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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR**

Original Application No. 310/2005

With

Misc. Application No. 137/05

Date of order: 13.02.2006

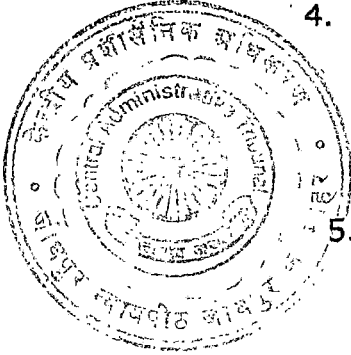
**CORAM:**

**HON'BLE SHRI J.K. KAUSHIK, JUDICIAL MEMBER**

1. Rajendra Choudhary son of Sh. Bhera Ram Choudhary, aged about 43 years, resident of 17A, Sharmikpura Masuria, Jodhpur.  
Post: Applicant is presently holding the post of Section Engineer at Shop No. 14, North West Railways, Workshop, Jodhpur.
2. Rohitash Sharma son of Sh. S.R. Sharma, aged about 42 years, resident of 9/37, Chopasani Housing Board, Jodhpur.  
Post: Applicant is presently holding the post of Section Engineer at Shop No. 15, North West Railways, Workshop, Jodhpur.
3. Avinash Mathur son of Sh. A.R. Rai, aged about 45 years, resident of L-202-A, Railway Workshop Colony, Jodhpur.  
Post: Applicant is presently holding the post of Section Engineer at CBCR, Shop No. 11, North West Railways, Workshop, Jodhpur.
4. Narendra Prakash Mathur son of Late Sh. A.P. Mathur, aged about 44 years, resident of L-222A, Railway Workshop Colony, Near Rotary Circle, Jodhpur.  
Post: Applicant is presently holding the post of Sr. Section Engineer/PCO, North West Railways, Workshop, Jodhpur.
5. Om Prakash Patel son of Sh. Rawat Ram, aged about 55 years, resident of 67, Near Pili Tanki, Bhagat Ki Kothi, Jodhpur.  
Post: Applicant is presently holding the post of MCM at Shop No. 4, North West Railways, Workshop, Jodhpur.
6. Mahendra Singh Pundir son of Sh. C.S. Pundir, aged about 44 years, resident of Section-7, New Power House Road, Jodhpur.  
Post: Applicant is presently holding the post of Section Engineer at Shop No. 2, North West Railways, Workshop, Jodhpur.
7. N. Philips son of Sh. L. Philips, aged about 53 years, resident of L-200A, Work Shop Colony, Rotary Circle, Jodhpur.  
Post: Applicant is presently holding the post of J.E.II at Shop No. 8, North West Railways, Workshop, Jodhpur.
8. Virendra Singh Gaur son of Sh. G.S. Gaur, aged about 46 years, resident of Sardar Club Scheme, Opposite Polo Ground, Jodhpur.  
Post: Applicant is presently holding the post of Section Engineer at Shop No. 4, North West Railways, Workshop, Jodhpur.

...Applicants.

Mr. Kuldeep Mathur, counsel for the applicants.



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**VERSUS**

1. The Union of India, through the General Manager,  
North West Railways, Jaipur (Raj.).
2. The Chief Workshop Manager [Earlier known as  
Dy Chief Mechanical Engineer (Workshop)],  
North West Railways, Jodhpur.

...Respondents.

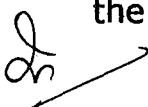
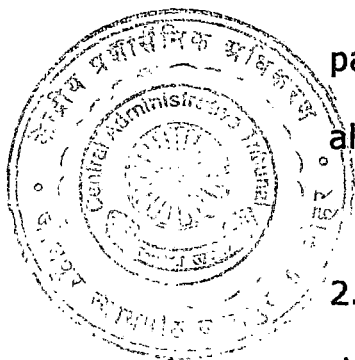
Mr. Manoj Bhandari, counsel for the respondents.

**ORDER (Oral)**

Shri Rajendra Choudhary & 7 Ors. have filed this Original Application assailing the validity of notices dated 16.07.2002 (Annexure A/3) and the orders dated 21.12.2002 (Annexure A/1) and they have prayed for quashing and setting aside the same and to restrain from making any recovery of the amount paid as special pay/teaching allowance to them and the amount already recovered be refunded to them.

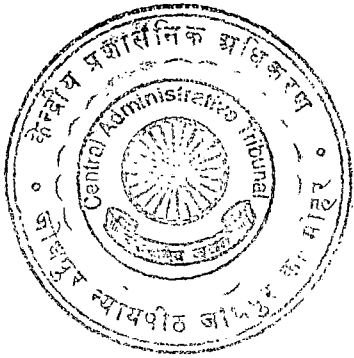
2. With the consent of learned counsel for both the parties, the case was taken up for final disposal at the stage of admission and I have accordingly heard the arguments advanced at the bar accordingly as well as perused the pleadings and records of the case.

3. At the very outset, the learned counsel for the applicants has submitted that the facts of this case fall within a very narrow compass and all the applicants performed the instructional duties during the various spells indicated in schedule 'A' at page 19 of the paper book. During the said period, they were paid certain

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special pay/teaching allowance by the respondents. There was no misrepresentation on the part of the applicants. The impugned orders came to be passed in 2002 but were kept in abeyance by the respondents themselves since one Shri Satish Chandra Mathur, a similarly situated person questioned the validity of similar order by filing an OA before this Bench of the Tribunal and an ad-interim order came to be passed in his favour. The said case has been finally allowed in favour of the applicant therein and the same has also been upheld by the Hon'ble High Court of Rajasthan at Jodhpur. He has submitted that while the controversy involved in the instant case stands fully covered by the verdict of this Bench of the Tribunal in the ibid case, the applicants are being subjected to hostile discrimination only on the ground that they have failed in assailing the impugned order immediately after the same came to be issued. He has also submitted that M.A. for condonation of delay has also been filed on the ground that once the respondents themselves did not give effect to the impugned orders and awaited the decision in the aforesaid case, the delay cannot be said to be attributable to the applicants. He has next contended that the respondents themselves have kept the impugned orders in abeyance and the moment they have started giving effect to the same, all the applicants have rushed to this Bench of the Tribunal, by filing the instant O.A. They in fact sincerely thought that they would be visited with the similar treatment as that of a similarly situated person indicated above (i.e. Shri Satish Chandra Mathur.). Nevertheless, such course of

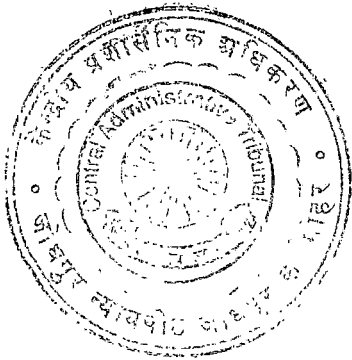


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action has not been found expedient for the respondents and the applicants compelled to file this Original Application.

4. The learned counsel for the respondents has submitted that the applicants were paid the special pay/teaching allowance due to mistake and they were not otherwise entitled for the same. He has further contended that the mistake came to be pointed out by the Auditors and then only the process of the recovery was put into motion. The applicants were issued with a show cause notice and after giving them opportunity of hearing the impugned order came to be issued. He has submitted that since the over-payment has been made to the applicants under bona fide mistake they may be permitted to recover the same in easy installments. He has also tried to demonstrate that there has been an abnormal delay in challenging the impugned order and no cogent reasons for condonation of the delay has been adduced. The subject matter relates to recovery which does not give any recurring cause of action, therefore, no fault can be fastened with the action of the respondents and the decision in the case of **Satish Chandra Mathur** is of no help to the applicants.

5. I have considered the rival submissions put forth on behalf of both the parties. Before advertng to the crux of the matter, I consider it expedient to clear of the peripheral issue of objection relating to the limitation. Admittedly, the impugned orders were issued in 2002 but the respondents themselves kept them

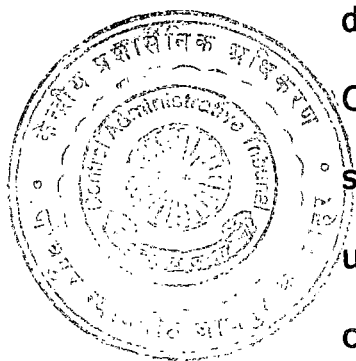


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in abeyance of their own since there was an interim order issued in favour of said Shri Satish Chandra Mathur. It seems that the then Chief Works Manager vide Annexure R/3 took up the matter with the financial wing for extending the similar benefit to all the similarly situated persons as that of Shri Satish Chandra Mathur, perhaps he was blessed with more than usual wisdom, but the finance department did not accede to his proposal and decided to go ahead with the recovery in respect of all the persons who did not take recourse to litigation and this decision could be taken up only vide Annexure A/4 dated 19.07.2005. In this view of the matter, I find that the matter has been under constant consideration with the respondents themselves and it does not sound well from their side that the O.A. is belated.

Otherwise also the applicants have a meritorious case and no settled issue is going to be unsettled if the O.A. is adjudicated upon on merits by applying the beacon light provided by apex court in case of **Collector, Land Acquisition, Anantnag v. Mst. Katiji, (1987) 2 SCR 387** : (AIR 1987 SC 1353). I consider it that there are good and sufficient reasons for condoning the delay and the delay in filing the Original Application is hereby condoned and the M.A. No. 137/2005 stands accepted accordingly.

6. Now turning up on the merits, I have waded through the aforesaid judgement passed in case of **Satish Chandra Mathur (O.A. No. 09/2003)** on 18.09.2003 by this Bench of the Tribunal where I was one of the party to the order. At this



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juncture, I can only assert that if, independent of the said authority, I were to examine the matter afresh, I would have reached to the same conclusion and otherwise also I am bound by the ratio of Division Bench judgement of this Bench of the Tribunal having been upheld by the Hon'ble High Court of Rajasthan at Jodhpur. If that were so, I have absolutely no hesitation in applying the said decision and deciding this case on similar lines and there is no need for fresh discussions. A copy of the said order is being placed on the records so as to avoid repetition of discussions once again.

7. In view of what has been said and discussed above, the Original Application has ample force and the same stands allowed, accordingly. The impugned notices dated 16.07.2002 (Annexure A/3) and the orders dated 21.12.2002 (Annexure A/1) are hereby quashed and the applicants shall be entitled to all consequential benefits including the refund of any amount which might have been already recovered from them in pursuance with the impugned orders. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.



  
( J K KAUSHIK )  
JUDICIAL MEMBER

Kumawat

Very  
B

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