

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/215/92, OA/294/92 & OA/295/92 with MA St.72/99

Date of Decision : 28 .4.2000

Shri Pratapsingh & Ors.,
Shri Raghuvirsinh T.Sisodia & Ors. and
Shri Raghuvirsinh T.Sisod : Petitioner (s)

Mr. Y.V.Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Ms..N. S.Shevde : Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.V.Ramakrishnan : Vice Chairman

The Hon'ble Mr. P.C.Kannan : Member(J)

OA No.215/92

1. Pratapsingh Shivubha
2. Vadivel S.
3. Daya Ramji
4. Akubha Hanubha
5. Muru Pala
6. Ibrahim Abdul
7. Govindraj S.
8. Sabastian Anthony
9. Saja Pala
10. Pitchamuthu Vaith
11. Karubha Lakhaji
12. Hakla Kalji
13. Periaswamy Adimulam
14. Dhanji Aka
15. Tersi Raja
16. Tribhuban Lalji
17. Bhima Uka
18. Bahadursing M
19. Rama Gangaram
20. Diluva Shivubha
21. Smt. Kunver Uka
22. Heera Tribhuvan
23. Kalu Vaja
24. Hasmukh Tapoo
25. Khetro Ketcha
26. Dilubha Pravinsingh
27. Smt. Muluben Kana
28. Kolanchi K.
29. Keshavan Naryan
30. Manga Deva
31. Kanji Chhana
32. Bacu Jaisingh
33. Hansraj Shamji
34. Chhana Dungar
35. Soma Bhana
36. Pradhanji Pannaji
37. Ashokkumar Nandkishor
38. Kana Bhika
39. Khushal Thovanji
40. Navubah Amarsingh
41. Mahipatsingh P.
42. Naryan Kana
43. Bharat Popat

44. Shamji Mohan
45. Natha Vasram
46. Babulal Maganlal
47. Madhubha H.
48. Nagar M.
49. Jivan H.
50. Dharamsingh M.
51. Bhagwan L.
52. Praveen Singh L
53. Fulji N.
54. Kalu B.
55. Bodu Mana

: Applicants

C/o. Executive Engineer [C]
Western Railway,
Ahmedabad.

Versus

1. Union of India,
Through the General Manager,
Western Railway,
Churchgate, Bombay-20.
2. Dy. Chief Engineer [C],
Central, B.G. Western Railway,
2nd Floor, Station Building,
Ahmedabad-2.
3. Divisional Railway Manager (E),
Western Railway,
Rajkot.

: Respondents

OA/294/92

1. Raghuvirsinh T. Sisodia,
Jt. Divisional Secretary,
P.R..K.P. Rajkot Division,
Western Railway,
Sabarmati, Ahmedabad.
2. Arumugam M
3. Arumugam P.
4. Anthoniswamy S.
5. Annamalai K.
6. Abji Khema

7. Nallathambi C.
8. Amardan Vadiwel
9. Anjalai Muthuswamy
10. Anjalai G.
11. Aypakannu P.
12. Annamalai K.
13. Bharat R.
14. Bhuri R.
15. Viziyaben A.
16. Basanti C.
17. Chandra P.
18. Chinnapaiyam S.
19. Chellamuthu A.
20. Chinnapayam M.
21. Chinal V.
22. Chellamuthu A.
23. Chintamani S.
24. Chinnapillai M.
25. Natesan Laxman
26. Dhanpakiyam K.
27. Devika K.
28. Govindam C.
29. Gauttam L.
30. Ganesh R.
31. Gangachellam P.
32. Ghanshyam P
33. Methai R.
34. Hemu J.
35. Kuppai R.
36. Kalliamma M.
37. Kashiamma A.
38. Kaliyan N.
39. Kolanchi M.
40. Kanta M.
41. Karsan A.
42. Kabudi G.
43. Karmada S.
44. Kolanchi A.
45. Karupai R.
46. Kamla V.
47. Kandaswamy M.
48. Kuppai C.
49. Kamla T.
50. Laxmi C.
51. Lekhraj M.
52. Radheshyam M.



53. Ramprakash K.
54. Satyaprakash D.
55. Shiv Bahadur R
56. Chinnapillai V.
57. Chinnathambhi M.

: Applicants

No.2 to 58, V.O.P.
Casual labourers of Rajkot Division,
At present
Working under the
Executive Engineer [C]
Western Railway,
Jaipur.

Versus

1. Union of India,
Through the General Manager,
Western Railway,
Churchgate,
Bombay-20.
2. Dy.Chief Engineer [C],
Station Building,
2nd Floor, Western Railway,
Ahmedabad-2.
3. Divisional Railway Manager,
Western Railway (E),
Rajkot.

: Respondents

OA/295/92

Mr.Raghuvirsinh T.Sisodia,
Jt.Divisional Secretary,
Paschim Railway Karmachari
Parishad, Western Railway,
Rajkot Division,
Sabarmati,
Ahmedabad.

: Applicant

Advocate: Mr Y.V.Shah

Versus

: 6 :

1. Union of India,
Through the General Manager,
Western Railway, Churchgate, Bombay-20.

2. Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

3. Dy. Chief Engineer (C),
Western Railway,
2nd Floor,
Station Building

4. Divisional Railway Manager (E),
Western Railway,
Rajkot.

: Respondents

(Advocate: Mr. N.S. Shevde)

COMMON JUDGMENT

OA/215/92

OA/294/92 &

OA/295/92

Date: 28-4-2000

Per : Hon,ble Mr.P.C.Kannan : Member (J)

All the above three O.As. raised common issues and therefore it is proposed to dispose of the same by a common order.

2. Briefly the facts as stated in the three O.As. are as follows:-

OA/215/92:

This OA has been filed by 55 applicants who worked as VOP(Project)

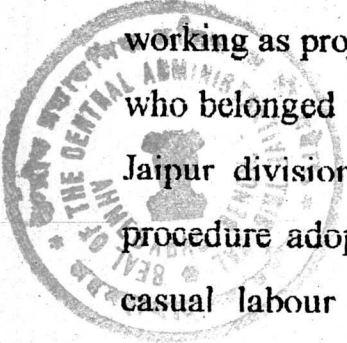
casual labour of Rajkot Division . They have prayed for the following reliefs:-

" Be pleased to direct the respondents to implement the combined seniority list at Annexure A/1 for the purpose of screening and absorption as regular class IV employees, and not to regularise any other casual labourers in any other manner, except in accordance with the combined seniority list published at Annexure A/1 in view of the Supreme Court judgment as reported in AIR 1988 SC 390."

3. The case of the applicants is that in terms of the judgment of the Hon'ble Supreme Court in the case of Ram Kumar vs. Union of India and Others (AIR 1988 SC 390), the respondents are bound to prepare a combined seniority list of both project and open line casual labour. In spite of such direction of the Supreme Court, the respondents failed to prepare such a common combined seniority list for regularisation of project casual labour. The applicant further submitted that even though an attempt was made by the authorities to prepare such combined seniority list vide order dated 5.1.87 (Annexure A-1) the respondents not followed it up but prepared separate seniority lists for project casual labour and open line casual labour and further prescribed a quota of 20: 80 percent for absorption/regularisation of project casual labour and open casual labour respectively. The applicants stated that the Divisional Railway Manager who prescribed this quota had no power to prescribe such a quota for regularisation of project casual labour. It is also stated that prescribing 20% quota for regularisation of project casual labour, is inconsistent with the Railway Board policy, and is, arbitrary. The applicant also stated that the VOP casual labourers belonging to Rajkot Divisions have been subsequently transferred to Ratlam, Jaipur, Bhavnagar, Baroda Divisions and if the respondents are allowed to act upon the quota of 20% for further absorption, the project casual labour of Rajkot division will never get any chance at all for regularisation as Class IV employees. They also challenged the procedure

adopted by the respondents for screening in the division leaving senior project casual labour who were transferred to other divisions.

OA/294/92:



4. This OA has been filed by 58 applicants who claimed that they are the senior most VOP Project casual labour recruited in 1979. The applicant No.1 is working as project casual labour in Rajkot division and the applicants No.2 to 57 who belonged to VOP casual labour of Rajkot division were transferred to the Jaipur division. The main grievances of the applicants are with regard to procedure adopted by the Rajkot Division for the selection and absorption of casual labour as Regular Class IV employees. They have particularly challenged the selection and absorption of certain casual labour under panel dated 6.4.89, 3/5-9-1991 and panel dated 10.6.92. The grievance of the applicant was that senior-most applicants were left out while preparing the seniority list of project casual labour at Rajkot division. The applicants also submitted that in terms of the Hon'ble Supreme Court's judgment in Ram Kumar vs. Union of India & Ors. (referred to supra) the respondents are bound to prepare a combined seniority list of both project and open line casual labour and the Respondents failed to prepare such a list. The applicants stated that the procedure adopted by the respondents for preparing the selection panel was also contrary to the judgment of the Supreme Court in Ram Kumar's case and the instructions of the Railway Board. They also challenged the ratio of 80:20 quota prescribed for the absorption of casual labourers belonging to open line and project casual labourers.

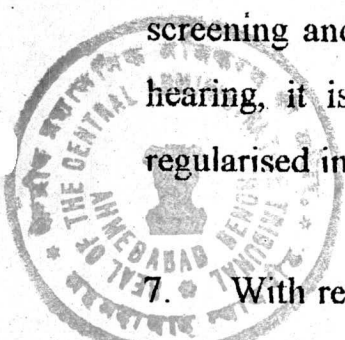
OA/295/92

5. This OA has been filed by Mr. Raghuvirsinh T. Sisodia, Joint Divisional Secretary Paschim Railway Karmachari Parishad, Western Railway,

Rajkot Division and also a V.O.P. Project casual labour. In this O.A. he had challenged the quota of 80: 20 % prescribed for open line and project casual labour respectively for the purpose of absorption as Class IV employees. He had stated that the Respondent No.4 had earlier published a combined seniority list of both open line and project casual labour vide letter dated 5.1.87 but did not pursue the same and thereafter prepared separate seniority lists of project and open line casual labour for the purpose of their absorption as regular Class IV employees. It has been stated that several project casual labour, on threat of retrenchment, were sent to Bhavnagar, Baroda, Ratlam, Kota and Jaipur Divisions and after their transfer to other divisions, they were not included in the seniority list of project casual labourers of Rajkot Division. The applicants submitted that in the facts and circumstances, the seniority list is liable to be quashed. The applicants also submitted that the DRM had fixed a quota of 80:20 ^{respectively} for the purpose of absorption of open line and project casual labour and stated that this quota is totally unjustifiable, arbitrary and discriminatory. It has also been stated that the DRM has favoured casual labour of open line instead of project casual labour.

6. The respondents in their reply have stated that the applicants in all the three O.As. were engaged as project casual labourers in Viramgam Okha Project within the jurisdiction of Rajkot Division. It has been stated that the combined divisionwise seniority list which was prepared by the Rajkot Division (Annexure A-1 in OA/215/92) was prepared before the issue of instructions by the Railway Board in pursuance to the judgment of Hon'ble Supreme Court in the case of Inderpal Yadav vs. Union of India. Subsequent to the issue of the said list (Annexure A-1) in OA.215/92 the General Manager issued letter dated 19.9.86 circulating the Railway Board's letter dated 11.9.86. In terms of this letter divisionwise, seniority list of project casual labour is required to be

prepared. Accordingly, such a list was prepared and circulated on 24.12.1987. All the applicants who filed the OA have been included in the said seniority list as per their seniority and number of days of working put by them. It has also been stated that the said seniority list contains about 10,000 names. In terms of the letter dated 20.5.91 of the respondent No.3, the Chief Engineer, Ahmedabad vide letters dated 17.6.91 and 18.9.91 sent the required information regarding VOP Project casual labourers working under his jurisdiction. It is also stated that all the applicants in OA/215/92 except applicant No.45 were included for screening and absorption by their originating Rajkot division. At the time of hearing, it is stated that all the eligible applicants have been screened and regularised in Class IV posts and granted seniority in accordance with the rules.



7. With regard to the ratio of the judgment of the Hon'ble Supreme Court in Ram Kumar's case, it has been submitted that in terms of the said judgment it is not necessary to prepare a combined seniority list of both project and open line casual labour. It is contended that as per the judgment of the Hon'ble Supreme Court in Inderpal Yadav case, the divisionwise seniority list of project casual labour alone is required to be prepared in accordance with the instructions issued by the Headquarter office vide letter dated 19.9.86.

8. With regard to the prescription of separate quota for absorption of open line and project casual labour, it has been stated that in accordance with the instructions of the Railway Board dated 7.2.89 (Annexure A-7 in OA/295/92) Railway Administration in consultation with the recognised unions and with a view to ensure that project casual labour are given due consideration, may evolve suitable guidelines for absorption of both project and open line casual labour, in regular employment in an equitable manner, to the extent possible. The General Manager, Western Railway subsequently issued instructions vide letter dated 16.11.87 authorising to the Divisional Railway Manager to prescribe quota in accordance with the guidelines. Accordingly, DRM Rajkot prescribed a

quota of 20% for project casual labour. The respondents stated that the prescription of such a quota is in accordance with the rules and instructions of the Railway Board and the same is valid in law. They also denied that prescribing 20% quota is discriminatory and violative of Articles 14 & 16 of the Constitution.

9. We have heard Mr.Y.V.Shah, learned counsel for the applicants and Mr.N.S.Shevde, learned counsel for the respondents. Mr.Y.V.Shah referred to the letter dated 5.1.1987 (Annexure A-1) in OA/215/92 and submitted that in terms of the judgment of the Hon'ble Supreme Court in Ram Kumar's case (*supra*), the respondents had prepared the combined seniority list of both project as well as open line casual labour working in Rajkot Division. However, the respondents subsequently did not pursue the said list for the purpose of regularising the casual labour. He submitted that the action of the respondents is in violation of the judgment of the Hon'ble Supreme Court in Ram Kumar's case. So far as the fixation of quota for absorption of project casual labour is concerned, he submitted that the DRM who prescribed the quota of 20 % had no power in terms of the IREM and the same amounts to ^{such} ~~such~~ delegation which is not permissible in law. In the facts and circumstances, he submitted that the order of the DRM prescribing such quota is liable to be quashed. Mr.Shah further submitted that the respondents did not follow any uniform policy regarding regularisation of project casual labour in each division. Some of the applicants who were initially joined in Rajkot Division were subsequently transferred to Jaipur Division and while making regularisation, the transferred employees have been left out resulting in juniors in the Rajkot division being absorbed leaving seniors. This has resulted in loss of service benefits to them. He also submitted that the respondents acted on the basis inspector-wise seniority and therefore, the seniority list is liable to be quashed.

10. Mr.Shevde, learned counsel for the respondents referred to the headquarter office letter dated 16.11.1987 (Annexure R-I in OA/294/92) and stated that in

accordance with the said instructions of the Headquarter office, divisionwise seniority of project casual labour was prepared. After preparing such seniority list, casual labourers were moved to other divisions. However, their names continued to ^{Dr}~~be~~ ^{Dr}appeared in the seniority list prepared by the Rajkot division in which they were originally recruited. He submitted that certain casual labourers who were transferred out of the division also had their name included in the transferred division for the purpose of their absorption. He submitted that it is possible that some of those project casual labourers who have been moved out from the Rajkot Division in which they were originally engaged could have been left out but called for screening subsequently, after being informed about the omission. He submitted that in terms of the instructions of the Headquarter Office, if seniors who have been transferred out of division and not absorbed, in the transferred division, they have a right to be considered and absorbed in the Division in which they were initially engaged according to their seniority. He further submitted that the applicants have not furnished full particulars in this regard and in the facts and circumstances, he cannot say how many applicants who were senior to several others were ^{Dr}~~not~~ left out for regularisation..

11. With regard to the prescribing quota for the absorption of project casual labour in open line he submitted that the Railway Board after prescribing the guidelines, authorised the Railway administration to prescribe the percentage for their absorption. In accordance with the instructions of the Railway Board and the General Manager, the DRM of each division in consultation with the recognised unions and in accordance with the guidelines, prescribed 20% quota for project casual labour. While prescribing such percentage, the DRM, is required to keep in view the total number of vacancies in the unskilled categories in the different screening units of open line department. He also submitted that casual labour working in open line acquire special skill and experience against open line posts and therefore the case of open line casual labour is not identical with project casual labour. In the facts and circumstances,

he submitted that prescribing such percentages does not amount to sub-delegation of power or arbitrary as contended by the applicants.

12. We have carefully considered the submissions of both counsel and examined the pleadings.

13. The first contention of the applicants in these OAs, is that the Respondents are bound to prepare a divisionwise combined seniority list of both project and open line casual labour. An identical contention was raised before this Tribunal in TA/3 of 1991 in the case of Association of Railway & Post Employees vs. Union of India & Others which was disposed of by our judgment dated 20.10.99. After a detailed examination of this issue in paragraphs 13 to 16 of the judgment, this Tribunal came to the following findings : (i) chapter 20 of IREM contained separate provisions regulating the engagement of open line casual labour and project casual labour; (ii) para 2006 of IREM provides that absorption of casual labour in regular services shall be subject to suitability and eligibility of the individual casual labour and the principles to be followed regarding their absorption ^{Dec} ~~which~~ shall be decided by the Railway administration; (iii) The scheme framed for regularisation of project casual labour in pursuance of the judgment of Hon'ble Supreme Court in the case of Indrapal Yadav case applied only to the project casual labour and there is also separate provisions/scheme for regularisation of open line casual labour; and (iv) In our opinion, the counsel for Railway Administration who appeared in Ram Kumar's case only stated that in the matter of regularisation, both project and open line casual labour are considered. The relevant portion of observations of this Tribunal in para 16 of the judgment reads as follows:

" In the light of the contents of the affidavit dated 3.7.98 filed by the Chief Engineer clarifying the matter and the statement that no such seniority list was ever prepared, we hold that Annexure-F cannot be relied upon to show that such a list was ever prepared. However, keeping in view the scheme as approved by Supreme Court in Indrapal Yadav's case, the provisions of IREM and the instructions of the Railway Board and other authorities referred

to above and the reply of the respondents, We hold that the respondents are required to prepare and maintain separate seniority list for project casual labour and open line casual labour. We, therefore, reject the contention of the applicant that a combined seniority list of both project and open line casual labour is required to be prepared in terms of the judgments of the Supreme Court and IREM."

In the light of the above, we reject this contention of the applicants

14. The next contention of the applicants in these O.As is that the DRM, Rajkot have no power to prescribe 20% class IV posts/vacancies in open line for project casual labour. It is stated that only General Manager had the statutory power and he cannot sub-delegate the aforesaid statutory power to the DRM. Such delegation is therefore illegal and ultravires. It is also stated that reservation of only 20% of posts of project casual labour is discriminatory and violative of provisions of Articles 14 and 16 of the Constitution.

15. This contention has also been dealt with in our judgment dated 20.10.99 in TA No.3 of 1991. In terms of para 2006 of IREM absorption of casual labour against regular vacancies shall be decided by the Railway Administration. The Railway Board vide letter dated 17.2.89 after referring to their earlier letters dated 7.3.72 and 3.5.72 regarding absorption in a regular employment of project casual labour against all the posts created for maintenance of new assets, referred to the following instructions with regard to absorption of project casual labour against regular vacancies arising in open line.

" The Board have reviewed the matter in consultation with two recognised Federations. After taking into account the views expressed by the Federations during discussions, Board

considered that while no hard and fast rule can be laid down in this regard, as the situations and practices may vary from Railway to Railway, it is necessary for the Railway Administrations to ensure that project casual labour are given the due consideration in absorption against regular vacancies arising in the open line. They therefore, desire that each Railway Administration should, in consultation with the recognised unions, evolve suitable guidelines for absorption of both project casual labour and non-project (or Revenue) casual labour, in regular employment against normal vacancies. As well as posts sanctioned for decasualisation in an equitable manner, to the extent possible."

16. In accordance with the provisions of IREM and the instructions of the Railway Board the General Manager, Western Railway vide letter dated 16.11.87 (Anneuxre R-I in OA/294/92) issued the following guidclines/instructions.:

"As regards absorption of project casual labour on regular percentage may be fixed in consultation with the recognised unions in proportion to the strength of project and non-project casual labour. For this purpose, the total number of vacancies in the unskilled categories in the different screening units of open line departments should be assessed and the number of vacancies to be filled up from the project casual labour should estimated applying the percentage fixed. The screened list of the project casual labour department-wise should be prepared accordingly for this number. From this list, project casual labour should be posted to the different units/departments against the vacancies in that unit according to the percentage of vacancies to be filled from project casual labour. The unskilled posts created for the maintenance and operation of the new assets should normally be filled up by the project casual labour unless there are non-project casual labour in service in the area with longer length of service. In addition to this percentage of vacancies, The posts created on open line as a result of de-casualisation shall be filled up by the open line casual labour only.

The above orders are applicable to all departments which employ both project and non-project casual labour. In case there are any local court's/CAT's order which are different from the above, the full details may be referred to this office so that the same can be examined and course of action to be taken advised."

: 16 :

17. It is in accordance with the ^{above} instructions of G.M., the DRM after consulting the recognised unions and examining the other relevant factors prescribed 20% of vacancies in open line for the project casual labour.

18. The General Manager in his letter dated 16.1.90 (Annexure A-VIII in OA/294/92) referred to with approval, the quotas fixed by different divisions. Para 2.1 of the said letter reads as follows:-

" 2.1. In this connection, attention is invited to the instructions contained in this office letter No.E(R & T) 615/0 dated 16.11.87 for fixing up a percentage in consultation with the recognised Unions in proportion to the strength of project and non-project casual labors. According to these instructions, the Divisions have fixed the percentage for absorption of project and non-project casual labors against the regular vacancies in Group 'D' categories as under:-

" Division	Percentage for non- <u>Project casual labour.</u>	Percentage for Project <u>Casual Labour.</u>
BCT	70%	30%
BRC	80%	20%
RTM	80%	20%
KTT	80%	20%
ATT	90.75%	03.25 % (position to be checked up and action taken accordingly.)
JP	80%	20%
RJT	80%	20%
BVP	60%	40%"

19. It may thus be seen that the General Manager, Western Railway after prescribing the detailed procedure/guidelines, directed the DRM of each division to prescribe the percentage for absorption of project casual labour. In our opinion, the action of the General Manager cannot be regarded as sub-delegation of the statutory power. We hold that the prescribing 20% of the vacancies in open line for absorption from project casual labour is in accordance with the provisions of IREM and is valid in law.

20. It is also contended that prescribing 20% of regular vacancies in open lines for the project casual labour is discriminatory and violative of Articles 14 and 16 of the Constitution. The project casual labour are not on the permanent establishment and they are engaged by the lower level subordinate staff of the railway administration. On completion of the project, the surplus staff were required to be retrenched or offered work of similar nature on a nearby project. Prior to 1984, the project casual labour were considered for absorption only against Class IV posts that may be required for operation and maintenance of new assets created (viz new lines, conversions, doubling major yards etc.) . It is only after the judgment of the Inderpal Yadav case and in terms of the scheme framed by Railway Board, project casual labour were considered for absorption against class IV posts in open line.

The duties of the casual labour in open line are different from that of the project casual labour in Construction and Signal Department . In our view, the open line casual labour who having worked against these posts had gained sufficient experience and expertise in manning the posts in open line. The project casual labour cannot be said to perform duties similar to open line casual labour . In the facts and circumstances, project casual labour cannot compare themselves with open line casual labour . It is therefore, open to the General Manager to authorise the DRM to fix separate percentage for the purpose of regularisation of project casual labour against vacancies in open line. In the facts and circumstances, we hold that the order of the General Manager in

prescribing 20% of regular vacancies in Class IV in open line for the purpose of absorption from project casual labour cannot be regarded as discriminatory or violative of provisions of Articles 14 and 16 of the Constitution. We reject the contention of the applicant in this regard.

21. The applicants contended that some of the project casual labour who are initially appointed in Rajkot division were subsequently transferred to Jaipur and other divisions. Such transferred persons who are senior to many others in Rajkot division were not considered while conducting screening and subsequent absorption by the Rajkot division. At the time of hearing, Mr. Shevde, learned counsel for the respondents submitted that the casual labourers who have been initially appointed in Rajkot Division and subsequently transferred can be considered by both the originating as well as the transferred division for the purpose of their regularisation/ absorption. He stated that at this stage, it is not possible to state whether any of the applicants were seniors to certain others who were absorbed by the Rajkot division (Annexure A-1 in OA/215/92). No factual details in this regard have been furnished to us. In the facts and circumstances, we direct that if any of the applicants ^{is} ~~were~~ aggrieved with the regularisation of any of the persons who were juniors to ^{him} ~~them~~, ^{he} ~~they~~ may submit ^{his} ~~their~~ representation in this regard to the competent authority within 3 months from the date of receipt of a copy of this order. If such a representation is received, the competent authority may dispose of the same in accordance with the rules/instructions and the applicants may be informed as expeditiously as possible and in any case within 3 months from the date of receipt of such representation.

22. The
No.21. No
disposed of.

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Book
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3/17/2000

Central Bank of India
Mumbai
Mumbai
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