

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the New Mangalore Port Trust for revision of rates of levy (with retrospective effect from 1 November 2000) applicable to the services of its Registered Cargo Handling Workers (RCHW) Wing as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/19/2001-NMPT

The New Mangalore Port Trust

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Applicant

O R D E R

(Passed on this 9th day of August 2001)

This case relates to a proposal from the New Mangalore Port Trust (NMPT) for revision of rates of levy (with retrospective effect from 1 November 2000) applicable to the services of its Registered Cargo Handling Workers Wing (RCHW).

2.1. In its proposal the NMPT has made the following points:-

- (i). The NMPT had taken over management of the dock workers in 1990 as per the settlement arrived at under Section 12(3) of the Industrial Disputes Act and had drawn up a scheme titled 'New Mangalore Port Cargo Handling Workers (Regulation of Employment Scheme), 1990' under which the RCHW Wing was functioning as a separate entity, as the scheme was intended to be self-viable.
- (ii). Subsequently, the Government directed the NMPT to merge the accounts of the RCHW Wing with the Port Trust's accounts; and accordingly, separate levy rates were made applicable in 1996, (with retrospective effect from 15 March 1990), as sanctioned by the Government.
- (iii). With the implementation of the revised wages for dock workers from 1 January 1998, the arrears of levy and wages as also the levy on revised wages became payable by the port users. The users, however, resisted to pay the levy on the following grounds:
 - (a). The amount payable towards the revised back wages was not provided for in their contracts already concluded.

(b). The gamut of the general cargo traffic at the NMPT has become dismal.

(c). The port is not expected to make profits out of the levy revision.

2.2. The NMPT has reportedly discussed the matter further with the port users and has proposed to lower the existing level of quantum of levy as detailed below:

- (i). The downward revision in the rates of levy is proposed to offset the extra burden on account of increased basic wages due to pay revision; and, hence, will not materially affect the financial position.
- (ii). The actual cost incurred on the facilities provided to the Dock Workers was not reckoned with in the workings of the revised rates of levy.
- (iii). The services of cargo handling workers are being cross-subsidised from the wharfage income of general cargo handled.
- (iv). The revised rates of the levy as proposed by the NMPT for approval vis-à-vis the existing rates are as follows:

Sl. No.	Particulars	Percentage of levy on the basic wages of the worker concerned	
		Existing	Proposed
(i).	All export containerised cargo only.	250%	200%
(ii).	All gangs consisting of 8 or more Hatch workers and its corresponding shore gangs for discharge / loading of cargo.	375%	200%
(iii).	All other gangs consisting of less than 8 Hatch workers and its corresponding shore gangs.	450%	250%
(iv).	All other cargo handling operation in the Port like unloading from transit shed, stack yard, open stack yard, etc.	450%	250%

Note: The levy at the rates indicated above is in addition to the actual wages earned by the worker including incentive wages calculated as per the respective clauses of prevailing Settlement / Scheme and payable to the NMPT by the Licenced Stevedores.

2.3. The revised rates of the levy were approved by the Board of Trustees of the NMPT in its meeting held on 21 November 2000. The Board had also decided to allow remission in labour levy to the extent of maintaining the gang cost at the present level (i.e. on pre-revised wage structure) till the proposed reduction in levy was notified.

2.4. In this backdrop, the NMPT has requested to approve the levy as proposed under paragraph 2.2(iv) above with retrospective effect from 1 November 2000.

3.1. A copy of the proposal was circulated to various representative bodies of port users for their comments. The comments received are summarised below:

Association of New Mangalore Port Stevedores (ANMPS)

- (i). They have no objection to the proposal of the NMPT, as the proposal was drawn up in consultation with them.

- (ii). They have desired to put forward their views in the joint hearing on certain related issues like reduction in manning scale, increase in datum to actual output, and implementation of a Compulsory Retirement Scheme to overcome the issue of surplus labour at the port.

New Mangalore Port Clearing and Forwarding Agents' Association (NMPCFAA)

They have endorsed the views of the ANMPS.

Kanara Chamber of Commerce and Industry (KCCI)

- (i). The concept of levy shall not exist at all; instead the Port must work towards attracting more traffic and innovate self-supportive schemes in this respect.
- (ii). Since, the general cargo handled at the NMPT is quantitatively dismal, the Port must control the expenditure on account of the RCHW Wing and bring it down to an economically viable level.
- (iii). Generation of unproductive employment must be avoided and ways should be paved for corporatisation.
- (iv). Details of expenditure incurred on the RCHW Wing have not been given; and, only the deficit is projected in support of the proposed levy.
- (v). The cost / financial details in the format prescribed by the TAMP should be submitted to enable all concerned to become aware of the cross-subsidisation of the services of the dock workers from the wharfage income realised from general cargo.
- (vi). Efforts must be made to reduce manpower and improve productivity. The overaged and physically unfit workers of the RCHW Wing need to be eliminated by implementing a VRS or a compulsory retirement scheme, if need be.
- (vii). Datum levels fixed in 1980 should be revised consequent upon increases in the productivity due to mechanised operations. Realistic productivity linked scales should be worked out by the Ports by educating the Union and the workers of the RCHW Wing about providing competitive service to attract the traffic at the NMPT. They should be made aware of the changing situations and the need to rationalise the pay structure.
- (viii). Instead of the wasteful expenditure and unwanted new projects like construction of new administrative building, the money can be used for attracting the traffic by way of incentives and subsidising new ventures in trade.
- (ix). In the present market scenario, the trade and industry cannot bear any increase in the levy of RCHW Wing.

3.2. Copies of the comments received from the port-user- organisations were forwarded to the NMPT as feedback information. The NMPT has not offered any comments on the views expressed by the port users.

4.1. A joint hearing in this case was held on 7 April 2001 at the NMPT. This case was taken up at the joint hearing alongwith the general revision proposal of the NMPT. At the joint hearing the following submissions were made:

New Mangalore Port Trust (NMPT)

- (i). We do not also want cross-subsidisation. But, elimination of cross-subsidies can only be gradual.
- (ii). RCHW Wing is a fait accompli. Our manoeuvrability is limited. But, we have proposed reduction of levies.
- (iii). Regular workers get 2.75 days work per month. But, all workers have nevertheless to be paid.
- (iv). Productivity has increased. Users need not, therefore, complain.
- (v). Ghost / badli workers may be there. But, we do not know.
- (vi). It is not possible to discontinue levy. Otherwise, wharfage may have to go up by another 30%
- (vii). RCHW is our total labour. There is no other operating expenditure on account of wages.
- (viii). How does change of the 'datum' matter for the tariff? The cost will still be the same.
- (ix). Revision of 'datum' will cause a total stoppage of work. Government has already appointed an adjudicator to review the manning scales. We have to await his report.
- (x). Construction of a new office building is approved by the Government in the Plan Scheme. There is no arbitrariness about it. In any case, the project has not yet been awarded. Its cost, therefore, is not included in our computation.

Kanara Chamber of Commerce and Industry (KCCI)

- (i). 'What the traffic can bear' must be replaced by 'efficient pricing system' as propagated by the TAMP.
- (ii). The recommendations made in the DRDO Report have not been considered at all, particularly the recommendation to reduce 'surplus' labour. The DRDO itself refers to 'Ghost workers'.
- (iii). We agree that the productivity has gone up by 10 times. But, the 'datum' has remained the same. This is at the root of all problems.

Association of New Mangalore Port Stevedores

- (i). Manning levels are very high. These were fixed 20 years ago and need to be revised.
- (ii). Datum is also very old and very low. Datum needs to be raised especially for mechanically handled cargoes.
- (iii). Port's labour gang cost is very high. Private labour is five times cheaper.

4.2. At the joint hearing, further written submissions were made by the KCCI and the Association of New Mangalore Port Stevedores which are summarised below: _

Kanara Chamber of Commerce and Industry (KCCI)

- (i). With liberalisation of the economy and reforms in economic policy, the term 'levy' should not exist.
- (ii). Levy leads to cross-subsidisation which is against the basic principles of the TAMP.
- (iii). Fixation of levy is dependent upon (i) minimum guaranteed wages to all the workers on roster; and, (ii) the quantity of general and bulk cargo handled at the Port. The total earnings from the RCHW Wing will dwindle with fall in the traffic of general and bulk cargo. Consequently, levy is increased to bridge this deficit. This vicious cycle, has to be broken.
- (iv). The Defence Research and Development Organisation (DRDO) in 1995 had recommended 39% reduction in the cargo handling workers when the berth occupancy of berth Nos. 1 to 7 was 61%. Presently, the berth occupancy of these berths is less than 30%. The surplus labour, therefore, must be reduced.

The workers on the NMPT pay roll are substituted by 'Badli' workers who are instigators of 'ghost'/'speed' money and shall, therefore, be removed from the rosters. There shall be strict monitoring of the system of entry of these workers into the Port, which can be regulated on the basis of photo-identity passes.

- (v). Steps shall be taken to instil discipline in the cargo handling workers to curb the menace of 'speed' money. A reduced, disciplined and dedicated cargo handling work force will increase productivity and, consequently, attract more cargo to the Port.
- (vi). Presently all the decisions relating to discipline, datum, incentives, VRS, levy, etc., are taken by the Port without consulting the Stevedores. Since, the Stevedores handle the workers, they must be involved actively in the administration of cargo handling workers.
- (vii). They have reiterated the points made by them earlier and stressed that the datum must be revised.

Association of New Mangalore Port Stevedores

- (i). In addition to reiterating the points made by them at the joint hearing, they emphasised the need for proper medical inspection and implementation of the Compulsory Retirement Scheme to eliminate overaged, sick and absentee workers.

5.1. At the joint hearing, the NMPT was requested to submit a detailed note on the legal status and the administrative & accounting arrangements of the RCHW Wing; and, a short note on the problem of ghost workers. The NMPT has furnished in this connection the following details:

- (i). The levy is being charged to cover short-deployment, administrative overhead and other benefits to the workers.
- (ii). This levy existed even before the RCHW Wing was taken over from private management of stevedores. All the conditions applicable earlier were continued to make the Scheme financially self-supportive.
- (iii). The levy is recognised by the Government of India; and, also by the Accountant General of Karnataka.
- (iv). The status of RCHW Wing; and, the necessity of notification of the same were discussed in a meeting held in Bangalore on 25 July 1995 wherein the

representatives of the MOST, A.G. (Karnataka) and the NMPT were present. The main points discussed and decided in this meeting were as follows:

- (a). The service conditions of the RCHW wing were formulated under Section 12(3) of Industrial Disputes Act 1947; and, therefore, further approval by the Central Government under the MPT Act was not necessary.
- (b). Since these workers were not listed in the Schedule of Employees of the Port, the question of these employees requiring regulations did not arise.
- (c). The Ministry of Law had opined that the Scheme was not a regulation under Section 28 of the MPT Act and thus, it would not require sanction of the Government.
- (d). It was, however, agreed that the levy charged by the NMPT under this scheme required the Government sanction and should be notified in the Gazette under the provisions of Sections 48 and 52 of the MPT Act from the date of commencement of the Scheme i.e.1990.
- (e). AG (Karnataka) agreed that the RCHW Accounts would be merged with Port Trust accounts from the year 1996-97.
- (v). The proposed revision is mainly on account of increase in basic pay due to pay revision; and hence, the levy being charged on the basic pay has gone up enormously making the charges unviable for the trade.
- (vi). The proposed revision from the date mentioned in the proposal may be approved until an alternative method is developed to amalgamate the cost of RCHW wing with other charges.
- (vii). Further, the NMPT clarified that there are no ghost workers as alleged by some of the users at the joint hearing.

6. With reference to the totality of information collected during the processing of this case, and taking into account the arguments advanced at the joint hearing, the following position emerges:

(i). As has been brought out by the NMPT, the Port does not maintain any labour force other than the Registered Cargo Handling Workers (RCHW) for the purpose of handling of cargo at its premises. The RCHW was earlier managed by the stevedores, which was taken over by the Port in 1990. The service conditions and benefits extended to the RCHW are the same as those for the Port Trust employees. In fact, the RCHW is administered and managed by the NMPT. But, the RCHW has not been included in the schedule of employees of the Port Trust; and, hence, they are to be treated as non-scheduled employees. It is noteworthy that the accounts of the RCHW Wing form part of the Port Trust's general accounts.

The details furnished by the NMPT reveal that the levy was approved by the Government and notified in the past under the provisions of Section 48 of the MPT Act. With the amendment of the MPT Act in 1997, the power to approve rates and conditionalities for services rendered by the Major Port Trusts now stands transferred to this Authority. Eventhough the employees in question are non-scheduled employees, the services can be said to be provided by the NMPT. That being so, there cannot be any doubt about the jurisdiction of this Authority to regulate the tariffs relating to the services rendered by the RCHW Wing at the NMPT.

(ii). The NMPT follows the conventional dock labour board levy system for the purpose of realisation of charges for deployment of RCH workers. Since the actual wages of the workers alongwith recovery of overheads as a percentage of the wages is being charged, it becomes

imperative to review the percentage of levy when the basic wages are revised upwards. In the instant case, the revised wages of dock workers have been implemented retrospectively with effect from 1 January 1998; hence, the rate of levy needs to have been adjusted accordingly, if the NMPT started billing on the basis of the revised wage structure. Billing on the basis of the revised structure has not been proposed by the NMPT with effect from 1 January 1998 but from 1 November 2000. Accordingly, the NMPT has proposed to reduce the rates of levy to keep the revised wages plus (revised) levy thereon at the level of pre-revised wages plus levy thereon. The Association of New Mangalore Port Stevedores has communicated its acceptance of the proposal saying that it was drawn up in consultation with them.

(iii). Eventhough the stated purpose of collecting a levy is to make the RCHW Scheme financially viable, the financial position submitted by the Port does not indicate that this objective is achieved. The revenue account of the RCHW Wing shows a deficit of about Rs.574 lakhs, Rs.747 lakhs and Rs.870 lakhs for the years 1999-2000, 2000-2001 and 2001-2002 respectively (without considering the notional wharfage subsidy). Eventhough the rate of levy is to be revised with reference to the financial position, the Port has categorically mentioned that the rate of levy proposed by it does not take care of the actual cost incurred on the facilities provided to the Dock Workers. The NMPT proposes to allow cross-subsidisation from the general cargo handling activity to the RCHW activity.

As admitted by the NMPT and pointed out by the various user Associations, there is surplus labour in the RCHW Wing. The average deployment of labour is at a disconcerting level of around 3 days per month. It is noteworthy that the NMPT has sent a separate proposal for general revision of its Scale of Rates, which is under consideration of this Authority. In that case, the NMPT has included the revenue and expenditure of the RCHW Wing in the cost statement relating to the activity of Cargo Handling and Storage (excluding KIOCL and MRPL cargo). This means, the deficit in the RCHW Wing working is sought to be subsidised by the cargo handling activity (i.e., by the wharfage income).

(iv). The issues of surplus labour and allocation of cost thereon were examined more pointedly by this Authority in a case relating to handling of manganese ore at the VPT. In that case, this Authority found it appropriate to spread the cost of surplus labour over the entire cargo traffic. By including the revenue position of the RCHW Wing in the cost statement relating to the cargo handling activity, the NMPT has attempted to spread over the labour redundancy to all cargo (except the dedicated cargo, charges for which are fixed based on separate Agreements). The approach adopted by the NMPT is, therefore, acceptable and its proposal for revision of levy is considered from the point of maintaining the cost to users at the same level both before and after the wage revision of the RCHW Wing employees.

(v). As has been mentioned earlier, the NMPT follows the conventional method of labour levy. Recently, this Authority approved a proposal of the Mormugao Port Trust (MOPT) to fix charges for deployment of its cargo handling workers on a per-tonne commodity-wise rate at various levels of productivity. While approving the proposal of the MOPT, this Authority found the following merits in the per-tonne rate based system:

(a). A 'per-tonne' rate brings in transparency in recovery of cost and makes accounting easier. As far as shippers are concerned, it becomes easier for them to assess cost of moving their cargo.

(b). The productivity linkage to the per-tonne rate will act as an incentive to the Stevedores to achieve better productivity to reduce the overall cost of operation.

(c). A unit rate system forecloses the scope for possible multiple accounting of the cost of the same labour gang while billing against different Lines / Consignees. Significantly, the Lines or their Agents pay the stevedores engaged by them on a unit rate basis depending on the tonnage of cargo loaded / unloaded.

(d). In the major ports, where the Dock Labour Board scheme was never introduced, the recovery of stevedoring / on-board charges are unit based. In case of Port Trusts, the charges levied for supply of shore-labour (who complement on-board labour) are included in wharfage or levied separately as handling charges. In either case, the charges realised are based on a unit-rate and not on a levy system. The National Institute of Port Management which recently carried out a study relating to the MOPT has also suggested conversion of the system of labour levy into commodity-wise per-tonne rates with productivity linkages.

(vi). This Authority has already decided to constitute a Working Group to analyse all relevant issues and implications relating to the tariffs for cargo handling workers. The NMPT proposal need not, however, be held up for a further study of the issues by the Working Group. In view of the obvious superiority of a unit rate over the conventional levy system and recognising the fact that the element of cross-subsidisation will continue from the wharfage income to the RCHW activity at the NMPT, the NMPT proposal for reduction of labour levy is approved with a stipulation that it must switch over to commodity-wise per-tonne rate structure with productivity linkage. The NMPT is allowed six months to formulate an appropriate proposal in this regard.

(vii). As has already been mentioned, the NMPT proposes to realise the wage cost based on the revised wage structure from 1 November 2000. That being so, the reduced levy approved now needs to be implemented with retrospective effect. Accordingly, this Authority prescribes a validity period for the revised rate of levy from 1 November 2000 to 31 January 2002. Within this period, the NMPT is advised to come up with its revised proposal to switch over to commodity-wise per-tonne rates for deployment of cargo handling workers.

(viii). The KCCI has raised an issue about ghost / badli workers and alleged ghost / speed money payment. This issue apparently is extraneous to the tariff fixation matter since the Port Trust has not included any such payment in deriving the proposed rate of levy. Nevertheless, the issue raised by the KCCI is valid considering the overall port cost to the trade, if the allegations made by it are true. In any case, this is a labour management issue which is for the Port Trust to consider. The suggestion made by the KCCI about introduction of photo-identity passes to regulate entry of workers into the port is worthy of serious consideration by the Port.

(ix). Some of the users, mainly the KCCI, have brought up the issues relating to manning scale and datum for productivity. The issue of manning scale has already been referred to adjudication at the national level. We have, therefore, not gone into the details at this stage, even though this issue is critical to determination of the level of tariff.

In the context of the NMPT recovering incentive wages at actuals along with the RCHW levy, the issue of datum for such productivity-linked payment is relevant. The NMPT's view that change of datum may not matter much in tariff fixation is not correct. It is to be recognised that tariff in this case is actual wages plus incentive payment plus levy and not levy alone, as assumed by the NMPT. A rational and timely revision of the datum will definitely impact on the incentive payment and, consequently, lower the overall cost of deploying RCHW, from the users point of view.

It is a very feeble argument that revision of datum will cause industrial unrest. The Port Administration has to stand up and address this issue frontally instead of shying away from it. It is our understanding that wage revision agreements for Port and Dock Workers specifically emphasise revision of the datum and improvements in productivity levels.

Since the instant proposal is to be considered as an interim arrangement without dwelling on the financials, the issue of productivity-linked payment will be taken up for detailed scrutiny when a 'per-tonne' rate is to be introduced in another six months' time. While formulating its proposal, the NMPT is advised to take into consideration realistic productivity levels and piece-rate payments in relation to them.

(x). The other issues raised by the users about labour rigidity and redundancy are obviously beyond the competence of individual port trusts to resolve in view of the limited manoeuvrability available to them. This calls for labour reforms at the national level; and, till this happens, a Regulator may have to reckon with the ground realities, at least to a limited extent during this phase of our development.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides as follows:

(i). The revised rates of levy as proposed by the NMPT and indicated in paragraph 2.2 (iv) above are approved.

(ii). These revised rates of levy will be effective retrospectively from 1 November 2000.

(iii). The validity of the revised rates of levy is fixed upto 31 January 2002

(iv). The NMPT is advised to formulate within six months its proposals for a commodity-wise per-tonne rate with productivity linkage for deployment of RCHW Wing workers.

(**S. Sathyam**)

Chairman

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