

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 751/98
T.A. No.

199

DATE OF DECISION

5/4/99

(2)

Sh. P.D. Meena & Ors.

Petitioner

Sh. M.R. Bhardwaj

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Sh. VSR Krishna

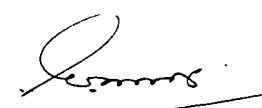
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.N. Bhat, Member(J)

The Hon'ble Mr. S.P. Biswas, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(S.P. Biswas)
M(A)

Cases referred:

1. Y.V. Rangaiah Vs. J. Sreenivasa Rao (1983(3) SCC 284)
2. SC/ST Officers Welfare Council Vs. State of UP & Anr.
(AIR 1997 SC 1451)
3. R.K. Sabharwal & Ors. Vs. State of Punjab & Ors.
(1995(1) SLR SC 791)
4. State of Rajasthan Vs. R. Dayal (1997(10) SC 419)
5. Ramana Dayaram Shett Vs. International Airport Authority
(1979(3) SCC 489)
6. Narendra Chadha & Ors. Vs. UOI & Ors. (ATR 1986 SC 49)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No.751/1998

New Delhi this the 5th day of April, 1999.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

1. Sh.P.D. Meena
s/o Shri G.R. Meena

2. Sh.Harbhajan Ram
s/o Shri Santa Ram

Both presently working as
Supdt. of Police in CBI, N.Delhi .. Applicants

(By Advocate Shri M.R. Bhardwaj)

versus

Union of India, through

1. Secretary
Department of Personnel & Training
North Block, New Delhi

2. Director
Central Bureau of Investigation
CGO Complex, Lodhi Road, New Delhi

3. Secretary
Union Public Service Commission
Shahjahan Road, New Delhi .. Respondents

(By Advocate Shri V.S.R. Krishna)

ORDER

Hon'ble Shri S.P. Biswas

Questions of law that fall for consideration
in this O.A., filed under Section 19 of the
Administrative Tribunals Act, 1985, are as under:-

- (i) Whether the vacancies that arose
before the existing Recruitment Rules
(RRs for short) were amended/modified
could be filled under the provisions
of the old rules which were in vogue
on the date/dates of occurrence of the
vacancies or under the
amended/revised rules?

(ii) Whether a "classification" /categorisation of a post held by an official could be changed with retrospective or even prospective effect altering adversely in either way his/her promotional prospects?

(iii) Whether vacancies which arose prior to the amendment of RRs and those occurred in the year of amendment of the Rules could be clubbed together and a combined panel prepared by the D.P.C. for effecting promotions based on "Selection"?

2. The undisputed facts of the case, briefly stated, are as follows:-

The applicants, one belonging to a Scheduled Caste (SC for short) and the other belonging to a Scheduled Tribe (ST for short) were promoted on ad hoc basis to the post of Superintendent of Police (SP for short) in the Central Bureau of Investigation (CBI for short) with effect from 1st October and 8th December 1995 respectively. The ad hoc appointments have been extended from time to time. Vacancies in the posts of SPs including those reserved for SC/ST officers were in existence prior to the amendment of the Recruitment Rules (RRs for short) w.e.f. 1.2.97.

3. The RRs for the post of SP were amended w.e.f. 1.2.97 by Notification No.213/4/94-AVD II issued by R-1 - the Department of Personnel & Training (DOP&T for short). The changes brought about in the new RRs vis-a-vis old ones could be seen in the table as hereunder:-

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	Promotion Quota	Length of regular service	Classification
Old Rules	Promotion Quota Post in the post of SP was 33.1/3% of the total strength, to be filled from the grade of Dy. SP.	Eight years regular service in the grade of Dy. SP for purposes of eligibility for consideration for promotion to the grade of SP.	The classification of the post of Dy.SP was Group 'B'.
New Rules w.e.f. 1.2.1997	Promotion Quota raised from 33.1/3% to 50%	The length of regular service raised from 8 to 13 years for eligibility for consideration for promotion to the grade of SP.	The post of Dy.SP has been re-classified as Group 'A'.

4. Following issuance of Administrative Instructions reclassifying the post of Dy. SP, as a Group 'A', the applicants had approached this Tribunal earlier through OA-1635/96 as they apprehended their reversions from the posts of SPs, promoted on ad hoc basis. The applicants in that O.A. prayed, inter alia, for issuance of directions to respondents that their ad hoc appointments as SP should be regularised against the long term reserved vacancies under the provisions of the RRs prevalent at that time. They also challenged the decision of the respondents to reclassify the post of Dy. SP as Group 'A'. The above O.A. was disposed of by this Tribunal with the following orders:-

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"Standing counsel for respondents submits that reversion will not be effected on the basis of impugned classification as it has been withdrawn. He submits further that proposals relating to the modalities of filling up the posts in question are under consideration. We record the submission. If applicants are aggrieved by the outcome of further proceedings. It will be open to them to seek appropriate remedies. We dispose of the original application as aforesaid."

5. The grievances of the applicants are that instead of taking action to regularise their promotions against reserved vacancies available prior to the date of amendment of the RRs, the respondents proceeded to fill the available vacancies under the new rules amended on 1.2.97 and referred the matter to the Union Public Service Commission (UPSC for short) to convene a meeting of the DPC to consider the cases of Dy. SPs who satisfied the conditions of eligibility prescribed under the amended rules. Applicants would further submit that out of 100 posts of SPs, 33 posts fall in the promotion quota according to old RRs and under 40 Point Roster, 5 and 3 posts out of promotion quota are reserved for SC/ST officers respectively. As per applicants, there are only 3 SCs and 1 ST officer promoted on regular basis, thus leaving 2 reserved posts of SPs each for SC/ST officers against which the applicants seek to be considered for regular promotion from the date of their initial ad hoc appointments.

6. Arguing strenuously on behalf of the applicants, Shri M.R. Bhardwaj, learned counsel for the applicants, contended that steps to fill up the promotional quota posts which have been in existence

Well before the amendment of the RRs on 1.2.97, under the provisions of the amended rules are not only illegal but also maliciously motivated to deprive the applicants and other SC/ST officers who fulfill the conditions of eligibility under the old rules, from their legal rights to be considered for regular promotion against reserved vacancies/posts.

Counsel for the applicants also contested the contention of the respondents that there were only 5 promotional quota vacancies available prior to 1.2.97. He would contend that 12 posts of SPs, diverted from the deputation quota in 1995, were to be added to the promotional quota posts as the same are not being diverted back to the deputation quota. Vacancy statement, as at A-5, has been referred to.

It is further submitted that the respondents are legally bound to fill all the promotion quota vacancies which arose prior to 1.2.97 under the unamended RRs as per the law enunciated by the Hon'ble Supreme Court in the case of Y.V. Rangaiah Vs. J. Sreenivasa Rao (1983(3)SCC 284) wherein their Lordships in para 8 of the judgement held that:-

"the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose."

7. The learned counsel for the applicants also drew out attention to the averments made by the respondents in their counter reply in the earlier OA-1635/96 to the effect that "a formal requisition for filling up the available regular promotion quota vacancies "including one for SC and one for ST in accordance with the provisions of the existing RRs has been sent to the DOP&T/UPSC." He would submit that in the background of such a submission and assurances given at the Bar, the Tribunal had passed orders dated 18.9.96 as in para-4 aforequoted. The respondents, therefore, cannot turn back and say that the applicants are not eligible for promotion under the amended rules.

8. The counsel also referred to the instructions contained in the DOP&T O.M. No.AB/14017/22/89-Esstt.(RR) dated 15.5.89 (A-7) which lays down that where service rules including RRs are being framed for the first time or are subsequently being amended or modified it would be ensured that the service interest of SC/ST candidates is not allowed to be adversely affected. The ld. counsel further argued that increasing the span of experience from 8 to 13 years and reclassifying the post of Dy. SP from Group-B to Group-A, as in the new RRs, amounts to colourable exercise of power to denude the rights of SC/ST officers. In support of the above contentions, the counsel relied upon the judgement of the Hon'ble Supreme Court in SC/ST Officers Welfare Council Vs. State of UP & Anr. (AIR 1997 SC 1451) wherein while dealing with the amendment of RRs for promotion from the post of Dy. Chief Medical Officer, the length of eligibility period was increased

from 8 to 12 years for promotion to the post of Chief Medical Officer. The Apex Court observed that it was a colourable exercise of powers "to denude the rights of officers belonging to reserve category and to deny them of their rights."

9. The respondents have vehemently opposed the claims of the applicants. They have contended that since the post of Dy.SP in CBI has now been classified as Group 'A', there is no reservation in favour of SC/ST officers for the post of SP which is a Group 'A' post. It has been submitted further that DOP&T has clarified that there needs to be only one panel and the vacancies of 1996 and 1997 in the rank of SPs be treated as belonging to 1997 and only one panel be prepared as per latest RRs. According to respondents, the applicants are not eligible to be considered for promotion as per the conditions of eligibility under the amended rules and as such they have no locus standi for grant of reliefs prayed for in this O.A.

10. Shri VSR Krishna, learned counsel for the respondents forcefully urged before us that when the RRs for the posts in the feeder grade and the promotional posts undergo changes, all the vacancies are carried forward to the year of amendment of RRs i.e. 1997 in the present case and the rules enunciated by the Apex Court in Rangaiah's case (supra) would not, therefore, be applicable to the facts and circumstances of the case. He accordingly defended the decisions taken by

the respondents to fill all the vacancies of 1996 and 1997 by means of preparing a single panel under the amended rules. 20

11. Shri Krishna further contended that even under the old rules in force prior to 1.2.97, both the applicants are not eligible for consideration for regular promotion as SP inasmuch as Shri Meena - applicat No.1, in particular, has not completed the eligibility period of 8 years in the post of Dy.SP on the crucial date i.e. 1.7.96. The name of the other officer, namely, Shri Harbhajan Ram does not come within the zone of consideration. In view of the above submissions, it has been urged that there is neither any illegality in filling up of the existing vacancies under the amended rules nor was there any ulterior motive to deprive SC/ST officers of their right for consideration for promotion.

12. Learned counsel for the applicants submitted that the stand taken by the respondents that in the event of changes in the RRs in the feeder grade post as well as promotional post, the vacancies in existence before the amendment of the rules could be clubbed with those occurring in the year when the amendment took place is highly untenable and is not supported by any statutory rules/instructions. As regards eligibility of the applicants under the old rules, it has been submitted that applicant No.1 was one of the 20 Inspectors of Police who were promoted to the post of Dy.SP by order dated 4.7.88 issued by R-1. The applicant No.1 received the same orders on 6.7.88 at

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Chandigarh where he was working and assumed the charge as Dy.SP on that day itself. It is thus obvious that he could not take the charge before 4.7.88, even if he was at the headquarters at New Delhi on 4.7.88 itself. In that case also, applicant No.1 would not have completed 8 years as on 1.7.96. Out of 20 officers so promoted, 9 ad hoc appointees were deemed to have been promoted on regular basis w.e.f. 30.6.88 by the above order. In the context of the above circumstances, it was argued that short fall of only 4 days in the period of eligibility of 8 years as on 1.7.96 has to be condoned exactly on the same basis on which 7 months' relaxation for eligibility was granted to applicant No.1 while promoting him as SP on ad hoc basis. This was done as he was the sole ST officer available for promotion against a reserved vacancy meant for ST category.

13. In reply to the other contention of the respondents that the name of applicant No.2 does not figure in the zone of consideration for promotion, it has been submitted that the concept of zone of consideration is no longer valid in the light of the ruling of the Hon'ble Supreme Court in R.K. Sabharwal & Ors. Vs. State of Punjab & Ors (1995(1)SLR SC 791. In this case, the law has been laid down that reserved vacancies have to be filled up by reserve category officers as the general category officers are not entitled to be appointed against reserved posts. It has been argued that only two requirements are required to be fulfilled, namely, (i) the availability of reserved category officers in the feeder grade fulfilling the prescribed conditions of eligibility; and (ii)

Existence of reserved vacancies. The ld. counsel for the applicants submitted that both these conditions are satisfied in the present case.

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14. We have given careful consideration to rival contentions of both the parties and have gone through the records carefully, considered the pleadings and studied the case laws cited including the written submissions filed by the ld. counsel for the applicants.

The main submission on behalf of the applicants is that the vacancies for the post of SP which were in existence prior to the date of amendment of the Recruitment Rules (w.e.f. 1.2.97) have to be filled up under the provisions of the RRs which were in force on the date/dates of occurrence of such vacancies as per the law laid down in Rangaiah's case (supra) reaffirmed by the case in State of Rajasthan Vs. R. Dayal (1997(10)SC 419).

15. We find considerable force in the submissions of the learned counsel for the applicants. It is now well settled that vacancies which occurred prior to the amendment of the RRs would have to be governed by provisions of the old rules and not by the amended rules and that the provisions of the amended rules would be applicable only to the vacancies which arose on or after the date of amended rules. This is the position of law as laid down by the Apex Court in the case of Rangaiah as well as State of Rajasthan (supra). In the case of R. Dayal, the Apex Court while

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making a reference to Rangaiah's case held that "the post which fell vacant prior to the amendment of the rules should be governed by original rules and not by the amended rules.....even a carry forward vacancy is required to be considered in accordance with the law existing unless suitable relaxation is made by the Government."

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16. In view of the above legal position emerging from the judicial pronouncements of the Apex Court in the two cases cited above, we have no doubt that there would be no escape from filling up the vacancies which were available prior to 1.2.97 under the provisions of old rules. This provides an answer to the first question of law as raised by us in para-I of this order.

17. We shall now examine the second legal issue touching upon respondents action in reclassifying the post of Dy.SP as Group 'A'. The effect of the new classification would be that there will be no reservation in promotions to the post of SPs. Through the impugned order of reclassification, what the applicants or those similarly placed officers could achieve by means of promotion to the higher rank of SPs has now been ordered to have already achieved or achievable by means of continuing in the lower rank of Dy.SP or by fresh entry there. The question is about the legal validity of the order of reclassification which has got retrospective effect since the notification mentions that those already in the post of DySP in Group "B" gazetted on the date of notification

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of the revised rules will be deemed to have been appointed to the post of Dy.SP as Group "A" at Initial Constitution.

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18. The Scheme of reclassification cannot take away the rights of the applicants herein in the background of respondents having incorporated a saving clause under Rule 7 of the amended Rules which is reproduced below:-

"7 Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Ex-servicemen and other special categories of persons in accordance with orders issued by the Central Government from time to time in this regard".

19. That apart, we find that the DOP&T vide its communication dated 25.3.97 had informed the CBI that SC/ST officers who are already in the grade of Dy.SP on the date of issue of the revised RRs will continue to have the facilities with respect to reservations even in the revised RRs in view of the saving clause at Para-7 of the Notification and Note II below column 11 of the Schedule to the RRs. But, the incumbent who will be appointed as Dy.SP after 31.1.97 (i.e. after the publication of the new RRs), no such facility of reservation will be available and they will be governed by new RRs. The CBI, in turn, wrote to National Commission for SC/ST on 27.3.97 conveying the decisions contained in DOP&T's aforequoted O.M. dated 25.3.97.

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20. In view of the above, the respondents' stand that under the amended rules regular incumbents to the post of Dy.SP would be treated as Group "A" officers would render the aforementioned saving clause under Rule 7 ineffective and inoperative. Respondents have unambiguously stated that SC/ST officers who were Dy.SP on 31.1.97 will continue to get the benefit of reservation as available under the old rules. Responsible respondents like the DOP&T are expected to act by the standards by which they profess. In this context we are tempted to extract a passage from the judgement in the case of Ramana Dayaram Shett Vs. International Airport Authority (1979(3) SCC 489) which is as follows:-

"It is well settled rule of administrative law that an executive authority must rigorously hold to the standards by which it professes its action to be judged and it must scrupulously observe those standards on point of invalidation of an act in violation of them."

We have, therefore, no doubt in our mind that because of the saving clause under Rule 7 which is mandatory and the details as aforesaid, the SC/ST officers holding the post of Dy.SP earlier to 1.2.97 will not get affected by the order of re-classification.

21. We also find no merit in the contention of the learned counsel for the respondents that when the changes take place in the RRs for the feeder grade posts and the promotional posts, there is no illegality in clubbing the vacancies in existence prior to the amended

rules with those which arose in the year when the amendment took place. The respondents have failed to show us any rule or instruction in support of the above contention. On the contrary, we find that the respondents stand in this respect runs contrary to the instructions of the DOP&T under their O.M. No.22011/5/86-Estt.(D) dated 17.10.90. The following instructions have been given in the aforesaid O.M. touching upon the subject of preparation of panels where DPC could not meet for a number of years:-

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"6.4.1 Where for reasons beyond control, the DPC could not be held in any year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:-

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on.

22. Respondents have also raised two other issues while opposing applicants claims. Thus, learned counsel for the respondents would contend that the name of one of the applicants, namely, applicant No.2 does not figure within the zone of consideration, we are of the firm view that the concept of having a common zone of consideration containing the names of general as well

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as reserve category officers is no longer valid in terms of the law laid down by the Apex Court in R.K. Sabharwal's case (supra). It has been held therein that "the roster point which is reserved for a backward class has to be filled up by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot which is reserved for backward class".

We may clarify the position of law in respect of the above by means of an example. There could be a slot reserved for the officers belonging to reserve category and the name of the SC or ST officer, though otherwise fully eligible for promotion, is far below in the seniority list and hence does not figure in the normal or the extended zone of consideration. In such a situation, no general category officer can be promoted against the reserved slot and at the same time the vacancy cannot remain unfilled, as following the rule of the Apex Court, "When a percentage of reservation is fixed in respect of a particular grade and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve point are to be filled from amongst the members of the reserve categories and the candidates belonging to the general category are not entitled to be considered for reserved posts." We find that the DOP&T vide its instruction in O.M. of 17th October 1990 has provided that where adequate number of SC/ST are not available within the normal field of choice, it may be extended 5 times the number of vacancies and the SC/ST candidates coming within the extended zone of consideration should be considered

against vacancies reserved for them. Respondents are even silent on the applicability of above instructions under O.M.No.22011/5/86-Estt.(D) dated 17.10.90 although the said O.M., in our considered view, will have no validity now in the background of law laid down by R.K. Sabharwal's case as per details as aforementioned.

23. In the circumstances aforesaid we are inclined to agree with the ld. counsel for the applicants that for filling up the reserved posts/points in the roster what is required is to ensure that there exist reserved posts and that SC/ST officers are available satisfying the conditions of eligibility for promotion. It is not necessary that the names of eligible SC/ST officers should be within the zone of consideration for filling up the reserve vacancies. They have to be picked up from the seniority list on the basis of which selections are made, provided they are otherwise eligible.

We are, therefore, of the firm view that regular promotions against the reserved vacancy cannot be denied on the alleged ground that the name of the second applicant does not figure in the zone of consideration.

24. It would be also appropriate to mention that respondents submission in preliminary objection to the O.A. to the effect that "there is no reservation in Group 'A' promotion" is not the correct position as regards the prevalent policy on reservation in matters of promotion. As per DOP/T's O.M. of October 1990, there is reservation in promotions by selections to

Posts/services within Group 'A' which carry an ultimate salary of Rs.5700 p.m. or less in the pre-revised scale. Respondents have also not controverted the vacancy position, including even deputation-diverted posts, as shown in Annexure A-5(Colly.).

25. Adverting to the other contention vehemently urged by the ld. counsel for the respondents that even under the old rules, one of the applicants (applicant No.1 in particular) would not be eligible as he has not completed the period of eligibility of 8 years for consideration of promotion on the crucial date of 1.7.96, we find that the short fall in the completion of 8 years is only by 4 days. This was because Shri Meena took charge of the post of Dy.SP on 6.7.88 when the office order dated 4.7.88, issued by the Headquarter at New Delhi, was received by him at Chandigarh on 6.7.88. Undisputedly, relaxation of about 7 months was given by the respondents for the purpose of making the applicant No.1 eligible for ad hoc promotion to the post of SP taking into consideration that he was the only ST candidate available and eligible for promotion against the post of SP. We see no reason in withdrawing the relaxation of 7 months given in connection with the earlier ad hoc promotion and in not providing relaxation of only 4 days' negligible gap caused by circumstances beyond the control of the officer. The question is whether provisions exist for granting relaxations when required. We find that providing such a relaxation will be in conformity with the provisions under Article 16(4A) of the Constitution. Art. 16(4) & 4(A) are enabling provisions which arm the states to provide

protective discrimination in deserving cases. Applicants cases fall in this category. An identical situation was examined by the Apex Court in Narender Chadha & Ors. Vs. UOI & Ors. (ATR 1986 SC 49). In that case those appointed in Indian Economic Service on an ad hoc basis and continued as such for a long period of time were treated to have been appointed regularly in relaxation of RRs and the continuance of such ad hoc promotee was justified on the basis of Rule 16 on assumption that Govt. had relaxed the rules and appointed them to the posts to meet the administrative requirements. The same situation prevails herein.


In view of the above, the applicant No.1 has to be treated as eligible for regularisation of his ad hoc promotion to the post of SP.

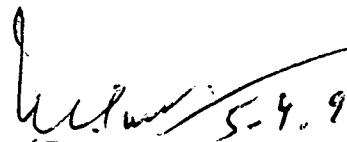
26. To ensure adequate representation of backward community officials in a service, Government can provide relaxations as per provisions in our Constitution. Grounds that prevailed for giving 7 months relaxation at the beginning still hold good for providing relaxation of 4 days for the purpose of regularisation.

27. In the light of the above detailed discussions, the O.A. deserves to be allowed and we do so accordingly with the following directions:-

- (a) Respondents shall consider the cases of the applicants for regular promotion to the post of SP against reserved vacancies under the old RRs applicable before 1.2.97 in the light of observations made hereinabove relating to relaxation.

- (b) The SC/ST officers holding the post of Dy.SP on 31.1.97 shall continue to enjoy the benefit of reservation in promotion to the post of SP and other concessions available to them under the old rules.
- (c) Respondents shall also initiate action to fill up other vacancies for the post of SP which were in existence on or before 1.2.97 under the provisions of the old RRs which were in force on the date/dates when the vacancies arose.
- (d) Our orders as in sub-paras (a), (b) & (c) aforesaid shall be complied with within a period of 3 months from the date of receipt of a certified copy of this order.
- (e) No costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)