

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.875/99

Thursday this the 12th day of June, 2003.

CORAM : Hon'ble Shri V.K.Majotra, Member (A)

Hon'ble Shri Shanker **Raju**, Member (J)

1. Tukaram Rangoo Patil
2. H.D.Chowdhari
3. Vasant Muralidhar Kachane
4. Gajanand Ramdas Talale
5. Prahlad Jagannath Nehate
6. Jeevan Hiraman Talale
7. Mahadeo Vittal Dange
8. Abdul Rahman Shaikh
9. Narayan P Maruti

...Applicants

All are working as Khalasis
under Chief Engineer (C)
MTP (R) Churchgate,
Mumbai.

By Advocate Shri L.M.Nerlekar

vs.

1. Union of India
through General Manager,
C.S.T., Central Railway,
Mumbai.
2. Chief Engineer (C)
MTP (R), Churchgate,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

b ...2/-

O R D E R

{Per : Shri V.K.Majotra, Member (A)}

Applicants 9 in number are stated to have been appointed as Khalasis in the Grade Rs.750-940 (RPS) under Chief Works Manager, Modernization Project, Parel. According to them, they were transferred in the same Grade and capacity to CE(C) MTP(R) Churchgate on being declared surplus (Ex.'A') dated 29.4.1992. Vide Exhibit-'B' CE(C) issued the posting orders of the applicants against the vacancies in the Electric Department w.e.f 7.5.1992 in the grade of Rs.750-940. Applicants are aggrieved that their pay has not been fixed in the scale of Rs.750-940 w.e.f.7.5.1992 and thereafter in the scale of Rs.2550-3200 w.e.f. 1.1.1996. Apart from fixation in the aforesaid pay scale with effect from the date mentioned above, they seek regular annual increments and arrears of pay arising out of grant of annual increments and consequential House Rent Allowance and other allowances.

2. Respondents have rebutted the claim of the applicant. Learned counsel of the respondents has stated that none of the 9 applicants has made any representation with regard to the grievance under consideration. He further contended that applicants had secured appointment on faked documents and that the applicants had been proceeded against in departmental enquiry initiated against them on 10.9.2001. He stated that applicants had not produced their service Register from the Modernisation

Project from where they stated to have been transferred to MTP Railway, Mumbai. In the absence of any Service Register, their payments were drawn since 1992 but their increments were withheld as on a reference made to CPO (Mech), Central Railway for sending service records of the applicants, it was revealed that no such transfer order No.53 of 1992 had been issued by them. The learned counsel also raised the point of limitation.

3. M.P.No.670/99 has been made seeking condonation of delay. The delay is condoned in the interest of justice.

4. According to us, objection relating to non submission of a representation in respect of their grievance to the respondents is too technical a point which is rejected in the interest of justice. When the respondents are conducting an enquiry against the applicants for securing employment on the basis of fraudulent or fake documents, which is still pending, the respondents cannot resort to with-holding increments of the applicants which is a kind of penalty which can be imposed only if charges against the applicant in a disciplinary enquiry are brought home against the charged officer. To a specific query, respondents stated that applicants are being paid salary. If that is so, and when the enquiry has not been concluded yet, respondents cannot be allowed to resort to arbitrary action against the applicants which is punitive in nature resulting in with-holding of increments.



..4/-

5. Having regard to the discussion and reasons stated above and in the interest of justice, respondents must release applicants' increments with effect from the time they had fallen due. Respondents shall, however, have liberty to take undertakings from the applicants for refunding the amounts on account of the increments granted in case the charges against them are proved and it is established that they had obtained appointments on the basis of forged documents. If the allegations are not proved against them in the enquiry, applicants shall be entitled to interest at the rate of 10% p.a. on arrears. Respondents are directed to sanction increments to the applicants on the above basis within a period of three months from the date of receipt of these orders. OA. is accordingly disposed of. No costs.

S. Raju

(SHANKER RAJU)

MEMBER (J)

V.K.Majotra

(V.K.MAJOTRA)

MEMBER (A)

mrj.