

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.771/01

Dated this, Wednesday the 29th day of May, 2002.

Shri S.Durai Sundareshn ... Applicant  
(Applicant by Shri S.S.Karkera, Advocate)

Versus

UOI & Ors. ... Respondents  
(Respondents by Shri V.S.Masurkar, Advocate)

CORAM:

HON'BLE SMT SHANTA SHASTRY, MEMBER (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✓
- (3) Library. ✓

*Shanta*  
(Shanta Shastri)  
Member (A)

sj\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.771/2001

DATED THIS the Wednesday ~~the 29<sup>th</sup>~~ day of May, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

Shri Swami Durain Sundareshan  
Track Man  
C/o Senior Section Engineer/  
P.Way (M), Office Mankhurd  
Central Railway, Mumbai.  
C/o Sellvambal,  
MS/RBU/C/Room No.3,  
Jasai Railway Colony,  
Uran Taluka Raigadh,  
Pin 410 207

... Applicant

(Applicant by Shri S.S.Karkera, Advocate)

vs.

1. The Union of India  
Through the General Manager  
Central Railway,  
Headquarters Office,  
Mumbai CST,  
Mumbai 400 001.
2. The Divisional Railway Manager (P)  
Central Railway CST,  
Mumbai 400 001.
3. The Chief Administrative Officer  
(Construction), Central Railway,  
C.S.T.Mumbai 400 001.
4. Dy. Chief Engineer,  
(Construction), Central Railway  
Panvel 410 206.

.... Respondents.

(Respondents by Shri V.S. Masurkar, Advocate)

O R D E R

[Hon'ble Smt.Shanta Shastri, Member (A)]

The applicant in this O.A. is aggrieved that he has been regularised and posted against the work charged post of Khalasi in the Pay Scale of Rs.750-940/- vide order dated 31.3.1997 instead of regularising him as Mate.

O.A.771/2001

2. Applicant was initially engaged as a Mate under the Construction Wing of Central Railway at Panvel on 31.12.1981. He was granted temporary status as Mate with effect from 1.1.1984. In the year 1988, the respondents have called for details for screening for regularisation of casual labourers. A further screening was called for on 20.11.1996 for screening of Muster Roll artisans of Engineering department for regularisation and absorption in the construction wing including the category of the applicants i.e. Mates. On 31.3.1997 the applicant was absorbed as Khalasi under the construction wing i.e. under the work charged post. Thereafter he was appointed as Junior Gang Man on the open line on 31.7.1998. Being aggrieved the applicant made a representation on 9.10.1997, for regularisation as per the Ratio laid down in the judgement of the Apex Court in the case of *Inderpal Yadav vs. Union of India*. He made several representations from 1988 upto 24.7.2001. According to him he did not receive any reply.

3. According to the applicant 40 posts were created in the Construction Department and the applicant ought to have been regularised as Mate in the Construction Department itself. But he has been denied regularisation in the category of Mate. This is contrary to the ratio of judgement of the Supreme Court in the case *Inderpal Yadav (supra)*.

4. The applicant submits further that he had earlier filed O.A.No.127/1989 for grant of Pay Scale of Rs.950-- 1500/- and regularisation in the Construction Wing. The Tribunal had directed the respondents to grant the difference in wages at the

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same rate in the Pay Scale of Rs.950--1500/- from the date of transfer from Construction Wing to Open Line till the applicants were repatriated to the Construction Wing vide judgement and order dated 7.6.1995.

5. The applicant has also filed M.P. 909/2001 for condonation of delay as the impugned order regularising him as Khalasi is dated 31.3.1997 and his appointment as Gangman w.e.f. 31.7.1998.

6. The respondents submit that the applicant was working as Casual Labourer Mate in the Construction Department and was given temporary status w.e.f. 1.1.1984 in terms of Railway Board's letter dated 11.9.1986, in pursuance of the judgement of the Supreme Court in the case of *Inderpal Yadav vs. Union of India*. The respondents further submit that the casual labourers are entitled for regularisation only in Group D posts. They cannot be regularised directly in Group 'C' posts. Respondents have cited the judgement of Supreme Court in the case of *Union of India vs. Motilal & Ors 1996 SCC (L&S) 613*. Accordingly the applicant has been regularised and posted on a regular post of Gangman in Open Line in Group D which is as per rules and as per the decision of the Supreme Court. The applicant is not entitled for regularisation as Mate. The judgement in the case of *Inderpal Yadav* does not relate to the matter of regularisation of Casual Labourers. It only relates to granting of temporary status to Casual Labourers working in Construction organisation. The respondents further disclose that the applicant had filed O.A.No.203/92 before this Tribunal challenging the panel and the same was dismissed vide order dated 27.3.1997 on final disposal

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of the O.A. and the applicant was initially posted against work charged <sup>post of</sup> Khalasi vide order dated 31.3.1997 and thereafter on the Open Line for regular absorption on 31.7.1998.

7. According to the learned counsel for the respondents the present O.A. is barred by principle of *res judicata* considering that applicant had approached the Tribunal earlier also for regularisation and his O.A. had been dismissed.

8. In regard to the submission made by the applicant that 40% posts had been created in the Construction Wing for regularisation of Mates w.e.f 15.4.1996, the learned Counsel for the respondents submits that the Chief Personnel Officer, Mumbai had vide his letter dated 25.10.1985 advised following Construction Reserve Class IV posts to be created and the casual labourers working against those posts of continuous nature of 3 years were called. The posts to be created were as under:

1. Peon/Office Khalasi	.... 16
2. Trollymen	... 27
3. Watchman/Chowkidar	.... 40
4. Daftary	.... 01

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The post of Mate was not <sup>at</sup> all proposed to be created against the Construction Reserve Posts. Therefore, the question of posting the applicant against the Construction Reserve post does not arise. The proposal was sent to the Headquarters Office under letter dated 15.4.1996 to obtain approval and sanction to create

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some posts against 40% Construction Reserve Posts. However, the proposal was turned down vide letter dated 18.6.1996. The respondents strongly denied the claim of the applicant to be regularised as Mate w.e.f 15.4.1996 under the Construction Wing. The respondents have relied on a judgement of this Tribunal in OA.385/95 filed <sup>by</sup> *Shri Ramchandra Gummana, Motor Lorry Driver vs. General Manager, Central Railway* wherein also the judgement of the Supreme Court in the case of *UOI vs. Motilal & Ors* reported [1996 SCC (L&S) 613] was relied upon. The respondents reiterated that the applicant cannot be regularised as Mate directly.

9. I have heard the learned Counsel for the applicant as well as the respondents. I have given careful consideration to the rival contentions. It has been well settled in the judgement of the Supreme Court in the case of *UOI vs. Motilal and ors (supra)* that any Casual Labourer has to be regularised or absorbed first only in a Group D post. There cannot be any direct absorption in Group C Post. Such people regularised in Group D posts are thereafter eligible for promotion to Group C posts against 25% quota for promotion. In view of this settled position the applicant's claim to be regularised in Group C as Mate cannot be considered. The respondents have also satisfactorily explained how there are no Reserve Posts created in the Construction Wing of Mates. As such there is no substance in the O.A. Also the applicant's earlier O.A. for regularisation as Mate has already been dismissed.

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10. In the facts and circumstances of the case, the O.A. deserves to be dismissed being devoid of merits. Accordingly, the O.A. is dismissed. In view of the above position M.P.No.909/2001 also stands disposed of. No order as to costs.

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(Smt. Shanta Shastry)  
Member (A)

sj\*

*dr. 29/5/22*  
by *dr. 29/5/22* Judgement despatched  
to  
*25/6/22*  
*W*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, AT MUMBAI.

REVIEW PETITION NO.13/2004

IN

O.A. No.771/2001

CORAM: HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)

Shri Swami Durain Sundareshan ... Applicant  
Petitioner  
(Applicant/Petitioner by Shri S.S.Karkera, Advocate)

vs.

UOI and 3 Ors. ... Respondents  
(Respondents by Shri V.S.Masurkar, Advocate)

ORDER IN R.P.NO.13/2004 DTD. 6/7/2004.

[Per: S.G. Deshmukh, Member (J)]:

The present Review Petition is filed by the applicant for review of the order of the Tribunal dated 29.5.2002 in O.A. No.771/01.

2. The applicant had filed the O.A. being aggrieved by the order dated 31.3.1997 against work charged post of Khalasi instead of regularising him as Mate. The O.A. was dismissed vide order dated 29.5.2002. It is the contention of the applicant that he had filed the case for regularisation in group 'C' post Mate on the basis of Circulars issued by the Railway Board from time to time. It is his contention that Circular No.E(NG)/97/RC/314 dated 9.4.1997 was not circulated to all concerned through the respondents though the respondents were well aware of the fact. The applicant was entitled for regularisation in Group 'C' post. It is the contention of the applicant that he studied up to 8th standard and he cannot discover the circular in question. He came to know about the said circular after coming to know about the judgement of Jaipur Bench in O.A. No.127/2001 dated 30.12.2003 in the case of

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Kushiram vs. UOI and Anr. It is the contention of the applicant that he came to know about the judgement in the first week of Jan.2004. It is the contention of the applicant that his case is identical and would have been allowed taking into consideration of the Railway Board's circular as well as the decision of the Apex Court in Ram Kumar & Ors. vs. UOI 1989 SC 390 (Larger Bench) and there arose an error apparent on law while delivering the judgement and the judgement:

3. The applicant also requested for condoning the delay.


4. The respondents filed their counter affidavit and contended that the judgement in O.A. was delivered on 29.4.2002. The R.P. is filed on 3.2.2004. According to the rule, the R.P. is to be filed within 30 days hence the R.P. deserves to be dismissed on the ground of limitation.

5. It is further contended that the Railway Board Circular dated 9.4.1997 is not at all applicable in the present case of the applicant. The applicant was not working in Group 'C' post prior to his absorption in Gr. D posts in the open line. It is also contended that the judgement dated 30.12.2003 of Jaipur Bench does not make it a point to file Review Petition as the Review Petition is filed when there is an apparent error on the face of the judgement and some document or rule position could not be shown at the time of hearing which were later discovered. The applicant wants to review the judgement dated 29.5.2002 on the basis of subsequent judgement dated 30.12.2003. Hence the R.P. deserves to be dismissed.

6. Heard the learned counsel Shri S.S.Karkera for the applicant and Shri V.S.Masurkar, for the respondents.

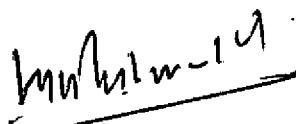
7. It is well settled that the power to review can be exercised on the application of a person on the discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it.

8. In the instant case, the O.A. 771/01 has been decided on 29.2.2002. The present R.P. is filed on 3.2.2004 i.e. after a lapse of more than one and half year. The R.P. is required to be filed within 30 days of the date of judgement. The explanation given by the applicant that he came to know about the Railway Board's circular in question only through the judgement of Jaipur Bench in O.A. No. 127/2001 which was delivered on 30.12.2003 cannot be accepted as a justifiable reason to condone the inordinate delay of one and half years. The circular is of 1997. Further Circular No.E(NG)/97/RC/314 dated 9.4.1997 is regarding the regularisation of casual labour working in the Group 'c' scale. The applicant was not working in Group 'C' post prior to his absorption in Group 'D' posts in the open line. Thus, the circular in question cannot be said to be applicable to the applicant in question.

9. The review can be exercised only for correction of an  
 apparent error on the face of the judgement, and some document or

rule position could not be shown at the time of hearing which were later discovered. In the instant case, applicant wanted to Review the judgement delivered on 29.5.2002 on the basis of a judgement which was subsequently delivered on 30.12.2003. The R.P. based on a judgement which was delivered subsequently cannot be allowed.

10. In view of the above discussion, I do not find any mistake or error apparent on the face of the record. There is no sufficient and justifiable reason to condone the delay in filing the R.P. The judgement cannot be reviewed on the basis of a judgement which was delivered subsequently. R.P. is dismissed. No costs.

  
( S.G. Deshmukh )  
Member (J)

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