

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1397/94

DATE OF DECISION: 28<sup>th</sup> September 2001

Shri J.F. Khan and others Applicant.

Shri G.S. Walia Advocate for  
Applicant.

Verses

Union of India and others Respondents.

Shri S.C. Dhawan Advocate for  
Respondents

CORAM

Hon'ble Shri S.L.Jain, Member(J)  
Hon'ble Smt. Shanta Shastry, Member(A)

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to No  
other Benches of the Tribunal?

(3) Library. yes

S(LJ)  
(S.L.Jain)  
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1397/94

the 28<sup>th</sup> day of September 2001

CORAM: Hon'ble Shri S.L.Jain, Member(J)

Hon'ble Smt. Shanta Shastry, Member(A)

1. J.F. Khan  
2. J.M. Choudhary  
3. A.V. Thale  
4. P.B. Pande  
5. K.M. Patil

### ...Applicants

All are working as  
Concrete Supervisors under  
Executive Engineer(Constr.)  
Metro Transport Projects  
(Railways)  
Mankhurd Station Building  
1st Floor, Mankhrud, Bombay.

By Advocate Shri G.S. Walia

· v/s

1. Union of India through  
Chief Engineer (Const.)  
Metro Transport Projects  
(Railways) Churchgate, Bombay.
2. Executive Engineer (Constn.)  
Metro Transport Projects  
(Railays),  
Mankhurd Station Building,  
1st floor, Mankhurd, Bombay. .... Respondents.

By Advocate Shri S.C. Dhawan.

ORDER

{Per S.L.Jain, Member(J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 to quash and set aside order No. MTP-XEN-MNKD-C.L./20 dated 21.11.1994 (Exhibit A) with a declaration that the applicants are entitled to be paid in the pay scale of Rs. 1200 - 1800 with other usual and consequential benefits.

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2. The applicants alongwith others challenged order dated 6.7.1989 by filing OA No. 517/90 before this Tribunal which was decided on 23.7.1992 with OA No. 448/90 and the operative part of the order is as under:-

The applications succeed and are allowed. The impugned orders in the two applications are quashed. We, however, make it clear, that it will be open to the authority concerned to pass fresh orders on merits and in accordance with law after affording an opportunity of hearing to the applicants.

3. The applicants' case in brief is that they applied, selected and were appointed with the approval of competent Authority as Highly skilled Project Casual labours in the pay scale of Rs. 1200 - 1800 on the dates shown below:

Sr.No.	Name	Date of appointment
1.	J.F. Khan	08.12.1987
2.	J.M. Choudhary	18.01.1988
3.	A.V. Thale	27.01.1988
4.	P.B. Pande	03.02.1988
5.	K.M. Patil	05.04.1988

They were initially paid as Highly skilled casual labour on daily basis @ Rs. 27.75 per day for a period of six months and thereafter absorbed in the regular pay scale of Rs. 1200 - 1800 plus D.A. as applicable. On 7.3.1989 by office order No. 3/1999 and 8/89 dated 1.4.1989 applicants No. 1 to 4 and applicant No.5 respectively were given temporary status on completion of 360 days continuous service and brought on regular scale of pay in Rs. 1200 - 1800 plus other admissible allowances

84 - ...3...

and paid as such. By office Order No. 9/90 dated 6.7.1990 the respondents reduced the pay scale of the applicants from Rs. 1200 - 1800 to Rs. 950 - 1500 which was subject of OA 517/90 decided on 23.7.1990 referred in Para 2 of this order.

4. Thereafter on 18.1.1993 the applicants submitted the representation to the respondents (Exhibit 'H') requesting the respondents to furnish the information as detailed in the said representation which are as under:

Ref: Your letter dated 4.1.93.

With reference to the aforesaid, you are requested to furnish the following information and documents which are in your custody.

- a. What was the post (skilled or unskilled) for which the notice or notification was issued in response to while we applied and were subsequently selected? A true copy of the notification may be furnished to us.
- b. For which posts (skilled or unskilled) the sanction was obtained at trainee of creation of the posts/ Kindly give a copy of the justification also.
- c. Whether the job which we are required to perform is un-skilled or skilled?
- d. What was notification to give the designation of concrete Supervisor?

Kindly supply the aforesaid information to that a comprehensive reply is given. If under any circumstances, you can't give the aforesaid then kindly inform us so that a representation is made on the basis of material and information available with us. Please note further that the delay will not be on our part.

However without supplying the said required information, the respondents decided the matter vide order dated 23.7.1993 rejecting the representation. On 12.8.1993 they made further representation (Exhibit J).

5. The Northern Railway vide order dated 5.7.1988 had actually granted the pay scale of Rs. 1300 - 1850 uniformly to all persons who are appointed as Diploma Holder Casual Labourers.

The applicants are also Diploma Holders in Civil Engineering. The post of Mason Mistry, Sub- Overseer Mistry are identical /equivalent to the post of concrete Supervisor and work and nature of work is also the same. The applicants are working as Concrete Supervisors. They are eligible to be absorbed and regularised in Civil Engineering Department in Central Railway in view of order dated 9.12.1993 by the Railway Board for S.E. Railway for the staff who were similarly placed. Hence this OA for the above said reliefs.

6. The respondents have resisted the claim of the applicants stating that order dated 23.7.1993 has become final and binding.

(a) OA is barred as per law of limitation, as the order dated 21.11.1994 is only the implementation of the order dated 23.7.1993 and is not an order itself. It is further stated that the applicants do not come under the category of "Highly skilled". They were appointed as Daily Rated Casual Labourers persuant to their application dated 1.12.1987. The description of the word "Highly Skilled casual labour" is a misnomer and a mistake as casual labour by its and in normal parlance cannot be termed as "Highly Skilled", as casual labourers are only relevant. They were not appointed in the pay scale of Rs. 1200 - 1800. After completion of a period of six months as casual labour, they were brought on monthly rate of pay and were termed as M.R.C.L. and accordingly paid. They were working as skilled Artisan Grade III and were entitled to the said monthly rate of pay. Due to inadvertence they were given the monthly rate fixed plus D.A. The mistake was pointed out by the Audit and Accounts

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Department vide their letter dated 17.4.1990 Exhibit R.1. Under the extent Rules and orders of the Railway Board, direct recruitment is resorted to only in unskilled categories as Khalasis or skilled artisan category as per percentage laid down for such vacancies. Highly skilled post is an intermediate grade post to be attained by persons regularly working in the skilled category after passing the trade test through departmental promotions. There is no direct recruitment to Highly Skilled Artisan post. By mistake applicants are described as Concrete Supervisor, as there is no such post. Order dated 5.7.1988 of Northern Railway is not applicable to the applicants. The applicants are not similarly placed as the employees of Central Railway, Work Mistry at Metro Railways for which there was a special sanction. There is no discrimination. Hence prayed for dismissal of the OA alongwith costs.

7. The earlier OA 517/98 was disposed of by order dated 23.7.1992 and <sup>an</sup> perusal of last but one para, it is clear that before passing the impugned order challenged in the said OA principle of natural justice was not observed. Hence it is ordered to pass fresh orders on merits and in accordance with law after affording an opportunity of hearing to the applicants. Hearing does not mean mere formality when the applicants vide their letter dated 4.1.1993 which is referred in para 4 of this order have sought the details in respect of the post which was notified and the applicants applied for the same, copy of notification, the sanction order in respect of the said post whether skilled or un skilled and the designation of Concrete Supervisor etc. <sup>but ✓</sup> were not supplied to the applicants and the

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respondents passed the impugned order. Thus it is apparent that mere formality to afford an opportunity was done by the respondents and no effective hearing was provided.

8. The respondents have resisted the claim on the ground that order dated 23.7.1992 has become final and binding and order dated 21.11.1994 is only the implementation of the order. Hence the OA is not maintainable. We are unable to subscribe to the said view for the reason that after passing the order the applicants are not deprived to agitate the matter in accordance with law and the judicial review is always maintainable.

9. The applicants have filed the OA against the order dated 21.11.1994 on 30.12.1994 within a period of one year of passing of the order by the respondents. Hence in no circumstances the OA can be said to be barred by limitation.

10. The respondents are supposed to file alongwith the written statement the documents relied by them. The material documents dated 1.12.1987 on the basis of which they claimed that the applicants were appointed and the notification by which the applicants have been called for has not been placed on record. In such a situation there is no escape except to order the respondents to afford an effective opportunity of hearing to the applicants after supplying of the copies of the documents asked for vide their letter dated 4.1.1993.

11. Keeping in view the long pendency of the dispute between the parties, we are of the considered opinion that time schedule deserves to be fixed for disposal of the matter by the respondents in accordance with law.

1. The respondents to supply copies of the documents asked for by the applicants vide their letter dated 4.1.1993 within a period of 30 days from the date of receipt of the copy of the order.

2... After supply of copies the applicants may submit the detailed representation within a period of 30 days from the date of receipt of copies of the documents.

3. The respondents shall decide the matter within next 30 days means after the date of receipt of the representation and personal hearing if sought by the applicants affording personal hearing.

12. Keeping in view the fact that the applicants are being compelled to file the OA before this Tribunal for none of their faults and the respondents did not care to afford an opportunity to the applicants in right earnest way, we think it proper to order the respondents to pay cost of Rs. 1000/- to the applicants, payable to the applicant No.1 for and on behalf of the applicants within a period of three months from the date of receipt of copy of the order.

13. OA disposed off in terms of para 11 and 12 accordingly.

*S. L. Jain*

(Smt. Shanta Shastry)  
Member (A)

*S. L. Jain*

(S.L.Jain)  
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

CONTEMPT PETITION NO: 24/2002 IN  
ORIGINAL APPLICATION NO: 1397/94

CORAM: Hon'ble Shri B.N. Bahadur Member (A)

Hon'ble Shri S.L. Jain, Member (J)

1. J.F. Khan  
2. A.V. Thale  
3. P.B. Pande  
4. K.M. Patil. ...Applicants

By Advocate Shri G.S. Walia

v/s

1. Shri P.K. Saxena  
Chief Engineer (Const.)  
Metro Transport Projects  
(Railways) 7th floor,  
New Admn. Office Bldg.  
D.N. Road, CSTM, Mumbai

2. Shri C.B. Saxena  
Executive Engineer  
Metro Transport Projects  
(Railways) Mankhurd  
Station Building, Mumbai.

...Respondents.

By Advocate Shri S.C. Dhawan

TRIBUNAL'S ORDER ON CONTEMPT PETITION

DATED: 28.11.2002

{Per S.L. Jain, Member (J)}

The applicants have filed C.P. 24/2002 in respect of an order passed in OA 1397/94 dated 28.9.2001.

2. We have heard the learned counsel for the applicant as well as respondents and perused the replied filed by the respondents. In view of the order passed in OA 1397/94 on 28.9.2001 the Tribunal has directed the respondents to supply copies of documents asked for by the applicants vide their letter dated 4.1.1993 within a period of 30 days from the date of receipt of the copy of the above order. The respondents have

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failed to comply with the same. The respondents in their reply in para 4 (v) stated that respondents's office searched for the said papers at Churchgate from where the MTP(R) office was shifted in January 2001 to CSTM and where some old records are still lying. However, these documents were not available even at that place. The said documents are also not available in the office of SPO MTP (R).

3. We have to arrive to the finding that whether it is wilful dis-obedience on the part of the respondents. To arrive to the said finding when the documents are not available and it is not a case where such instance may not take place in shifting of the office, We find that this is not a case of wilful dis-obedience. We observe that the applicants are at liberty to aduce secondary evidence in respect of the said documents.

4. The learned counsel for the applicant Shri G.S. Walia stated that one months time be provided for aducing secondary evidence and to make representation within the same period, which is allowed.

4. In the result C.P. is dismissed. Notice issued to the respondents are discharged.

S.L.Jain  
(S.L. Jain)

Member (J)

B.Bahadur

(B.N. Bahadur)  
Member (A)

NS