

AB DB

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

MA 2083/2000
~~MA 2083/2000~~

ORIGINAL APPLICATION NO. 1684/2000

SHRI/SMT. nam chand and others

VERSUS

Union of India and others

This application has been submitted to the Tribunal by
Shri/Smt. B.S. Manne under Section 19 of
the Administrative Tribunal Act, 1985 and the same has been
scrutinised with reference to the points mentioned in the
Administrative Tribunal Act, 1985 and Procedure Rules, 1988.

The applicant has also filed a Misc. Application(s)
regarding (a) jurisdiction (b) joining (c) condonation of delay
and/or (d) Petition for Transfer. MA U/R 6 of CAT Procedure
Rules, 1987.

The application has been found in order and may be
listed in Court for admission/orders.

S.O. (Listing)

D.R. (J)

JOINT REGISTRAR

for
30.8.2000

31.8.2000

COURT NO. 11/2

DATE 11/2/2000

FORM NO. 2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

SB/DB

DB

REPORT ON THE SCRUTINY OF APPLICATION

Diary No. ... 17.17..

Presented By : B. S. Meenar Date of Presentation ... 28.5.2000

Applicant (s) ... Mam Chand Group : ... K.C.

Respondent (s) ... Union of India

Nature of grievance ... Regulation

No. of applicants : ... 2 No. of Respondents : ... 2

Received on Date ... 30/2/00
By Registrar

CLASSIFICATION

Subject : ... Regulation (No. ...) Department : ... Railway 2

* If S.B.

1. Is the application is in the proper form? (PROFORMA / COMPILATION)
(three complete sets in paper book form in two compilations).
2. Whether name, description and address of all the parties been furnished in the cause title? *Yes*
- 3.(a) Had the application been duly signed and verified? (SIGNED / VERIFIED)
(b) Have the copies been duly signed?
(c) Have sufficient number of copies of the application been filed?
Yes
4. Whether all the necessary parties are impleaded? *Yes*
5. Whether English translation of documents in a language other than English or Hindi been filed? *Yes*
- 6.(a) Is the application in time? *Yes*
(See Section 21)
(b) Is MA for condonation of delay filed? *Yes*
7. Has the Vakalatnama/Memo of appearance/00 authorisation been filed? *Yes*
8. Is the application maintainable? u/s 2, u/s 14, u/s 18 (u/s 2,14,18 or U/R 6 etc). *No* U/R 6, PT u/s, 25 file
9. Is the application accompanied by IPO/DD for Rs. 50/- ?
10. Has the impugned orders original/duly attested legible copy been filed? LEGIBLE/ATTESTED
11. Have legible copies of the annexure duly attested been filed? LEGIBLE/ATTESTED

Applicant Mam Chand Resides at Chandigarh which is also not mentioned in 1st page p No 23

6A/1684/2002
MA 2083/2002

FILED/PAGINATION

- 12. Has the index of documents been filed and pagination done properly ?
- 13. Has the applicant exhausted all available remedies ?
- 14. Have the declaration as required by item 7 of Form-I been made ?
- 15. Have required number of envelopes (file size) bearing full address of the respondents been filed ?
- 16.(a) Whether the reliefs sought for, arise out of single cause of action ?
- (b) Whether any interim relief is prayed for ?
- 17. In case an MA for condonation of delay is filed, is it supported by an affidavit of applicant ?
- 18. Whether this case can be heard by Single Bench ?
- 19. Any other point ?
- 20. Result of the scrutiny with initial of the Scrutiny Clerk.

✓
✓
K
K
No
Yes
NO
MA

The application is in order and may be registered and listed before the Court for admission/orders on:

- (a) MA for joining - U/R (5) (a) / 4 (5) (b)
- (b) MA U/R 6 of CAT Procedure Rules, 1987
- (c) PT u/s 25 under At Act
- (d) MA for condonation of Delay;

OR

The application has not been found in order in respect at Item No(s) mentioned below ;

- (a) Item Nos. 8, 11, 15
- (b) Application is not on prescribed size of paper.
- (c) MA U/R 4(5)(a) / 4(5)(b) has not been filed.
- (d) Application /counsel has not signed each page of the application/documents.
- (e) MA U/R 6 has not been filed.

The application might be returned to the applicant for rectification of the defects within 7 days.

SCRUTINY CLERK
SECTION OFFICER
D.R. (J)
JOINT REGISTRAR

28/11/2002
28/11/2002

COURT NO. DATE

Item No: 8. The Principal Bench has the jurisdiction because the impugned order has been passed by CAT (Constitution) which is clarified in para 2 of the OA. Needful has been done.

Item No: 11
Item No: 15
Needful has been done

28/11/2002

PRINAIPL BENCH : NEW DELHI.

O.A. NO. 84 / 2000.

... Applicants.

versus

... Respondents.

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2. Memo of Parties
3. Original Application
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dt.11.4.97 regularising the
applicant as SOM in gr.1400-2300.

COMPL. II

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Date : 28/1/2021

Place : New Delhi.

(B.E. MAINEE & MR S. MEENU MAINEE)
ADVOCATES

240, Jagriti Enclave

Delhi 110 092T (1B)

प्रधान न्यायाधीश
आज दाखिल किया
फरार

128 AUG 2009
 डाखिल नं. 111/2009
 उपरजिस्ट्रार/Dy. Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI.

M.A NO. 2083 / 2000

IN
O.A NO. 1684 / 2000.

Shri Mam Chand & Others. ... Applicants.

Versus

Union of India & Others. ... Respondents.

APPLICATION UNDER RULE 4(5) OF THE ADMINISTRATIVE
TRIBUNAL ACT MOST RESPECTFULLY SHOWETH :

1. That the above application has been filed by six applicants jointly because they have a common cause of action and common relief has been prayed.

It is therefore most respectfully prayed that the honourable Tribunal may be pleased to permit the applicants to file the application jointly.

VERIFICATION

Verified at New Delhi on 28/8/2000 that

contents of the above application are true to my personal knowledge and that I have not suppressed any material fact.

APPLICANT.

through :

Date : 28/8/2000

(B.S. MAINEE & MRS. MEENU MAINEE)
ADVOCATES
240, Jagriti Enclave,
Place: New Delhi. (vikas marg ext.)
Delhi - 110 092.

-B-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI.

O.A NO. 1684 /2000.

Shri Mam Chand & Others.

... Applicants.

Versus

Union of India & Others.

... Respondents.

MEMO OF PARTIES

S.No.	Name & Father's Name	Designation	Working under
1.	Mam Chand s/o Shri Soran Singh	S.O.M	Dy.C.E./CM Northern Railway Chandigarh.
2.	Dharam Vir s/o Shri Chet Ram	-do-	Dy.CE(C) Northern Railway Patel Nagar, New Delhi
3.	Shri Amarjit Singh s/o Shri Inder Singh	-do-	SEN(C) Northern Railway Ludhiana.
4.	Ravi Lal s/o Shri Kalu Ram	-do-	Dy.CE(C) Northern Railway Chandigarh
5.	Rajinder Kumar s/o Shri Sadhu Ram	-do-	-do-
6.	Shri Roshan Lal s/o Shri Ganpat Ram.	-do-	Dy.CE(C) Northern Railway CSB.

... Applicants.

versus


1. The General Manager,
Northern Railway, Baroda House New Delhi.
2. The Chief Admn. Officer (Constn.)
Northern Railway, Kashmeri Gate, Delhi

... Respondents.

through :

Date : 28/8/2000

Place: New Delhi.


(PS. MAINEE & MRS. MEENU MAINEE)
ADVOCATES
240, Jagriti Enclave,
(vikas marg ext.)
Delhi - 110 092.

Complete

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI.

O.A NO. _____/2000.

Shri Mam Chand
S/o late Shri Soran Singh
Suboverseer Mistry (Work Mistry)
under Chief Administrative Officer (Constn.)
Northern Railway,
Kashmeri Gate,
Delhi

And 5 others as per Memo of Parties. ... Applicants.

Versus

Union of India : Through

1. The General Manager
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Administrative Officer (Constn.)
Northern Railway,
Kashmeri Gate,
Delhi.

... Respondents.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION IS MADE :

Impugned order No. 942-E/7/Constn/VI dated 11.4.1997 and 22.4.1997 passed by the Chief Administrative Officer (Constn.) Northern Railway, Kashmeri gate, Delhi and communicated subsequently by the Dy. Chief Engineer (Constn.) Northern Railway, vide their letter dated 17.4.1997 and 23.4.1997 marked as Annexure A-1, A-2 and A-3.

Ann.A-1

Ann.A-2

Ann.A-3

That the applicants are aggrieved by the impugned orders vide which Respondents have regularised the services

of the applicants as work Mistries/SOMs grade Rs. 1400-2300 from the date of regularisation instead of from the earlier date from which the applicants have been continuously working and had also acquired temporary status. That the applicants are also aggrieved by the failure of the respondents to fix their pay in grade Rs. 1400-2300 giving them the benefit of their services which they have rendered as SOM(Work Mistries) from the date from which they have been working with temporary status although were entitled to pay scale of Rs. 1400-2300 from 1.1.1986 when this scale was recommended and accepted by the Respondents for the post of SOM/Work Mistries.

2. JURISDICTION OF THE TRIBUNAL :

That the Principal Bench has the Territorial Jurisdiction to entertain and try this case because of cause of action has arisen in Delhi and relief being claimed by the applicants to be granted by the Chief Administrative Officer (Constn.) Northern Railway, New Delhi.

3. LIMITATION :

That the applicants further declare that the application is within the limitation period prescribed in section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1. That the applicants are qualified as Draughtsman

(Civil) and have passed two years course from various institutions of all of which as recognised Institution by the Secretary, National Council for Training in vocational Trade, Ministry of Labour.

4.2. That in response to be advertisement by the respondents the applicants were amongst those who had applied for the post of Sub Oversear Mistries on the northern railway.

4.3. That in response to the advertisement the applications were made by 3 years Diploma Holders as well as two years certificate holders.

4.4. That it is respectfully submitted that no distinction was made at the time of appointment by the respondents between 3 years diploma holders and two years certificate holders. A common selection was held and those who were selected included the Diploma holders and two years certificate holders like the applicants

4.5. After having been adjudged suitable for the post of SOM the applicants were appointed on daily wages at the rate of 1/30 of the pay scale of Rs. 330-560 and the appointment was made in the year 1983.

4.6. That the same scale of pay of rs. 330-560 was given to Diploma holders as well as two years certificate holders and the duties assigned to all of them were the same.

4.7. After the implementation of the 4th Pay commission the applicants alongwith diploma holders SOM placed in

grade 1200-2040 but in the year 1988 the respondents enhanced the pay scale of diploma holders of Rs. 1320-2040 and decreased the pay scale of the non-diploma holders to grade Rs. 950-1500 which decision of the respondents were challenged by the applicants by filing an O.A No. 264/1989 praying for quashing the impugned orders and also had prayed for interim orders against implementation of the impugned orders. The O.A was admitted and this honourable tribunal had passed orders against reverting the applicants to the lower grade. Ultimately the O.A was allowed on 1.6.1994 in terms of which this honourable Tribunal held that the respondents had no right to place the applicants in a scale lower than grade Rs. 1200-2040.

4.8. That the applicants have been continuously working as SOMs in a satisfactory manner but had not been regularised in the post for a long time. The Diploma Holders SOMs therefore filed OA No. 359/1989 Shri Satish Kumar and others in Jodhpur Bench of this Honourable Tribunal praying for directions to the Respondents for regularisation as SOMs, the post in which they had been working years together.

4.9. That the aforesaid O.A. was allowed vide judgement which is reported in SLJ 1991(3) PAGE-391.

4.10. That the aforesaid SOMs who were Diploma holders were regularised as SOMs in the year 1994 and were

placed in scale Rs. 1400-2300. The Respondents however did not extend the benefit of the judgement to the applicants also on the ground that the applicants were not diploma holders. This decision of the respondents was challenged by the applicants by filing an O.A. No. 1419/1994 praying for directions to the respondents to regularise the services of the applicants also as SOMs similarly as has been done in case of Diploma Holders. The aforesaid O.A was allowed by this Honourable Tribunal vide judgement dated 29.1.1996. A copy of which is annexed hereto and marked as Annexure A-4.

4.11. At the admission of the said O.A this honourable Tribunal had passed interim orders to the effect that if the applicants succeed in the O.A and consider fit for regularisation, authority concerned shall refix their inter-se seniority with their juniors.

4.12. In terms of the aforesaid judgement this honourable Tribunal was pleased to direct the respondents to consider the applicants alongwith others who are similarly placed for appointment as S.O.M in grade Rs. 1400-2300 against direct recruitment quota on the same conditions as prescribed in the impugned order of 5.4.1994 though they do not possess the qualifications of 3 years diploma. The honourable Tribunal further directed the respondents to comply the aforesaid action within 6 months from the date of receipt of the copy of the order.

4.13. That after the aforesaid judgement selection was held by the Railway Recruitment Board for the post of Mistry (Works) SOM grade Rs. 1400-2300 and all the applicants were selected for regularisation in terms of letter dated 6.3.1997. A copy of which is annexed hereto and marked as Annexure A-5.

4.14. After the applicants were selected by the Railway Recruitment Board, Chandigarh appointment letters were issued by the Respondents. One of the letters of appointment is annexed hereto and marked as Annexure A-6.

4.15. After the applicants had been duly selected by the Railway Recruitment Board Respondent No.2 passed orders to appoint the applicants as work Mistries in grade Rs. 1400-2300 vide letter dated 11.4.1997 and 22.4.1997 which have been placed as Annexure A-1 and Annexure A-2 and Annexure A-3.


4.16. Although the applicants have been regularised as SOMs grade Rs. 1400-2300 but their pay has not been fixed in grade Rs. 1400-2300 giving them the benefit of period they have earlier worked on the same post as temporary status holders.

4.17. In this regard it is respectfully submitted that the pay scale of Rs. 1400-2300 was allotted to the category of SOM from 1.1.1986 but the Respondents had not been paid the said scale either to the Diploma

holders or non-diploma holders for any reason whatsoever perhaps only on the ground that they had not yet been regularised. After they have been regularised in grade Rs. 1400-2300 the pay of the applicants has to be fixed in grade Rs. 1400-2300 giving the benefit of entire period they had working in the said post from 1.1.1986 from which date this scale has been allotted to the category of SOMs.

4.18. That soon after the orders of fixation of pay of the applicants in grade Rs. 1400-2300 without giving them the benefit of earlier period were passed the applicants submitted representations for proper fixation of pay as per rules with effect from 1.1.1986. Some of the representations given by the applicants dt. 14.9.1997, 29.5.1998, 3.6.1998 and 26.8.1998 are annexed hereto and marked as Annexure A-7.

4.19. That in spite of the aforesaid representations the respondents have not yet fixed the salary of the applicants in grade Rs. 1400-2300 giving them the notional benefit of increment from the date from which they are working as SOM after the Fourth Pay Commission Report. In terms of which grade Rs. 1400-2300 was allotted to the category of SOMs.



4.20. That the Diploma holders who are also regularised as per direction of this honourable Tribunal have also not been given the benefit of fixation of pay in grade Rs. 1400-2300 from the date from which they had been working after the Fourth Pay Commission Report and as such they have also filed O.A being No. ~~1443/95~~ ^{1443/95} praying for directions to the Respondents to fix their pay in grade Rs. 1400-2300 from 1.1.1986 and give consequential benefits. The said O.A has been allowed by this Hon'ble Tribunal. A Copy of which is annexed hereto and marked as Annexure A-8.

4.21. That the impugned orders are illegal, arbitrary and discriminatory inter-alia on the grounds as mentioned in para -5 below :

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1. That the applicants have admittedly been working as Work Mistries/SOMs right from the initial date of their appointment admittedly the pay scale appropriate to the category of Work Mistries/SOMs in scale Rs. 1400-2300 and not Rs. 1320-2040.

5.2. That because the applicants had been performing the duties, responsibilities and functions of work Mistries they are entitled to be given the pay scale of Rs. 1400-2300 from the date from which they were fixed in grade Rs. 1200-2040



i.e. from 1.1.1986 from which date the scale of Rs. 1400-2300.

5.3. That the applicants are entitled to the benefit of the Principal of equal pay for equal work which has been approved by the honourable Supreme Court followed by this honourable Tribunal.

5.4. That before regularisation orders were passed the applicants were drawing Rs. 1560/- which was in scale Rs. 1200-2040, but the respondents have fixed the salary of the applicants at the same rate without giving any benefit of fixation of pay as per rule in grade Rs. 1400-2300 from the date from which they are working on the said post admittedly.

5.5. That when the applicants had been working continuously with temporary status against regular vacancies, the delay in regularisation cannot under any circumstance forfeit their service prior to the date of regularisation and as such the applicants are entitled to be regularised from the date from which they are given temporary status as Work Mistries/SOMs.

5.6. Similar O.A has already been allowed by this Hon'ble Tribunal.

5.7. That the impugned orders are therefore arbitrary and



malafide.

6. DETAILS OF REMEDIES EXHAUSTED :

That the applicants have submitted representations but no reply has been given to them.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

The applicants filed O.A 960/2000 but was withdrawn before issue of notice with liberty to file after amendment. That the applicants further declare that they had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT :

8.1. That this honourable Tribunal may be pleased to allow this application and direct the respondents to fix the salary of the applicant in grade Rs. 1400-2300 giving them benefit of their earlier working as temporary status holder in the category of SOMs i.e. from 1.1.1986



when the category of SOM was placed in grade Rs. 1400-2300.

8.2. That this Honourable Tribunal may be further

pleased to direct the respondents to give consequential

benefits also to the applicants after fixing their pay

in grade Rs. 1400-2300 with effect from 1.1.1986.

8.3. That any other further relief which this

Honourable Tribunal may be deem fit and proper

Under the circumstances of the case may also be

granted in favour of the applicants.

8.4. That the cost of the proceedings may also be

awarded in favour the applicants.

9. INTERIM RELIEF, IF ANY PRAYED FOR :

NIL

10. NOT APPLICABLE.



13
VERIFICATION

I, Dharam vir

s/o Sh. Chet Ram

aged about 39 years, working as SOM in the office of
Dy. CE/c, Petal Nagar r/o vill 2 P.O. Mai Majri Distt-Sonepat,
New Delhi

do hereby verify that the contents of paras 1 to 4 of the above application are true and correct to the best of my knowledge and paras 5 to 12 are believed to be true on legal advice and that I have not suppressed any material fact.

New Delhi

Dharamvir
Applicant

Dated : _____

I, Mam Chand

s/o Late Sh. Sohan Singh

aged about 37 years, working as SOM in the office of
Dy. Chief Engineer Const r/o B-374/1 Railway Colony Ambala Cantt.
Chandigarh

do hereby verify that the contents of paras 1 to 4 of the above application are true and correct to the best of my knowledge and paras 5 to 12 are believed to be true on legal advice and that I have not suppressed any material fact.

New Delhi

Mam Chand
Applicant

Dated : _____

I, AMARJIT SINGH

s/o INDER SINGH

aged about 41 years, working as SOM in the office of
SEN/C/LDH r/o A.No. 12-A Rikhy Rly Colony Ludhiana

do hereby verify that the contents of paras 1 to 4 of the above application are true and correct to the best of my knowledge and paras 5 to 12 are believed to be true on legal advice and that I have not suppressed any material fact.

New Delhi

Amarjit
Applicant

Dated : 28/8/2000

through

No. of Po - 112269

Issued - B.N

Date - 28/8/2000

(B.S. MAINEE / MEENU MAINEE)

Advocates

240, Jagriti Enclave,

Vikas Marg Extn.

Delhi - 110 092

Tel. : 2152172, 2166162

~~30~~
VERIFICATION

I, Ravi Lal

s/o Sh. Kahu Ram

aged about 35 years, working as SOM in the office of

Dy C.E./Chandigarh r/o Rly Colony HP Una (HP)

do hereby verify that the contents of paras 1 to 4 of the above application are true and correct to the best of my knowledge and paras 5 to 12 are believed to be true on legal advice and that I have not suppressed any material fact.

New Delhi

Munna
Applicant

Dated : _____

I, Rajinder Kumar

s/o Sh. Sadhu Ram

aged about 38 years, working as SOM in the office of

Dy C.E./Chandigarh r/o Rly Colony Una (HP)

do hereby verify that the contents of paras 1 to 4 of the above application are true and correct to the best of my knowledge and paras 5 to 12 are believed to be true on legal advice and that I have not suppressed any material fact.

New Delhi

Rajinder
Applicant

Dated : _____

I, ROSHAN LAL

s/o SH. GANPAT RAM

aged about 36 years, working as SOM in the office of

Dy. C.E./CSB r/o Village & P.O. Tigrana Distt. Bhiwani

do hereby verify that the contents of paras 1 to 4 of the above application are true and correct to the best of my knowledge and paras 5 to 12 are believed to be true on legal advice and that I have not suppressed any material fact.

New Delhi

Roshan Lal
Applicant

Dated : 28/8/2000

through

(B.S. MAINEE / MEENU MAINEE)

Advocates

240, Jagriti Enclave,

Vikas Marg Extn.

Delhi - 110 092

Tel. : 2152172, 2166162

NOTICE

The under noted Temporary Status SOM's in Gr. as. 1200-2040(RPS) working in this unit who have been appointed as works Mistry in Gr. 1400-2300(RPS) in terms of SPO/Const./K. Gate, Delhi's letter No. 942-E/7/Const/U-1 SOM/Pt. I dated 11/4/97, after their empanelment for the post of ~~Mistry~~ ^{works} by AMB/CDG and Medical fitness in A-3 in terms of Judgement in OA No. 1419/94 are posted in the offices indicated below for their field training.

Sr. No.	Name of the employee & Father's name.	Design.	Grade.	Posted under.
1.	Sh. Ravi Lal S/O Sh. Kala Ram.	Mistry.	1400- 2300(RPS)	Dy. CE/U's office at CDG
2.	Sh. Rajinder Kumar S/O Sh. Sadhu Ram.	-do-	-do-	-do-
3.	Sh. Man Chand S/O Sh. Soran Singh.	-do-	-do-	SAN/U's office at UMR

They will draw pay Gr. Rs. 1560/- in Gr. 1400-2300(RPS).

(ASHOK KUMAR)

Dy. Chief Engineer/Const.,
N. Railway, Chandigarh.

NO. 2-E/C/CDG Dtd 17-4-97

Copy forwarded for information and necessary action to:-

- 1) G.M.(P) Hd. Rs. office, B. House, New Delhi.
- 2) SPO(Const) N. Railway, K. Gate, Delhi under CAO/Const/Delhi. Please send their Apptt. Papers to this office for record. Acknowledgement of letter dt. 11/4/97 from the employees are attached herewith as desired.
- 3) PA & CAO/Const., N. Railway, K. Gate, Delhi.
- 4) SPO/Const. N. Railway, Ambala Cantt.
- 5) S/Shri Ravi Lal, Rajinder Kumar, & Man Chand Works Mistry. They are requested to submit a bond on Non-Judicial Stamp Paper of Rs. 10/- to serve in this railway for minimum period of 5 years within 7 days from the date of receipt of this letter.
- 6) Spare copies for the personal files of the employees.

TRUE COPY

ATTESTED

15/11
NORTHERN RAILWAY

ANNEXURE A-2

Office of the,
Dy. Chief Engineer/Const.
Northern Railway,
Ghaziabad.

NOTICE

In terms of judgement in O.A No. 1419/94 and as a result of empanalment for the post of Mistry work Gr. 1400-2300(RPS) by R.R.B./CDG and after being declared medical fit in A-3 by Sr.DMO /DLI vide fit certificate No. 837765 dated 17.4.97, Shri Dharam Veer s/o Shri Chetram is hereby appointed as Mistry works Grade Rs. 1400-2300(RPS) as per C. A. O./ Const.'s letter No. 942-E/710 /HQ/SOM/Pt.I dated 22.4.97 and no is posted under J.E./C-1/W /GHB with immediate effect.

No. 3-E/Dy.CE/C/GZB.

Sd/-
Dy. Chief Engineer/Const.
Ghaziabad.

Copy forwarded for information & n/action to :-

1. The C.A.O./Const. N.Rly. Kashmere Gate. Delhi.
2. The FA & CAO/Const. -do-
3. The AEN/Cconst.I & II/GZB.
4. The J.E./C-I(W) / GZB.
5. Sh. Dharamveer in office.
6. Spare copy for placing in his service record.

TRUE COPY
ATTESTED

8383
h

16
A3
Northern Railway

(16) 17
Office of the
Dy. Chief Engineer/Const
Ghaziabad.

NOTICE

In terms of Judgement in OA No. 1413/94 and as result of empanelment for the post of Mistry work Gr. 1400-2300 (RPS) by R.R.P./COC and after being declared medical fit in A-1 by Sr. DMQ/DLI vide fit certificate No. 8377765 dated 17.4.97, Shri Roshan Lal s/o, Sh. Ganpat Ram is hereby appointed as Mistry work (Top. I Grade Gr. 1400-2300 (RPS)) as per C.A.O./Const's letter No. 942.E/74-C/HG/SOM/Pt. I dated 22.4.97 and he is posted as Technical Assistant attached to Dy. CE/C/GZB. Attendance is allowed with Drawing office staff.

DL
Dy. Chief Engineer/Const/
Northern Railway, Ghaziabad

No. 3-E/Dy. CE/C/GZB.
Dated 23.4.97

Copy forwarded for information & n/action to:-

1. The C.A.O./Const/N.Ply/K.Gate, Delhi.
 2. The FA & CS/Const. -cc-
 3. The AEN/Comm/1 & II/GZB.
 4. Sh. Roshan Lal in office
 5. Spare copy for placing in his service record.
 6. C.M/C & Office
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CENTRAL ADMINISTRATIVE TRIBUNAL
(PRINCIPAL BENCH - NEW DELHI)

O.A. No. 1419/94

Decided on 29.1.1996

Shri Mam Chand and 6 others

Union of India & Ors.

Versus

Applicants

Respondents

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For the Applicants: Shri B.S. Mainee, Advocate
 For the Respondents: Sh. Ramesh Gautam, Advocate

PRESENT

The Hon'ble Mr. A.V. Haridasan, Vice-Chairman (J)
 The Hon'ble Mr. R.K. Ahooja, Member (A)

Casual Labour--Regularisation--Applicants were casual workers having temporary status praying for regularisation as Sub Overseer Mistries Grade Rs. 1400-2300/--Respondents contested on the ground that the applicants were diploma holders and were working as casual staff in the lower grade of Rs. 1200-2050/-- Tribunal observed that practical experience would always aid a person in effectively discharging the duties and is a good guide to assess suitability-- Respondents directed to consider the Applicants for appointment as Sub Overseer Mistries in the grade of Rs. 1400-2300/- against the recruitment quota at par with diploma holders.

ORDER

R.K. Ahooja, Member (A)-- The applicants, seven in numbers, claim that they were appointed as Sub-overseer Mistries (SOM) between the years 1981-84. Initially they were appointed as Causal workers on daily wages but subsequently they were given temporary status and were placed in the scale of Rs. 330-560 which was later converted to Rs. 1200-2040. Their grievance is that they were continuously working as SOM for more than 10 years but they have not been regularised and instead respondent No. 2 has invited applications from SOMs who are diploma-holders for regularisation excluding the applicants on the ground that they are holding only two years certificate as Draftsman (Civil).

2. The case of the applicant is that two years course of Draftsman (Civil) which they have passed is recognised by the National Council for Training in Vocational Trade. Further, when the jobs of SOM were advertised by the Northern Railway, no distinction was made between the three year diploma holders and two years certificate holders and they along with diploma holders were selected and adjudged suitably. For the post of SOM the scale of Rs. 330-560 was also common to both the certificate holders as well as the diploma holders and the duties assigned to them were also of the same nature. The scale of Rs. 330-560 was later converted to Rs. 1200-2040 as a result of Fourth Pay Commission Report. The applicants state that the respondents further revised the pay scale of SOM to Rs. 1320-2040 from Rs. 1200-2040 and the applicants were allowed the same higher scale in the month of May, 1988. They allege that at this stage, the respondents drew a distinction between the two categories and passed an order on 13-7-88 whereby the SOM holding diplomas were continued in the grade of Rs. 1320-2040 and those holding Certificates, like the applicants, were ordered to be placed in the lower grade of Rs. 950-1500 corresponding to the scale of Rs. 260-400 prior to the Fourth Pay Commission Report. The applicants then approached the Tribunal in OA-264/89 and the same was allowed partly on 1-6-94 by the Tribunal which ordered that the respondents had no right to place the applicants in a scale lower than Rs. 1200-2040 (Annexure A-3). The applicants further state that some of the SOMs filed OA-359/89 before the Jodhpur Bench of the Tribunal challenging the proposed decision of the respondents to regularise them in class-IV categories and not in the category of SOM and the same OA was allowed (SLJ 1991(3) page 391) with the direction that necessary steps need to be taken by the respondents for regularisation after preparing the necessary scheme for the purpose. The respondents thereafter in pursuance of

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the aforesaid directions of the Tribunal issued a notice for special recruitment to the post of SOM in the grade of Rs. 1400- 2300 but laid down that persons eligible for this recruitment would be only diploma holders. The applicants are aggrieved that when no distinction had been made between the diploma holders and certificate holders at the time of initial appointment and the same pay scales had been given to both the categories and the same duties were also assigned to all of them, the action of the respondents in denying an opportunity to be regularised to the certificate holders is inequitable and unjustified.

3. The respondents in their reply have denied the claim of the applicant and have submitted that the judgment of the Tribunal in OA-359/89 gave a specific direction for regularisation of those who were having three years diploma course and hence the applicants could not claim the benefit of the same decision and the scheme prepared in pursuance thereof. The respondents also state that the applicants were wrongly engaged as casual labour by different officers in violation of rules and without any authority and as such the very initial engagement of the applicants was ab initio not right and they have no right for consideration to the post of SOM. The Department had for this reason placed the applicants in the grade of Rs. 950-1500 but they were restored to the grade Rs. 1200-2040 on account of the interim order of the Tribunal in OA-264/89. The respondents also denied that the applicants are working just as diploma holders SOM and are discharging similar responsibilities.

4. We have heard the ld. counsel on both sides. Shri Mainee, counsel for the applicant has vehemently argued that since the diploma holders and the certificate holders were recruited together and remained in the same position in the same grade till the respondents tried to discriminate them vide their orders in 1988, they are to be treated as similarly placed for the purpose of regularisation in terms of the orders of the Jodhpur Bench of the Tribunal. We find however that the Jodhpur Bench observed in the orders that "It will obviously neither be just nor fair to compel the applicants who are diploma holders and have been working against Class-III post for six to eight years to seek their regularisation against much lower post in Class-IV post." This makes it clear that the orders in the said OA were meant for the diploma holders. However, the issue before the Jodhpur Bench of the Tribunal was that there was no scheme available for regularisation of casual labour who had acquired temporary status in the Class-III posts. It was concluded by the Coordinate Bench that the applicants before it should also be considered for regularisation against Class-III post and the respondent were directed to prepare a scheme accordingly. We therefore feel that the ratio of the order also applied to the applicants at least to the extent that the respondents should consider their regularisation against Class-III posts since the applicants have rendered such a long service continuously.

5. The next question which arises is whether such a regularisation should be a part of the scheme prepared for SOMs who hold diploma. The applicants claim and the respondents deny that the nature of duties of the certificate holders are the same as those of diploma holders. It has however not been denied that the applicants were also recruited for the same work as the diploma holders, though now respondents claim that this was done erroneously. Further more, till the Fourth Pay Commission's Recommendations came and were implemented vide orders of the respondents issued in 1988, both the categories continued to receive the same pay scale. The distinction was thus drawn by the

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respondents only while implementing the recommendations of the Fourth Pay Commission.

6. Th Id. counsel for the applicants argued that the recruitment rules for the post of work mistries which is a class-III post, analogous to SOM, is matriculation in second Division with Mathematics. According to the Id. counsel, the applicants have in any case the minimum qualification prescribed for the job. He further sought to rely on the orders of the Supreme Court in *Bhagwati Prasad vs. Delhi State Mineral Development Corporation* (AIR 1990 SC 371) wherein their lordships have observed as follows:

"Practical experience would always aid the person of effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments of petitioners were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. It can be said that three years experience, ignoring artificial break in service for short period/periods created by the management, in the circumstances would be sufficient for confirmation."

The above observation has also been relied upon by the Coordinate Bench at Jodhpur while giving directions to the respondents regarding the regularisation scheme for SOMs who are diploma holders. We have no hesitation in concluding that the ratio of the *Bhagwati Prasad vs. SMDC* (supra) applies equally to the applicants in the present OA. Since the applicants were recruited along with the diploma holders and drew the same pay scales for a number of years, they are in our view entitled to be considered for regularisation in terms of the scheme prepared by the respondents which has been denied to them vide the impugned letter of the Headquarters, Northern Railway, dt. 5-4-94 (Annexure A-1).

7. Taking various aspects of the case discussed above, we direct that the respondents will consider the applicants also with those who are similarly placed for the appointment as SOM in the grade of Rs. 1400-2300 against the direct recruitment quota on the same terms and conditions as prescribed in the impugned order of 5th April, 1994, though they do not possess the qualification of three years diploma. The respondents will also complete this action within six months of the receipt of this order. The application is accordingly allowed. No order as to costs.

**CENTRAL ADMINISTRATIVE TRIBUNAL
(HYDERABAD BENCH)**

O.A. No. 1139/92
Decided on 18.9.1996

A. Nagamalleswara Rao

Applicant

Union of India & Ors.

Versus

Respondents

For the Applicant:

Shri J. Venugopala Rao, Counsel

For the Respondents:

Shri N.V. Raghava Reddy, Addl. CGSC

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ANNEXURE P-5

RAILWAY RECRUITMENT BOARD
SCO 78-79, Sector 8/C, Chandigarh.

CONFIDENTIAL,
No. RRB/CDG/EN-5/96(Spl.Rectt/SOM)

Dt. 06 March, 97.

The General Manager (P),
Northern Railway,
Hd. Qrs, Office,
Baroda House,
NEW DELHI.

Sub :- Regularisation of Mistry Works Gr.1400-2300(RPS).

Ref :- Your office letter No.220-E/105-X/EIIBI dt. 2/3-12-96.

On the basis of selection held by this Board, the following
07 candidates have been selected provisionally for regularisation
as MISTRY WORKS (SOM) In Gr. Rs.1400-2300/RPS in order of
merit :-

Merit No.	Roll No.	Name of the candidate (S/sh)	Cat.
1.	004	Amarjit Singh	Genl.
2.	002	Mam Chand	-do-
3.	003	Rajinder Kumar	-do-
4.	001	Ravi Lal	S. C.
5.	005	Tilak Raj	Genl.
6.	007	Dharam Vir	-do-
7.	006	Roshan Lal	-do-

Actual appointment of thee candidates is subject to their being
found suitable in all respects at your end as per extant rules and
completion of necessary formalities like verification of certificates etc.

Original applications of above 07 candidates, duly stamped
'Provisionally Expanelled' and signed by the Chairman, RRB/CDG
are enclosed.

DA/- Original applications
of above 07 candidates,

SD/-
(BRIG. HARJIT SINGH)
CHAIRMAN

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ANNEXURE A-5

Copy to :-

1. The C.A.O. @ NR, Delhi in reference to his letter No. 942/E/2 /UQSOM/Gen/Pt.I dt. 12.12.96 & 3.2.97.
2. The Executive Director Estt @, Rly, Bd. New Delhi.
3. The Dy. Director Estt (RRB), Rly, Bd. New Delhi.
4. The Dy. CPO/R, N.Rly, B.House, New Delhi.

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NORTHERN RAILWAY

HEADQUARTERS OFFICE,
KASHMERTI GATE, DELHI.

No:942-E/2/Const./H2.SMOT/Pt-1,

Shri Mam Chand.
s/o Sh.Late. Sh. soran singh.
c/o Dy.CE/Construction Chandigarh, N.Rly.
Chandigarh.

Sub:- Regular appointment as Mistry Works (App.) Gr.Rs.
1400-2300(RPS).

.....

In terms of judgement in O.A No. 1419/94& as a ~~result~~ result of your empanelment for the ~~post~~ of Mistry Works Gr.Rs.1400-2300(RPS) by RRP/CDG & after being declared medically fit by A.O by MS/UMB vide fit certificate No. 869894 dated 9.4.97. By are hereby appointed as Mistry Works (App.) Gr.Rs.1400-2300(RPS).

you will have to execute a on a non judicial stamp paper of RS.10/- to serve in this Railway for a minimum period of 5 years on the prescribed format which is attached herewith.

you are directed to report immediately to Dy.Chief Engineer/Const./Chandigarh for field beining.

sd/-
sr.personnel officer/Constn.

Copy to :- All concerned.

Meenu
etc

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ANNEXURE A-7

To,

The Chief Administrative Officer/Const.,
Northern Railway, Kashmiri Gate,
Delhi-6.

(Through SEN/C/UMB)

Sub :- Refix Inter Seniority with my Juniors such as Sh. Gian Chand
SOM and Payment of Difference in Pay Scale since 1.1.85.

Ref :- CAT/NDLS Order in OA No. 1419/94 dt. 10.08.94 and my
application in this regard t. 22.4.97, 7.5.97, 3.6.98
and Hd. Qrs. Office date letter No. 942-E/7/const.U. O. SOM
/ Pt-I Dt 5.5.97.

Dear Sir,

I beg to state as I have already requested you through
my above self applications to refix my pay to give inter Seniority
with my Juniors such as Sh. Gian Chand S/O Sh. Nand Lal SOM,
sh. Rajinder Kumar S/o Sh. Hari Ram SOM, both working
under SEN/C/CDG, and Sh. Rakesh Kumar, SOM working
under SEN/C/UMB, as said in Hon'ble CAT/NDLS order dt.
10.8.94 in OA No. 1419/94. You have agreed to refix my pay
after completion of Ph, I & II training in CETA/CNG vide your
letter No. CE/ Const./ SOM/ Pt-I. Now I have completed the
above said training successfully so you requested to refix and
pay and to seniority with my juniors. Who are getting more pay
than me. My juniors are getting 1st clean Passes where, this
privilege is not given to me.

Further, I have come to know that the Administration is
going to block my annual increments giving pay protection

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ANNEXURE A-7

where an my above said Juniors are given annual increments continuously. In light of CAT/NDLS order dt. 10.8.94 in OA No. 1419/94 you are requested to refix my pay as already done in case of my Juniors.

I hope that you will look into the matter with mercy and relieve me from harassment which I am facing since long. Unless the above said court orders are implemented I will suffer an irreparable loss and I may be compel to pray before Hon'ble CAT for implementation of the same and the Administration will be responsible for any financial and mentally loss to me.

Thanking You,

DA/- As above.

Yours faithfully,
Sd/-26.8.98
(MAM CHAND)
SOM Under SEN/C/UMB.

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To,

Senior Civil Engineer (Const.)
Northern Railway,
Ambala Cantt.

Sub :- Refixation and payment of difference in pay
since 1-1-1986.

Ref :- CAT/NDLS interim order in OA No. 1419/94 dt.
10.8.94 and my application dt. 22.4.97 and
hd. Qrt letter No. 942-E/7/const/U.Q/SOM/Pt-I
dt. 5.5.97.

R/Sir,

I beg to state that as I have already requested you
through my application dt. 22.4.97 to refix my pay as per CAT/
NDLS order dt. 10.8.94 in OA No. 1419/94, but you agreed vide
letter No. 942-E/7/const/U.Q./SOM/Pt-I dt. 5.5.97 to refix our
pay after completion of phase-II training in GETA/CNB. Now I
have completed the above said training successfully and you
are therefore again requested to refix my pay since 1.1.86 in
scale Rs. 1320-2040 and then regularisation in pay scale Rs.
1400-2300 since 10/94 as already done in the case of junior to
me like Sh. Gian chand s/o Sh. Nand Lal SOM and Sh. Rajinder
kumar s/o Sh. Hari Ram SOM working under Dy. CE/C/CDG. I
am giving below some facts in support of our case.

The date of appointment of Sh. Gian chand and sh. Rajinder
Kumar SOM is 18/2/93 & 28/7/84 respectively whereas my date of

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ANNEXURE A-7

appointment is 04/1/83, it is obvious from the above that they are junior to me and getting more pay and other benefits (such as 1st class passed) than me.

I am herewith attaching AEN/C/UMB's Notice No. 1-E/Const. /UMB dt. 11/88 that shows the fixation of Sh. Gian Chand & Sh. Rajinder Kumar in the pay scale of Rs. 1320-2040 since 1/1/86 and then regularised in scale Rs. 1400-2300. W.e.f. 10.94.

I hope that you will look into the matter personally and relieve me from harassment which I am facing since long.

Thanking You,

DA/- As above.

Dt : 3.6.98.

Sd/-
(MAM CHAND)
SOM working under
SEN/C/UMB.

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To

THE CHIEF ADMINISTRATIVE OFFICER (CONSTN.),
Northern Railway,
Kashmeri Gate, Delhi.

Sub : Fixation of Pay.

Sir,

Most respectfully, we beg to submit that we have already sent our representation on 14.9.1997, requesting your Honour to kindly fix our pay in the pay scale of Rs. 1400 - 2300 for the period we have worked as S.O.M. because the only pay scale of S.O.M. is Ra. 1400 - 2300 from 1.1.1986.

2. You are requested once again to kindly consider our case favourably and decide the matter by issuing appropriate orders for fixation of pay in the grade of Rs. 1400 - 2300.

Thanking you.

Yours faithfully,

Dated: 19th May, '98.

1. (MAM CHAND).
S/o Shri Soran Singh,
S.O.M., Under Dy.C. E./C.,
Nor. Rly., Chandigarh.
2. (DHARAM VIR)
S/o Shri Chet Ram,
SOM Under Dy.C.E. (C),
Nor. Rly., Patel Nagar,
New Delhi.
3. (AMAR JIT SINGH).
S/o Shri Inder Singh,
SOM Under S.E.N. (C),
Nor. Rly., Ludhiana.
4. (NAVI LAL).
S/o Shri Kalu Ram,
S.O.M., Under Dy.C.E. (C),
Northern Railway, Chandigarh.
5. (RAJINDER KUMAR)
S/o Shri Sadhu Ram,
SOM Under Dy.C.E. (C),
Nor. Rly., Chandigarh.
6. (ROSHAN LAL)
S/o Shri Ganpat Ram,
SOM Under Dy.C.E. (C),
Nor. Rly., CSB.

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To

THE CHIEF ADMINISTRATIVE OFFICER (CONSTN.)
Northern Railway,
Kashmeri Gate,
Delhi.

Sub : Fixation of Pay.

Ref : Your letter No.942-E/2/Constn./UO/SOM.Pt.I
dated 11.4.1997.

Sir,

Most humbly and respectfully, we beg to say that our pay should be fixed in the grade of Rs. 1400 - 2300, giving the benefit of fixing the pay for the total period we have worked as S.O.M., because the pay scale of S.O.M. has been fixed in the pay scale of Rs. 1400 -2300 by the Fourth Pay Commission.

2. Since we have been working as S.O.M., we are entitled to fixation of pay in the said grade for the entire period. You are requested to kindly consider the case favourably and give us the benefit.

Thanking you and with regards,

Yours faithfully,

Dated:14th September, '1997. (1) (MAM CHAND).
S/o Shri Soran Singh,
S.O.M.,
Under Dy. C.E./C,
Northern Railway,
Chandigarh.

(2) (DHARAM VIR)
S/o Shri Chet Ram,
S.O.M.,
Under Dy.C.E. (C),
Northern Railway,
Patel Nagar,
New Delhi.

(3)
(AMAR JIT SINGH).
S/o Shri Indar Singh,
S.O.M.,
Under S.E.N. (C),
Northern Railway,
Ludhiana.

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4. (RAVI LAL)

S/o Shri Kalu Ram.

S.O.M.,

Under Dy.C.E. (C),

Northern Rly., Chandigarh.

5. (RAJINDER KUMAR)

S/o Shri Sadhu Ram.

S.O.M.,

Under Dy. C.E. (C),

Northern Railway,
Chandigarh.

6. (ROSHAN LAL)

S/o Shri Ganpat Ram.

S.O.M.,

Under Dy. C.E. (C),

Northern Railway, CSB.

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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH.

Faridkot House,
Copernicus Marg,
New Delhi - 110 001.
Date : 3/11/99

From

The Registrar,
Central Administrative Tribunal,
Principal Bench, New Delhi.

To

1. Sh. B.S. Mainee, Counsel for the applicant
CAT BAR ROOM NEW DELHI
2. Sh. O.P. Kashatriya, Counsel for the respondents
CAT BAR ROOM NEW DELHI

Regn.No. D.A. 1443/95

M.K.Srivastava

Applicant

Versus

UOI

Respondent

Sir,

I am directed to forward herewith a copy of
Judgement/Order Dt. 26/10/99 passed by this Tribunal in
the above mentioned case for information and necessary action, if
any.

Please acknowledge the receipt.

Yours faithfully,

(SECTION OFFICER)
JUDL.-II
FOR REGISTRAR

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO: 1443/95

the 26th day of OCTOBER 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri J.L.Negi, Member (A)

1. Manoj Kumar Srivastava
2. Gyanendra Singh Kusshwah
3. Dinesh Kumar
4. Alok Kr. Rathi
5. Arvind Kr. Gupta
6. Pramod Kr. Verma
7. Deepak Arya
8. D.P. Bebela
9. Arvind Khare
10. Ashok Kr. Agarwal
11. Balveer Singh
12. Pradeep Bhayana
13. Ram Kr. Gupta
14. Rabendra Singh Sengar
15. Arun Singh
16. Sandeep Srivastava.

...Applicants.

By Advocate Shri B.S.Maine.

V/s

1. Union of India through
Secretary, Railway Board,
Ministry of Railways
Rail Bhawan, New Delhi.
2. The General Manager
Central Railway,
Bombay V.T.
3. The Chief Administrative
Officer (Const)
Central Railway,
Bombay V.T.

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4. The Deputy Chief Engineer (Const)
Central Railway,
Gwalior.

...Respondents

By Advocate Shri O.P.Kshatriya.

ORDER

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. We have heard Shri B.S. Mainee, counsel for the applicant and Shri O.P.Kshatriya, counsel for the respondents.

2. The applicants who are 16 in number were engaged on casual appointment as Highly Skilled Technical, Mistry at Gwalior in Central Railway. From the pleadings it is not clear as to in what year the applicants were engaged on casual basis. But this was sometime prior to 1.1.1986. It is stated that the applicants are Diploma holder in Civil Engineering and Dis-charging the duties of Inspection of works. Prior to IV th Pay Commission report the salary for the post of IOW was Rs. 425 - 700 which has now been revised as Rs. 1400 - 2300 as per IV th Pay Commission report. Earlier the applicants were placed in the pay scale of Rs. 330 - 550 for which the revised pay scale after the IV th Pay Commission is Rs. 1200 - 2040. The IV th Pay Commission report has suggested that all the Supervisory staff are to be in one grade of Rs. 1400 - 2300. The Railway Board has accepted this recommendation and issued a notification dated 2.1.1987. Though there were earlier two grades in Supervisory cadre, SOM Grade I and SOM Grade II, but both are merged into one cadre after the IV th Pay Commission report in the grade of Rs. 1400 - 2300. Now the department is suggesting that the applicants should get

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SOM Grade II in the scale of Rs. 1200 - 2040. It is stated that there is no such SOM Grade II after IV th Pay Commission. Since both the Grade I and II are merged in one cadre of Rs. 1400 - 2300. The applicant has made number of representation but no reply is given. The decision of the Senior Accounts Officer is that the applicants should get pay of SOM Grade II in the scale of Rs. 1200 - 2040 is not correct. Therefore the applicants have approached this Tribunal praying that the decision of the Accounts Officer dated 19.3.1988 be quashed and the respondents be directed to give the scale of Rs. 1400 - 2300 to the applicants from the date IV th Pay Commission report was implemented by the Government and to make payments and all the arrears.

3. The defence of the respondents is that the application is not maintainable and it is barred by principles of Res-judicate, since the applicants had already filed Writ Petition in the Supreme Court. It is further stated that this Tribunal at Delhi has no jurisdiction to entertain this case. The applicants have not applied for regular recruitment as per the directions of the Supreme Court in its order dated 3.5.1989 in Writ Petition 1198/88 and connected cases. The applicants have also filed OA 161/94 and 398/95 at Jabalpur and therefore the present OA should be stayed till the disposal of the OAs. On merits, it is stated, that the applicants came to be engaged as daily rated labourer @ the rate of Rs. 18.75 per day. They were given monthly rated labour status after completion of 180 days and they were given the benefit of temporary status in the grade of Rs. 1200 - 2040 on completion of 360 days. It is stated that the

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the applicants were never placed in the scale of SOM Grade II. Hence the applicants are not entitled to the grade of Rs. 1400 - 2300. The post of SOM is regular Supervisory cadre post whereas the post of the applicants are of Casual labour. The duties of SOM and the applicants are entirely different. The applicants have been given temporary status in the scale of Rs. 1200 - 2040 and they are not entitled to the grade of Rs. 1400 - 2300. Since the applicants are not holders of permanent post of SOM or IDW they are not entitled to pay scale of Rs. 1400 - 2300. It is also stated that the application is barred by limitation.

4. In the light of the pleadings and the arguments before us, the points for consideration are:

1. Whether the application is maintainable in this Tribunal?
2. Whether the application is barred by principles of Res-judicata?
3. Whether the applicants are entitled to the pay scale of Rs. 1400 - 2300 and if so from what date?
4. Whether the application is barred by limitation?

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5. Point No.1

This objection regarding jurisdiction is taken on the ground that the applicants are working at Gwalior, within the jurisdiction of Jabalpur Bench of the Tribunal, but the case is filed in Principal Bench, New Delhi.

One of the grievance of the applicants is enforcement of the circular issued by the Railway Board and since the Headquarters of the Railway Board is at New Delhi, the OA can be filed at New Delhi. Further the Principal Bench has overall jurisdiction over any matter and anybody can approach Principal Bench, New Delhi, but the rules provide for permission of the Chairman should be taken. The respondents have not raised this objection and got the OA rejected at the admission stage on the ground of Teritorial Jurisdiction. The OA has been admitted and now being pending for final hearing for 4 1/2 years and hence at this stage we do not want to give any merit to the objection of Teritorial Jurisdiction. Since we have heard the OA on merits, we are disposing of the OA on merits.

6. Point No.2

The learned counsel for the respondents contended that since the applicants had approached the Supreme Court and had also approached the Jabalpur Bench of this Tribunal they cannot approach the Principal Bench again and the case is barred by Principles of Res-judicata.

[Signature]

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7. As could be seen from the record, the applicants had approached the Supreme Court regarding apprehended termination. The respondents stated that the applicants would be given opportunity to apply before the Supreme Court for regular appointment and their case would be considered. The question of pay scale was not the issue in Writ Petition filed before the Supreme Court. The Supreme Court has not given any opinion on that question. Hence the plea about Res-judicate has no merit and is rejected.

The Jabalpur Bench of this Tribunal has given some directions regarding regularisation. Even there the question of proper scale of pay for the applicants was not in issue and has not been decided. Therefore the plea of Res-judicata has no merit. Point No2 is answered in the negative.

8. Point No.3:

Now coming to the merits of the case, the applicants were initially appointed as Highly Skilled Technical Mistry on casual basis and after 360 days they have been conferred with temporary status. As provided under the Rule 2005 of Indian Railway Establishment Manual Volume II (1990 Edition), the Casual labourers who were granted temporary status are entitled to the same rights and benefits as admissible to temporary Railway Servants. It is not in dispute that temporary employees are entitled to pay scale of the grade in which they are appointed. Therefore though the applicants were originally appointed as daily rated casual labourers, after acquiring the temporary status, they are entitled to pay in the scale in which they are appointed.

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In fact in this case the question is as to which scale of pay the applicants are entitled and there is no dispute that the applicants are entitled to scale of pay. In fact the applicants after acquiring temporary status have been given pay scale of Rs. 1200 -2040 as admitted in the written statement, but the applicants want pay scale of Rs.1400 -2300. Hence there is no dispute that casual labour acquiring temporary status is entitled to regular pay scale but the dispute is only about the particular scale of pay.

9. The applicant's case is that though they were appointed as Highly Skilled Technical Mistry they have been working as either Inspector of Works or as SOMs, but in the reply the respondents asserted that the applicants were never appointed as IOWs or SOMs and therefore they are not entitled to pay scale of IOWs or SOMs. Both sides have filed number of documents in support of their contentions.

The Senior Accounts Officer, Central Railway in his letter dated 19.2.1988, which is at page 30 of the paper book, says that there are two grades of SOM I and II and that the applicants should be placed in SOM grade II, in the original pay scale of Rs. 330 -560 which is equivalent to Rs. 1200 - 2040 after the IV th Pay Commission report. According to the applicants though there were two grades SOM I and II prior to IV the Pay Commission Report but now Pay Commission has given only one grade of Rs. 1400 - 2300 and hence the opinion or direction of Senior Accounts Officer is not according to Rules. It may also be noted that one A.V. Bhagwat was also appointed as HST and he has been

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given higher grade of Rs. 1320 -2040 as mentioned in one of the letters of the department dated 22.12.1989, which is at page 31 of the paper book.

10. Then we have very crucial and conclusive document which supports the case of the applicants for engagement in the particular post and scale of pay. The document is at Exhibit A 2 attached to applicant's rejoinder dated 27.4.1996. The document is at page 110 of the paper book. It is a letter written by Dy.Chief Engineer to the Headquarters office.

The letter says that 8 HSTMs were recruited on daily wages for six months. Then it mentions as follows:

"These HSTMs are carrying out duties of IOW Grade III Rs. 425 -700 (RS)/1400 -2300 (RPS)"

This clearly shows that HSTM's/IOW grade III are in the pay scale of Rs. 425 - 700 revised pay scale of Es. 1400 - 2300.

We have already seen that opinion of the Accounts Officer is, there are two grades of SOM namely Grade I and II and applicant should be placed in the lower grade of 1200 -2040. The learned counsel for the applicants contended that after IV th Pay Commission Report there is one grade of SOM in the pay scale of Rs. 1320 - 2040 and therefore the suggestion of the Accounts Officer that the applicants should be given SOM grade II has no basis.

Then we have the Railway Board's circular dated 2.1.1987 which states that Supervisory Mistry placed in Workshops, Production Units and open line Establishment should be placed in the grade of Rs.1400 - 2300.

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In view of the above reasoning, we hold that the applicants are entitled to pay scale of Rs. 1400 - 2300 from 1.1.1986 when IV th Pay Commission Report was accepted by the Government of India. Point No.3 answered accordingly.

11. Point No.4.

The applicants are claiming the benefit of pay scale and arrears from 1.1.1986, but the OA was filed 9 years later in 1995. The learned counsel for the applicants contended that this is a continuing cause of action and therefore there is no limitation and even otherwise the applicants have filed M.P. for condonation of delay.

The only reason given for condonation of delay is that the applicants were sending repeated representations.

Sending repeated representation will not ^{Save} ~~serve~~ limitation as observed by the Supreme Court in a recent judgement reported in 1996 SCC L&S 205 (Administration of Union Territory of Daman and Diu V/s R.B. Valand)

The Supreme Court in M.R.Gupta's case, 1995 SCC (L&S) 1273, has held that fixation of proper pay is continuing cause of action. Even though the Supreme Court has held that this is continuing cause of action, as far as arrears are concerned the question of limitation gets attracted.

Hence in the above circumstances we hold though the applicants are entitled to the benefit of revised pay scale of Rs. 1400 - 2300 from 1.1.1986, we grant the benefit notionally from 1.1.1986. However the applicants are entitled to actual monetary benefit only from the date of filing the application.

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The DA was filed on 28.7.1995 and therefore we grant actual monetary benefits only from 1.8.1995. We also take into consideration the burden on the exchequer if monetary benefits are granted earlier. In the facts and circumstances of the case we grant actual monetary benefits only from 1.8.1995 till today and onwards. We may also take judicial notice that V th Pay Commission report has been accepted by the Government during the pendency of the DA with effect from 1.1.1996. Therefore the applicants are also entitled to corresponding benefits under the V th Pay Commission Report also.

12. In the result the DA is allowed as follows:

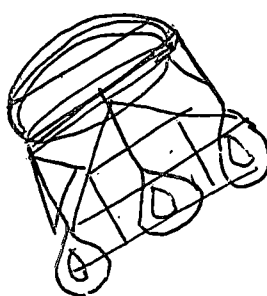
1. The applicants are entitled to notional benefit of fixation of pay in the scale of Rs. 1400 -2300 from 1.1.1986.
2. The applicants are granted actual monetary benefits including the arrears only from 1.8.1995 till today and onwards.
3. The respondents are directed to comply with this order within a period of four months from the date of receipt of copy of this order.
4. In the circumstances of the case there will be no order as to costs.

(J.L.NEGI)
MEMBER(A)

NS

(R.G.VAIDYANATHA)
VICE CHAIRMAN

4/11/96



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

ORIGINAL APPLICATION No. 1684

OF 2000

IN THE MATTER OF :

Shri MAM CHAND & Ors

.....Applicants

VERSUS

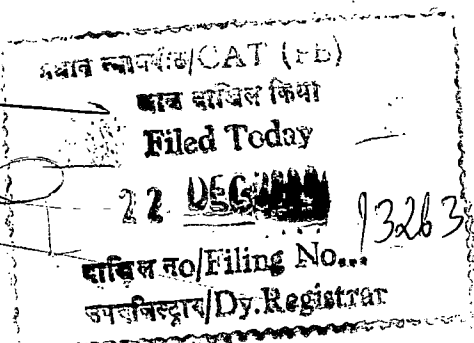
Union of India & Others

.....Respondents

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Received
22/9/2000



(R.L. Dhawan) Advocate
Counsel for the Respondents
C-8, Anand Vihar,
Vikas Marg Ext.
Delhi-110092
Tel. Nos. 2155350, 2166721

New Delhi

Dated..2.2.2000

1

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A. 2083 of 2000

in

O.A. No. 1684 of 2000

IN THE MATTER OF

Shri MAM CHAND & Ors APPLICANTS

vs

UNION OF INDIA & Ors RESPONDENTS

REPLY ON BEHALF OF THE RESPONDENTS
TO M.A. UNDER RULE 4(5) OF C.A.T.
PROCEDURE RULES, 1987

MOST RESPECTFULLY SHOWETH

1. The contents of this para are disputed and denied. It is submitted that the Applicants do not have a common cause of action. It is further denied that common relief can be prayed for or common relief can be granted. The Applicants do not have a common cause of Action or a common grievance. Grievance, if any, of the Applicants should have been agitated by each of them separately. The Application is, therefore, bad in law and deserves to be dismissed, on this count alone.

P R A Y E R

In view of the submissions made herein above, this Hon'ble Tribunal may be pleased to dismiss it is most respectfully prayed that the M.A. of the Applicant, in the interest of justice.

Dy. Chief Engineer/Const.
Northern Railway, Chandigarh

RESPONDENTS
FOR & ON BEHALF OF THE UNION OF INDIA

through

(R.L. DHAWAN) ADVOCATE
COUNSEL FOR THE RESPONDENTS

VERIFICATION

I,

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:2:

Office of the Chief Administrative Officer (Construction)
Northern Railway, Delhi, do hereby verify that the
and correct
contents stated herein above are true/to my knowledge
and nothing material has been suppressed.

VERIFIED at ^{Chandigarh} Delhi this 16th day of
December, 2000.

^{Signature}
RESPONDENTS
FOR & ON BEHALF OF THE UNION OF INDIA
Dy. Chief Engineer/Const.
Northern Railway, Chandigarh

3

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1684 of 2000

IN THE MATTER OF

Shri MAM CHAND & Ors APPLICANTS

vs

UNION OF INDIA & Ors RESPONDENTS

COUNTER REPLY ON BEHALF
OF THE RESPONDENTS

MOST RESPECTFULLY SHOWETH

PRELIMINARY OBJECTIONS

1. That the Original Application filed by the Applicants is barred under the Doctrine of Res-judicata. It is submitted that the Applicants had earlier filed O.A. No. 1419/94 for appointment as SOM in grade 1400-2300 which was disposed of by this Hon'ble Tribunal vide their judgement dated 29-1-96 (Annexure A-4 of OA). The Applicants have also filed another O.A. No. 2047/99 seeking assigned of correct seniority as SOM on their such appointment. In the present O.A. the Applicants are seeking their placement in grade 1400-2300 from 1-1-1986 and consequential benefits i.e. seniority etc. The Hon'ble Supreme Court have laid down the law in case of Commissioner of Income

Am
Dy. Chief Engineer/Const.,
Northern Railway, Chandigarh

Tax vs T.P.Kumaran (SLJ 1996(3) SC 101)
that "the relief which should have been
claimed in the original suit cannot be
claimed by a separate suit".

2. That the O.A. is barred by limitation and
not maintainable under Section 21 of
the Administrative Tribunals Act, 1985.
As submitted herein above, the Applicants
are seeking their placement in grade 1400-
2300 w.e.f. 1-1-1986 with consequential
benefits. The Applicants by their own
admission submitted their joint representation
dated 14-9-97 (Annexure A/7) and the limitation
period prescribed under Section 21 of the
Administrative Tribunals Act, 1985 expired
on 13-3-1999. The present O.A. filed in
August 2000 is clearly barred by limitation.
It is further submitted that the judgement
dated 26-10-99 passed by this Hon'ble
Tribunal in O.A.No. 1443/95 (Annexure A-8)
will not give ^{fresh} ~~sufficient~~ cause of action
to the Applicants as per law laid down
by the Hon'ble Supreme Court in case of
Bhoop Singh vs. U.O.I. & Ors (ATR 1992(2)
SC 278).

^{Can}
Dy. Chief Engineer/Const. 3.
Northern Railway, Chandigarh

- That the joint application filed by the
Applicants is not maintainable under law
as the Applicants are not similarly placed.
It is respectfully submitted that the M.A.
No. 2083/2000 filed by the Applicants for
joining together and filing joint application

may be dismissed, in the interest of justice.

4. That no cause of action has accrued in favour of the Applicants and against the Respondents. The Application is totally devoid of merit and may be dismissed.
5. That the Application is misconceived and not maintainable under law.

PARAWISE REPLY

At the outset, the Respondents deny each and every allegation made in the O.A. except those which are specifically admitted herein after and those which are a matter of record. Parawise reply, however, is as under :-

1. The contents of this para are wrong and denied. It is submitted that the Applicant No. 1 was initially engaged as Casual Labour on 4-1-83 by IOW/C/UMB on daily wages/TLA basis against construction project labour, and temporary status was granted w.e.f. 4-1-1984 as Khalasi grade 196-232. The Applicant No. 2 was initially engaged as Casual Labour Sub-Overseer by IOW/C/UMB on 5-1-83 and worked upto 14-12-83. He was re-engaged as Casual Labour Sub-Overseer on 9-5-84 by IOW/C/KKDE. He was granted temporary status as un-qualified Mistry/SOM on 9.5.85. The Applicant No. 3 was initially engaged on daily wages as Casual Labour Sub-Oversee Mistry and granted temporary

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status as Khalasi grade 190-232 w.e.f. 1-1-1984. It is submitted that all the applicants have passed 2 years course in Draftsmanship whereas as per Recruitment Rules vide Para 175 of Indian Railway Establishment Manual Vol. I, the prescribed qualifications for direct recruitment is Diploma in Civil Engineering. The

Applicants who were un-qualified Mason Mistries in the Construction Organisation were placed in the scale of Rs. 950-1500 w.e.f. 15-6-88 vide Notice dated June 1988, a copy of which is filed and


ANN. R/1

marked as Annexure R/1 and later in implementation of the judgement passed by this Hon'ble Tribunal in OA No. 264/89 was fixed in the pay of un-qualified SOM/grade 330-560 w.e.f. 1-1-1984 vide Notice dated 2-3-92, a copy of which is filed and marked as

ANN. R/2

Annexure R/2. The Applicants who are un-qualified Mason Mistries filed O.A. No. 1419/94 seeking their regularisation as SOM in grade 1400-2300. The said O.A. was disposed of by this Hon'ble Tribunal vide judgement dated 21-9-1996 (Annexure A-4 of OA). In implementation of the

said judgement the applicants were selected for regularisation as Mistry (Works) SOM in grade 1400-2300 vide Notice dated 6.3.1997 (Annexure A-5 of OA) issued by the Chairman, Railway Recruitment


Dy. Chief Engineer/Consd.,
Northern Railway, Chandigarh

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Board, Chandigarh. After successful completion of the prescribed training, the Applicants have been appointed as SOM grade 1400-2300 in 1999. It would be observed that the Applicants on being selected by Railway Recruitment Board were selected as Apprentices JEW Gde II and SOM Gde I in the scale of Rs. 1400-2300 in March 1999. Thus the claim of the Applicants for being placed in the scale of Rs. 1400-2300 retrospectively from 1.1.1986 is not tenable and their O.A. is misconceived and not maintainable under law.

2. In reply it is submitted that the Principal Bench of this Hon'ble Tribunal have no territorial jurisdiction to entertain this Application. As per Memo of Parties, the Applicant No. 1, Applicant No. 4 and Applicant No. 5 are posted at Chandigarh and the Applicant No. 3 is posted at Ludhiana. It is submitted that Chandigarh and Ludhiana fall within the territorial jurisdiction of Hon'ble Chandigarh Bench.

Cm
Dy. Chief Engineer/Cons. 3.
Northern Railway, Chandigarh

In reply it is submitted that O.A. is barred by limitation and not maintainable under Section 21 of the Administrative Tribunals Act, 1985, as explained in the Preliminary Objections.

4. FACTS OF THE CASE

4.1 In reply it is submitted that the Applicants have themselves admitted that they possess 2 years Certificate of Draftsmanship (C) minimum educational and thus they do not possess the prescribed / qualification for direct recruitment as Sub-Overseer Mistry in grade 1400-2300.

4.2 The contents of this para are wrong and denied. It is submitted that the Applicants were initially engaged as Casual Labour. Sub-Overseer on daily rate basis by the concerned Sr. Subordinate and no advertisement for such appointment was issued as contended in this this para.

4.3 The contents of this para are wrong and denied. It is submitted that the recruitment of Sub-Overseer Mistry grade 1400-2300 is made through the agency of Railway Recruitment Board and minimum educational qualification prescribed is 3 years Diploma in Civil Engineering. As already submitted herein above, the Applicants were initially engaged as casual labour on daily rated wage basis by the concerned Sr. Subordinate directly and they were not so recruited through any advertisement.

4.4 The contents of this para are wrong and denied. It is submitted that the Applicants were initially engaged as casual labour sub-overseers on daily rate wage basis by the concerned Sr. Subordinate and

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and no selection for such engagement was conducted as alleged in this para.

4.5 The contents of this para are wrong and denied. It is submitted that no selection for adjudging the suitability of the Applicant was held as alleged in this para.

As submitted herein above, the Applicants were initially engaged as Casual Labour Sub-Overseers on daily rate wage basis by the concerned Sr. Subordinate.

4.6 The contents of this para are wrong and denied. It is submitted that the Applicants were given scale of Rs. 330-560 in implementation of the judgement passed by this Hon'ble Tribunal in O.A. No. 264/89 dated 1-6-94.

4.7 The contents of this para are wrong and denied. As already submitted herein above, the Applicants were given the grade of Rs. 330-560 w.e.f. 1.1.1984 in the light of the judgement passed by this Hon'ble Tribunal in O.A. No. 264/89.

4.8 The contents of these paras are not admitted
to
4.10 as stated. It is submitted that in compliance with the judgement dated 29-1-96 passed by this Hon'ble Tribunal (Annexure A-4), the Applicants were considered in selection for the posts of Work Mistry grade 1400-2300 conducted by the Railway Recruitment Board Chandigarh and placed on the panel vide

Cm
Dy. Chief Engineer/Const.,
Northern Railway, Chandigarh

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letter dated 6-3-97 (Annexure A-5 of OA) issued by the Chairman, Railway Recruitment Board, Chandigarh. It is further submitted that the Full Bench of this Hon'ble Tribunal have held in case of Yasin Khan (OA 2654/96) that as a rule, 2 years Certificate Holders like the Applicant are not eligible for direct recruitment as SOM grade 1400-2300 for which minimum educational qualification prescribed is 3 years Diploma in Civil Engineering.

4.11 In reply it is submitted that the Applicants have not filed copies of the said interim orders passed by this Hon'ble Tribunal and in the absence thereof, no comments can be given by the Respondents.

4.12 The contents of these paras are not admitted
to
4.14 as stated. It is submitted that in implementation of the judgement dated 29-1-96 (Annexure A/4 of OA) passed by this Hon'ble Tribunal, the Applicants were considered in the selection for regularisation as SOM in grade 1400-2300.

4.15 The contents of this para are not admitted as stated. It is submitted that after successful completion of the requisite training of 2 years, the Applicants have been appointed as JEW Grade II and Supervisor (Work) in grade 1400-2300 in 1999.

Cin
Dy. Chief Engineer/Consd.
Northern Railway, Chandigarh

- 4.16 The contents of this para are not admitted as stated. It is submitted that after their appointment as JEW-II/ Supervisor Works, they have been given the scale of Rs. 1400-2300. Previously as un-qualified Work Mistry, they were given the scale of Rs. 950-1500 (Annexure R/1) w.e.f. 15-6-88 vide Notice-dated June 88. Later in implementation of the judgement dated 1-6-84 in OA No. 264/89 passed by this Hon'ble Tribunal, un-qualified Work Mistry were given the scale of Rs. 330-560/ 1200-2040 w.e.f. 1.1.84. As per law laid down by the Full Bench of this Hon'ble Tribunal in case of Yasin Khan (supra) 2 years Certificate-Holders like the Applicants are not eligible for direct recruitment as SOM/Work Mistry in grade 1400-2300.
- 4.17 The contents of this para are not admitted as stated. It is submitted that directly recruited SOM possessing minimum educational qualification of 3 years Diploma in Civil Engineering have been placed in grade 1400-2300 from 1-1-86. The Applicants are un-qualified Work Mistry as they possess only 2 years Certificate in Draftsman(C), they were correctly placed in scale 330-560/ 1200-2040 in implementation of the judgement dated 1-6-84 in OA No. 264/89 passed by this Hon'ble Tribunal. It is submitted that

the Applicants have been appointed as JEW-II/
Supervisor (Works) in grade 1400-2300 in
implementation of the judgement dated
29-1-96 (Annexure A-4 of OA) passed by
this Hon'ble Tribunal.

4.18 In this para the Applicants have themselves
admitted that they submitted their first
representation dated 14-9-97 from the date
the limitation period will commence
had expired on 13-9-99. The present
Application filed after expiry of the
limitation period is not maintainable under
Section 21 of the Act.

4.19 The contents of this para are not admitted
as stated. It is submitted that the Applicants
who are unqualified Work Mistry were given
the scale of Rs. 330-560/1200-2040 w.e.f.
1-1-84 in implementation of the judgement
dated 1-6-94 in OA No. 264/89 passed by
this Hon'ble Tribunal. It is further
submitted that SOM possessing prescribed
mininum educational qualification of
3 years Diploma in Civil Engineering are
recruited through Railway Recruitment Board
and working in open line are given the
scale of Rs. 1400-2300.

am
Dy. Chief Engineer/Const.
Northern Railway, Chandigarh

4.20 The contents of this para are not admitted
as stated. It is submitted that as mentioned

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in the judgement (page 8) dated 29-10-99 (Annexure A/8 of OA), Supervisory Mistry placed in Workshop, Production Units and Open Line Establishment are eligible to be placed in grade 1400-2300 in terms of Railway Board's circular dated 2-1-87. The Applicants who are working in Construction Organisation were given the scale of Rs. 330-560/1200-2040 in compliance of the judgement dated 1.6.94 in OA No. 264/89 passed by this Hon'ble Tribunal.

5. REPLY TO GROUNDS

The contents of Grounds 5.1 to 57 are disputed and denied. The Applicants have merely repeated the facts stated in para 4 of the O.A. As such the Respondents crave leave of this Hon'ble Tribunal to refer and rely on the reply given in para 4 of the Counter Reply. However, reply to legal submissions will be made at the time of arguments.

6. In reply it is submitted that the Application is not maintainable under Section 20 of the Administrative Tribunals Act, 1985.

7. In reply it is submitted that the Applicants have filed O.A. No. 2047/99 seeking identical relief ie assignment of seniority as SOM in grade 1400-2300 which fact they have suppressed from this Hon'ble Tribunal. Their Application may be dismissed on this ground alone.

Cin
Dy. Chief Engineer/Const.,
Northern Railway, Chandigarh

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8. In view of the submissions made herein above, the Applicants are not entitled to the relief claimed by them in the OA which is liable to be dismissed.

9. In reply it is submitted that the Applicants are not entitled to any interim relief prayed for by them in the O.A.

10-12 These paras being formal need no comments.

P R A Y E R

In view of the submissions made herein above, it is MOST RESPECTFULLY prayed that this Hon'ble Tribunal may be pleased to dismiss the Application of the Applicants, in the interest of justice.

cin
Dy. Chief Engineer/Const.,
RESPONDENTS Northern Railway, Chandigarh
FOR & ON BEHALF OF THE UNION OF INDIA

through *M B Dhar*

(R.L. DHAWAN) ADVOCATE
COUNSEL FOR THE RESPONDENTS

VERIFICATION

I, KK Agarwal, Dy. Chief Engg/const/Chandigarh-
Office of the Chief Administrative Officer(C)
Northern Railway, Construction Organisation, Kashmere
Gate, Delhi-do hereby verify that the contents of
paras 1, 4 to 7 are true to my knowledge based
on official records which are regularly kept
and information received from the concerned
official while those of paras 2, 3 and 8 to 12

(15)

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and of the Preliminary Objections believed to be true on legal advice received and that I have not suppressed any material fact. Last para is prayer to this Hon'ble Tribunal.

VERIFIED at Delhi this 16th day of December, 2000.

Chandigarh
RESPONDENTS
FOR & ON BEHALF OF THE UNION OF INDIA
By. Chief Engineer/Const.,
Northern Railway, Chandigarh

(16)

Annexure R-I

(8)

Annexure (B)

57

NOTICE

In terms of Dy. CE/C/UMB letter No. 220-E/W/C/UMB dated 21.6.88 & 27.6.87 revised pay of the following casual labour/SON/T.S. staff unqualified has been fixed at Rs 950/- in grade B. 950-1500(RPS) w.e.f. 15.6.88

L. Measran. Alishay

Authority :- CE/C/DLI letter No. 561-E/1/C/IV/PC/Pt.I dated 13.5.88 & 6/88.

1. Sh. Man Chand S/O Sh. Swaran Singh
2. Sh. Amar Singh S/O Sh. Inder Singh

Sr. AEN/C/UMB

No. 1-E/Const/UMB

Dated 6/88

Copy Forwarded for information and necessary action to:-

- 1) FA&CAO(C)/DLI
- 2) Dy. CE/C/UMB
- 3) IOW/C/III/UMB
- 4) CIOW/C/II/UMB

CTC
Adv.

(17)

Annexure (C)

S.No. 10

Annexure R-2
58

NORTHERN RAILWAY
(NOTICE)

In terms of CAO(C)DLI letter No.5-E/CAT/NDLS
27.2.92. The pay of under noted unqualified SOM's has
been revised as under. Any payment due to them on account
of annual increment may be drawn to avoid any complication
in implementation of judgement of CAT/NDLS in MP-1687/91/
264/89.

<u>Amarjit Singh</u>	<u>Sh. Roshan Lal</u>	<u>Sh. Mam Chand</u>
1.84 330/- in scale 330-560.	1.3.84 330/- in scale 330-560	4.1.84 330/- in scale 330-560.
1.85 340/- -do-	1.3.85 340/- -do-	1.1.85 340/- -do-
1.86 350/- -do-		1.1.86 350/- -do-
1.86 1230/- in Scale 1200-2040	1.1.86 1200/- In Scale 1200-2040	1.1.86 1230/-
	1.3.86 1230/- Due to Annual increment.	
1.87 1260/- -do-	1.3.87 1260/-	1.1.87 1260/-
1.88 1290/- -do-	1.3.88 1290/-	1.1.88 1290/-
1.89 1320/- -do-	1.3.89 1320/-	1.1.89 1320/-
1.90 1350/- -do-	1.3.90 1350/-	1.1.90 1350/-
1.91 1380/- -do-	1.3.91 1380/-	1.1.91 1380/-
1.92 1410/- -do-	1.3.92 1410/-	1.1.92 1410/-

Q. M. Alwar

for Deputy Chief Engineer/Const.,
Northern Rly., Ambala Cantt.

1-E/Pt.IV/Const/UMB

Dt.02.03.92

Forwarded for information & necessary action to:-
CAO(C)K-Gate/DLI in reference to his letter cited above.
FA & CAO(C)DLI.
AEN(C)UMB.
IOW(C)IV/UMB.
P. File of the employee.

CTC
/m/
Adv.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

O.A.NO. 1684/2000

In the matter of :

Shri Mam Chand & others

... Applicants

versus

Union of India & others

... Respondents

I N D E X

Sl.No.	Description of documents relied upon	page Nos.
--------	---	-----------

1. Rejoinder on behalf of the
applicants

1-12

Copy received
26/2

(B.S. Mainee)
Advocate
240 Jagriti Enclave
Delhi-110092

Date :

26/2/2001

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RECEIVED

FILED

2001

SECRET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

O.A.NO. 1684/2000

In the matter of :

Shri Mam Chand and others

... Applicants

versus

Union of India & others

... Respondents

REJOINDER ON BEHALF OF THE APPLICANTS

MOST RESPECTFULLY SHOWETH :

REPLY TO PRELIMINARY OBJECTION :

1. Para-1 of the preliminary objection as raised by the Respondents is absolutely without merit and is misconceived. The doctrine of Res-judicata does not arise in this case.

The applicants have filed this O.A. challenging the wrongful action of the Respondents in granting the admissible pay scale to the applicants only from the date their services

have been regularised as SOM. Although the applicants are working as SOMs from 1.1.1986 but were being given lower pay scale which was subsequently ordered to be modified to Rs. 1400-2300. The recommendation of the Fourth Pay

Commission to grant pay scale Rs. 1400-2300 to the SOM/Work Mistries have been accepted by the Respondents and accordingly the applicants have been placed in the said scale but the correct fixation of pay has not been done as per rules. The applicants have to be fixed in

grade Rs. 1400-2300 from the date from which they are

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continuously working as SOMs. The contention of the Respondents that the applicants have claimed seniority in this O.A. is misconceived. The applicants have not claimed seniority in this O.A. which is for the purpose of fixing ~~was~~ correct salary from the date from which they are working as SOMs consequential benefits of arrears etc. which are due to them in accordance with law. In the O.A.No. 1419/1994 the applicants claimed pay fixation in grade Rs. 1400-2300 which has been allowed by this honourable Tribunal but the Respondents have inexplicably failed to grant pay fixation from the date from which the applicants have been working as SOM. The doctrine of res-judicata is not applicable.

2. Para-2 of the counter affidavit is wrong and denied.

The O.A. is perfectly maintainable, under the law and is well within time. The Respondents appeared to be belevering under wrong notion so far as limitation is concerned. The O.A. filed by the applicants is perfectly within time.

3. Para-3 of the preliminary objection is wrong and denied. All the applicants have a common cause of action and common relief has been claimed. Therefore the M.A. for joining together has been moved in accordance with rules.

4. A definite cause of action has arisen in favour of the applicants.



5. Para-5 of the preliminary objection is wrong and denied. The O.A. is perfectly maintainable under the law.

PARAWISE :

1. Para-1 of the counter reply in so far as it controverts corresponding para is wrong and denied and para-1 of the O.A. is reiterated. The Respondents contention that the applicants were unqualified is contrary to the law as laid down by the honourable Supreme Court in Bhagwati Prasad's case. The applicants having worked for a number of years can under no circumstance be called unqualified. In this connection the applicants draw the attention of this honourable Tribunal towards the judgement of the honourable Supreme Court in Bhagwati Prasad's case a para of which has been extracted in the judgement in Annexure A-4.

In this regard it is respectfully submitted that the Respondents have appointed Diploma holders as well as non-diploma holders without any distinction to do same job as SOMs. There was no difference either in the job which they were deputed to perform nor in the pay scale. All the casual SOMs were initially placed in grade Rs. 330-560 irrespective of the fact whether they have three years Diploma or two years certificate. Subsequently when the RESPONDENTS passed order to reduce the pay scale of the applicant from Rs. 330-560 to Rs. 950-1500. The applicants were forced to file O.A.No. 264/1989 which was allowed and the pay scale of the applicants was restored which was

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wrongfully sought to be reduced.

The action of the Respondents in labelling the applicants as "unqualified" is contrary to the law as laid down by the honourable supreme Court in Bhagwati Prasad's case and in ~~xxx~~ fact amounts to Contempt of Court. The Respondents cannot label the applicants as unqualified SOMs particularly when the case of the applicants is fully covered by the judgement of the honourable supreme Court in Bhagwati Prasad's case on the basis of which the applicants have already been regularised as SOMs. The honourable Supreme Court has held that those who have been allowed to work for a considerable length of time it would be hard and harsh to deny them the confirmation in the respective post on the ground ~~of~~ that they lack prescribed educational qualification. In this view of the matter repeated assertions of the Respondents to call the applicants as unqualified is unwarranted and contemptuous in nature. The applicants are not unqualified. Had it been so they would not have been regularised as SOMs. The applicants are fully entitled to have their pay fixed in grade Rs. 1400-2300 from 1.1.1986 from which date the applicants have been performing the duties, functions and responsibilities of SOMs and according to the Fourth Pay Commission recommendation accepted by the Respondents the only pay scale of SOM is Rs. 1400-2300.

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2. Para-2 of the counter reply is wrong and denied. The cause of action has arisen in Delhi because the orders of pay fixation in grade Rs. 1400-2300 have to be passed by the Chief Admn. Officer (Constn.) Northern Rly Kashmeri Gate, Delhi. This issue has already been decided in Charan Singh's case where this honourable Tribunal has held that staff working in construction organization can file their O.As in Delhi because the decision with regard to their service matters is to be taken by the CAO (Constn.), Delhi.

3. Para-3 of the counter affidavit is wrong and denied and para-3 of the O.A. is reiterated.

4.1. Para-4.1 of the O.A. is wrong and denied and para-4.1 of the O.A. is reiterated. The applicants were fully qualified for the post of SOM and that is why they were appointed alongwith others and had been performing duties of SOMs alongwith their colleagues who were possessing three years Diploma. The applicants had been performing same very duties, functions, responsibilities and in accordance with law as laid down by the honourable Supreme Court in Bhagwati Prasad's case after having completed three years of service they became fully qualified for the post of SOM. The Respondents are wrongfully and contemptuously labelling the applicants as unqualified.

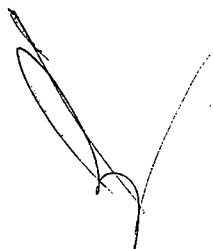
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4.2. Para-4.2 of the counter affidavit is wrong and denied and para-4.2 of the O.A. is reiterated.

4.3. Para-4.3 of the counter reply is wrong and denied and para-4.3 of the O.A. is reiterated. The applicants have been found qualified and suitable for the post of SOMs in the judgement dated 29.9.1996 and they have been subsequently selected by the Railway Recruitment Board Chandigarh and have been regularised as SOMs. The applicants cannot be called and labelled to unqualified. The Respondents are saying out of prejudice and malafide intention.

4.5. Para-5.5 of the counter affidavit is wrong and denied and para-4.5 of the O.A. is reiterated. Casual SOMs were appointed after adjudging their suitability and holding selection irrespective of the fact whether they possess 3 years Diploma or two years certificate and they were assigned the same very job in the same very scale.

4.6. Para-4.6 of the counter affidavit is wrong and denied. The Respondents wrongfully sought to revert the applicants from grade Rs. 330-560 to Rs. 950-1500 which order was quashed by this honourable Tribunal. The tenor and tone of the Respondents in this para is unfortunate being most misleading. This honourable Tribunal had only quashed




the illegal orders passed by the Respondents and the Respondents were bound to obey the said order. The honourable Tribunal had held that the applicants could not be reverted to a lower scale than what was given to them at the time ~~the~~ of appointment as SOMs.

4.7. Para-4.7 of the counter reply is wrong and denied. The grade Rs. 330-560 was given to the petitioners from the very beginning when they were appointed as casual SOMs. The contention of the Respondents that grade Rs. 330-560 was given to the applicants in pursuance of the judgement in O.A.No. 264/1989 is absolutely wrong and misleading.

The grade Rs. 330-560 was given to the applicants in 1984 but was sought to be reduced by the Respondents which order was quashed by this honourable Tribunal in O.A.No. 264/1989.

4.8 to 4.10 :Paras 4.8 to 4.10 of the counter reply in so far as it controvert the corresponding para is wrong and denied and para-4.8 to 4.10 of the O.A. are reiterated. The full Bench of this honourable Tribunal had in yasen Khan case relied upon the judgement of the honourable Supreme Court in Bhagwati Prasad's case as well as in Ram Kumar's case and therefore directed the Respondents to regularise Shri yasen Khan (Diploma holder) as SOMs which judgement has already been implemented.



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4.11. In regard to para-4.11 it is respectfully submitted that the said interim orders passed by this honourable Tribunal are well within the knowledge of the Respondents because they were the Respondents in that case also and the orders were passed in the presence of the Counsels.

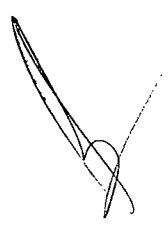
4.12 to 4.14 : In so far as these paras are sought to be controverted are wrong and denied and corresponding paras of O.A. are reiterated.

4.15. Para-4.15 of the counter reply in so far as it controverts corresponding para is wrong and denied and para-4.15 of the O.A. is reiterated.

4.16. Para-4.16 of the counter reply is wrong and denied and para-4.16 of the O.A. is reiterated.

In accordance with rules casual labour with temporary status have to be given same very pay scale which is given to the regular staff holding the said post.


The applicants are not/^{un-}qualified work Mistries in accordance with law as laid down by the honourable SupremeCourt in Bhagwati Prasad's case by 1.1.1986 they have already became qualified having put in a number of years of service and were therefore entitled to full pay scale of Rs. 1400-2300.



That the Respondents are trying to distort the fact. As already submitted Diploma holders as well as non-Diploma holders were appointed as SOMs and were given same pay scale. But the Respondents wrongfully declared the applicants as unqualified and passed orders to reduce their pay scale Rs. 950-1500 which order was quashed and the applicants were brought at par with others. The reliance of the Respondents on the Yaseen Khan's case does not assist them because in case of Yaseen Khan the honourable Tribunal had declared him qualified on the basis of the honourable Supreme Court judgement in Bhagwati Prasad's case and the Respondents were directed to regularise him as SOM. The staff who had been working for several years in the same post and had experience of several years could not be called unqualified and as per the law as laid down by the honourable Supreme Court in Bhagwati Prasad's case.


The rhetoric of the Respondents in this regard only of smacks/panic arisen out of their illegal action.

4.17. Para-4.17 of the counter reply is wrong and denied and para-4.17 of the O.A. is reiterated. When the three years Diploma holders who are also working as SOM just as applicants are working have been given pay scale



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Rs. 1400-2300 from 1.1.1986 the action of the Respondents in not fixing the pay of the applicants in grade Rs.1400-2300 from 1.1.1986 is discriminatory. The applicants had been doing the same very job and was performing same very duties and responsibilities which were being performed by three years Diploma holders and as such after having made experience for about three years they became qualified for appointment as SOM and this is what has been held by this honourable Tribunal in Mamchand's case relying upon the judgement of the honourable Supreme Court in Bhagwati Prasad's case. In O.A. No. 264/1989 this honourable Tribunal had quashed the orders of the Respondents in which they wanted to introduce a discrimination between Diploma holders and non-diploma holders. The Respondents had sought to reduce the pay scale of the applicants on the ground of not possessing Diploma. But the honourable Tribunal quashed the said order and restored the pay scale of the applicants. Subsequently this honourable Tribunal has held the applicants as qualified relying upon the judgement of the honourable Supreme Court in Bhagwati Prasad's case and had directed the Respondents to regularise the services of the applicants as SOMs in grade Rs. 1400-2300.



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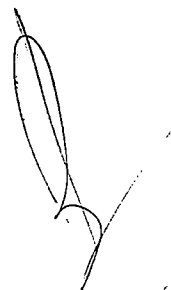
4.18. Para-4.18 of the counter reply is wrong and denied and para-4.18 of the O.A. is reiterated. The application is well within time.

4.19. Para-4.19 of the counter reply is false statement deliberately made to mislead this honourable Tribunal.

The grade Rs. 330-560 was given to the applicants from 1.1.1984 not in pursuance of the honourable Supreme Court judgement but because the pay scale at that time of SOMs was only Rs. 330-560 which was given to Diploma holders as well as non-diploma holders. This honourable Tribunal intervened only when the Respondents sought to distinguish between Diploma holders and non-diploma holders and sought ~~xxx~~ to reduce the pay scale of non-dip;oma holders which order was quashed. The applicants had been appointed as SOMs against direct recruitment quota.

4.20. Para-4.20 of the counter reply is wrong and denied and para-4.20 of the O.A. is reiterated.

5.1 to 5.7 : Paras 5.1 to 5.7 of the counter affidavit are wrong and denied and paras 5.1 to 5.7 of the O.A. are reiterated.



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6. para-6 of the counter affidavit is wrong and denied and para-6 of the O.A. is reiterated.

7. Para-7 of the counter reply is wrong and denied.

2047

The O.A.No. ~~247~~/1999 is seeking a different relief

could not be claimed in this O.A. as per rules. The

O.A.No. 2047/1999 has been filed challenging the wrongful

action of the Respondents in assigning them seniority.

While this O.A. is against the order regarding fixation of pay.

8. Para-8 of the counter affidavit is wrong and denied

and para-8 of the O.A. is reiterated.

9. Para-9 of the counter affidavit is wrong and denied

and para-9 of the O.A. is reiterated.

10 to 12 : Need no remarks

VERIFICATION

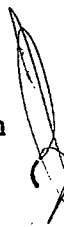
Verified at New Delhi on

26/2/2001

that the contents of the above Rejoinder are true to my personal knowledge and that I have not suppressed any material fact.


Applicant

through


(B.S. Mainee)
Advocate
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