGS Veera at Mumbai the appellant was asked to opt for Ship Diving Course. Accordingly he opted for the same and successfully completed

the course on 5<sup>th</sup> June, 1996. As per the guidelines, if a person qualifies such course the incumbent is benefited with Rs.100/- p.m. in addition to his salary in the form of diving allowance which was subsequently revised at Rs.200/- p.m.

3. The appellant having successfully qualified in the course of Air Crew Diver ((hereinafter referred to as 'ACD'), by order dated 4<sup>th</sup> March, 2000 was transferred on permanent duty as Air Crew Driver.

4. On 28th October, 2003, the competent authority issued guidelines for management of ACD cadre in the Coast Guard. Thereunder tenure of seven years was fixed for continuing in the said post. It was made clear that on completion of seven years of service in normal course ACD enrolled persons would be reverted to their parent cadre. However, it was extendable by another three years.

5. The appellant preferred the writ petition (AN) 55/2007 before the High Court of Calcutta at Circuit Bench at Port Blair. Prayer was made to issue a writ of mandamus directing the respondent authorities to act in accordance with law allowing the appellant to continue in Air Crew Man (D) Cadre till he is found medically fit as per clarification given by the D.G., Coast Guard Headquarters, New Delhi by his letter dated 9<sup>th</sup> April, 1988. A further prayer was made for issuance of a writ in the nature of certiorari setting aside the policy decision as contained in the aforesaid letter dated 28<sup>th</sup> October, 2003. The learned Single Judge referring the decision

of the Division Bench in MAT No. 14 of 2005 with CAN No. 50 of 2005 dated November 17, 2005 allowed the writ petition by order dated 8<sup>th</sup> March 2007 and set aside the policy decision dated 28.10.2003. The said order was challenged by Union of India in a writ appeal which was allowed by the impugned judgment dated 9.7.2007 passed by the Division Bench.

6. The learned counsel for the appellant assailed the impugned order passed by the Division Bench mainly on three counts, namely, (i) at the time of induction of the appellant in the Aviation Branch, in terms and conditions of service as clarified in the letter dated 9<sup>th</sup> April, 1988 issued by the DG Coast Guard, Air Crew Driver in Coast Guard would continue to be deployed for diving duty so long as they are medically fit. Therefore, the appellant being medically fit is to continue against the said post and cannot be reverted pursuant to circular dated 28.10.2003; (ii) The impugned guidelines dated 28.10.2003 is wholly unreasonable, arbitrary and contrary to the Government guidelines which state that until such time the Coast Guard General Rules/Orders and procedures are promulgated, the Rules and procedure applicable to Naval Aviation Branch would be followed. And (iii) the guidelines dated 28.10.2003 cannot be given retrospective effect to revert those who are fit and functioning as ACD.

7. The learned counsel for the appellant placed reliance on guidelines issued in letter dated 9<sup>th</sup> April, 1988 whereby it was clarified that ACD in the Coast Guard would continue to be

deployed for diving duties so long as they are medically fit.

8. On the other hand, according to the learned counsel for the respondents the policy decision dated 28.10.2003 is not retrospective but prospective and the same is applicable to all the incumbents holding the posts of ACD on the date of issuance of guidelines i.e. 28.10.2003 and those who may be inducted in future. Reliance was also placed on the policy decision issued by the Government of India from time to time and the reasons for issuance of the impugned guideline dated 28.10.2003.

9. We have heard learned counsel for the parties and perused the record.

10. From letter issued by Ministry of Defence, Government of India, dated 11.11.1983 we find that the Aviation Branch was created provisionally and the terms and conditions of service for Coast Guard Aviation personnel were also mentioned therein. In the Annexure I attached to the said circular of 11.11.1983 it is made clear that the subordinate Officer and the ACD of the Coast Guard Aviation Cadre who qualifies and fulfill all the conditions as laid down and are employed as ACD, on tenure basis, shall be eligible for the flying pay of Rs.374.50 per month as applicable to sailors of Naval Aviation Branch. The relevant portion of the letter dated 11.11.1983 is quoted hereunder:

"SUB: CREATION OF AVIATION BRANCH-TERMS AND CONDITIONS OF SERVICE FOR COAST GUARD AVIATION PERSONNEL

Sir,

I am directed to convey the sanction of the president to the creation of Coast Guard Aviation Cadre

on the terms and conditions of service of the Coast Guard Aviation personnel, on provisional basis till the final recommendations of the 4<sup>th</sup> Central Pay Commission are approved by the Government as contained in the Annexure I and II to this letter.

2. The provision of this letter will take effect from 01 June, 1983.

3. The other terms and conditions of service, Coast Guard Aviation personnel will be governed by the Ministry of Defence letter No. CGHQ/SC/201/182/CG/D (N-II) Dated 29 Sep 78 as amended from time to time.

4. This letter issues with the concurrence of the Ministry of Defence (Finance) Vide their U.P. No.32/2/82-NA/78(S) of n1983.

ANNEXURE II TO THE MINISTRY OF DEFENCE LETTER  
CR/0122/944/DO/CG/D (N-III) DATED 11 NOV 1983

TERMS AND CONDITIONS OF SERVICE-SUBORDINATE  
OFFICERS AND NAVIKS IN THE COAST GUARD AVIATION  
CADRE

(a) Branches, Cadres and Specialisation The Branches, Cadres and specialization of subordinate Officers and Naviks would be as follows:-

<u>Branch</u>	<u>Cadre</u>	<u>Specialisation</u>
General Duties	Airmen	Aircrew Diver Aircraft Handler Safety Equipment Photo Metrology Fight Signaler
Technical	Fight Engineering	

(b) Pay Scales

<u>Ranks</u>	<u>Rs.</u>
Pradhan Adhikari	645-25-745
Uttam Adhikari	535-20-655
Adhikari	440-15-530
Pradhan Navik	350-8-130
Uttam Navik	300-6-360-8-376
Navik	275-6-347

Subordinate Officers and Naviks of the Coast Guard, Aviation Cadre, who qualify and fulfill all conditions laid down and are employed as aircrew, on tenure basis, shall be eligible for flying pay of Rs.374.50 p.m. as applicable to sailors of Naval Aviation Branch vide NI-25/74, as amended from time to time."

11. Though Aviation Branch was created on provisional basis and a tenure was fixed under annexure I, it appears that the Assistant Director (Officers) Coast Guard Headquarter, New Delhi, by letter dated 9<sup>th</sup> April, 1988, clarified that ACD in the Coast Guard would continue to be deployed for diving duties so long as they are medically fit, relevant portion of which reads as follows:

"SA/0107

9<sup>TH</sup> APRIL, 1988

THE OFFICER-IN-CHARGE  
BUREAU OF NAVIKS  
CHOETAH CAMP  
MANKHURD,  
BOMAY.

CONDITIONS OF SERVICE-AIR CREW DIVERS

1. Refer to CGHQ letter of even number dated 18<sup>th</sup> Mar., 1988.
2. On reconsideration of the proposal, it is seen that Air crew Diver is a specialization of the Coast Guard Air Crew Cadre of the GD Branch. The question of restricting their utility for any fixed time does not therefore, arise.
3. In view of the above, it is clarified that the Air Crew Diver in the Coast Guard would continue to be deployed for diving duties so long as they are medically fit.

Sd/-

(G.S.SUHAG)

ASSTT. DIRECTOR (OFFICERS)  
FOR DIRECTOR GENERAL

12. There is no permanent cadre of ACD. It continues to be provisional. But in spite of that it appears that because of the clarification letter dated 9<sup>th</sup> April, 1988 a number of persons were allowed to continue as ACD in the Coast Guard on the ground that they are medically fit and they were not reverted back to their parent cadre. The effect of such continuance was noticed by the respondents and it was observed that in the absence of a clear cut policy in the Coast Guard, ACD are functioning in contravention to existing Govt. of India regulations in relation to age limit, tenure in cadre etc. The sanction of the Government in the cadre limit was limited and the continuance of personnel since enrolment without any revision in the cadre will lead to audit objection at a later stage. The Government issued guidelines for the management of ACD Cadre in Coast Guard by Circular letter dated 28.10.2003 the relevant portion of which reads as follows:

POLICY LETTER

COAST GUARD HEADQUARTERS  
NATIONAL STADI  
NEW DELHI-110001  
DATED: 28<sup>TH</sup> OCTOBER, 2003

GUIDELINES FOR MANAGEMENT OF ACD CADRE IN COAST GUARD  
INTRODUCTION:

1. Air Crew Diver (ACD) care enrolled personnel are borne in helicopter flights for undertaking SAR and other such operational commitments. It has been observed that in the absence of clear-cut

policy, ACD cadre in Coast Guard is functioning in contravention to existing Govt. of India regulations in relation to age limit, tenure in cadre etc. the Government sanction available in the cadre is limited and continuance of personnel cadre since enrollment without any revision in their status will lead to audit objection at a later stage. In view of above, a revision of the Cadre was considered necessary and following conditions are spelt out as guidelines for management of ACD cadre in the Coast Guard."

#### Tenure in Cadre

6. The normal tenure of an ACD enrolled personnel would be for 7 years from the date of enrollment as laid down vide GOI MOD letter AO/4401/NHQ/733/DOI/D(N-II) dated 18<sup>th</sup> April, 1986 (Placed at Annexure-I), subject to meeting requisite medical standards prescribed for the cadre. However, on special cases the tenure may be extended for a further period of 3 years with approval of the Government. Such cases would only be considered to meet service exigencies such as shortage in cadre etc. Cases seeking such extension are to be forwarded by Commanding Officers through Regional Commanders to CGHQ for taking up with Government.

#### Reversion to Parent Cadre:

7. ACD enrolled personnel would be reverted to their parent cadre in the following eventualities:

1. On completion of 7 years of service, in normal cases However extendable by another 3 years as mentioned at para 6 ibid.
2. On promotion to the rank of Adhikari or equivalent.
3. On medical grounds.
4. In above cases Bureau will issue CG Drafting Order, Specialist Qualifications-Reversion."

13. From the letter aforesaid following facts emerge: (i) ACD cadre is provisional; (ii) The officers of different branches and cadres of specialization such as Pradhan Adhikari, Uttara Adhikari, Adhikari, Pradhan Navik, Uttam Navik and Navik who are qualified are posted as ACD on tenure basis; (iii) the policy decision terms and conditions while the terms and conditions of service Coast Guard Personnel Aviation have been prescribed in the letter dated 11.11.1983 at the time of creation of Aviation Branch and (iv) medical fitness is essential for continuing to the gazetted post, as prescribed under Circular letter dated 9<sup>th</sup> April, 1988.

14. No separate terms and conditions of services has been prescribed by letter dated 9<sup>th</sup> April, 1988. It has been originally prescribed by letter dated 11.11.1983 while Aviation branch was created. Letter dated 9<sup>th</sup> April, 1988 is a letter of clarification pursuant to a letter written on 18.3.1988. Thereunder it was clarified that ACD in Coast Guard would continue to be deployed for diving duties so long as they are medically fit; that means if they are not medically fit they have to be reverted back to their parent department. But that does not mean that those who have been deputed as ACD have a right to continue in the post of ACD as long as they are medically fit. A tenure being fixed under the terms and conditions of service by original letter dated 11.11.1983, no person transferred or deputed to the post of ACD has any right to continue beyond the tenure prescribed by the competent

authority.

15. In that view of the matter the appellant has no right to continue in the post after completion of the tenure of seven years. The circular dated 28.10.2003 is prospective but it will be applicable to all those incumbents who were functioning or will be inducted in future as ACD.

16. In Bishun Narain Misra vs. The State of Uttar Pradesh and Others AIR 1965 SC 1567, the age of superannuation was reduced from 57 years to 55 years resulting of early retirement of public servants than what was provided provisionally under the existing Rule. In the said case also similar arguments were raised that the guidelines in question having given retrospective was bad as no guidelines could be made retrospectively. A Constitution Bench of this Court in the said case held that:

"6. The next contention on behalf of the appellant is that the rule is retrospective and that no retrospective rule can be made. As we read the rule we do not find any retrospectivity in it. All that the rule provides is that from the date it comes into force the age of retirement would be 55 years. It would, therefore, apply from that date to all Government servants, even though they may have been recruited before May 25, 1961 in the same way as the rule of 1957 which increased the age from 55 years to 58 years applied to all Government servants even though they were recruited before 1957. But it is urged that the proviso shows that the rule was applied retrospectively. We have already referred to the proviso which lays down that Government servants who had attained the age of 55 years on or before

June, 17, 1957 and had not attained the age of 58 years on May 25, 1961 would be deemed to have been retained in service after the date of superannuation, namely 55 years. This proviso in our opinion does not make the rule retrospective; it only provides as to how the period of service beyond 55 years should be treated in view of the earlier rule of 1957 which was being changed by the rule of 1961. Further the second order issued on the same day also clearly shows that there was no retrospective operation of the rule for in actual effect no Government servant was retired before the date of the new rule, i.e. May 25, 1961 and all of them were continued in service up to December 31, 1961 except those who completed the age of 58 years between May 25, 1961 and December 31, 1961 and were therefore to retire on reaching the age of superannuation according to the old rule. We are, therefore, of opinion that the new rule reducing the age of retirement from 58 years to 55 years cannot be said to be retrospective. The proviso to the new rule and the second notification are only methods to tide over the difficult situation which would arise in the public service if the new rule was applied at once and also to meet any financial objection arising out of the enforcement of the new rule. The new rule, therefore, cannot be struck down on the ground that it is retrospective in operation.

17. In view of the aforesaid findings we hold that the circular dated 28.10.2003 is prospective and not retrospective and it only provides the tenure beyond which a person cannot continue in the post. Contention as raised on behalf of the appellant cannot be accepted and is rejected. We find no merit in this appeal. It is accordingly dismissed.

Special leave petition (C) Nos. 27982/2010 & 3945/2014:

18. In view of the judgment rendered today in Civil Appeal No. 6616 of 2008 titled Rajesh Kumar vs. Union of India and Others, we dismiss these special leave petitions.

.....J.  
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.  
(PRAFULLA CHANDRA PANT)

New Delhi;  
September 24, 2014.