

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 207/2001

(15)

Thursday, this the 8th day of February, 2002

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMN)

Narain Dass & Ors.Applicants
(By Advocate: Shri R. Venkataramani with
Shri R.K. Shukla)

Versus

Union of India & Anr.Respondents
(By Advocate: Shri Anil Singhal for Mrs. P.K.Gupta)

Corum:-

HON'BLE MRS. LAKSHMI SWAMINATHAN, VC (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to
Benches of the Tribunal? NO

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(S.A.T. RIZVI)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A. NO. 207/2001

New Delhi, this the ^{4/8/} day of February, 2002
Hon'ble Mrs. Lakshmi Swaminathan, V.C. (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

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1. Shri Narain Dass,
S/o Late Shri Lila Ram,
R/o A5B 180, Janakpuri,
New Delhi - 110 058
2. Shri Rohtas Chander Sharma,
S/o Shri Tika Ram,
R/o 9/1, Poultry Farm (URI Enclave).
Delhi Cantt. 110 010
3. Sardar Manjeet Singh,
S/o Shri Iqubal Singh Bedi,
R/o MS - 106, Hari Nagar,
New Delhi - 110 064
4. Shri Jaipal Singh,
S/o Late Shri Lakhpal Singh,
R/o H.No. P-4-A, (URI Enclave)
Delhi Cantt. 110 010
5. Shri Subhash Chander Anand,
S/o late Shri Madan Lal Anand,
R/o T-16 1, URI Enclave,
Delhi Cantt. 110 010
6. Shri Sardar Joginder Singh,
S/o Shri Lal Singh,
R/o S-1/135, Old Mahavir Nagar,
New Delhi - 110 018
7. Shri Nafe Singh,
S/o Shri Hari Singh,
R/o Vill. P.O. Dichaon Kalan,
New Delhi - 110 043
8. Shri Ved Paarkash,
S/o Shri K.R. Narula,
R/o C-4-F/210, Janakpuri
New Delhi - 110058
9. Shri Sri Krishan,
S/o Late Shri Jagannath Parsad,
R/o WZ-124, Plot No.335, Chand Nagar,
New Delhi - 110 018
10. Shri Ram Niwas,
S/o Shri Ram Parsad,
R/o 134, Pocket-3, Paschim Puri
New Delhi - 110 063
11. Shri Tilak Raj
S/o Late Nihal Chand,
R/o 103, Indira Park, Pankha Road,
Uttam Nagaar, New Delhi
12. Shri Baldev Raj (MHA & AAC No.2)
S/o Late Shri Bansi Lal
R/o 3/50 Block, Back side, Subhash Nagar,
New Delhi

Dr

13. Sardar Charan Singh
S/o Shri Bhag Singh
R/o C-34/1, Ranjit Vihar,
Village Naloti
New Delhi - 41

14. Shri Attar Singh,
S/o Laate Shri Nathu Ram
R/o Village Aya Nagar, P.O. Arjun Garh
New Delhi

15. Shri Ved Bhushan Puri,
S/o Shri R.N. Puri,
R/o P-20/5, URI Enclave,
Delhi Cantt. 110 010

16. Shri Munshi Ram
S/o Late Shri Jhooter Singh
R/o Vill. Kamruddin Nagar,
P.O. Nangloi, Delhi

17. Shri **G.M.** Bhadola,
S/o Shri S.R. Bhadola,
R/o 66/2, MES Qtrs. Ordnance Depot
Shakurbasti, Delhi

18. Shri Sudesh Kumar,
S/o Shri Shyam Lal
AGE A C & r NO III
Delhi Cantt.

..... Applicants

(By Advocate : Shri R. Venkataramani with
Shri R.K. Shukla)

Versus

1. Union of India,
Ministry of Defence,
Through Secretary Ministry of Defence,
South Block, New Delhi.
DHQ PO, New Delhi - 110 011

2. The Engineer in Chief,
Army Headquarters,
Rajaji Marg, Kashmir House,
New Delhi

3. Chief Engineer,
Headquarters, Western Command,
Engineer Branch Chandi Mandir

..... Respondents

(By Advocate : Shri Anil Singhal for Mrs. P.K. Gupta)

O R D E R

HON'BLE MR. S.A.T. RIZVI, MEMBER (A) :

The applicants, 18 in number, who currently hold
the posts of Senior Electrician HS-I, Senior Mechanic
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HS-I and Senior Mechanic (Refrigeration and Airconditioning) HS-I, are aggrieved by the respondents' action in not granting to each one of them the pay scale of Rs.1400-2300 w.e.f. 1.1.1986, the date from which the recommendations of the 4th Central Pay Commission (CPC) were enforced. They are also aggrieved by the denial of promotion to them to the post of Superintendent Grade E/M Gd II since redesignated as J.E. A prayer has accordingly been made for issuing appropriate directions to the respondents.

2. The respondents have contested the case and have filed a detailed reply. A rejoinder thereto has also been filed on behalf of the applicants.

3. We have heard the learned counsel on either side at great length and also had occasion to peruse the material placed on record.

4. The facts of the case insofar as these are relevant for the purpose of adjudication in the present OA, briefly stated, are that on being aggrieved by the respondents' action as in this O.A., the applicants along with some others had come up before this very Tribunal on an earlier occasion by filing OA No. 241/1994. The same was decided ultimately on 26.7.1997 (Annexure A-1). The relief claimed by the applicants in that OA was denied. However, a direction was issued to the respondents in the following terms:-

"It will be appropriate for the applicants to make a detailed representation to the respondents within one month from the date of

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receipt of a copy of this order bringing out the recommendations of the Fifth Pay Commission relied upon by Shri Rattanpaul and also the absence of promotion prospects. If they do so, the respondents shall consider the matter taking into account the educational qualifications required for the post and the promotion prospects and come to an appropriate finding within four months from the date of receipt of that representation and communicate the decision immediately thereafter to the applicants."

5. A detailed representation was accordingly filed by the applicants on 5.10.1999 (Annexure A-3). After considering the aforesaid representation and presumably some other representations filed on behalf of the applicants, the respondents have disposed of all the various representations by their letter dated 17.7.2000 (Annexure A-4) by holding as under:

- "(a) The duties performed by the applicants are not supervisory in nature.
- (b) The applicants cannot compare with other Deptt and such a comparison is not legally tenable. The applicants in the case are performing duties of operators in MES.
- (c) The minimum level supervisory post in MES for this category is Junior Engineer (EM) for which the qualification is possession of Diploma in Engineering is a statutory requirement under recruitment rules.
- (d) The case for grant of higher pay scale was earlier deliberated in detail, considered and rejected at the highest level of Committee of Ministers. No new grounds have been brought out by the applicants in the representation to alter the position."

The present OA has resulted from the aforesaid letter issued by the respondents.

6. During the course of lengthy arguments in this

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case only two issues have been brought into focus. One relates to the question whether the posts held by the applicants could be termed as supervisory posts. The other relates to the principle of constructive resjudicata. No other issue raised in the impugned letter of 17th July, 2000 will, in the circumstances, need to be gone into for effective disposal of this OA.

7. Taking the issue of the supervisory nature of the posts held by the applicants first, we are required to consider a series of documents placed on record which, according to the learned senior counsel appearing on behalf of the applicants, fairly and clearly indicate that the posts in question could be categorised as supervisory posts and accordingly by following the recommendations made by the Fourth and Fifth CPCs, the applicants could be considered for grant of the pay grade of Rs.1400-2300 which is to be given to the lowest levels of supervisory posts in terms of the recommendations made by the Commission. The point made by the learned senior counsel was that even if the respondents have considered the relevant material for the purpose of deciding the above question, the need for a review based on the material now placed on record and the arguments advanced in the present OA, is clearly established.

8. Before we proceed further and start looking into the various documents supporting the learned senior counsel's view regarding the supervisory nature of the posts in question, we have found it worthwhile to look

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into the recommendations made by the Fourth and Fifth CPCs brought to our notice by the learned senior counsel. This is what the Fourth CPC has to say in the matter:

Extract of Para 11.27 (page 199) of Fourth CPC's recommendations -

"Posts in the scale of Rs.380-560 from the lowest supervisory level. Direct recruitment of diploma holders is resorted to a limited extent in certain defence units. Since Rs.380-560 is also the scale of highly skilled grade-I employees, a request has been made for upgradation of posts at this level. Of the major departments, Railways alone have a lower supervisory scale of Rs. 330-480 for mistris. We understand that mistris working in certain selected areas like loco and electric multiple unit car sheds, where they are in independent charge and supervise highly skilled artisans, are given special pay of Rs.35/- per month. Taking note of these facts, we are of the view that in all departments the lowest supervisory level should be in the scale of Rs.1400-2300. The work content of mistris in the scale of Rs.330-480 should be reviewed by railways. Those who are basically workers should be placed in the highly skilled grade (Rs.1200-1800) and the others who can be clearly identified as supervisors may be given the scale of Rs.1400-2300".

9. The sum and substance of the aforesaid recommendation made by the Fourth CPC, according to the learned senior counsel, is that the lowest supervisory levels, wherever these existed, should necessarily have been placed in the revised pay grade of Rs.1400-2300. The applicants in the present OA were then in the pay grade of Rs.380-560 which was the pay grade applicable to the lowest supervisory levels. Accordingly, once it is found that the posts in question are supervisory posts, there can be no difficulty in placing the

✓ applicants also in the aforesaid higher pay grade of Rs.1400-2300.

10. Insofar as the Fifth CPC's recommendations are concerned, the learned senior counsel appearing on behalf of the applicants has placed reliance on the following extract taken therefrom (A-11):-

"We find that the direct recruitment qualification for the initial pay scale of technical supervisors in workshops is Diploma in Engineering of relevant discipline or graduation in Science. We have as a general principle decided to improve the recommendation of Diploma Engineers in Government. In accordance with this general approach, we recommend following grade structure for technical supervisors in Workshops.

Designation	Existing	Recommended	Revised decision in Railways decided by the Ministry in July, 1996	Remarks
Charge-man-II Chargeman	1400-2300	1600-2660	Jr. Engg. (Rd-II) Workshop	Higher scale due to diploma entry at this level"

The aforesaid, no doubt, applies to the Railways but the learned senior counsel has advanced the plea that similar recommendations have been made by the Fifth CPC in regard to all those holding Diplomas in Engineering across the board in the various Departments of the Government. The requirement of a Diploma in Engineering has since been prescribed in respect of the posts held by the applicants as well and this was done in 1991 (Annexure A-10). The aforesaid recommendations have accordingly been made keeping the aforesaid position in view. The applicants, however, did not hold Diploma in

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Engineering but they do hold posts which now require a Diploma in Engineering at the entry level. Lack of the aforesaid qualification (Diploma in Engineering) will, according to the learned senior counsel, in no case affect the applicants' claim adversely as they perform the same duties and responsibilities as are performed by the Diploma holders. In order to facilitate consideration of the applicants' claim, they have placed on record a comparative statement (Annexure A-12) showing the positions of Charge Mechanics working in the MES (respondent-department), the Chargemen working in the COD, CVD and EME, and the Mistry HS-I working in the Railways. According to the aforesaid statement, the Third CPC had placed all of them in the same pay grade of Rs.380-560. The Fourth CPC placed them all uniformly in the pay grade of Rs.1320-2040. Subsequently by a clarification given by the Government, the pay grades applicable to all of them, other than the Charge Mechanics, working in the MES (the applicants) were revised uniformly to the higher pay grade of Rs.1400-2300. The Charge Mechanics (MEM) were left out to stay put at Rs.1320-2040. The same disparity has been maintained as a result of the recommendations made by the Fifth CPC.

11. We have considered the aforesaid recommendations made by the Fourth and Fifth CPCs and find that though no specific recommendation has been made in respect of the posts held by the applicants in the MES, a favourable consideration of their claim might become possible if, by some reasoning they can be deemed to

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hold supervisory posts even if at the lowest levels in their own set-up. Whether or not the posts held by them are supervisory in nature is thus the only issue which would need to be resolved. We, therefore, proceed now to look at the various documents placed on record, and to which our attention has been drawn by the learned senior counsel, to bring home his point that the posts held by the applicants could indeed be termed as supervisory posts.

12. Quite a few documents, including some in the nature of internal correspondence, have been shown to us by the learned senior counsel in his bid to convince us that the posts in question could indeed be held to be supervisory posts. In order to appreciate the point made by him, we find it convenient to reproduce, in the following, some of the extracts taken from the aforesaid documents/correspondence indicating that apart from whatever else the post holders in question were required to do, at least a part of their work involved supervision one way or the other. Certain duties and responsibilities envisaged in the aforesaid documents/correspondence are clearly supervisory in nature, whereas the others are not.

"(c) He is responsible for mustering and taking attendance of industrial personnel and allocating duties to TP as instructed by Supdt E/M Gde II. He may draw maintenance stores for the smooth running of E/M installations and maintenance of pt/ty building as well."

(Charter of duties -
Annex.A-6)

"8. He should be able to supervise and maintain a refrigeration repair shop independently.

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11. He should be able to train his subordinates on refrigeration and air condg. and should be able to effectively command and control them."

(Syllabus of
trade test - Annx.A-6)

"III. JOB SUMMARY Under general direction supervise and guide various tradesmen under him, viz. Vehicle Mechanic, Fitter, Fitter Engine, Vehicle Electrician, Driver Mechanical Equipment, Turner, Moulder and Welder etc. for efficient functioning of plant/installation, vehicles Earth Moving Equipment to look after installation of capacity upto 100 B.H.P.

III. JOB DUTIES

Take attendance, allocate routine duties to various tradesmen

Dispose off routine simple admn. work.

Study defect report, organise minor repair tasks including demand of spares and stores.

Check normal working system of installation and take remedial preventive measures to avoid brake down. Prepare dinonsigned sketches for tradesmen, instruct them for a particular job.

Maintain all type of records and charts.

Assist & Grade II in preparation of MEO Estimates."

(Job analysis/description
dated 4.9.77 - Annx. A-7)

"III. JOB DUTIES

Take attendance, allocate routine duties to various tradesmen and dispose off routine simple admin work."

(Job analysis/description
dtd. 4.9.77 - Annx. A-7)

"8. He should be able to supervise and maintain a refrigeration repair shop independently.

11. He should be able to train his subordinates on refrigeration and air condg and should be able to effectively command and control them." (Syllabus of Trade Test - Annx.A-19)

"2.a) The job content of Sr. Mech R&ACHS1 is a complex mix of trade manship and an element of supervision and in this way their task can be considered as quite



complex and difficult as it involves faults tracing and supervision of repair works thereafter, thus becoming a way challenging assignment.

b) In view of generalised nature and critical requirement of supervision due to the vast scope of E/M work in MES, their role becomes all the more important as they are on many occasions paying a vital role giving technical suggestion on maintenance and repair technical suggestion on maintenance and repair activity and suggesting improvements in work, in view of their insight and awareness of system, thereby providing valuable support to the supdt E/M II or E/M I.

c) Sr. Mech R&AC are working as incharge of small maintenance teams as per duty roster, mostly organising repairs as detailed in para (a) above.

d) XXXXX

3. In view of the above facts, if their counterparts in other departments are getting the pay scales of Rs.1400-2300, it is felt that there is a strong and valid case of considering the same pay scale for them in recognition of their job content. Granting of the same scale which will boost the morale of the workers and reflect in improved job satisfaction and productivity."

(GE's letter to HQ CWE dtd 21.3.90 - Annx. A-20)

"a) At the outset it is mentioned that the nature of the applicant's demand is genuine and needs sympathetic consideration since they are not asking for any thing outside the scales recommended by the Pay Commission and accepted by the Govt. They are merely seeking fixation of their pay in the scale of Rs.1400-2300 which rightly belongs to them and has been universally extended to all Defence Estt. for similar category of tradesmen. Their fixation in the scale of Rs.1320-2040 appears to be a mistake.

b) XXXXX

c) XXXXX

d) XXXXX

e) XXXXX

f) In this connection it is noteworthy that Sr. Mech (R&AC) HS I as presently named, have all along been equated with the present Chargeman in EME, CVD and COD by all 2nd, 3rd and 4th Pay Commissions. Accordingly their demand seeking parity of

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status and scale of pay is considered justified and conceded under the Maxim "Equal work, Equal Pay". "

(CWE's letter to C.E.
dtd 2.4.90 - Annx. - 21)

"To attend, supervise electric faults, breakdown & repairs of complaints of electric motor & transformer.

To attend the duty of Supervision & attend the general complaints of water-supply"
(Charter of duties - Annexure A-23)

"2. The post of Senior Technician (Highly Grade categories is promotional post, previously it was designated as charge mechanic when even Diploma Holder appointed directly. xxxx

3. xxxx. There is also a derth/shortage of experienced, seasoned, willing and enterprising personnel at the level of senior technician highly skilled grade-I level who are to undertake/supervise work of junior technical staff".
(Staff of case sent by Dir(Pers) to E-in-C dtd 2.4.97 - Annx.A-24)

13. It will be seen from the above that at any rate on ~~two~~ occasions, the respondents themselves had thought that the posts in question could be regarded as supervisory in nature. It will also be seen that on occasions again the respondents had expressed the view that the pay grade applied to the posts in question could be equated with the pay grade (Rs.1400-2300) applicable to the equivalent posts in the COD, CVD and EME. Thus, there are enough communications to support the view that the posts held by the applicants could be regarded as supervisory posts. In this view of the matter, we are inclined to feel that there is a case for a proper review of the matter by the respondents even if they have previously considered the very same material for deciding the applicants' representations.)

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14. Having dealt with the major issue involved herein, namely, that of the supervisory nature of the posts held by the applicants, we are now left with the other issue relating to the application of resjudicata. When the matter came up before this Tribunal, they negatived the applicants' plea by holding as follows in their judgement dated 26.7.1999 in OA No. 241/1994:-

"5. The main issue raised in this case is whether the posts held by the applicants involved supervisory work or not. This matter was considered by the JCM and also the Committee of Ministers but they rejected the claim that these posts have a supervisory role. We also find from the reply statement of the respondents where they have enclosed the duty chart that nowhere it has been prescribed that they will supervise the tradesmen. The applicants have not been termed as Technical Supervisors and the pay scale of Rs.1400-2300 is not available to them. We also take note of the judgement of the Jabalpur Bench rendered in OA 230/88 on 8.3.94. In para 3 of this judgement has been stated that it is not established from records that the applicants therein (who were identically situated), were holding the supervisory posts. The relief prayed for by the applicants in that OA that they may be equated with supervisory staff and granted the pay scale of Rs.1400-2300 was rejected. In the present case, the respondents have categorically stated that the lowest supervisory post is Supdt. EM Grade-II in the scale of 1400-2300 which is above the post held by the applicants. The learned counsel for the applicant states that the respondents have admitted that the applicants are performing the duties of supervisors and therefore, and they are entitled for the scale of Rs.1400-2300 but this is not borne out and the respondents have categorically denied the same. We find that the judgement of the Jabalpur Bench rendered in OA 230/88 is fully applicable to the present case. There is force in the submission of Shri Krishna that the matter is concluded by the decision of the Jabalpur Bench of this Tribunal and the present applicants cannot reagitate the same before us. We hold that we cannot grant the relief sought for." (Para-5 of Annx. A-1)

15. If one has regard to the above, the Tribunal has clearly and unequivocally decided the matter leaving no

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substance in the applicants' plea that the posts held by them could be termed as supervisory posts. In that view of the matter, the present OA is, in our judgement, barred by the principle akin to the principle of constructive resjudicata. We will, in the
circumstances, refrain from giving a verdict on this
issue.

16. Even though barred by the principle akin to the principle of constructive resjudicata which no doubt binds us, the matter can still be reviewed by the respondents at their own level as pointed out by us in paragraph 13 above. The respondents may accordingly review the matter as suggested even if we are, on account of the application of the aforesaid principle, not inclined to issue a direction to them to do so.

17. The concluding portion of the order passed by this Tribunal in OA No. 241/1994 on 26.7.1999, to which we have referred earlier in this order, despite a clear finding recorded therein on the question of supervisory nature of the posts, gave liberty to the applicants to agitate the matter further with a view to enabling the respondents to go into the alternative possibility of considering the applicants' case for being considered for promotion to posts carrying the higher pay grade of Rs.1400-2300. We presume that the Tribunal, while passing the aforesaid order, had gained a clear impression that, in the peculiar circumstances in which the applicants were placed, it was necessary to find some way for placing them in the higher grade of

Rs.1400-2300. Had that not been so, the Tribunal would not have given liberty to the applicants to agitate the matter over again. We fully appreciate the approach formulated by the Tribunal at the time of passing orders dated 26.7.1999.

18. The learned counsel appearing on behalf of the respondents has argued that the posts held by the applicants carry the designation of a Mechanic. According to him, Mechanics can never be equated with Engineers. The pay grade (Rs.1400-2300) to which the applicants aspire has been given by the respondents to the Junior Engineers and the post of Junior Engineer, according to him, is the lowest level supervisory post in the respondents' organisation. In this view of the matter, according to him, the applicants cannot have a case for declaring the posts occupied by them as supervisory in nature. He has also pointed out that placing of the applicants in the pay grade of Rs.1400-2300, which is the grade applicable to JEs, will lead to a cascading effect thereby necessitating the revision of pay scales applicable to all the posts in the Organisation due to inevitable considerations of horizontal and vertical relativities. A direction which could lead to such a situation cannot be given, according to the learned counsel for the respondents, in terms of the ratio laid down by the Full Bench in OA No.1901/1999. The principle of resjudicata also invoked by him has already been discussed by us in an earlier paragraph. For these reasons we are, all said and done, in agreement with the contentions raised on behalf of

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the respondents and find little merit in the present O.A.

19. Before parting with this order, we would also like to point out that creation of a supervisory level/post has both administrative and financial implications. Most of the personnel working in any organisation at various levels, barring the lowest level, are required to perform a set of duties carrying an element of supervision. This cannot mean that, barring the lowest level itself, every one else in the hierarchy should be regarded as a supervisor. The applicants herein, no doubt, occupy a post three levels above the lowest level in their set-up, but they themselves are below the Junior Engineer placed in the pay grade of Rs.1400-2300, who is regarded as the lowest supervisory level by the respondents. On this issue, the learned counsel appearing on behalf of the respondents has pointed out that if the applicants' claim for the posts held by them to be deemed as supervisory in nature is found by some reasoning to be valid, the next lower functionary, namely, Mechanic HS-II will also be tempted to prefer a similar claim, and it would be impossible to deny his claim after the applicants' claim has been entertained and allowed. On a deeper consideration, we also find that a determination of the question whether a particular post could be regarded as supervisory in nature should, in all fairness, be made not by a Court of law but by the respondents themselves on the basis of job evaluation studies and expert advice having regard to the various

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relevant considerations. This must have been one of the reasons why the Tribunal in passing orders dated 26.7.1999 desisted from giving a verdict on the aforesaid issue of some import, and, for the very same reasons, we have refrained from deciding that issue, and have preferred only to make a suggestion contained in Paragraph 13.

20. In the light of the foregoing, the O.A. is dismissed with no order as to costs.

S.A.T. RIZVI

(S.A.T. RIZVI)
MEMBER (A)

LAKSHMI SWAMINATHAN

(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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