

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 911/97

(11)

New Delhi, this the 29th day of August, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

C.D.Bhatia and others Applicants

(By Advocate: Sh. Vikas Singh)

Vs.

Union of India and others Respondents

(By Advocate: Mrs. P.K.Gupta)

1. To be referred to the reporter or not? YES
2. To be circulated to other benches of the Tribunal? NO

GOVINDAN S. TAMPI)
MEMBER (A)

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HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

(12)

1. C.D.Bhatia,
son of Late Sh. Mani Ram,
r/o 870/7, Govindpuri (Kalkaji),
New Delhi-110019.
2. Sohan Singh,
son of Late Sh. Banta Singh,
R/o 1751/6, Govindpuri Extension (Kalkaji),
New Delhi-110019.
3. Birham Singh,
son of Sh. Ram Singh,
R/o 851/7, Govindpuri (Kalkaji),
New Delhi-110019.
4. R.S.Kaim,
Son of Sh. Krishan Lal,
R/o F-170, Village Khanpur,
New Delhi-110062.
5. R.V.Singh,
son of Sh. C.Ram,
R/o C-5A/161, Janakpuri,
New Delhi.
6. Mangat Ram Bali,
son of Sh. Amar Dass,
R/o G-222, Nanakpura,
New Delhi-110021.

..... Applicants

(By Advocate: Sh. Vikas Singh)

VS.

1. Union of India
through the Secretary,
Ministry of Personnel Public Grievances
and Pensions, North Block,
New Delhi-110001.
2. Establishment Officer & Addl. Secretary,
Dept. of Personnel & Training,
North Block, New Delhi-110001.
3. Director (Central Services),
Dept. of Personnel & Training,
Lok Nayak Bhawan,
New Delhi-110011.

..... Respondents

(By Advocate: Mrs. P.K.Gupta)

ORDER

By Hon'ble Sh. Govindan S. Tampi, Member (A)

(3)

The applicants Sh. C.D.Bhatia and five others are Section Officers/Desi Officers and belong to the Scheduled Castes/Scheduled Tribe categories (SC/ST, for short). They have come up in this OA-911/97, impugning the letter No.4/18/95 C.S.I. of 26.11.96 issued by the Deptt. of Personnel & Training, rejecting their representation dated 8.11.95, seeking promotion to the grade of Under Secretary, by following a revised zone for consideration. They feel that the instructions with regard to the reservations issued in April 1983, but amended in September 1983, have made reservation purely dependent on vacancies to their detriment. They had filed an OA No.434/94 but this did not succeed. In the meanwhile, the Hon'ble Supreme Court in Civil Appeal No. 4026/88 in the case of U.P. Rajya Vidyut Parishad SC/ST Karamchari Kalyan Sangh Vs. U.P. Electricity Board and others, held on 23.11.94 that a common zone of consideration for general candidates as well as for SC/ST candidates based upon a common seniority list would defeat the purpose of reservation in the matter of promotion and that there should be a separate zone of consideration for promotion of SC/ST candidates. The applicants applied to get the benefit of the Supreme Court's order through a review application before this Tribunal, but did not succeed as it was held on 3.4.95, that a subsequent decision by a higher Court was not an accepted ground for review of an earlier judgment In the S.L.P. filed against the above the Hon'ble Supreme Court ordered as below:-

"We have heard learned counsel for the parties. Learned counsel for the petitioners has raised only one contention to the effect that there has to be a separate zone for consideration so far as SC/ST candidates are concerned. According to

him, clubbing the scheduled caste with the general category in the same zone of consideration would defeat the very purpose of reservation. He relies of this Court's judgment in U.P.Rajya Vidyut Parishad SC/ST Karamchari Kalyan Sangh Versus U.P. State Electricity Board and others (C.A. No.4026/98) decided on 23.11.94. This precise point was not raised before the Tribunal. The point was sought to be raised in a review petition but the Tribunal did not permit the same to be raised at that stage. We see no ground to interfere with the impugned judgment of the Tribunal.

(A)

We are, however, of the view that the law laid down by this court in U.P.Rajya Vidyut Parishad's case is binding on all the authorities including the Union of India. The petitioners may, if so advised, approach the Govt. seeking enforcement of the law laid down by this court. Special leave Petitions are disposed of."

2. Following the above, the applicants filed a detailed representation to the Govt. on 8.11.95 but not having received any reply moved the Apex Court in contempt petition, which was disposed of on 30.4.96 on the Govt's assurance that the representation filed by the petitioners shall be disposed of in due course. The applicants also moved the National Commission for Scheduled Castes and Scheduled Tribes on 21.5.96, seeking their intervention in the matter. While the matter was pending before the Commission, the respondents issued the impugned letter dated 26.11.96 rejecting the representation filed by the applicants dated 8.11.95, seeking to implement the Apex Court's order to have separate zone for SC/ST candidates for promotion. It was also found that as was done in 1994, some promotions were ordered by the respondents in 1996, by selecting candidates beyond the extended zone. The applicants thereafter filed contempt petition No. 101-102 of 1997, in the Apex Court, bringing out all facts but was permitted to withdraw the same on 10.3.97 and for availing themselves of the remedy available under the law. Hence, this application.

3. The grounds of relief sought by them are as below:-

(V)

- i) inspite of the fact that decision of the Apex Court in Civil Appeal No. 4026/88 was binding on all authorities including the Union of India, it was not being followed.
- ii) applicants were eligible to be promoted alongwith the general candidates but the same was not done.
- iii) respondents had not acted in pursuance of the directions of the National Commission for Scheduled Castes/Schedule Tribes.
- iv) SC/ST candidates have not been given their due share in matters of promotion and thus their fundamental rights were violated.
- v) respondents have been selectively promoting SC/ST candidates even beyond the zone of consideration, and thus acting in a discriminating manner.

4. In view of the above following reliefs have been sought by the applicants.

- a) promotion of eligible SC/ST candidates as Under Secretaries with retrospective effect from 4.12.91 onwards upto the extent of their due share;

b) implementation of the orders of the Apex Court in SLP 14568-69/95 and CA No. 4026/98 dated 23.11.94 by preparing separate zone of consideration for SC/ST, apart from general candidates; and

c) quashing of the memorandum dated 30.9.83 which has become null and void in view of the Supreme Court's decision. Applicants have also sought interim directions against promotion of general candidates from the common seniority list till all SC/ST candidates like themselves have been promoted from 4.12.91.

5. In their reply filed on 19.8.97, the respondents contest the pleas made by the applicants. After narrating the circumstances leading to the amendment on 30.9.83, of the general instructions contained in OM dated 30.4.83, they point out that the vacancies in the grade of Under Secretaries are filled by promotion from the feeder cadres of Section Officers/Private Secretaries by selection on the recommendation of the DPC constituted by UPSC. Reservation for SC/ST candidates is also provided for. While the normal zone of consideration is three times the number of vacancies, if adequate number of SC/ST candidates are not available in the normal zone for the vacancies earmarked, the consideration zone is extended to five times the number of vacancies in their case.

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6. As regular promotions to the grade of Under Secretary could not be held since 1986, on account of pending litigations promotions were made w.e.f. 4.12.91, under the directions of the Hon'ble Supreme Court, but as provided for by the OM dated 30.4.83 and 30.9.83. This was objected to by the applicants but their OA filed before the Tribunal did not succeed. Their representation was also considered and they succeeded. They were informed by the letter dated 13.12.85 indicating that the vacancies have been correctly computed. Their review application filed subsequent to the decision of the Hon'ble Supreme Court in UP Rajya Vidyut Parishad case also was rejected by the Tribunal. In the SLPs filed against it, the Hon'ble Supreme Court did not interfere with the Tribunal's order but indicated that the law laid down in UP Rajya Vidyut Board's case was binding on all including Union of India, and the applicants could approach the Govt. It was followed by the applicants representation dated 8.11.95.

7. On examination of the representations, vis-a-vis, the Hon'ble Supreme Court's decision it was found that the rules governing the reservation policy in UP State Electricity Board and the Government of India were different. UP State Electricity Board rules provided for a 'common' zone of consideration for the general as well as the reserved category of officers for promotion (regular) from Executive Engineer to Superintending Engineer grade. There was no separate zone of consideration nor any kind of separate treatment for SC/ST candidates in promotion to the grade of Superintending Engineer. Hence, the Apex Court's interim order dated 16.11.94, mentioned in their order dated 23.11.94, that clubbing SC/ST with the general category in the same zone of consideration would defeat the very purpose of reservation..

(17)

(8)

Following it, UP State Electricity Board revised the seniority lists separately for SC, ST and general category employees to serve as separate zones for promotion as seniority cum fitness basis. Once this was done, the Hon'ble Supreme Court disposed the case on 23.11.94, without going into other issues.

8. The respondents further point out that in terms of CSS Rules, 1962, as amended, if sufficient number of SC/ST officers are not available within the normal field of selection, i.e., three times the number of vacancies, the same is extended upto five times and within this extended zone of consideration' only SC/ST candidates are located and not the general candidates. Thus, this extended zone of consideration is a separate zone for the SC/ST only. The SC/ST vacancies still remaining are filled on the basis of a limited departmental competitive examination open to SC/ST officers with four (4) years' approved service as against the prescribed eight (8) years' service. SC/ST officers, thus are not clubbed with the general category officers and are considered separately from the category officers for promotion against the reserved vacancies. Evidently therefore, though the manner of computing separate zones for consideration for SC/ST is different from that subsequently adopted by the UP State Electricity Board, the reservation policy of the Govt. of India and that applicable for CSS officers do provide for separate zone of consideration, and therefore, the ratio of the Supreme Court's decision in UP Rajya Vidyut Parishad case, is not violated. This is, what has been followed in the case of the applicants and the same was correct and proper indicate the respondents. The applicants were also accordingly informed by the impugned communication dated 26.11.96 National Commission for Scheduled Castes/Scheduled Tribes, who took up

the matter on behalf of the applicants were replied on 18.3.97 indicating the rules and the details of disposal of the applicants' representation. Applicants thereafter went to the Apex Court in contempt, withdrew the same and filed this OA, say the respondents. (19)

9. As a preliminary objection, the respondents plea that as the Hon'ble Apex Court did not specifically allow the applicants any liberty to file any application and as they have already availed themselves of the remedy available to them this OA was hit by res judicata.

10. They further contest the pleading that the applicants were denied promotion, violating their constitutional rights, but state that they could not be promoted as they did not fulfil the requirements as brought out in the OM dated 30.4.83 to 30.9.83. It was also wrong to say that the requirement of consideration zone was wrongly used by the respondents to deny the applicants promotion; which were their due. It was also denied that the SC/ST candidates were clubbed together with general candidates and that all the vacancies which arose since 1989-90 and which fell in the share of SC/ST candidates always remained unfilled. The allegation that in the DPC for 1994, wrong computation of vacancies took place, was wrong. It was correctly worked out and eligible persons including four of the applicants were promoted. However, applicant No.1 had already superannuated by that time. Respondents state that they have acted through-out correctly and properly and in accordance with the rules. They had properly examined the ratio of the Hon'ble Apex Court decision in UP Rajya Vidyut Parishad's case in the light of the instructions and concluded that the extended range of five times the number of vacancies,

exclusively meant for locating SC/ST candidates only and as such it was a separate zone for them. With reference to the scope and powers of the National Commission for Scheduled Castes/Scheduled Tribes, the respondents refer to the decision of the Hon'ble Apex Court in Civil Appeal No.13700 of 1996 (All India 10B SC/ST Employees Welfare Association Vs. Union of India & others reported in JT 1996 (10) SC 287), to the effect that the Commission while has powers of the Civil Court while investigating matters, it has no power of granting injunctions whether temporary or permanent. It was also not correct to say that the range or zone of consideration has been extended on selective basis, as those who had retired or resigned have not been taken while computing the extended zone. The respondents once again state that as the Hon'ble Apex Court had not made any specific order or granted liberty to the applicants to file OA before the Tribunal, it is covered by res judicata and was not maintainable.

(20)

11. The applicants in their rejoinder contest and deny the averments by the respondents and reiterate their pleas, which they aver, should be accepted.

12. Heard the counsel for both sides. Strongly urging the points on behalf of the applicants Sh. Yunus Malik, the learned counsel states that the respondents have attempted to side step the directions given by the Hon'ble Supreme Court in CA No. 4026/94 and deny the applicants the right for separate zone. Once the Hon'ble Supreme Court has indicated that their decision in UP Rajya Vidyut Parishad's case, laying down the need to have separate consideration zone for SC/ST candidates, was binding on all including Union of India, nothing remained for the respondents except to fall in and act accordingly.

Instead of doing it, the respondents were persisting with the discredited system of combined zone, making reservation dependent only on the number of vacancies, which were being fixed arbitrarily from year to year or even less. This violates the right of the SC/ST candidates and grant unintended benefit to the general candidates. The counsel states that they do not want the extended zone of five times, which includes the general candidates but only want a separate consideration zone of three time the vacancies from only the eligible candidates of SC/ST category. This alone would satisfy them and would take care of the decision of the Hon'ble Supreme Court in the case of UP Rajya Vidyut Parishad, argue the counsel.

(21)

13. Refuting the points raised on behalf of the applicants, the learned counsel for the respondents point out that inasmuch as the extended zone of between three times to five times was meant only to locate and select the SC/ST candidates, it was in effect the separate zone of consideration, contemplated in the Hon'ble Apex Court's order. The CSS Rules and the instructions of OM dated 30.4.83 & 30.9.83 have been following the above principles and therefore the decision taken by them while disposing of the representation dated 8.11.95, by their letter dated 26.11.96 was correct and deserve to be endorsed, according to him.

14. We have carefully considered the matter. The respondents' preliminary objection on res judicata, as the applicants have correctly withdrawn their contempt petition and moved this Tribunal. The point for determination in this OA is the nature and extent of the consideration zone for protecting the reservation permitted for promotion into the

grade of Under Secretaries from the feeder cadre. While the applicants plead that the present instructions contained in the OMs of the DOPT dated 30.4.83 and 30.9.83 providing for the consideration zone of thrice the vacancies, and the extended zone of five times the vacancies to locate and select SC/ST candidates when they are not available in the normal zone does not serve the purpose and that a separate zone exclusively consisting of eligible SC/ST candidates should be constituted as ordered by the Hon'ble Supreme Court in UP Rajya Vidyut Parishad's case, the respondents aver that the above 2 OMs represent the correct law and that in so far as the extended zone is exclusively for locating the SC/ST candidates it does constitute the separate zone, as contemplated by the Apex Court in the above case. In view of the fact that the rival contentions centre around the decision of 23.11.94 of the Hon'ble Supreme Court in Civil Appeal No.4026/98 (UP Rajya Vidyut Parishad SC/ST Karamchari Kalyan Sangh vs. UP State Electricity Board & Others), it would be relevant and necessary for us to refer to the same. More so, as the Apex Court has while disposing the SLP has 14568-14569 on 20.10.95 indicated that the said decision is binding on all including the Union of India. The whole decision is being reproduced below:-

" We have concluded the hearing of arguments. We are prima facie in agreement with the contention of the learned counsel for the appellant that there has to be a separate zone for consideration so far as SC/ST candidates are concerned. Clubbing the Schedule Case with the general category in the same zone of consideration would defeat the very purpose of reservation. Mr. B.Sen, learned senior counsel appearing for the Board, states that he would like to place the matter before the Board and seek further instructions from the Board."

Pursuance to the above quoted order, Mr. A.M. Rawat, Joint Secretary, U.P. State Electricity Board has filed an affidavit dated November 22,

1994 on behalf of the Board. paras 5,6 and 7 of the affidavit which are relevant are reproduced hereunder:

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"5. That on 10.10.94 the State Govt. issued a G.O. by which the quota of Scheduled Castes has been enhanced from 18% to 21%. Thus, the total reservation for SC/ST candidates became 23%. The State Govt. vide another G.O. No. 13/34/90-P-1/1994 provided that the promotions to the post of Head of Department, a post just one rank below the Head of Department and to a post in any service carrying the pay scale and maximum of which is Rs. 6700/- or above shall be filled on the basis of merits and the rest of the post will be filled by promotion on the basis of seniority subject to the rejection of unfit. The State Govt. also has framed U.P. Govt. Servants Criterion for Recruitment by Promotion Rules, 1994. True English translation of G.O. dated 10.10.1994 and aforesaid Rules are being filed herewith and marked as Annexure-II and III respectively to this affidavit.

6. That the Board in its meeting held on 16.11.1994 has adopted the aforesaid reservation policy of the State Govt. Thus the post of Superintending Engineer which carry the pay scale of Rs. 5700-6300/- has now to be filled in accordance of above policy by preparing separate zone of consideration for SC/ST candidates as well as general category candidates.

7. That at present there are 7 vacancies of Superintending Engineers which have been kept reserved for SC/ST candidates in accordance with interim orders of this Hon'ble Court. Besides this, there are 23 more vacancies of Superintending Engineers of 1994 out of which 23% have to be filled through SC/ST candidates and rest by general category candidates. Thus total vacancies of Superintending Engineers available for SC/ST candidates would be 13(7+6) which will be filled by preparing separate zone of consideration for SC/ST candidates as well as General Category candidates"

In view of the averments made in the affidavit quoted above, it is not necessary for us to go into the various questions canvassed before us. The contentions of the appellants before us have been substantially met with by the Board. In view of the stand taken by the Board in its aforesaid affidavit, the judgement of the High Court has become redundant and it shall not be operative. The appeal is disposed of with no order as to costs.

In view of the order passed in C.A. No. 4026/88, the Writ Petition and the Special Leave Petition are disposed of.

sd/-
(KULDIP SINGH)

New Delhi
November 23, 1994.

sd/-
(B.I. HANSARIA)"

As far as we can make out from the facts of the case, the Hon'ble Apex Court has directed the creation of separate zones for consideration to SC/ST candidates where there was zone and opined that clubbing them with the general category in the same zone of consideration would defeat the very purpose of reservation. What the Hon'ble Apex court has directed that no method should be adopted by back door to destroy or obviate the right of reservation granted. In the reply by the respondents it has been pointed out that under the UP State Electricity Board rules there was no separate zone of consideration nor any kind of separate treatment for SC/ST candidates in promotion to the grade of Superintending Engineer, an averment not contested by the applicants either in their detailed rejoinder or in their oral submissions. It is, therefore, evident the Hon'ble Apex Court was ordering the creation of an arrangement, where there was none, to protect the cause of reservation. The situation obtaining in the case of the CSS Rules and the two OMs of the Deptt. of Personnel & Training dated 30.4.83 and 30.9.83 is different. The same do postulate a specific drill in this regard. Department of Personnel & Training OM No. 36011/14/83-Estt. (ST) dated

30.4.83 and 30.9.83 would merit reference in this context.

These refer to consideration of the cases SC/ST employees for ad hoc promotions. Relevant portions are reproduced below:-

(25)

A. "The undersigned is directed to refer to the Department of Personnel & A.R. O.M. No. 36021/7 (SCT) dated 16.04.1979 on the above subject where Ministries and Departments were requested to report promotions only when it became inescapable in the public interest and that where such ad hoc promotion had to be resorted to unavoidably, the public interest the claims of eligible officers belonging Scheduled Castes/Scheduled Tribes should also be duly considered alongwith other eligible in the filled though was to be no formal reservation for Scheduled Castes/Scheduled Tribes in such promotions. A number of Ministries/Departments have asked for clarification regarding the procedure to be followed and the guidelines prescribed for considering the claims of the Scheduled Castes/Scheduled Tribes candidates while making ad hoc promotions.

2. It is once again reiterated that the basic approach of this Department is that ad hoc promotions should be minimised, if not eliminated altogether. However, if such ad hoc promotions are to be made in exceptional circumstances, such as during pendency of court cases, protracted seniority disputes, non-framing of recruitment rules unforeseen delay in direct recruitment or convening of DPCs for reasons beyond the control of the controlling authorities etc. the following guidelines may be followed so as to ensure that the claims of eligible candidates belonging to Scheduled Castes/Scheduled Tribes are also duly considered;

(i) Ad hoc promotions should be considered only against vacancies in excess of 45 days;

(ii) Since in cases where reservation orders for SC & ST are applicable all vacancies for periods in excess of 45 days are necessarily to be placed on the appropriate roster, the number of vacancies falling the share of SC & ST, if the vacancies were to be filled, on regular basis should first be identified.

3. Since ad hoc promotions are made on the basis of seniority-cum-fitness, all the Scheduled Castes and Scheduled Tribes candidates covered in the relevant seniority list within the total number of such vacancies in which ad hoc promotions are to be made, should be considered in the order of their general seniority in the gradation list, on the principle

of seniority-cum-fitness and if they are not adjudged unfit, they should atleast be promoted on ad hoc basis;

4. If, however, the number of SC/ST candidates found fit within the range of actual vacancies is less than number of vacancies identified as falling to their share if the vacancies were filled on a regular basis vide (2), then additional SC/ST candidates to the extent required should be located by going down the seniority provided they are eligible and found fit for such ad hoc appointment. This procedure should be adopted on occasion on which ad hoc appointment is resorted to ;

[OM No. 36011/14/83-Estt. (ST) dated 30.4.83]

(2b)

B. The undersigned is directed to refer to the Department of Personnel and A.R. O.M. No. 36011/14/83-Estt. (SCT) dated 30.04.1983 on the subject mentioned above. A doubt arisen with regard to guidelines (3) and (4) of the O.M. dated 30.04.1983 as to the outer limit in the seniority list from which Scheduled Castes/Schedules Tribes candidates should be located for ad hoc promotions.

2. It has nowbeen decided that the Scheduled Castes/Schedules Tribes candidates who are within the number of actual vacancies should be considered in accordance with their general seniority on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on ad hoc basis. If, however, the number of Scheduled Castes/Scheduled Tribes candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share, then additional Scheduled Castes/Scheduled Tribes candidates to the extent required should be located by going down the seniority list but within 5 times the number of vacancies being filled on a particular occasion, subject of course, to their eligibility and fitness.

3. Ministry of Finance etc.. are requested to bring the contents of this O.M. to the notice of all their attached and subordinate offices.

[OM No. 36011/14/83-Estt. (ST) dated 30.9.83]"

15. Field of selection normally is three times the number of vacancies where all are considered together. If however, sufficient number of SC/ST officers are not available within the field of selection, it is extended upto five times and within the extended 'zone of consideration', only SC/ST candidates are located and not general candidates. Thus, this

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extended zone of consideration is a separate zone of consideration for SC/ST only. To illustrate, when twenty vacancies are to be filled up, with four vacancies for the SC/ST, normally sixty candidates would be considered. But if no eligible SC/ST, candidates are available in the first sixty, the consideration zone would be extended to hundred only to locate SC/ST candidates and if they are so available, they would get the promotion. The zone between sixty to hundred is a separate zone for the SC/ST in that no general category candidate from that side, even if he is otherwise eligible would be considered, as the zone covering him has been exhausted at sixty and the stage from sixty to hundred is earmarked for the eligible SC/ST candidates. In this zone the SC/ST candidate is not clubbed or considered with general category candidate as it is an exclusive zone/separate zone for the SC/ST category candidates. Evidently, therefore, in the CSS Rules and the relevant OM, separate Zone for the SC/ST has been built in the Scheme itself, unlike in the case of UP State Electricity Board rules before the decision of the Hon'ble Apex Court in UP Rajya Vidyut Parishad's case. And, therefore, there is correct and proper implementation of the Supreme Court's decision in that Scheme itself. That being the case, the applicants' request that the concerned OM, should be quashed and a new scheme for creating separate zones for general candidates, on the one hand and for the SC/ST candidates on the other should be ordered do not merit endorsement. The Scheme as envisaged in the CSS Rules along with the OMs dated 30.4.83 and 30.9.83, do have the provision for the separate zone for preserving, protecting and advancing the reservation policy of the Govt. and they have therefore

to stand. The action taken by the respondents in pursuance of the above are correct, legal and in pursuance of the instructions.

16. In view of the above, we are convinced that the applicants have not made a case for our interference. The application thus fails and is accordingly dismissed along with the MA. No order to costs.

(GOVINDAN S. TAMPI)

Member (A)

'sd'

V. RAJAGOPALA REDDY)

Vice Chairman (J)

Ombyyenddy