

30.5.2001.

OA-80/98

Present: Sh . S.R. Seikh, proxy counsel for  
Sh. R. Ramamurthy, Counsel for  
applicant.

Shri R.R. Shetty, counsel for respondents.

It is stated that the learned counsel for  
the applicant Sh. Ramamurthy is not well and he seeks  
a week's time. Shri Shetty has no objection.  
List the case on 7.6.2001.

It is made clear to the applicant's counsel  
that this would be the last opportunity and in the  
event of non-prosecution the OA would be decided as per  
the provisions of Rule 15 of the C.A.T. (Procedure)  
Rules, 1987.

S. Raju  
(Shanker Raju)  
Member (J)

'San.'

Dt. 07/06/2001

Applicant by Shri R. Ramamurthy.  
Respondents by Shri R.R. Shetty.

Arguments heard & concluded.

Order Reserved.

Revised file  
no PFSRS/CLA/HRP  
P/TTC  
C.R-P. NO 1483 of  
Havaldar Ramprasad  
back on 15/1/01  
Sri Kumar

(Shanker Raju)  
mco

30.1.2002

88\98

Order/Judgement despatched  
to App.

22/6/2002  
(s) Judgment  
for

that A.A. Shetty, cont. is of record of the

It is noted that the learned counsel for  
the applicant Sh. Ramamurthy is not well and is  
a week's time. Shri Shetty has no objection.  
List the case on 7.6.2002.

It is made clear to the applicant's counsel  
that this would be the last court day and in the  
event of non-association the case would be decided on  
the provisions of rule 15 of the Criminal Procedure  
Code, 1987.

(Shanker Shetty)  
(Member)

10/6/02

~~CENTRAL~~ ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

OA 80/1998

MUMBAI, THIS THE 15TH DAY OF JUNE, 2001

HON'BLE SHRI SHANKAR RAJU, MEMBER (J)

Havaladar Ramprasad  
working as Assistant Pointsman  
in the Kurla Car Shed under  
Senior Divisional Engineer  
(Traction, DETRS), Kurla  
MUMBAI - 400 070

..Applicant

(By Advocate Shri R. Ramamurthy)

V E R S U S

1. Union of India,  
through the General Manager  
Central Railway,  
Chhatrapati Shivaji Terminus  
MUMBAI - 400 001.
2. The Divisional Rail Manager  
Bombay Division, Central Railway  
Chhatrapati Shivaji Terminus  
MUMBAI - 400 001.
3. The Senior Divisional Personnel  
Officer, Mumbai Division  
Central Railway,  
Chhatrapati Shivaji Terminus,  
MUMBAI - 400 001.
4. The Divisional Traction Superintendent,  
Kurla Car Shed, Central Railway, Kurla  
MUMBAI - 400 070.
5. The Senior Divisional Electrical  
Engineer (TRS)  
Kurla Car Shed, Central Railway,  
Kurla, MUMBAI - 400 070.

...Respondents

(By Advocate Shri R.R. Shetty)

O R D E R

By Hon'ble Shri Shankar Raju, Member (J)

The applicant who had been working as a Substitute Assistant Pointsman from 12.12.80 has sought his regularisation w.e.f. 8.4.88 from the date he had successfully passed the screening with all consequential benefits. During the pendency of this OA the applicant was considered for regularisation and due to medical

examination in the wrong category he has been regularised as a Khalasi vide order dated 12.1.2000 which he has assailed by way of an amendment. The respondents vide their order dated 13.3.2001 rectified their mistake and sent the applicant for training to APM grade Rs.2550-3200 (RSPP) and taken steps to regularise his services as he had been found fit for A-2 medical category. As such the relief claimed by the applicant in para 8 (C-1), (C-2) and (C-3) as amended have become infructuous. The only issue which remains to be resolved in this OA is whether the applicant is entitled for regularisation w.e.f. 8.4.88 when he has successfully passed the screening.

The applicant contends that he had been continuously working as APM w.e.f. 1980 and was screened for the purpose of being regularly absorbed as Pointsman on 6.11.84 and had passed the medical examination of A-2 category on 20.10.82. The applicant made a representation on 4.9.85 when nothing was communicated to him regarding the fate of the screening held on 6.11.84. Vide letter dated 26.10.85 sent by DEE/TRS Kurla to DTS the recommendations have been made for regularisation of the applicant as Assistant Pointsman. Vide letter dated 8.4.88 at Annexure 'C' the applicant had successfully passed the screening and directed to be regularised but not orders to that effect had been passed. The juniors of the applicants who had joined service later than him have been regularised and further accorded promotion to Pointsman 'B' and 'A' grades. The grievance of the applicant is that despite being successful in the screening had not been considered for regularisation and continued as a Substitute Pointsman without any fault of

him<sup>h</sup> which has affected his promotional avenues and amounts to discrimination vis-a-vis his juniors under Article 14.

The respondents in their reply mainly contested the OA on the ground that the screening scheduled in 1984 had not taken place and in fact the applicant was screened and placed on panel in 1988. The call letter sent to the applicant for regularisation in Group 'D' was for the purpose of verification of his documents who had not turned up after screening along with the relevant documents like casual labour card, school leaving certificat, copy of the call letter and details of the period, as according to the respondents the regularisation would not have taken place without the verification of these documents. The applicant due to his own fault by not presenting himself with the relevant documents had lost sight of his regularisation. According to the respondents the procedure for verification of documents is to ensure that the person should not be regularised having forged and fictitious documents like casual labour card etc. Referring to Exhibit 'C' letter dated 8.4.98 it is contended that a substitute having cleared the screening has to present himself with all relevant documents and in the event of his failure he would not be subjected to medical examination and failure to do so the proposal could be cancelled. The name of the applicant had figured at serial No.51 of this panel. The applicant has further contended that no reasons have been assigned by the applicant that despite informed and issuance of call letter why he has failed to report to the respondents with necessary documents. The claim of the applicant is also

resisted on the ground that now according of regularisation and seniority with retrospective effect would unsettle the settled position after a long lapse of time. The applicant would be placed above all the seniors to whom he has not made aparty. The claim is also resisted on the ground that for a cause of action arose in 1988<sup>w</sup> the application has been filed after a period of 10 years, i.e., in 1998 and his hopelessly barred by limitation.

I have carefully considered the rival contentions of the parties and perused the material on record. As regards the relief of regularisation of the applicant as khalasi by subjecting him to a fresh medical examination is concerned, the same has been rectified by the respondents themselves and the applicant was subjected to A-2 category medical examination and had been sent for training to the post of APM and is to be regularised thereafter. The relief asked for by the applicant on that count has been meted out to him and the OA has become infructuous with regard to the relief claimed by way of an amendment. As regards the issue of regularisation of the applicant with retrospective effect and accord of seniority and other consequential benefits from the date he successfully completed the training is concerned, I find that vide an order dated 8.4.98 a letter has been addressed to Senior Divisional Engineer, Kurla informing about the fact of the applicant having passed the screening successfully and further intimation to be given to the applicant for production of certain documents for verification of the process for further regularisation as APM. The respondents contention that

he has been working in the same section for the last 15 years and there is no evidence or proof adduced by the respondents to show that he had been called upon to produce the documents or this call letter has been served upon them I have perused the record and find that except letter dated 8.4.88 there is nothing on the record to show that the aforesaid communication had been sent to the applicant or any call letter was issued requiring him to produce the documents for verification etc. I also find from a letter dated 26.10.85 written by the respondents recommending regularisation of the applicant. The averment of the respondents that the applicant despite being issued a call letter had not reported for verification of documents for regularisation in Group 'D' is not to be acted upon in absence of any evidence to show that the call letter was sent to the applicant and the same had been communicated to him and he had the knowledge about the fact that he has to present himself for verification of documents etc. The contention of the applicant that had not been intimated about presenting himself for verification etc. and no call letters have been served upon him, is justified as there is nothing on record to indicate that the applicant had been served upon the same. Apart from it, on filing the present OA the respondents themselves took up the process of regularisation of the applicant by subjecting him to medical examination and without insisting on the verification etc. regularised and absorbed him in class IV post as Khalasi and later on corrected it by absorbing him as APM clearly indicates that the applicant has never been called upon for verification of his documents etc. Furthermore, I also find from the record that the applicant was also in the panel after his screening in

1998 but yet due to the fault of the respondents had not been considered for regularisation from the date his juniors were accorded the same as per his seniority in the panel. The applicant has been deprived of his right of regularisation and further consequential benefits without any fault of him<sup>u</sup> and has been discriminated with his juniors which is violative of Articles 14 and 14 of the Constitution of India. I am of the confirmed view that the applicant has never been duly communicated about presenting himself after successfully clearing the screening for verification of documents and he should not suffer on account of the lapse of the Government. In this view I am fortified by the ratio laid down in State of Maharashtra v. J.A. Kerandisan 1989 (1) ATC 593 as well as the ratio of the Apex Court in Krishnamurthy v. G.M. Northern Railway, 1976 (4) SCC 825. The contention of the respondents that in the event the applicant is accorded seniority from the back date it would amount to unsettling the settled position, I am of the confirmed view that this can be taken care of by placing the applicant at the bottom of the seniority not affecting the others. Furthermore, had the respondents acted properly the applicant by virtue of his place in the panel would have been accorded seniority at a proper place as the juniors of the applicants have been regularised and were further accorded promotion<sup>u</sup>, the applicant cannot be deprived of the same being fully eligible and this would amount to treating the equals unequally and would be violative of Articles 14 and 16 of the Constitution of India. As regards the issue of delay is concerned, the applicant had assailed the action of the respondents by not regularising him despite according the same to his juniors which had bestowed the applicant a cause of action to challenge the proceedings. Apart



from it, the applicant has assailed an order dated 12.1.2000 in this OA which is within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

Having regard to the discussion made above and the reasons recorded the OA is allowed. The respondents are directed to regularise the applicant as APM with effect from the date his immediate junior was accorded the same and having regard to the seniority in the panel after screening in 1988<sup>w</sup> the applicant shall also be entitled for all the consequential benefits. However, for the purpose of seniority the applicant shall be placed at the bottom of the seniority list drawn. The respondents shall also consider accord of benefits of qualifying service to the applicant for the purpose of seniority and other benefits as per their scheme and guidelines on the subject. These directions shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju  
(Shanker Raju)  
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: MUMBAI

RP No.54/2001 in

OA No.80/98

MA No.702/2001

Mumbai this the 19th day of September, 2001.

Hon'ble Mr. Shanker Raju, Member (J)

Havaladar Ramprasad

...Petitioner/Respondent

vs.

Union of India & Ors.

....Respondents/Petitioners

ORDER (By Circulation)

The present R.P. is filed by the Union of India seeking review of the order dated 15.6.2001. They have also filed MP No.702/2001 for condonation of delay in filing the R.P. I have perused the reasons given for delay and I am satisfied that the reasons are not justified to condone the delay. MP-702/2001 is, therefore, rejected.

2. I have also perused the R.P. The grounds taken in the RA do not bring it within the purview of Order 47, Rule CPC <sup>1/2</sup> (1) read with Section 22 (3)(f) of the Administrative Tribunals Act. I do not find any error apparent on the face of record or discovery of new material which was not available to the review petitioners, when the OA was heard and decided even after exercise of due diligence. The review petitioners are trying to re-argue the matter, which is not permissible as held by the Apex Court in K.Ajit Babu & Ors. v. UOI & Ors., JT 1997 (7) SC 24. The R.P. is dismissed, in circulation.

S. Raju

(SHANKER RAJU)  
MEMBER(J)

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2.11.2001

Shri R.R.Shetty for the applicant.

M.P.722/01 is considered. Paras 4, 5 and 6 of the M.P. read as under -

" I say that the Hon'ble Tribunal has committed grave error in allowing the OA w.e.f. 1988. In that the seniority to be granted to the applicant in 1988 would unsettle the settled seniority position of about 720 persons who have been regularised as Assistant Pointsman, since 1988 to the date of Hon'ble Tribunal's judgment dated 15.6.2001.

5. I say that for the above-mentioned reason, the respondents have filed a Review Petition before this Hon'ble Tribunal on 8.8.2001 to review the judgment dated 15.6.2001.

6. I say that for the reasons stated above, the respondents are seeking that the Hon'ble Tribunal grant further time of six months for complying with the orders. In the Original order, 2 months time has been fixed for the compliance thereof. The respondents are making this application as a period will expire on 26.8.2001."

It is therefore a ground taken that the Tribunal has committed an error in allowing the OA . In para 5 it is also reiterated that Review Petition has been filed which learned counsel only states has been rejected. It is then stated in para 6 that the above are the reasons for seeking extension in time for implementing the judgement in the OA. This cannot be a ground for seeking extension in time for the implementation of the judgment. M.P. 722/01 is therefore rejected. Inform the other party.

Order/Judgment despatched  
to Appellant/Respondent (s)  
on 11/12/01  
ms

B.N. Bahadur  
(B.N. Bahadur)  
Member (A)  
2/11