

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.1448 OF 2012

New Delhi, this the 21<sup>st</sup> day of April, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER  
AND**

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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1. Shri Kripa Narain Shahi,  
s/o Shri Satya Dev Shahi,  
R/o G-46, First Floor,  
Near Durga Mandir, East Vinod Nagar,  
New Delhi 110091

2. Abdul Bari Khan,  
s/o late Shri Abdul Shakeel Khan,  
R/o F-475, IInd Floor, Gadda Colony,  
Near Khajoor Wali Masjid,  
Jaitpur Extn., Part-II, Badarpur,  
New Delhi 110044

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Applicants

(By Advocate: Mr. Amit Kumar)

Vs.

New Delhi Municipal Council,  
Palika Kendra,  
New Delhi,

Through its Chairman

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Respondent

(By Advocate: Mr. Rajneesh Vats)

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**ORDER**

**RAJ VIR SHARMA, MEMBER(J):**

The applicants have filed the present O.A. seeking the following reliefs:

- õa) **Direct the respondent to consider the applicants for regularization at the post of Lift Operator on the line of Ramakant Rai;**

- b) Direct the respondent to pay the arrears, bonus etc. of their salary with interest and other consequential benefits;
- c) Direct the respondent to pay the litigation cost; AND
- d) pass such order/s or direction/s which this Honøble Court may deem fit and proper in the facts and circumstances of the case.ö

2. The brief facts of the applicantsø case are as follows:

2.1 Applicant no.1 was engaged by the New Delhi Municipal Council (NDMC) to work on Temporary Muster Roll (TMR) as Lift Operator w.e.f. 5.4.1991. Applicant no.2 was engaged by the NDMC to work on TMR as Lift Operator w.e.f. 9.5.1994. The NDMC brought them on Regular Muster Roll (RMR) with effect from 11.6.2002, though they were entitled to be brought on RMR from an earlier date or at least from the date when their juniors were brought on RMR.

2.2 Being aggrieved by the decision of the NDMC bringing them on RMR with effect from 11.6.2002, the applicants filed W.P. (C) Nos. 17970 and 21918 of 2005. These writ petitions were transferred to the Tribunal and registered as TA Nos.1076 and 1077 of 2009. The Tribunal, by a common order dated 14.5.2010, disposed of both TA Nos.1076 and 1077 of 2009 and issued the following directions:

ö10. Taking into account the above factual position in which the disputes raised by the Applicants could not be properly clarified by the Respondents, we direct the Respondent NDMC to examine the issue raised by the Applicants for ante dating their conversion from TMR to RMR on the basis of the records available with the Respondent. While examining the issue, the Respondents are also directed to give an opportunity to the Applicants to represent and furnish documents and statement if

needed to show how the ante dating would be possible and whether it would be admissible as per the NDMC Council Resolution. It goes without saying that the Respondent, after due consideration, decide the issue by a speaking and reasoned order with intimation to the Applicants.ö

2.3 In compliance with the Tribunal's direction, *ibid*, the NDMC, considered the claim of the applicants, but rejected the same, vide order dated 25.10.2010 (Annexure A/3), which is reproduced below:

NEW DELHI MUNICIPAL COUNCIL  
PALIKA KENDRA: SANSAD MARG  
NEW DELHI 110001  
(ELECTRIC ESTABLISHMENT UNIT-1)  
Reference No.EEI/GAIII/1804      Date: 25.10.10

Subject: Implementation of the Orders of the Hon'ble CAT dated 14.5.2010 in TA No.1076/2009 and TA No.1077/2009 in respect of Sh.Kripa Narain Shahi & Sh.Abdul Bari Khan, respectively.

Hon'ble CAT vide its orders dated 14/5/2010 directed the respondent, N.D.M.C. to examine the issue raised by the applicants for ante-dating their conversion from Temporary Muster Roll to Regular Muster Roll on the basis of the records available with the respondent N.D.M.C. While examining the issue, the respondents have been directed to give an opportunity to applicants to represent and furnish documents and statement, if needed to show how the ante-dating would be possible and whether it would be admissible as per the N.D.M.C. Council's Resolution and pass a speaking order.

2. The applicants, as per directions of the Hon'ble CAT, appeared before the Chairperson, NDMC on 14.06.2010 and 21.9.2010. They also appeared before the undersigned on 25.06.2010 and again on 24.9.2010 where Deputy Director (Elect.), Section Officer (Electric Establishment ó I), and Section Officer (Civil Establishment II) were also present. The applicants reiterated their claims that Para No.1 of the Writ Petition filed before the High Court may be considered while finalizing their cases.

3. The applicant No.1, Shri K.N.Shahi contended that Para No.1 of the Writ Petition filed by him before Hon'ble High Court of Delhi may be read as part and parcel of the submission made by him and his case may be considered accordingly. In

Para No.1 of WP (C) 17970/05 the applicant had claimed that he was brought on the roll as Regular Muster worker vide Orders dated 11.06.2002, while he was entitled to the same status from at least 09.10.1992 when his juniors, as per details given below, were converted to Regular Muster Roll workers and he is further entitled to be regularized after six years, i.e., w.e.f. 1998.

Sl.No.	NAME OF THE CANDIDATE	NUMBER OF DAYS WORKED AS TMR	DATE ON WHICH RMR STATUS GRANTED
1	SHRI HARISH ASSAL, CARD NO.2147	298	9.10.1992
2	SHRI RADHESHAM, CARD NO.2153	308	9.10.1992
3	SHRI SUKH PAL SINGH, CARD NO.2151	309	9.10.1992
4	SHRI DEEPAK ASSAL, CARD NO.2146	299	9.10.1992

4. After going through the records available with the respondent N.D.M.C. and analyzing the facts the position that has emerged is as under:

- (i) The applicant No.1, Shri K.N.Shahi was engaged on Temporary Muster Roll as Khallassie w.e.f. 5.4.91 and applicant No.2, Shri A.B.Khan was engaged on Temporary Muster Roll on 09.05.1994.
- (ii) As a welfare measure for N.D.M.C.employees, the Administrator, N.D.M.C. vide his orders dated 17.03.1992 had decided that those muster roll workers, who were wards of serving regular employees of N.D.M.C. and have rendered a minimum service of 180 days during the period 1<sup>st</sup> January 1991 to 31<sup>st</sup> December 1991 with a break not exceeding 60 days at a stretch, may be appointed on Regular Muster Roll subject to availability of vacancies. It is pertinent to mention that the applicant Shri Shahi had completed only 173 days up to 31.12.1991, and Shri Khan was appointed only on 09.05.1994.
- (iii) Under Section 38 of the then Punjab Municipal Act, 1911 the Committee through its Administrator was empowered

to appoint any person. As per orders of the then Administrator dated 09.10.1992, 40 Temporary Muster Roll Khallasies, reported to be wards of municipal employees, including the 4 persons mentioned in the Para No.3 above, were placed on regular muster roll. The name of the above said officials existed at Sr.No.31,36,29 and 34 of the said orders. A copy of the office order dated 09.10.1992 is annexed as Annexure-I.

- (iv) Since this was a scheme meant for the welfare of the employees, only wards of the employees were considered for regularization on Regular Muster Roll. The cases of the applicants were not considered accordingly.
- (v) Vide circular dated 11.05.1994 those muster roll employees who have completed 750 days as on 31.03.1994 were considered for appointment on Regular Muster Roll. A copy of the said circular dated 11.05.1994 is annexed as Annexure-II. Grant of RMR status was not automatic. One had to apply for the same. It has not been claimed that they applied for the same & not considered. As the applicants had not put in 750 days as Temporary Muster Roll worker on 31.03.1994 they were not considered for Regular Muster Roll.
- (vi) After enactment of N.D.M.C.Act, 1994, one of the Member of the Council proposed that all those who have completed 500 days as TMR be regularized. This was not accepted and the Council vide Resolution No.4 (v) dated 23.2.1996 resolved that RMR be linked with availability of vacancies. A copy of the said Resolution dated 23.02.1996 is annexed as Annexure III.
- (vii) Council vide its Resolution No.3(v) dated 26.02.2002 and 3(ii) dated 24.05.2002 decided to grant Regular Muster Roll status to the Temporary Muster Roll card holders who had completed 500 days and fulfilled the prescribed conditions. The Council approved the proposal regarding 500 and above days as the criteria for conversion of TMR into RMR as on 31.12.1998. Copies of the Resolutions dated 26.02.2002 and 24.05.2002 are annexed as Annexure IV and Annexure V.
- (viii) As per Council Resolution, the seniority of a muster roll worker is not determined as per date of his initial appointment, but number of days worked, as specified in Resolutions made from time to time.
- (ix) The applicants having completed more than 500 days up to 31.12.1998 were granted Regular Muster Roll status vide Orders dated 11.06.2002. Their names figure at

S.No.7 and 40 of the said orders, whose copy is annexed as Annexure VI.

5. In view of the position discussed here in above claim of the applicants for antedating the grant of Regular Muster Roll from an earlier date is not possible as per the extant policy and Committee's decision/Council's Resolutions and no discrimination was made against them. As such, their representations are rejected.
6. Claim for relief has been made in 2005 for a period from 9.10.1992. This is after a period of 13 years. As per Supreme Court decision in -Pan Singh & Others Vs. NDMC- decided on 8.3.07, such a claim cannot stand and has to be rejected.
7. This issues with the approval of the Competent Authority.

2.4 After the above order dated 25.10.2010 was passed by the NDMC, the applicants made representations dated 2.5.2011 and 8.6.2011 requesting the Chairman, NDMC, to antedate their RMR status, and to regularize their services in Group -C- posts. There being no response, the applicants moved the Committee for Redressal of Grievances, NDMC. The Committee, vide its proceedings dated 2.11.2011, recommended regularization of their services after following due process. Thereafter, applicant no.1 filed a complaint before the Public Grievances Commission, Government of NCT of Delhi. The Commission, vide its order dated 7.12.2011, directed the NDMC to take further action immediately in respect of regularization of the services of applicant no.1. Despite the above recommendations of the aforesaid Committee, and Commission, the respondent- NDMC having failed to redress the grievance of the applicants, the present O.A. has been filed by them seeking the reliefs, as aforesaid.

2.5 The applicants have asserted that at the time of their initial engagement on TMR as Lift Operators by the NDMC, they had possessed the essential qualification, and fulfilled the eligibility criteria for appointment as Lift Operators. They were entitled to be brought on RMR after completing 500 days of work from the dates of their initial engagement, and their services were to be regularized in the post of Lift Operators, after they completed six years of service on RMR.

2.5.1 It is contended by the applicants that the policy decision taken by the NDMC to grant RMR status to TMR employees, who were wards of employees of NDMC, was discriminatory. On the basis of such discriminatory decision, the NDMC granted RMR status to several TMR employees who were much junior to them. Therefore, they were entitled to be brought on RMR from an earlier date, or from the date when their juniors were brought on RMR, and, by antedating the grant of RMR status to them, the NDMC ought to have regularized their services as Lift Operators.

2.5.2 It is asserted by the applicants that one Mr. Rama Kant Rai was appointed as Caretaker on *ad hoc* basis on 2.5.1994. The post of Caretaker is a Group -CØ post. The NDMC regularized his services as Caretaker with effect from the date of his initial appointment on *ad hoc* basis, i.e., 2.5.1994.

2.5.3 It is also asserted by the applicants that services of S/Shri Babu Gautam, V.K.Pandey, Anup Kumar Sharma, Rajesh Gomes, Gopal, Ranbir, who were working either on RMR or on work-charged basis against Group -CØ posts, were regularized by the NDMC. It is, thus, contended by the

applicants that denial of regularization of their services as Lift Operators (Group -CØ) by the NDMC is discriminatory. In support of their contention, the applicants have referred to the judgment dated 7.10.2005 passed by the Honøble High Court of Delhi in W.P. ( C ) No. 5162 of 2002 (**Soban Singh & others Vs. N.D.M.C. and others**), wherein it has been held that the earlier decision of the NDMC, whereby the employees working in Group -CØ posts were regularized in Group -CØ posts, was the correct one, and the demotion of the petitioners was illegal, and, as such, their services ought to have been regularized in the posts in which they had been working for several years.

2.6 It is further asserted by the applicants that the NDMC has 40 Lifts operating in two to three shifts. 80 Lift Operators are required for proper functioning of the said Lifts. Out of 25 sanctioned posts of Lift Operator, seven (7) posts are lying vacant since 1987. Three more posts of Lift Operator also fell vacant due to retirement and death of the incumbents in the year 2004. At present, there are 17 vacancies in the sanctioned posts of Lift Operators. The applicants, therefore, submit that the NDMC, instead of regularizing their services as Assistant Line Mates (Group -DØ) with effect from 2.1.2007, ought to have regularized their services against the vacant posts of Lift Operators (Group -CØ) with retrospective effect.

3. In its counter reply, the NDMC, while reiterating the contents of its order dated 25.10.2010 (Annexure A/3), has stated that the post of Lift Operator is a Group -CØ post, and is filled up through the Delhi Subordinate



Services Selection Board only. In this connection, the NDMC has referred to the Recruitment Rules for the post of Lift Operator, which are reproduced below:

1	NAME OF POST	LIFT OPERATOR
2	NO. OF POSTS	25***
3	CLASSIFICATION	CLASS III
4	SCALE OF PAY	4000-6200
5	WHETHER SELECTION OR NON-SELECTION POST	NON-SELECTION
6	AGE LIMIT FOR DIRECT RECRUITMENT	18-35
7	EDUCATIONAL AND OTHER QUALIFICATION FOR DIRECT RECRUITMENT	Matric/ HR Secondary, Tech. Qualification: ITI Certificate in the trade of Electrician/ Wireman from Recognised Institution.
8	WHETHER AGE PRESCRIBED FOR DIRECT RECRUITMENT WILL APPLY IN THE CASE OF PROMOTIONS	N.A.
9	PERIOD OF PROBATION, IF ANY	N.A
10	METHOD OF RECRUITMENT WHETHER BY DIRECT OR BY PROMOTION/OR DEPUTATION/TRANSFER. NO. OF VACANCIES TO BE FILLED BY VARIOUS METHODS	Direct Recruitment. The Departmental candidates possessing above qualification are considered with outsiders.
11	IN CASE OF RECRUITMENT BY PROMOTION/DEPUTATION/ABSORPTION 6 GRADES FROM WHICH PROMOTION/DEPUTATION/ABSORPTION TO BE MADE:	N.A.
12	IF A DPC EXISTS, WHAT IS ITS COMPOSITION	DPC to be constituted under orders of the Administrator /President, NDPC Reso.No.94 & 23 of 09.06.1972 & 25.11.1975.
13	REMARKS	

3.1 It is also stated by the NDMC that except the applicants in the present O.A., the services of all those persons, who were granted RMR status as Khallasis, vide office order dated 11.6.2002, *ibid*, were regularized either w.e.f. 1.1.2007 or any other date. As the applicants were working on

RMR as Lift Operators, and they might not be accepting the offer of regularization of their services in Group -DØ posts and might prefer to file appeal in the court of law, their services were not regularized. Subsequently, it was approved that the services of the applicants might be regularized w.e.f. 2.1.2007 against Group -DØ posts in the Electricity Department. Accordingly, the applicants were offered appointment to the post of Assistant Line Mate (Group -DØ) with effect from 2.1.2007, vide order dated 2.4.2012.

4. Refuting the stand taken by the NDMC, the applicants have filed a rejoinder reply wherein they have reiterated more or less the same averments and contentions as in their O.A.

5. We have perused the records, and have heard Mr. Amit Kumar, the learned counsel appearing for the applicants, and Mr. Rajneesh Vats, the learned counsel appearing for the respondent-NDMC.

6. It is the claim of the applicants that the respondent-NDMC ought to have brought them on RMR with effect from 9.10.1992 and 25.10.1996 respectively when they had completed 500 days of service on TMR as Lift Operators. The respondent-NDMC ought to have also regularized their services with effect from 9.10.1998 and 25.10.2004 when they had completed six years of service on RMR. In support of their claim, the applicants have contended that the respondent-NDMC, while granting RMR status to their juniors, had ignored their cases. It is pertinent to mention here that in compliance with the order dated 14.5.2010 passed in TA Nos. 1076 and 1077 of 2009, the respondent-NDMC considered the

aforesaid claim of the applicants, but rejected the same, vide order dated 25.10.2010, which has been reproduced in paragraph 2.3 above. It transpires from the order dated 25.10.2010, *ibid*, that as per the policy decision taken by the Administrator, NDMC, vide order dated 17.3.1992, that those TMR, who were wards of serving employees of the NDMC and had rendered a minimum service of 180 days during the period from 1.1.1991 to 31.12.1991, with a break not exceeding 60 days at a stretch, might be brought on RMR, subject to availability of vacancies, 40 TMR Khallasies, including the four persons named by the applicants, had been placed on RMR, vide order dated 9.10.1992. It is the admitted position that applicant no.1 had completed only 173 days of service on TMR as on 31.12.1991, and applicant no.2 had been engaged on TMR only on 9.5.1994. Therefore, the question of bringing them on RMR, along with those 40 TMR Khallasies, did not arise. As per the circular dated 11.5.1994, referred to in the order dated 25.10.2010, *ibid*, those TMR employees, who had completed 750 days as on 31.3.1994, had to be considered for being brought on RMR, for which they had to apply. There is nothing on record to show that in response to the circular dated 11.5.1994 applicant no.1 had applied for bringing him on RMR. Applicant no.2 having admittedly been engaged on TMR only on 9.5.1994, the said circular dated 11.5.1994 cannot be said to be applicable to his case. It also transpires from the order dated 25.10.2010, *ibid*, that as per the resolutions dated 26.2.2002 and 24.5.2002, TMR card holders, who had completed 500 days and fulfilled the prescribed conditions, were to be

brought on TMR with effect from 31.12.1998. Accordingly, the applicants, who had completed more than 500 days of service as on 31.12.1998, have been granted RMR status with effect from 11.6.2002, vide order dated 11.6.2002. In the above view of the matter, we do not find any illegality in the order dated 25.10.2010, *ibid*, issued by the respondent-NDMC rejecting the claim of the applicants for being granted RMR status with retrospective effect, as claimed by them.

7. On a perusal of the materials available on record, it is found that after the applicants were offered appointment to the post of Assistant Line Mate (Group -Dø) with effect from 2.1.2007, vide order dated 2.4.2012, *ibid*, the present O.A. was filed by them claiming regularization of their services in the post of Lift Operator (Group -Cø) with effect from the dates of their initial engagement on TMR. It is the contention of the applicants that when the services of one Mr. Ramakant Rai were regularized by the respondent-NDMC with effect from 2.5.1994, i.e., the date of his initial appointment as Caretaker on ad hoc basis, vide posting slip dated 2.5.1994, the respondent-NDMC ought to have regularized their services as Lift Operators from the dates of their initial engagement, i.e., 5.4.1991 and 9.5.1994. It is also the contention of the applicants that non-regularization of their services as Lift Operators with effect from the dates of their initial engagement is discriminatory. In support of their contentions, the applicants have also referred to the judgment dated 7.10.2005 passed by the Honøble High Court of Delhi in **Soban Singh & Others Vs. N.D.M.C. and others**

(supra). The applicants have also filed copies of the posting slip dated 2.5.1994 issued by the respondent-NDMC in favour of Mr.Rama Kant Rai and another; the award dated 28.2.2004 passed by the Industrial Tribunal-II, Karkardooma Courts, Delhi, in I.D. No.12 of 2000 (M/s NDMC Vs. Its Workmen Sh.Rama Kant Rai & another); the judgment dated 6.3.2009 passed by the Honøble High Court of Delhi in W.P.(C) No. 2273 of 2005 (N.D.M.C. Vs. Shri Rama Kant Rai); the office order dated 21.5.2009 issued by the respondent-NDMC regularizing the services of Mr.Rama Kant Rai as Caretaker with effect from 2.5.1994; the order dated 22.8.2006 passed by the Honøble High Court of Delhi in W.P. (C) No. 18559 of 2004; and the office order dated 16.12.2009 issued by the NDMC regularizing the services of Mr.Shakeel Ahmed as Caretaker with effect from 6.5.1994, i.e., the date of his initial appointment. On a careful perusal of these documents, we have found that prior to their initial appointment as Caretaker on ad hoc basis, S/Shri Rama Kant Rai and Mohd.Shakeel Ahmed were working as Peons with the respondent-NDMC. The dispute between the NDMC and S/Shri Rama Kant Rai and Mohd. Shakeel Ahmed was referred by the Government of NCT to the Industrial Tribunal for adjudication. The term of reference was as to whether Sh.Rama Kant Rai and Sh. Shakeel Ahmed, Caretakers, were entitled to the pay scale of Rs.4000-7100/- as was being provided to their regular counterparts and if so, what directions were necessary in that respect. The award was passed by the Industrial Tribunal declaring that Shri Rama Kant Rai (the contesting workman) was entitled to the pay scale of

Rs.950-1500/- from 2.5.1994 till 31.12.1995 and pay scale of Rs.4000-7100/- w.e.f. 1.1.1996 onward till he worked as Caretaker on ad hoc basis. Though the writ petition was filed by the NDMC challenging the Industrial Tribunal's award, yet a compromise was entered into by and between the NDMC and Mr. Rama Kant Rai, as a consequence of which it was agreed by the NDMC to regularize the services of Sh. Rama Kant Rai as Caretaker Grade II from the date of his initial appointment as Caretaker on ad hoc basis w.e.f. 2.5.1994 in the pay scale of Rs.950-1500/- which stood revised to Rs.4000-7000/- with effect from 1.1.1996. An affidavit to that effect was filed by the NDMC before the Hon'ble High Court. In this affidavit it was stated that the said settlement might not be treated as a precedent. In the light of the aforesaid affidavit, the Hon'ble High Court disposed of the writ petition. Accordingly, the NDMC issued office order dated 21.5.2009 regularizing the services of Sh. Rama Kant Rai as Caretaker with effect from 2.5.1994, i.e., the date of his initial appointment as Caretaker on ad hoc basis. The Hon'ble High Court also granted the same relief to Mohd. Shakeel Ahmed in the writ petition filed by him. Consequently, the NDMC issued office order dated 16.12.2009 regularizing the services of Mohd. Shakeel Ahmed as Caretaker with effect from 6.5.1994, i.e., the date of his initial engagement as Caretaker on ad hoc basis.

8. From the foregoing, it is clear that the applicants in the present case are not similarly placed as Mr. Rama Kant Rai. While the applicants were initially engaged on TMR, Shri Rama Kant Rai was appointed as

Caretaker on ad hoc basis with effect from 2.5.1994. Furthermore, before his ad hoc appointment as Caretaker on ad hoc basis, Shri Rama Kant Rai was working as a Peon with the respondent-NDMC. The NDMC regularized the services of Shri Rama Kant Rai as Caretaker with effect from 2.5.1994, i.e., the date of his initial appointment as Caretaker on ad hoc basis, in compliance with the award passed by the Industrial Tribunal, and the judgment passed by the Honøble High Court of Delhi. Therefore, in the present case, the applicants cannot claim to be treated at par with Shri Rama Kant Rai.

9. The Recruitment Rules for the post of Lift Operator do not provide for regularization of services of any employee working on TMR/RMR. In the case of **Accounts Officer (A & I), APSRTC and Others Vs. K.V. Ramana and Others**, AIR 2007 SC 1116, the Honøble Supreme Court, relying on the case of **Secretary, State of Karnataka and Others Vs. Uma Devi and Others** [(2006) 4 SCC 1], has held that absorption, regularization or permanent continuance of temporary, contractual, casual daily wage or ad hoc employees *de hors* the rules of Constitutional scheme of public employment cannot be directed by the courts. Even if the contract labourers, or casual workers, or ad hoc employees have worked for a long period, they cannot be regularized *de hors* the rules for selection. Again in the case of **Union of India and Another Vs. Arulmozhi Iniarasu and Others**, (2011) 7 SCC, the Honøble

Supreme Court referred to the case of **Uma Devi**s case (supra), and reiterated the same principle of law.

10. After having given our anxious consideration to the facts and circumstances, and the rival contentions, in the light of the above decisions of the Hon<sup>ble</sup> Supreme Court, we have found no substance in the contentions raised by the applicants in support of their claim for regularization of services as Lift Operators (Group -C) with effect from the dates of their initial engagement on TMR.

11. Resultantly, the O.A., being devoid of merit, is dismissed. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SUDHIR KUMAR)**  
**ADMINISTRATIVE MEMBER**

AN