

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 257/98 and 262/98

DATE OF DECISION: 31<sup>st</sup> January 2000

Shri Goyaprasad Mahadeo Ganpat

Applicant.

Shri R.Ramamurthy

Advocate for

Applicant

Versus

Union of India and others

Respondents.

Shri Suresh Kumar

Advocate for

Respondent(s)

CORAM

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

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

NS

CENTRAL ADMINISTRATAIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:257/98 and 262/98

the 31<sup>st</sup> day of JANUARY 2000

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

1. Goyaprasad Mahadeo Ganpat  
Residing at  
Nityanand Chawl,  
Mukund Nagar,  
Dharavi, Mumbai.
2. John Bhimappa  
Residing at  
Room No.336,  
Nityanand Chawl,  
Mukund Nagar,  
Dharavi, Mumbai.
3. Shantaraj Yenkappa  
Residing at  
Room No.2/2,  
Kashinath Pawse Chawl,  
Near Sai Baba Mandir,  
Poona Link Road,  
Katemanaavli,  
Kalyan, Dist. Thane(M.S.)
4. Babu Hanumantha,  
Residing at  
Tadesjwar Wadi,  
Mogul Lane,  
Mahim, Mumbai.
5. Alexander Markappa,  
Residing at  
Salwati Store,  
Mukund Nagar  
Dharavi, Mumbai.
6. Husseinappa Ammana  
Residing at  
C/o Moonlight Cleaners,  
Kumbharwada Road,  
Dharavi X Road,  
Mumbai.
7. Hanumantha Sayanna  
Residing at  
Room No.230-1/5  
Ganesh Galli,  
Mumund Nagar,  
Dharavi, Mumbai.

Shri

8. Mohan Benjamin  
Residing at  
Room No.109,  
Nityanand Chawl,  
Mukund Nagar,  
Dharavi, Mumbai.
9. Niranjan Bhimappa  
Residing at  
Room No.6/60,  
New Municipal Chawl,  
Opp. Municipal School  
Porwada, Sonapur Road,  
Dharavi, Mumbai.
10. Nijlinga Shivlilingappa  
Residing at  
Room No.63,  
Tadeshwar Bhavan,  
Mogul Lane,  
Mahim, Mumbai.
11. Gulam Sayanna  
Residing at  
Chawl No.A-8, Room No.6,  
New Girhavker Wadi,  
Sitaladevi Temple Road,  
Mahim, Mumbai.
12. Bhaskar Nargappa,  
Residing at  
Room No.8, Tadeshwar Bhavan  
'B' Wing, Mogul Lane,  
Mahim, Mumbai.
13. Arjun Hanumantha  
Residing at  
Room No.408, Venkateshwar Chawl,  
Anna Nagar,  
Dharavi, Mumbai.
14. Rajapa Gangappa,  
Residing at  
Room No.13/87,  
Maharana Pratap Nagar,  
Dharavi Cross Road,  
Mumbai.
15. Shanmugam Pakiri  
Residing at  
Indira Kuteer,  
Rahul Nagar Zopadpatti,  
Room No.14, Chawl No.14,  
Tilak Nagar, Chember,  
Mumbai.
16. Singarayar Adaikalan  
Residing at  
Muthumariaman Temple,  
Shell Colony Road,  
Tembe Nagar, Chembur

17. Raju Arson  
Residing at  
Room No.6, Chawl No.14,  
Rahul Nagar, Tilak Nagar,  
Chembur, Mumbai.

18. Shivling ;lParamanna  
Residing at  
Room No.104, 1st floor,  
'D' Wing, Padmashalli  
Co-operative Housing  
Society Ltd.,  
R.P.Nagar, Matunga  
Labour Camp, Mumbai.

...Applicants in  
OA 257/98

1. Mohamad Hussain Mulla  
Residing at  
Room No. 138-1-4,  
Nityanand Nagar,  
Dr. Ambedkar Road,  
Matunga Labour Camp;,  
Matunga, Mumbai.

2. Jayappa Tinappa  
Residing at  
Room No.334,  
Nityanand Chawl,  
Mukund Nagar,  
Dharavi, Mumbai.

3. Kishore Yenkappa  
Residing at  
Muthumariaman Temple,  
Shell Colony Road,  
Chembur, Mumbai.

4. Anthony Selvan  
Residing at  
Muthumariaman Temple,  
Tembe Nagar,  
Shell Colony Road,  
Chembur, Mumbai.

5. Essamy Kollianorar,  
Residing at  
Muthumariaman Temple,  
Tembe Nagar,  
Shell Colony Road,  
Chembur, Mumbai.

6. Johny Tayappa,  
Residing at  
C/128, Nityanand Chawl  
Mumund Nagar,  
Dharavi, Mumbai.

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7. Mahesh Ramchandra Jadhav  
Residing at  
Room No. 1487/6, Chawl No.49  
B.M.C. Colony,  
Malad (W), Mumbai.

8. Siddaroda Bhimappa  
Residing at  
Room No.33, Tadeshwar Wadi  
Mogul Lane,  
Mahim, Mumbai.

9. Mohanraj Sidhappa  
Residing at  
Shop No.335, Budhi Mandir  
Ganesh Chowk, Mukund Nagar,  
Dharavi Mumbai.

10. Suresh Samuel  
Residing at  
A/2/250, Anna Nagar,  
Kambharwada,  
Dharavi, Mumbai.

11. Timappa Ashappa  
Residing at  
Room No.1, Tadeshwar Bhavan  
Mogul Lane, Mahim, Mumbai.

12. Divakar R.Parmeya  
Residing at  
Darbari Chawl,  
Dahisar Ketaki Pada  
Near Shankara Mandir,  
Dahisar, Mumbai.

13. Mani Mukund  
Residing at  
C/o Lahanoo Yadav,  
Gauri Chawl,  
Ramabai Colony,  
Near Chembur Railway  
Station, Mumbai.

14. Suresh Balram  
Residing at  
Balaram Jama Patil  
Chawl No.80, Sabegaon  
Post Diva Railwy Station.  
Thane.

15. Krishna Shivaram  
Residing at  
Room No. 5, Baburao Bhagat Chawl  
Diva Station (West)  
Thane.

16. Anil Kanha  
Residing at  
Dathiwali, Post Diva,  
Dist. Thane(M.S.)

5/4m/

17. Saravanbabu Nagarajan  
Residing at  
Shop No. 3,  
Chembur Railway Crossing,  
Santha Jog Marg,  
New Tilak Nagar Road,  
Chembur, Mumbai.

18. Rajratnam Kandan,  
Residing at  
Muthumariaman Temple,  
Tembe Nagar,  
Shell Colony Road,  
Chembur, Mumbai.

19. A.K.Raman Shekar  
Residing at  
Room No. 184  
Dr. Ambedkar Nagar,  
Tilak Nagar,  
Chembur, Mumbai.

...Applicants in  
OA 262/92

By Advocate Shri R.Ramamurthy

v/s

1. Union of India through  
The General Manager,  
Central Railway,  
CST, Mumbai.

2. The Divisional Rail Manager  
(Works), Central Railway,  
Mumbai Division,  
CST, Mumbai

3. Assistant Engineer(Works)  
Central Railway,  
Mumbai Division,  
CST, Mumbai.

4. Senior Divisional Personnel  
Officer, Central Railway,  
CST, Mumbai.

...Respondents

By Advocate Shri Suresh Kumar.

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S. S.

O R D E R

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

These are the applications under Section 19 of the Administrative Tribunals Act 1985 to quash and set aside the decision conveyed under letter dated 15.4.1997, for a direction to screen the applicants for the purpose of their being empanelled for absorption against existing and future vacancies in Group 'D' category, for a declaration that the Bombay Divisional Authorities cannot introduce any cut off date for the purpose of screening and that they are bound to screen the applicants and others similarly situated persons, who had rendered service previously in Railways, for the purpose of empanelling them for absorption in regular service in Group 'D' category, for a declaration that the respondents are bound to give preference to the applicants and others similarly situated persons for absorption in Group 'D' category alongwith costs.

2. By an amendment after filing of the written statement by the respondents, the further reliefs for a direction to the respondents to include the names of the applicants in Live Register/Supplementary Live Register maintained in Central Railway, Mumbai Division on the basis of the services rendered previously by the applicants on Central Railway, for a direction to call and consider the applicants according to their seniority in the Live Register/Supplementary Live Register for screening and absorption in Group 'D' posts is added.

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3. The applicants in OA 257/98 and in OA 262/98 filed OA No.754/92 and 753/92 before the Central Administrative Tribunal, Bombay Bench on 21.10.1991, written statement and rejoinder were filed on 25.6.1992 and 20.8.1993 respectively. The respondents issued an order dated 5/17.8.1994 to the following effect:-

"You are requested to submit a list of CL/MRCL who have not been screened till date in the proformas attached herewith. In case any Casual Labour/MRCL worked under your jurisdiction and presently not in services the names may also be submitted in the proforma attached separately under the heading of Casual Labour/MRCL not in services.

The above information may please be sent upto 30.9.94."

4. The applicants of OA 257/98 and 262/98 filed M.P. No.1037/94 and M.P.1036/94 on 6.10.1994 which were was considered and ordered on 11.10.1994 to the following effect:-

"Mr. M.S.Ramamurthy, counsel for the applicant.

Shri Dhawan counsel states that Mr. J.G.Sawant, counsel for the respondents is not well and requests for time upto 14.10.1994.

The only direction that we would make at this stage is that the respondents should give the forms in which the applications are to be made to the present applicants and allow them to file those forms duly filled in before the expiry of the due date. Further orders will be passed on hearing other side on 17.10.1994.

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On a further request of the applicant an order dated 17.10.1994 was passed to the following effect:-

"Applicant by Shri Ramamurthy. Respondents by Shri Dhawan. Shri Dhawan states that the respondents would comply with order dated 11.10.1994 and supply the forms and accept the same after they were duly filled in.

In view of this no further order is necessary on MP 1036/94 and M.P. is accordingly disposed of.

Earlier order dated 25.10.1994 stands."

5. The respondents issued another circular dated 7.10.1994. The applicants filed in OA 257/98 M.P.1037/94 and in OA 262/98 M.P.1036/94 on 17.11.1994. Meanwhile the OAs came for final hearing and were decided vide order dated 25.1.1995 and the following order was passed:-

"The applicants should make application setting out the facts of each case before the concerned Authority within four weeks from today. If such applications are made, the Respondents would consider the case of those persons only who have made such applications within 8 weeks from the date of receipt of the applications and if they find any of the Applicants are eligible to be screened, that relief may be granted to them. If the applications are rejected, the rejection should be done by passing a speaking order. With these directions the OAs are disposed of. No order as to costs."

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6. The applicants filed C.P. 121/95 and CP 123/94 in OA 754/92 and 753/92 respectively in or about August 1995 which were disposed of vide order dated 8.1.1997 by the following order:

"It is the duty of the Applicants to furnish full details and on the basis of the details furnished by them, their entitlement for screening is decided. It is not the case here. In our view the Applicants have failed in furnishing the information for consideration of their case and only on the basis of the information furnished by the Applicants Respondents can consider their case on merits."

7. The applicants filed representation dated 3.2.1997 which was rejected by the respondents vide order dated 15.4.1997. The applicants served the respondents with legal notice dated 29/30.7.1997. The association of the SC/ST Employees also took the matter vide representation dated 10.9.1997 and 16.9.1997.

8. The respondent No. asked respondent No. to submit comments vide letter dated 23.7.1997. The respondent appointed Sharad J.Patil vide order dated 2.5.1997.

9. The grievance of the applicants is that they were employed in Central Railway as Casual Labour initially and thereafter as Monthly Rated Casual Labour (MRCL) during different spells as per particulars furnished vide C-1 to C-11 in OA 262/98 and C.1 to C-16 in OA 257/98.

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working in connections with the work of construction of buildings used as office or residence, construction of plateforms, yards, connected with Railway transportation from Mumbai VT to Kalyan and beyond which was of perennial nature. The said work not only consisted fresh construction but also maintainance to work like roofing, asphalting repairs to station , offices, flats Plastering work etc. The respondent No.2 terminated their services vide notice of termination dated 7.3.1991 which occassioned for filing of OA No. 754/92 and OA 753/92. They submitted the forms duly filled. The Respondent No. 2 vide circular dated 7.10.1994 changed the criteria for screening, which is illegal and arbitrary. The respondents have descided their application vide order dated 15.4.1997 without hearing the applicants on the ground unknown/unnoticed to them.

10. After filing of the Written statement by the respondents the applicants amended the OA and added the relief which are mentioned in para 2 of this order.

Hence these OAs forthe above said reliefs.

11. The respondents have resisted the claim of the applicants and alleged that the applicants have no cause of action, Joint application is not maintainable, the claim is barred by time, Inspector of works is not a party to the proceedings, hence the claim is bad for non joinder of necessary parties. The applicants were as per their allegations engaged in two spell,

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12. The applicants filed the rejoinder affidavit alleging that the cause of action accrues on a letter dated 15.4.1997, they have a common cause of action, they have previously also filed the joint application which was registered as OA 753/92 and dand 754/92 and decided on 25.1.1995, the claim is well within time, the job was of a perinal nature, all the applicants applied well in time, the authorities issuing the circular dated 5.6.1995 were not competent / authorised to issue the same. The said circular is in contravention of the Master Circular in which the scheme for regularisation is mentioned. The applicants were not party to the proceedings in an enquiry against Shri Mohan S. Nikam Senior Time Keeper, hence the conclusion arrived against him cannot be binding against the applicants. They prayed for the rejection of the objections of the respondents.

13. During the course of the arguments, the learned counsel for the respondents relied on 1997(75) FLR 154. Himachal Pradesh Housing Board V/s Ompal and others decided by Apex Court of the land and argued that till the order of termination exists, direction regarding the regularisation cannot be ordered. We agree to the said proposition of law. In the present case, the applicants have not sought the relief of screening for absorption in Group 'D' post which is a step towards regularisation, hence though till the termination order exists, as it is not being set aside or quashed, the applicants are not entitled to claim the said relief.

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14. The learned counsel for the respondents relied on JT 1996(2) SC 455 State of Himachal Pradesh v/s Suresh Kumar Verma and Another and argued that appointment on daily wage basis is not an appointment to a post according to the rules. We agree to the said proposition of law.

15. The learned counsel for the respondents relied on 1994(7) SLR 199 Ashok Kumar v/s Executive Engineer Rural Engineering Services Lalitpur and others and argued that if the applicants are not appointed for performing any regular type of work and duties, they are not entitled to regularisation. In the present case, the applicants have not sought the relief of regularisation, but sought the relief of the screening for the purpose of empanelment for absorption which is a step towards regularisation, the said exercise would be of no help when the ultimate goal cannot be achieved.

16. The learned counsel for the respondents relied on (1997)4 SCC 88 State of U.P. and others v/s AJAYA KUMAR and argued that the 'Daily wager' is not entitled to regularisation. We agree to the said proposition of law.

17. The learned counsel for the respondents relied on 1985(2) SLR 248 Inderpal Yadava and others v/s Union of India and others and argued that scheme framed by the Railway Ministry to treat project Casual Labour in temporary service who were in service as on 1.1.1984- others retrenched. Choice of 1.1.1984 arbitrary, date modified from 1.1.1984 to 1.1.1981. The said proposition of law can not be disputed.

18. The learned counsel for the respondents relied on AIR 1994 SC 1638 *Madhyamik Siksha Parisad U.P. v/s Anil Kumar Mishra and others* which lays down the proposition that adhoc assignment, post not sanctioned, no right of regularisation exists for such employees on the basis of mere 240 days of work. I agree to the said proposition of the law for the reason that only 240 working days not sufficient to create right of regularisation.

19. On facts I find that removal of Shri Mohan S. Nikan Senior Time Keeper for engaging the applicants without following proper procedure and sanction of the competent authority, does not lead me to conclude that the applicants have not worked prior to 1990 for the reason that the enquiry was not against the applicants. They were not afforded an opportunity of being heard, hence to hold that service particulars of the applicants are not authentic is against the principles of natural justice. A further ground to the said finding is that respondents have stated that they are not possessed with the said facts.

20. The learned counsel for the applicant has drawn my attention to the Master circular on casual labour in respect of provisions of Live Register and Supplementary Live Register. On perusal of the same I find that the provision does apply even in respect of Project Casual Labour which is apparent from para 2 of the same.

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"In the case of Project casual labour, the register will be maintained as per the territorial jurisdiction of the Division, including all the departments."

"The names of casual labour, both in the open line and in the Projects who were discharged prior to 1.1.1981 for want of work or due to completion of work and not re-engaged thereafter and who had applied by 31.3.87, claiming the benefit of inclusion in the seniority list prepared by the Administration for provision of employment will, after a verification of genuineness of the claims, by a committee of officers on each Division, be entered in the supplementary live register. For full details, para 7.7. to 7.9 above may be seen. The registers will be separate for the open line casual labour and the Project casual labour. The individuals borne on the supplementary live registers will have no preference over those borne on the live registers for purposes of consideration for absorption, re-engagement."

21. The service particulars of the applicants prior to 1990 are to be ascertained by the respondents after following the principles of natural justice. The said service particulars if not found true, then to secure the job on the basis of the said particulars and working thereafter in the year 1990 and 1991 shall be of no consequence as the fraud was committed at the earlier stage. If the situation is otherwise, the applicants

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continue in 1990 and 1991 if in accordance with rules, the said finding be the result of an enquiry which is to be held as stated above. Then their working in 1990 -91 deserves a consideration.

22. The applicants case is not barred by law for the reason that OA is filed on 24.2.1998, the decision was conveyed under letter dated 15.4.1997 when respondent No.3 is the party, Inspector of works, who works under respondent No.3 is not a necessary party. The joint application is also maintainable as they have common cause of action. The said points are also not challenged during the course of arguments.

23. Regarding letter dated 5.6.1995 it is suffice to state that the said point is for the first time raised in rejoinder affidavit, no relief is sought in respect of the same, hence it is not necessary to record an opinion on the same.

24. On 7.10.1994 Divisional Office Personnel Branch Bombay VT Central Railway has issued a letter (Exhibit I) mentioning the qualification of VIII standard and working MRCLs for screening. I have perused the Master circular and I am of the considered view that such criteria cannot be laid down by Exhibit I, as it being in contravention of the Master Circular in respect of casual labours.

JKM'

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25. The screening of the casual labourers depends, recording of their names in casual Live Register/Supplementary Live Register depends on their working in Railways which itself is in dispute, empanelment for absorption against existing and future vacancies in Group 'D' category is a subsequent stage after their name finds place in Live Register/Supplementary Live Register and vacancies are available. In view of the above sequence, I am of the considered view that first, the respondents to conduct enquiry as ordered in para 21 of this order after observing the principles of natural justice, arrive to a finding and then to proceed in accordance with law.

26. In the result, both the OAs are partly allowed to the extent that order dated 15.4.1997 Exhibit -B issued by the office of the Assistant Engineer(Works) CST Mumbai No. WM CSTM 97-98, CLIV dated 15.4.1997 is quashed and set aside, the respondents are ordered to conduct an enquiry as ordered in para 21 of this order, arrive to a finding after observing the principles of natural justice and then to proceed in accordance with law.

27. No order as to costs.

*J.C.Jain*  
(S.L.Jain)  
Member(J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P.Nos.112/2001 & 113/2001  
in  
O.A.Nos.262/98 & 257/98

Dated this Monday the 8th Day of April, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman  
Hon'ble Shri B.N. Bahadur, Member (Administrative).

M.H. Mulla & 18 Ors.

..Applicants in  
O.A.262/98

G.M. Ganpat & 17 Ors.

..Applicants in  
O.A.257/98

( By Advocate Shri R.Ramamurthy )

Versus

Shri R.N. Dwivedi,  
Divisional Rail Manager (Works),  
Central Railway,  
CST Mumbai.

.. Contemner in  
OA Nos.262/98  
and OA.257/98

( By Advocate Shri S.C. Dhawan )

Order on Contempt Petitions (Oral)  
{ Per : B.N. Bahadur, Member (A) }

The applicants in O.A.262/98 and O.A.257/98 have come up in both these Contempt Petitions alleging that the orders made in O.A.262/98 and O.A.257/98 (common order) by this Tribunal on 31.1.2000 have not been implemented. Notice was issued to the alleged contemner who has filed written statement in reply dated 6.3.2002. We are examining whether there is any wilful disobedience of the order on the part of the alleged Contemnors.

2. Let us first go to the order in the aforesaid

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O.A.Nos.262/98 and 257/98. It was disposed of as partly allowed to the extent that the order dated 15.4.1997 has been quashed and set aside and the respondents are ordered to conduct an enquiry in accordance with Para 21 of the order and arriving at a finding after observing the principles of natural justice. In Para 21 it is stated as under:-

"21. The service particulars of the applicants prior to 1990 are to be ascertained by the respondents after following the principles of natural justice. The said service particulars if not found true, then to secure the job on the basis of the said particulars and working thereafter in the year 1990 and 1991 shall be of no consequence as the fraud was committed at the earlier stage. If the situation is otherwise, the applicants continue in 1990 and 1991 in accordance with rules, the said finding be the result of an enquiry which is to be held as stated above. Then their working in 1990-91 deserves a consideration."

3. In the reply filed by the alleged contemners it is stated that though there is a delay in the implementation of the order, but there is no intention to wilfully or deliberately disobey the order. It is then stated by the deponent Shri R.N. Dwivedi, Sr. Divisional Engineer (CO), DRM Works Office, Central Railway that he had constituted a Committee consisting of three officers to enquire into the case and to submit a report. It is also stated that the said Committee issued notices to the applicants for a personal hearing, and that after such personal hearing, applicants were also

asked about the particulars of depots and officers under whom they are worked. It is specifically stated that this was done in order to comply with the principles of natural justice, and to give an opportunity to the applicants to prove the correctness of the entries in the card. The applicants have signed the said statements recorded at the hearing, but have failed to give any proof or cogent answers to show working prior to 1990. Accordingly, orders have been made by the (original) respondents dated 19.3.2001, a copy of which is at Annexure A-2.

4. Learned Counsel for the original applicants in O.A. Shri Ramesh Ramamurthy assisted us in the matter. Also we have considered the arguments made by Shri S.C. Dhawan, who represents the alleged contemners. We are convinced that no case has been made out before us to establish wilful disobedience on the part of the respondents. An order was made to give opportunity, and after providing such opportunity the order dated 19.3.2001 has been made. We do not feel that this is a fit case to for proceeding with contempt proceedings. Accordingly, the contempt proceedings are hereby dropped and the contempt petition is rejected. Notices are discharged.

CAT/MUM/JUDL/OA.262/98 and 257/98

Dated:

Copy to :-

1. Shri R.Ramamurthy, Counsel for Applicant.  
2. Shri S.C.Dhawan, Counsel for Respondents.

Dtd: 9.6.2002

Section Officer.

Order/.....  
to Applicant/Respondent (s)  
on 2.5.2002

V/S  
MS