BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A.247/87

1. Shri Jaitu T. Tiwari,
C/o.Rambahadur Yadav,
Waldhooni,Ashok Nagar,
Murgibai ki Chawl,
Kalyan,
Dist.Thane. .. Applicant

vs.

Divisional Electrical Engineer,
Traction Dept.,
Central Railway,
Kalyan. .. Respondent

O.A.248/87

Shri Kishore Govinda Ingle,
C/o. R.D.Nemade,
Narayan Nagar,
Kochgaon,
Ambernath. .. Applicant

vs.

Divisional Electrical Engineer,
Traction Dept.,
Central Railway,
Kalyan. .. Respondent

3. O.A.249/87

Shri Vilas Lotu Chaudhary,
Narayan Nagar,
Kosgaon,
Ambernath,
Dist.Thane. .. Applicant

vs.

Divisional Electrical Engineer,
Traction Dept.,
Central Railway,
Kalyan. .. Respondent

4. O.A.251/87

Shri Prabhakar Narayan Bane,
Behind Shiv Chhaya Sadan,
Jimibaug, Kolsewadi,
Kulgaon(East) .. Applicant

vs.

Divisional Electrical Engineer,
Traction Dept.,
Central Railway,
Kalyan. .. Respondent

5. O.A.268/87

Shri Shantaram Namdeo Shinde,
Railway Building No.M/SRBI/3R/
No.17, Ashok Nagar,
Kalyan. .. Applicant

vs.

The Divisional Railway Manager,
Central Railway,
Bombay V.T. .. Respondent

... 2/-

6. O.A.310/87

Shri Mohamed Bahid Safi,
C/o. Shri G.K.Masand,
Advocate,
24-B,Rajabahadur Compound,
3rd Floor,Hamam Street,Fort,
Bombay - 400 023. .. Applicant

vs.

a) Union of India
through
The General Manager,
Central Railway,
Bombay V.T.

b) Assistant Engineer(Works)
Central Railway,
Byculla,
Bombay - 400 008.

c) Inspector of Works
(Maintenance)
Central Railway,
Wadi Bunder,
Bombay. .. Respondents

7. O.A. 410/87

Shri Bapu Deochand More,
R/o.PATONDE,
Tal.Chalisgaon,
Dist.Jalgaon. .. Applicant

vs.

a) Union of India
through
The General Manager,
Central Railway,
Bombay V.T.

b) Chief P.W.I.(N)
Chalisgaon,
Dist.Jalgaon. .. Respondents

8. O.A.426/87

Shri Gangaprasad S.Yadav,
C/o. R.S.Yadav,
Shantabai ki Chawl,
Room No.4, Halavpur,
Kurla,Bombay - 400 070. .. Applicant

vs.

The Dy.C.E.(Const.)
Central Railway,
Bombay V.T. .. Respondent

9. O.A.427/87

Shri Suresh Namdeo Gole,
Deepak Niwas Building,
Behind Kadam Building,
Rambaug Main Road,
Kalyan - 421 301. .. Applicant

vs.

The Dy.C.E.(Const.)
Central Railway,
Bombay V.T. .. Respondent

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10. O.A.455/87

Shri Bharat Mahipat Salunkhe,
Maratha Kolseadi,
Hanuman Tekadi,
Bhosale Chawl,
Tal.Kalyan,Dist.Thane. .. Applicant

vs.

The Dy.C.E.(Const.)
Central Railway,
Bombay V.T. .. Respondent

11. O.A.542/87

Shri Abu Zapar Qureshi,
C/o.L.M.Nerlekar,
Advocate,
140, Usha Niwas,
Shivaji Park,
Road No.5,
Bombay - 400 016. .. Applicant

vs.

The Divisional Rly.Manager,
Central Railway,
Bombay V.T. .. Respondent

12. O.A.543/87

Shri Ram Dan Jokhai Prajapati,
Barkat Ali Nagar,
Antop Hill, Wadala,
Gautam Nagar Zopadpatti,
Bombay - 400 037. .. Applicant

vs.

The Divisional Rly.Manager,
Central Railway,
Bombay V.T. .. Respondent

13. O.A.544/87

Shri Mukund R.Yevale,
Swadeshi Mills Road,
Tadwadi,
Mangde Chawl,Chunabhatti,
Bombay - 400 022. .. Applicant

14. O.A.545/87

Mohd Hanif Sheikh Baboo,
Railway Quarter,
RB II-554,Railway Colony,
Trombay,Vasinaka,
Bombay - 400 074. .. Applicant

15. O.A.546/87

Shri Anand Dattaram Rane,
Laxmi Cottage,
Bldg.No.B,Room No.97,
3rd Floor,Dr.Ambedkar Road,
Bombay - 400 012. .. Applicant

16. O.A.552/87

Shri Shashikant D.Lad,
Kumberwada,
Shankar Teli Chawl,
Opposite Subha Maidan,
Kalyan,Dist.Thane. .. Applicant

vs.

The Divisional Rly.Manager,
Central Railway,Bombay V.T. .. Respondent in all the above cases from Sr. No.13 to 16.

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17. O.A.572/87

Shri Dinkar Kisan,
Mahatma Phule Nagar Zopadpatti,
Shri Guru Narayan High School,
Chawl No.7,
Bombay - 400 089. .. Applicant

vs.

The Deputy Chief Engineer,
Central Railway,
Bombay V.T. .. Respondent

18. O.A.588/87

Jyotiram Sopanrao Jagdale,
Room No.689,
Vikasnagar(Kiwle)Dehuroad,
at Post Dehuroad,
Tal.Haveli,
Dist.Pune. .. Applicant

19. O.A.589/87

Vishwanath Krishna Mane,
Room No.L-30,Netke Chawls,
(M.B.Camp),At Post-Dehuroad,
Tal.Haveli, Dist.Pune. .. Applicant

20. O.A.613/87

Shri Anant Nathuram Deshmukh,
Shirse,Post-Kondiwade,
Tal-Karjat,
Dist.Raigad. .. Applicant

21. O.A.646/87

Shri Harendra Prasad Gupta,
House No.198,Central Railway
Quarters, Subhash Chowk,
Kalyan,Dist.Thane. .. Applicant

22. O.A.647/87

Shri Bhaskaran Ayyan,
Central Railway Quarters,
MS/RB/I/1001/7,
Waldhone,Kalyan. .. Applicant

23. O.A.648/87

Shri Atmaram Harichandra Nighojkar,
Mahavir Peth,Karjat,
Dist.Raigad. .. Applicant

24. O.A.745/87

Shri Vasudeo Kondaji Munde,
Residing at Porle,
Post-Porle,Via Kalyan,
Desai Patil Pada,
Tal-Thane,Dist-Thane .. Applicant

25. O.A.793/87

Shri Asharam Dinanath Hinge,
C/o.Shivaji Somnath Dalvi,
Patrayachai Chawl,
Near Rajan Bhadur Mills,
Laxmi Provision Stores,
Tadiwala Road,Pune-411001. .. Applicant

... 5/-

26. O.A.794/87

Shri Satprakash Omprakash Sharma,
C/o. K.G.Sharma,
MS/RBI/995/31,Railway Colony,
Kolshe Wadi,
Kalyan. .. A[illegible]ant

27. O.A.4/88

Shri Dilip Baburao Bhonsale,
Near F-Cabin,
Milind Nagar,
Kate Manveli,
Kalyan(East),
Dist.Thane. .. [illegible]ant

28. O.A.23/88

Javed Shaikh Abdul,
416,New Mangalwar Peth,
Near Kalewada,
Pune - 411 011.

29. O.A.53/88

Shri Ratanakar Yeshwant Kul[illegible]
C/o.M.V.Chandratraya
Murar Sheth chawl,
Murbad Road,
Kalyan. .. [illegible]licant

30. O.A.88/88

Shri Motilal Deviprasad Bari,
C/o. P.R.Singh,
Dr.Granti Road,
Parsi Colony,
Ujwala Apartments,4th Floor,
Bombay - 400 014. .. Applicant

31. O.A.103/88

Anil Dayanand Gaikwad,
119, Jagtap Chawl,
Ward No.2,
Dapodi,
Pune - 411 012. .. [illegible]

32. O.A.114/88

Shri Vilas Madhukar Bhalerao
Brake's Man Chawl,
'J' Type,
Room No.170,
Murbad Road,
Near Chaya Talkies,
Kalyan. .. Applicant

33. O.A.115/88

Shri Virendra Vijay Dey,
Narayan Bengali Chawl,
Room No.1,Maratha Kolsewadi,
Kalyan. .. Applicant

34. O.A.116/88

Shri Abdul Karim,
Brake's Man Chawl,'J'Type,
Room No.137,
Murbad Road, Kalyan. .. Applicant

vs.

The Divisional Railway Manager,
Central Railway,
Bombay V.T. .. Respondent in all the above cases from Sr. No.18 to 36.

Coram:Hon'ble Vice-Chairman Shri B.C.Gadgil
Hon'ble Member(A)Shri L.H.A.Rego

Appearances:

1. Shri L.M.Nerlekar
Advocate for applicants at Sr.Nos. 1 to 5, and 8 to 34

2. Shri G.K.Masand
Advocate for applicat at Sr.No.6

3. Shri H.N.Tripati,
Advocate for applicant at Sr.No.7

4. Shri R.K.Shetty
Advocate for Respondent at Sr.Nos.1 to 4, Sr.16,Sr.No.20,Sr.Nos. 27,28,31 & 34

5. Shri D.S.Chopra,
Advocate for Respondent at Sr.Nos.5,6,8, 9,10,11,12,13,14,15, 17,18,19,29,30,32,33

6. Shri V.G.Rege,
Advocate for Respondent at Sr.No.7,

7. Shri P.R.Pai,
Advocate for Respondent at Sr.Nos.21,22,23,24,25, 26,

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JUDGMENT Date: 17-8-1988

(Per B.C.Gadgil, Vice-Chairman)

These applications can be decided by a common judgment. This is more so, when the controversy is practically concluded by the judgment passed by this Tribunal on 14-8-1987 in O.A.No.219/86 (Kismatram Kedaram vs. The Divisional Railway Manager, Central Railway, Bombay V.T.) and other connected matters. The Railway Administration has filed Review Petitions before this Tribunal viz. Review Petitions Nos. 34/87 and others. The said Review Petitions were dismissed by us on 17-11-1987. The Railway Administration has preferred Special Leave Petition in the Supreme Court against the dismissal of the said Review Petitions and on 1-2-1988 the Supreme Court has dismissed the SLP.

2. It is not necessary to narrate the f in each of these applications. Suffice it to m n the facts only in regard to O.A.268/87. The ap cant in this application is a casual labourer working with the Railway Administration from 1982. He claims that he had attained temporary status as an employee in the Railway as he had worked for more than 120 days. It is seen that the respondent had taken a decision that while employing persons as casual labourers, preference was to be given to those who had previously worked as casual labourers and whose services were earlier terminated for want of work. According to the respondent, the applicant has produced a false labour card showing that he had previously worked with the Railway Administration and on that basis, secured employment in 1982. The respondent issued a letter dtd. 23-10-1986 stating therein, that the applicant

had obtained employment, on the basis of a Casual Labour Card bearing No.318158, which showed that the applicant had previously worked with the railway administration. The letter further states, that it has been found that the said labour card was a forged one. The applicant was therefore asked to state as to why his service should not be terminated for this reason. The applicant gave a reply on 13-11-86 denying the allegation that he had not worked previously with the railway administration or that the labour card was forged or bogus. He has also stated, that the Casual Labour Card No.318158, does not belong to him and that the Department had lost the labour card produced by him. The Personnel Department of the railway administration by its letter dtd. 9-12-1986 terminated the services of the applicant forthwith, on the ground, that he had obtained employment on the basis of a false casual labour card. It is this order that is challenged by the applicant.

3. The allegations in the remaining applications are practically similar. Only the date of entry in service, the date of notice issued by the Department and the date of termination would differ. These applicants therefore claim that the termination of their service without holding a departmental enquiry was bad, as the termination is simpliciter but has attached a stigma to the applicants.

4. The respondents have denied the allegations made in all the applications. It was contended, that the Department checked the service record and found that each of these applicants was not previously employed by the railway administration. They therefore assert that the termination of service was legal and proper. This is the type of reply given by the

respondents in some of the applications, while in other applications no written reply has been filed. However, the contention advanced in the course of the hearing was uniform and similar.

5. It is common ground that no departmental enquiry as contemplated by the Railway Rules has been held before the railway administration terminated the service of all the applicants on the allegation that these applicants had produced a bogus casual labour card. Before proceeding further we would like to give below in a nutshell the relevant dates about the entry in service, date of notice, reply given by the applicant and the date of termination.

O.A.No. & Name of the applicant.	Date of entry in service	Date of notice by Rlys.	Date of reply given by the applicants.	Date of termination
(1)	(2)	(3)	(4)	(5)
1) O.A.247/87 Shri J.T.Tiwari	10-12-83	29-1-87	11-2-87	No Termination order.
2) O.A.248/87 Shri K.G. Ingale.	3-4-84	29-1-87	11-2-87	- do -
3) O.A.249/87 Shri V.L. Choudhari	13-4-83	29-1-87	11-2-87	- do -
4) O.A.251/87 Shri P.N.Bane	6-3-83	27-1-87	11-2-87	- do -
5) O.A.268/87 Shri S.N. Shinde.	12-7-82	23-10-86	13-11-86	9-12-86
6) O.A.310/87 Shri M.B.Safi	21-11-83	14-1-87	17-1-87	No Termination order.
7) O.A.410/87 Shri B.D.More	22-4-81	20-1-87	27-1-87	

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(1)	(2)	(3)	(4)	(5)
8) O.A.426/87 Shri G.S. Yadav.	2-5-83	4-2-87	18-2-87	23-2-87
9) O.A.427/87 Shri Suresh N. Gole.	20-6-83	18-11-86	27-11-86	16-12-86
10) O.A.455/87 Shri B.M. Salunke.	3-5-83	17-10-86 18-11-86	6-12-86	18-12-86
11) O.A.542/87 Shri Abu Zapar Qureshi.				30-11-84
12) O.A.543/87 Shri Ram Dan Jokai Praja-pati.				5-11-84
13) O.A.544/87 Shri M.R.Yevale	8-6-1983			30-11-84
14) O.A.545/87 Shri M.H. Shaik Baboo				30-11-84
15) O.A.546/87 Shri A.D.Rane	19-10-1980			30-11-84
16) O.A.552/87 Shri S.D.Lad	6-3-83			13-3-87
17) O.A.572/87 Shri Dinkar Kishan	20-12-82	18-11-86		19-12-86
18) O.A.588/87 Shri Jyotiram Sopanrao Jagdale	10-11-83	5-11-84		30-11-84
19) O.A.589/87 Shri Vishwanath K. Mane.				30-11-84
20) O.A.613/87 Shri Anant N. Deshmukh	15-3-83	5-1-87		27-1-87
21) O.A.646/87 Shri Harendra Prasad Gupta	25-3-86	19-3-87	1-4-87	25-7-87
22) O.A.647/87 Shri Baskaran Ayyan	26-12-85	19-3-87		11-9-87
23) O.A.648/87 Shri Atmaram H.Nighojkar	28-2-83	19-3-87	1-4-87	19-9-87

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(1)	(2)	(3)	(4)	(5)
24) O.A.745/87				
Shri Vasudeo K. Munde.	14-11-83			14-7-84
25) O.A.793/87				
Shri Asharam D. Hinge.	January, 1984.	1-10-1984		1-11-1984
26) O.A.794/87				
Shri Satprakash Omprakash Sharma	19-1-1985			27-1-86
27) O.A.4/88				
Shri Dilip Baburao Bhonsale	9-12-83	23-1-87		23-1-87
28) O.A.23/88				
Shri Javed Shaikh Abdul	25-1-84	5-11-84		30-11-84
29) O.A.53/88				
Shri R.Y.Kulkarni	8-2-84			24-6-87
30) O.A.88/88				
Shri Motilal Deviprasad Bari	2-4-83			24-6-87
31) O.A.103/88				
Shri Anil D. Gaikwad.	January, 1984.	1-10-84		1-11-84
32) O.A.114/88				
Shri Vilas Madhukar Bhalerao	9-12-83			28-8-86
33) O.A.115/88				
Shri Virendra Vijay Dey.	9-12-83			28-8-86
34) O.A.116/88				
Shri Abdul Karim	22-9-82	9-2-87	2-3-87	16-6-87

6. The question therefore is as to whether the termination of service of these applicants in the above manner is legal or not. It is this very aspect that has been considered by us in Kismatram's case. We may state here that the facts in these proceedings are practically similar to the facts in Kismatram's case and other connected matters. We have relied upon

the decision of the Supreme Court in the case of Jagdish Prasad v. Sachiv Zilla Ganna Committee reported in ATR 1986(1)SC 197. In that case the applicant while applying for service had concealed the fact of his removal from earlier service on charges of corruption. It is for this reason that the services of the applicant were terminated. The Supreme Court quashed the said order and the material head-note reads as follows:

> "Where from the order of termination itself it is evident that it was passed on the ground that the appellant concealed the fact of his removal from the service under the U.P.Govt.Roadways on charge of corruption at the time when he applied for the post of clerk under the Ganna Society then such order of termination is not an innocuous order, but is an order which on the face of it casts stigma on the service career of the appellent and it is in effect an order of termination on the charges of concealment of the facts that he was removed from his earlier service under the U.P. Roadways on charges of corruption. This order undoubtedly is penal in nature having civil consequences and it also prejudicially affects his service career. Furthermore, this order of termination is considered along with the show cause notice will clearly reveal that the order of termination if considered along with the show cause notice will clearly reveal that the order of termination in question is not an innocuous order made for doing away with the service of the temporary employee like the appellant in accordance with the terms and conditions of his service. This order, is therefore, per se,illegal, arbitrary and in breach of the mandatory procedure prescribed by Regulation 68 of the U.P.Cane Co-operative Service Regulations 1975. The order made is also in utter violation of the principle of audi alteram partem"

It is material to note that Service Regulation No.68 mentioned above, provided for holding of a departmental enquiry after framing necessary charges. The Regulation further states that the delinquent has to submit his explanation. He is to be asked ~~as to whether he is to be~~

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asked as to whether he is to be heard in person. Inspection of the record is to be given and the delinquent is entitled to a personal hearing including the right to cross-examine the witnesses. The delinquent then has to enter his defence. It is only after holding such a detailed enquiry that the order terminating him from service could be passed. A similar procedure is contemplated by the Railway Rules for holding a departmental enquiry. These rules have not been followed in all the cases before us. Relying upon the above mentioned Supreme Court judgment we held that detailed departmental enquiry as prescribed by the rules should be held even when an allegation is made about concealment of certain facts at the time of entry in service.

7. It is true that the respondents have relied upon the decision of the Principal Bench of the Administrative Tribunal reported in 1987(3)ATC 990. The Principal Bench has in that case held, that the termination of service alleged to have been secured by dishonest means is permissible without holding any enquiry. Before the Principal Bench certain interrogatories were framed and the applicants were asked to reply to them. Thereafter the Principal Bench found that such termination was neither arbitrary nor by way of punishment. The learned advocates appearing on behalf of the respondents relied upon this decision and submitted, that the view taken by us in Kismatram's case(O.A.219/86) and other connected matters, is contrary to the view taken by the Principal Bench and that therefore it would be necessary to make a reference to the Chairman of the Central Administrative Tribunal under Section 5(4)(d) of the Administrative Tribunals Act 1985 to constitute a larger Bench of more than two members for

The Industrial law is quite different and it will not be open for Govt. to contend that though no enquiry was held even when it is required to be so held, Govt. should be given an opportunity to lead evidence before us for the purpose of proving the misconduct. Such a procedure is impermissible when there is constitutional mandate under Article 311 that the termination in the shape of penalty has to be preceded by a lawful enquiry. The respondents therefore cannot rely on the above judgments for the purpose of praying that they should be allowed to lead evidence in these proceedings.

10. The net result is that the termination of all the applicants without holding any departmental enquiry as contemplated by the Railway Rules is bad.

11. Before passing final orders we would like to divide these 34 matters into 5 groups, on account of some minor differences. For example Group No.I consists of Original Application Nos.793/87, 23/88 and 103/88. In these matters we are told that the department has subsequently come to the conclusion that the casual labour cards were not bogus but were genuine. The Asstt.Mechanical Engineer has verified this position and has directed that appropriate necessary action be taken on that basis. However, the applicants in these cases have not been reinstated in service. Thus under no circumstance the administration can successfully challenge the claim of these applicants for reinstatement in service with full backwages.

12. Group II consists of Applications Nos. 426/87, 427/87, 455/87 and 572/87. Though initially the services of the applicants were terminated on the ground that they have produced bogus casual labour cards, the Department had later taken them back in service in February,1988. Their grievance is that they have not

been paid their backwages. Obviously on such reinstatement they would be entitled to such backwages.

13. Group III is with respect to Original Applications Nos.542/87, 543/87, 544/87, 545/87,546/87, 588/87 and 589/87. It seems that these applicants have taken the matter to the High Court. The High Court by its order dtd. 23-1-1985 set aside the termination. The Department, however, took no action to reinstate the applicants. The applicants then filed their application before the Tribunal. The Department reinstated the applicants with effect from 6-11-1987. However, backwages have not been paid . Obviously the applicants would be entitled to all backwages.

14. Group No.IV consists of Applications Nos. 247/87,248/87,249/87,251/87,410/87, 745/87,794/87,53/88, 88/88, 114/88, 115/88 and 120/88. There is no written order terminating the service of the applicants. However, their services were orally terminated. During the course of the hearing however it was candidly stated before us, by the respondents that the said termination was on account of the production of alleged bogus casual labour cards.

15. In Group No.V are applications Nos.O.A. 268/87, 310/87,552/87, 613/87,646/87,647/87,648/87 and 4/88. There is a written order of termination of service and it is not disputed that the said termination is on account of production of alleged bogus casual labour cards. As far as Groups IV and V are concerned, the termination of service of applicants is liable to be set aside with consequential orders for payment of backwages.

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16. Before concluding we may add that Shri Nerlekar for the applicants submitted that each of the applicants should be awarded cost and that the amount payable to each of them should carry interest. He argued that such a claim is made as the Department had not implemented the earlier judgment of the Tribunal in Kismatram's case, though it had lost the case in the Supreme Court. There is some substance in the contention of Shri Nerlekar. However, we are not inclined to grant to the applicants either costs or interest. But we direct the respondents to comply with our judgment within a specified time expeditiously.

17. For the above reasons we pass the following order:

(a) Applications Nos.247 to 249, 251, 268, 310,410, 552, 613, 646, 647, 648, 745, 793, 794 of the year 1987 and 4, 23, 53, 88, 103,114 to 116 of the year 1988.succeed. The termination of service of each of these applicants is quashed. The respondents are directed to reinstate each of these applicants in service with full backwages from the date of termination of their service till their reinstatement along with perquisites admissible under rules.

(b) Applications Nos.O.A.426,427, 455, 542 to 546,572,588 and 589 of the year 1987 are partially allowed. It is not necessary to pass an

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order of reinstatement in respect of these applicants as they have already been reinstated. However, the respondents should pay to each of the applicants full backwages from the date of termination of their service till their reinstatement along with other perquisites admissible under rules.

(c) We make it specifically clear, that this judgment in respect of these applications would not prevent the Railway Administration from holding a departmental enquiry as prescribed by the rules and passing appropriate orders on the basis of the evidence adduced therein.

(d) This judgment should be complied with expeditiously and in any case within a period of two months from today.

(e) Parties to bear their own costs in each of this applications.

18. This judgment should be placed in O.A. 268/87 and a copy thereof kept in the record of the remaining applications.

Contempt Petition
No. 11/89 (at Flag 'A') fixed on 31/3/89.

SSH
16/2/89

Dated: 31.3.1989

Mr. T.D. Ghaisas, Law Assistant for the respondents. A copy of C.P. No. 11/89 is given to him.

Respondents to file the reply to that petition on 6.6.1989. Orders on that petition will also be passed on the same date.

(M.Y. Priolkar)
M(A)

(M.S. Mujumdar)
M(J)