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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.88/96

New Delhi this the 17th day of December, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (ADMNV)

1. All India DRDO Stenographers Association, (recognised), Defence Science Centre, Metcalfe House, Delhi-110054 through its General Secretary Sh. A.K. Bhatnagar
2. Sh. J.B. Thokal, son of Shri Babu Rao, Stenographer II, V.R.D.E., Ahmednagar.Applicants

(By Advocate Shri G.D. Gupta)

-Versus-

1. Union of India, Ministry of Defence, through the Secretary, Department of Defence Research and Development Organisation, South Block, New Delhi.
2. The Secretary, Ministry of Personnel, Public Grievances & Pensions, Deptt. of Personnel & Training, North Block, New Delhi.
3. Director General, Research & Development, Directorate of Personnel (R&D), (PER-3), Government of India, Ministry of Defence, Research and Development Organisation, DHQ, P.O. New Delhi 110011.Respondents

(By Advocate Shri P.H. Ramchandani)

ORDER

By Reddy, J.:-

The main question that arises in this case is whether the Stenographers Grade II working in a subordinate office, can seek parity of pay with the Stenographers working in the Central Secretariat.

2. The members of the applicant's association, who are Stenographers Grade-II working in Defence Research and Development Organisation (DRDO), seek parity of pay scales with the Stenographers Grade 'C' working in the Central Secretariat, w.e.f. 1.1.86.

3. The facts of the case are as follows:

3.1 The first applicant in the case is All India DRDO Stenographers Association and the second applicant is one of the members of the said Association.

3.2 It is the case of the applicants that the functions of the Stenographers who are working in the Ordinary Grade, Personnal Assistants, Private Secretaries or Principal Private Secretaries in the Central Secretariat/Subordinate Offices do the same type of work. The method of appointment to the posts of Stenographer in both wings are also similar. There is no differnce in the duty chart of the Stenographers in Central Secretariat Service (CSS) vis-a-vis Stenographers in DRDO. The minimum qualification for the recruitment is also the same. As per the second Pay Commission's recommendations the ordinary grade of pay scale in both the categories was fixed at Rs.130-300 w.e.f. 1.1.70. As per the Third Pay Commission's recommendations the scale was revised to Rs.330-560 in the ordinary grade of Stenographers in the subordinate offices and the Stenographer Grade "D" in Central Secretariat. However, the scales of pay in the higher grade right from 1.1.70, as per the recommendations of the second pay Commission have been fixed at a higher scale of pay in respect to CSS. As per the Fourth Pay Commissions's recommendations the scale of pay of entry grade, i.e., Grade III was fixed at Rs.1200-2040 for the Stenographer of both categories while in higher grades, i.e., Grade "C" Stengorahers in the CS was fixed at

Rs.1400-2600 and Rs.1400-2300 respectively. The following chart reveals the above position as to the distinction in the pay scales:

<u>Subordinate Offices</u>	<u>Central Secretariat</u>
<u>2nd Pay Commission</u>	
Ordinary Grade Rs.130-300	Grade III Rs.130-300
Sr. Grade Rs.210-425	Grade II Rs.210-350
<u>3rd Pay Commission</u>	
Ordinary Grade Rs.330-560	Grade D Rs.330-560
Sr. Grade Rs.425-700	Grade C Rs.425-800
<u>4th Pay Commission</u>	
Grade III Rs.1200-2040	Grade-D Rs.1200-2040
Grade II Rs.1400-2300	Grade-C Rs.1400-2600
Sr. P.A. Rs.2000-3200	Sr. P.A. Rs.2000-3500

3.3 The Stenographers working in the offices outside the Secretariat agitated for parity in the scales of pay even at the higher grade before the Board of Arbitration (JCM), New Delhi who gave its award dated 8.8.89 in CA reference No.2/86 directing that the Stenographers in the Subordinate Offices in the existing scale of Rs.1400-2300 shall be placed in the scale of Rs.1400-2600. The Government implemented the award in its order dated 4.5.90. Thus the pay scales of the Stenographer Grade II were brought at par with Stenographer Grade "C" posted in CS\$. However, the parity of scales was short lived.

3.4 CSS Direct Recruits Assistants Association filed OA-158/87 before the Tribunal seeking higher scale of pay and the Tribunal directed the Government, by its



order dated 21.5.89 to place them in the pay scale of Rs.1640-2900. The Government in its order dated 31.7.90 have not only given the pay scales of Rs.1640-2900 to the Assistants in C.S. but also to the Stenographers Grade 'C' in CSS offices, as they were also in the pre-revised scale of Rs.425-800. Thus, disparity again has been created by the Government between the Stenographers in the CS/Subordinate Offices. The grievance of the applicants, who are in the category of subordinate office Stenographers, therefore, is that they are also entitled for the revision of the scale to Rs.1640-2900. Aggrieved by the order dated 31.7.90 the applicants made representations immediately thereafter, but it was rejected by the impugned order dated 23.6.95, which is sought to be impugned in this OA.

4. It is contended by the learned Senior Counsel for the applicants Shri G.D. Gupta that once the applicants are found to be eligible for the parity of pay scales with the Stenographers in CS on the basis of the similarity of functions and responsibilities, there can be no reason for not paying the revised pay as was given to the Stenographers of CS.

5. The learned counsel strenuously contends that the qualifications for appointment and nature of duties in both the cases are the same. Even if there is any difference in the mode of selection/recruitment it would not be a valid ground for not allowing the same pay scale, in view of the law laid down on this aspect. The learned counsel places reliance on the duty chart of

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Stenographers working in the CS vis-a-vis Stenographers to stress his plea that they are similar for Stenographers in DRDO.

6. The learned counsel for the respondents, Shri P.H. Ramchandani, however, raises a preliminary objection as to the limitation. On merits, learned counsel seeks to draw a broad classification into two classes, viz. Stenographers within and outside the Secretariat as they possess characteristically intrinsic differences. He points out that one deals with technocrats where the volume of work is very much less than the other, who deal with bureaucrats who being the backbone of the administration deal with complex and voluminous work of great responsibility. The learned counsel brings out the other basic differences between their functions and responsibilities. He further submits that it is not the function of the Courts to venture in fixation of pay scales of different categories of employees which depends upon several factors viz. evaluation of duties and responsibilities of the respective posts and that it should be best left to the expert bodies which are constituted for the said purpose and who are eminently suitable for the same. The learned counsel also cited the judgement of the Principal Bench of the Tribunal in OA-487/92 Northern Railway Stenographers' Association, New Delhi & Others v. Union of India & Anr. dated 15.4.97, which is conclusive in this question.

7. We have given careful consideration to the arguments advanced by the learned counsel for the applicants and the respondents. Broadly, the case involves evaluation of the nature of work of the Stenographers in the Secretariat and Stenographers working in the non-Secretariat offices. The claim is founded upon the method of recruitment, nature of duties and responsibilities in both the offices and hence it is claimed that they are entitled for the same pay scale on the principle of "equal pay for equal work". It is not in dispute, however, that their pay scales are distinct and different right from 1.1.70 - the date on which the recommendations of the Second Pay Commission have been implemented.

8. The present controversy is confined to the pay scale of the DRDO/Subordinate Offices in Grade II Stenographers Rs.1400-2300 vis-a-vis pay scale of Grade "C" Stenographers in the CS Rs.1400-2600. For more than two decades, as seen ^{in the chart} ^{supra}, the applicants were paid less than their counter-parts. However, it is true that in view of the award given by the Board of Arbitration the Stenographers in the subordinate offices were also given the same pay scale of Grade-C Stenographers in CS of Rs.1400-2600. Thus a parity has been created in the pay scales of the Stenographers in both offices. The learned counsel heavily relies upon the award of the Board of Arbitration in support of his plea. The thrust of the argument appears that when once they are placed at par with the Stenographers in C.S., it is wholly illegal and arbitrary to discriminate them in subsequent revision of pay. We have perused the award of the Board

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of Arbitration. Except noticing the arguments advanced on either side, the Board of Arbitration has not assigned any reasons why it had decided to place the Stenographers in the subordinate offices in the scale of Rs.1400-2600 at par with the Stenographers in the Secretariat. However, the award having become final the Government had implemented the same and placed the Stenographers in the subordinate offices in the higher pay scale of Rs.1400-2600. But it is difficult to hold from this award that a conscious decision has been taken by the Government that the nature of duties and responsibilities of the Stenographers in both the organisations is identical. It is trite law that an award is valid and binding not for its reasons but for its decision. It is further seen that in view of the judgment of the Tribunal in OA-153/87 dated 23.5.89 filed by the CSS Assistants Association, by which it was directed to place the Assistants in the scale of Rs.1640-2900, they were accordingly placed in the said scale. Considering the fact that the Assistants have been drawing the same pre-revised pay scale of Rs.425-800, of Stenographers in CSS, the Government have decided to raise the pay scales of the Stenographers in CSS also at par with the Assistants. Thus their pay scale has been raised from Rs.1400-2600 to Rs.1640-2900. The applicants who were drawing the pre-revised scale of Rs.425-700 cannot be said to be standing on the same footing and hence are not entitled to the same revision in their pay scale.

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9. The applicants endeavour to show from the pleadings in the case that they are identical with their counter-parts in CS. It was stated that the method of recruitment, promotion and minimum qualifications are the same apart from the nature of duties. It is also pointed out that if any difference was there in the mode of recruitment, it would hardly be relevant from the point of view of equal pay for equal work. It is undoubtedly true that the law is well settled that once the nature and functions are not shown dissimilar the mere fact that the recruitment is made one way or the other is hardly relevant Vide Bhagwan Dass's case (AIR 1987 SC 2049 and V.R. Panchal & Another v. Union of India & Another, 1996 (34) ATC 544. Applicants mainly rely on the duties prescribed in the memorandum dated 12.4.88 for Stenographers in CS to show that they are the same for the employees in DRDO office.

10. The learned counsel for the respondents, however, submits that the nature of functions of the applicants cannot be compared to that of the Stenographers in CS. Several reasons have been given in the counter-affidavit how the pay scales cannot be extended to the applicants. The following extracts in the counter-affidavit bring out the basic differences in two groups:

"8. The scale of Rs.1640-2900 was not extended to DRDO Stenographers grade II for the following reasons:

(a) The question of parity of stenographers of subordinate offices with Central Secretariat in the matter of pay scales was rejected by Board of Arbitration.

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(b) There is a category of stenographers known as steno grade I in the pay scale of Rs.1640-2900 in DRDO.

(c) The Stenographer Grade II in DRDO are eligible for consideration for promotion to the post of stenographer grade I which is in the pay scale of Rs.1640-2900.

(d) DRDO being a scientific organisation, the functions of stenographic assistance provided are not comparable with that of Central Secretariat Service.

(e) The stenographers Grade II in DRDO is a Group "C" post.

(f) There is no open competitive examinations for recruitment to any grade of stenographer in DRDO.

(g) There is no direct recruitment even partially to the stenographers grade II.

9. In view of the above stated facts, the OA 88 of 1996 is devoid of any merit and hence is liable to be dismissed.

10. In reply to paras 4.1. to 4.3, 4.9 and 4.10 of the OA, it is submitted that the role and duties of a stenographer ~~are~~ directly correlated to the duties and role of the officer to whom the stenographer is attached. Since the officers of Central Secretariat Service (CSS) are basically involved in policy formulation connected with various fields of administration, the stenographers attached to them assist in related roles leading to policy making such as collection, compilation and presentation of relevant inputs. The role of stenographer in DRDO is different and not comparable with those of CSS as DRDO is a scientific organisation and officers are engaged in scientific research work. The functional distinction does not therefore allow comparison. Even the duties as listed are only illustrative in nature do not bring out any specific duties in any specified environment.

11. Paras 4.4 to 4.8 of the OA merely bring out various provision of SROs. A copy of the recruitment rules are annexed as R-I. Accordingly, the

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relevant extracts from CSS Stenographers recruitment rules are annexed as R-3.

12. Although the recruitment qualification is same there is a qualitative difference in the mode of recruitment while 50% of steno of steno grade III (feeder cadre to steno D) in the scale of Rs.1200-2040 is through local employment exchange and the other 50% through LDCE in DRDO in case of Central Secretariat it is by promotion for the scale of Rs.1640-2900 and the rest by DR through open competitive exam to be conducted by SSC.

13. With reference to para 4.12 of the OA it is submitted that the status of an officer in a scientific organisation and that in secretariat is not comparable. The provision of stenographic assistance in the Ministry is linked to the status of the officer while in DRDO it is on functional need basis. It is submitted that the quality of work and the degree of responsibility of the stenographers in the subordinate offices is not the same as in the case of Sectt. offices."

11. Thus, several grounds of functional distinction have been brought out why comparison between them is impossible to be made. It was also stated, that the provision of stenographic assistance is linked to the status of the officer in DRDO, whereas, it was on functional need basis in the Secretariat. Stress was mainly laid on the basic difference involved in the policy formulated connected with the various fields of administration which includes collection, compilation and presentation of relevant inputs which was significantly absent in the offices in the DRDO.

12. Before we proceed to consider this aspect, it is necessary to notice the well settled law

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on the aspect of pay fixation in different categories of posts.

13. The question as to the parity of pay scales between the Lecturers in the Higher Secondary Schools and the Lecturers in the non-Technical Schools, Madhya Pradesh has come up for consideration in State of Madhya Pradesh & Anr. v. Pramod Bhatia & Ors., JT 1992 (5) SC 683. The Supreme Court elaborately considering several decisions on this aspect, held as follows:

"It is not enough to say that the qualifications are same nor is it enough to say that the schools are of the same status. It is also not sufficient to say that the service conditions are similar. What is more important and crucial is whether they discharge similar duties, functions and responsibilities. On this score there is a noticeable absence of material."

".....In this context, it would be appropriate to refer to the definition of the expressions "same work or work of similar nature" contained in clause (h) of Section 2 of the Equal Remuneration Act, 1976. The said Act was enacted by Parliament (as pointed out by this Court in McKinnon Mackenzie v. Andrey D'Costa (1987 (2) SCC 469) to implement Article 39(d) of the Constitution and the obligation created by 'The Convention Concerning Equal Remuneration for Men and Women Workers' for work of equal value (generally referred to as 'Equal Remuneration Convention, 1951') adopted on June 29, 1951, to which India is a signatory. Article 2 of the Convention obliged the signatory States to effectuate the said rule by all means including the machinery of law. The said Act is applicable to such establishments and employments as may be notified by the Central Government under Section 1 (3) of the Act. Though the said Act is mainly directed against discrimination against women and is also not applicable to the employments or establishments to which the Respondents herein belong, yet the relevance of the said definition cannot be denied, occurs as it does in an enactment

made to give statutory shape to the rule of "equal pay for equal work both for men and women". The definition in Section 2 (h) reads:

"2(h)."Same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the difference, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment."

13. It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed by Sh. Mukherji, J. (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality."

14. In State of U.P. v. J.P. Chaurasia, AIR 1989 SC 121, the Supreme Court has clearly laid down that:

".....It was for the administration to decide the question whether the posts which very often may appear to be the same or similar should carry equal pay, the answer to which depends upon several factors, namely, evaluation of duties and responsibilities of the respective posts and its determination should be left to expert bodies like the Pay Commission. The Court should normally accept the recommendations of Pay Commission."

15. The latest view of the Supreme Court is contained in Union of India & Ors. v. P.V. Hariharan, JT 1997 (3) SC 569. The Supreme Court observed:

"We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis

of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

16. In the light of the above authoritative pronouncements it appears that the only limited jurisdiction for this Tribunal in considering the claim of the applicant, is to see whether any hostile discrimination has been practiced by the Government against the applicants. We are afraid that the applicants have not laid a sound foundation to prove that in spite of their nature of work and responsibilities being identical with that of the Stenographers in CS they were paid lesser pay scale.

17. The applicants have been discharging their duties in the Research Office in the Defence. By the nature of things their duties and responsibilities cannot be said to be the same as that of the Stenographers working in the Secretariat offices in the Government of India. The Third Pay Commission in its report has clearly brought out basic and intrinsic differences in the nature of work of Stenographers working in the Secretariat and outside the Secretariat in the subordinate offices. The Commission stated that:

"As a general statement, it is correct to say that the basic nature of a Stenographer's work remains by and large the same whether he

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is working with an officer in the Secretariat or with an officer in the Subordinate Office. We feel, however, that the position needs to be examined a little more critically because the size of a Stenographer's job is very much dependent upon the nature of the work entrusted to that officer. It would not be correct, therefore, to go merely by status in these matters and disregard the functional requirements. By the very nature of Secretariat working, volume of dictation and typing work can be expected to be heavier than in a Subordinate office; also the requirements of secrecy even in the civil offices of the Secretariat can be very stringent. Considering the differences in hierarchical structures and in the type of work transacted in the Secretariat and in the subordinate offices, we are not in favour of adopting a uniform pattern. Once the functional requirements are seen to be different for the Secretariat and the Subordinate Offices, it will not be worthwhile to aim for absolute parity in the pay scales of Stenographers working on the two sides."

18. Again in the Fifth Pay Commission's report, which has been accepted by the Government of India their differences were clearly brought out as follows:

".....Considering the differences in the hierarchical structures and in the type of work transacted in the secretariat and in the subordinate offices, the Commission was not in favour of adopting a uniform pattern in respect of matters listed in the preceding paragraph. To our mind, the observations of the Third CPC are as relevant today as they were at that point of time and we are not inclined to overlook them totally. In view of the above mentioned distinguishable features, we do not concede the demand for absolute parity in regard to pay scales between stenographers in offices outside the secretariat."

19. Thus in addition to the above distinguishing features brought out in the counter-affidavit, the Pay Commissions which are the Expert Bodies for fixing the pay scales have taken the similar view.

20. In para 45.30 the Fifth Central Pay Commission has stated that it had no intention of reopening the past cases or making any recommendation with respect to the anomalies with retrospective effect and all the recommendations would have prospective effect from the date recommended and that the administrative ministries were requested to settle the past cases at their level. It is, therefore, contended that this OA filed seeking equal pay w.e.f. 1.1.86, i.e. with effect from the Fourth Central Pay Commission's report the recommendations of Fifth Pay Commission are not to be relied upon. It is true that the recommendations of the Fifth Pay Commission are only prospective. But the reasons given by the Fifth Pay Commission on the basic differences between the two sets of posts cannot be said to be inapplicable or irrelevant for considering the case of the applicants. The differences pointed out cannot be said to be new ones that arose only from 1.1.96. If the Third Pay Commission's report, as stated supra, is noticed the same differences have been given between the duties and functions of the offices in two offices. Merely because the applicants were placed in the same scale by virtue of the award of the Board of Arbitration it is difficult to hold that the duties and responsibilities of the applicants are the same. The Board of Arbitration is not an expert body for fixation of pay scales on evaluation of the relative functions, so as to completely ignore the opinions of the Pay Commissions. On the other hand, the Supreme Court has in no uncertain



terms stated in P.V. Hariharan's case (supra) that it was not for the courts to embark upon the fixation of pay scales without accepting the reports given by the Pay Commission.

21. Moreover, the Principal Bench of the Tribunal in OA-487/92 in its judgement dated 14.4.97 has considered an identical question, where the Northern Railway Stenographers' Association, New Delhi sought the same benefit as claimed by the applicants herein. The Bench has considered elaborately the case law on this point and placing reliance upon the report of the Fifth Central Pay Commission found that the demand with regard to the pay scale was not acceptable. We are in complete agreement with the reasons given in the judgement. This decision squarely covers the question involved in this case.

22. In the circumstances, the applicants' claim is liable to be rejected.

23. We are also of the view that the OA is also liable to be dismissed on the ground of limitation. It is not in dispute that the applicants were aggrieved by the order dated 31.7.90 when the Government raised the scale of pay to the Stenographers in C.S. from 1400-2600 to 1640-2900. Aggrieved by the same the applicants filed the representations and that the matter was also taken up by the JCM for redressal of the applicants' grievances. It is also the grievance of the

applicants that the State of Maharashtra also granted the pay scale of Rs.1640-2900 to the Stenographers grade II. Thus the cause of action arose in 1990. The applicants should have waited for the reply only for a period of six months and thereafter should have filed the OA within one year thereafter. The applicants, however, impugns the order of rejection of the representation dated 23.8.95. But a perusal of the order of rejection Annexure "B" clearly indicates that it was a reply to the letter dated 22.6.95. In the counter-affidavit it has been clearly stated that the representations were made by the applicants in June, 1994. Hence, it is contended by the learned counsel for the respondents that the representation made after four years does not either save or prolong the limitation. Whether the representations are made immediately thereafter or in 1994, as contended by the learned counsel for the respondents, in either way, the OA would be hit by Section 21 of the Administrative Tribunals Act, 1985. If representation was filed immediately thereafter the OA ought to have been filed within one and a half years thereafter. If no representation is filed soon thereafter, nevertheless, the limitation would commence from the date of the order, i.e., 31.7.90. If the representations are made in June, 1994 by that time itself the limitation would expire.

24. But it is contended by the learned counsel for the applicants that the cause of action being continuous in the sense that the correct salary

computed on the basis of a proper pay fixation, is a right which subsists during the entire tenure of service and hence it can be exercised at any time and in that view the question of limitation is not attracted to the facts of the case. The learned counsel relies upon the ratio in M.R. Gupta v. Union of India and Others, 1995

(5) SCC 628. We are afraid that the ratio in M.R. Gupta's case (supra) is not applicable to the facts of the present case. In M.R. Gupta's case the question that arose was as to the pay fixation in accordance with rules. The Supreme Court held that so long as the employee was in service a fresh cause of action arises every month when he is paid his monthly salary on the basis of wrong computation made contrary to the rules. The claim of the applicants in the present case is founded on the revision of pay to the Stenographers in the Central Secretariat by the order of the Government dated 31.7.90. The applicants were aggrieved by the said order inasmuch as they were not given the same pay revision. Thus the cause of action in this case arose on 31.7.90. Hence, the ratio of M.R. Gupta's case (supra) is wholly inapplicable. The learned counsel also relies upon Madhukar Morey and Others v. Union of India and Others, 1989 (11) ATC 726, where it was held that the plea of limitation does not apply to employees who claim discrimination of pay and allowances as it was a recurrent cause of action every month. Again in view of the above reasons this case has no application to the present case. The claim is not mere parity of pay scales between the applicants and the Stenographers

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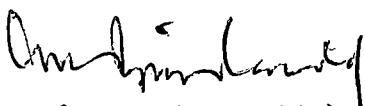
Grade "C" in the CS but it is a claim based upon the Government's action raising the pay scales of Stenographers in CS by order dated 31.7.90. In the circumstances, we are of the view that the OA is also liable to be dismissed on the ground of limitation.

25. In view of the aforesaid discussion the OA is dismissed, both on merits and limitation. No costs.

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(Smt. Shanta Shatry)
Member (A)

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(V.Rajagopala Reddy)
Vice-Chairman (J)