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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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M.A.2580/2001 IN
C.P. 208/1999 IN
O.A. 254/1993 &
R.A. 387/2001

New Delhi, this the 8th day of January, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Dr. S.P. Manik Applicant
(By Advocate: Shri Kailash Vasudev, Sr. Counsel
with Sh. Rama Krishna)

Versus

Union of India and Ors. Respondents
(By Advocate: Shri V.S.R. Krishna)

ORDER

Hon'ble Shri S.A.T. Rizvi:

RA 387/2001 has been filed on behalf of the respondents in OA No.254/1993 praying for a reconsideration of orders passed by this Tribunal on 10.9.2001 as rectified on 1.10.2001. The aforesaid orders dated 10.9.2001 have been passed so as to clarify the true import and the context of the words "as if he was appointed in M&C cadre" appearing in direction No.1 of the directions of this Tribunal given in OA No.254/1993 on 11.9.1998, in accordance with the directions given by the High Court of Delhi in CWP No. 1603/2000 on 25.7.2001.

2. MA No.2580/2001 has been filed also on behalf of the respondents in OA No. 254/1993 seeking extension of time for implementing the Tribunal's aforesaid order dated 10.9.2001 until the aforesaid Review Application has been disposed of.

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3. MA No.2628/2001 has been filed on behalf of the applicant in OA No. 254/1993 praying for a direction to the respondents to appear in person before the Tribunal to explain their conduct, further praying for imposing a suitable punishment on the respondents for their deliberate and wilful disobedience of the Tribunal's order dated 10.9.2001 together with its orders dated 11.9.1998.

4. In order to understand the implications of the aforesaid orders passed by this Tribunal and the Review and the Misc. Applications filed as above, we find it necessary to dwell, at some length, at the facts and circumstances of this case reflected in the various orders passed in OA No. 254/1993. We do so in the following paragraphs, by dealing with the merits of the case to the extent necessary. We are clear in our mind that the Tribunal's order dated 11.8.1998 as a whole is, in any case, not required to be reviewed at this stage and what is to be looked at is whether the words "as if he was appointed in M&C cadre" have been clarified in pursuance of High Court's direction consistently with the findings conclusively arrived at by the Tribunal in their order of 11.9.1998. The respondents having not sought a review of the aforesaid order of 11.9.1998 in accordance with the provision of the AT Act, 1985 and the Rules framed thereunder, they cannot seek a review of the same by filing the present RA.

5. The applicant was appointed against an isolated/special post of Deputy Director (Rubber) on 13/14.1.1972

(Annexure A-1 to OA 212/1991) as a direct recruit through the UPSC. He joined the said post on 16.3.1972 (Annexure A-2 to OA No.212/1991). In the advertisement earlier issued on 24.4.1971 in respect of the aforesaid post, it was stated that the aforesaid post would be located in the Metallurgical and Chemical Directorate (M&C Directorate) of the Research, Designs & Standards Organisation (RDSO), Lucknow. The post was stated to be temporary, but was likely to continue indefinitely. The appointment could be terminated according to rules. The same also provided that in respect of matters not specifically referred to in the aforesaid offer letter, the provisions of the Indian Railway Establishment Code (IREC) and other extant orders as amended from time to time will apply. Further a provision made therein indicated that the applicant was to be employed ordinarily and throughout his service in the RDSO. The respondents, however, retained the right to require the applicant to serve in any other part of the Railway administration. In the event, the applicant has continued to work in the RDSO throughout without having been sent out to any other Railway administration. Admittedly the respondents have not mentioned any where in the aforesaid orders that the post of Deputy Director (Rubber) was to be treated as an ex-cadre post. Thus, the aforesaid post was to be an encadred post and was to be regarded ^{as} such from day one. The question that had remained in dispute was whether the same could be treated as encadred in the RDSO and in the RDSO, within the M&C Directorate thereof, or outside the RDSO in any of the

Production Units of the Railways or else with any of the
Zonal Railways.

6. It is not in doubt that the applicant was specially recruited through the UPSC for the post of Deputy Director (Rubber) at a point of time when the Recruitment Rules for the said post did not exist. The relevant rules were, however, issued much later vide Notification dated 1.6.1977, copies of which were forwarded to all the Production Units of the Railways as well as to all the Zonal Railways. Three copies of the aforesaid Notification were forwarded to the RDSO as well. Since the aforesaid Notification was issued after the applicant had already been appointed as Deputy Director (Rubber) and had joined the said post, his service conditions could not be governed by the aforesaid Notification. He was, therefore, destined to serve the Railways in the RDSO, and move up in the hierarchy in the same cadre in accordance with the executive instructions issued by the respondent-authority in exercise of the powers available under Article 77 of the Constitution.

7. Recruitment Rules notified on 18.9.1965, i.e., before the applicant was appointed to the post of Deputy Director (Rubber), applied to the posts of Chemists and Metallurgists in the Indian Railways. The same could not find application in the case of the applicant, inter alia, for the reason that he was appointed to a post, namely, that of Deputy Director (Rubber) which finds no place in the aforesaid Notification dated 18.9.1965. Moreover, as has already been stated, the applicant was

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directly recruited through the UPSC without any reference to any of the extant rules. Special qualifications, which do not find mention in the aforesaid Notification dated 18.9.1965, were laid down for the post of Deputy Director (Rubber). Furthermore, the rules notified on 18.9.1965 did not provide for posts higher than the posts of Chemists and Metallurgists. In terms of pay scale, the applicant was placed in the same pay scale which applied to the Chemists and Metallurgists. Beyond this point there was no similarity between the posts of Chemists and Metallurgists and the post of Deputy Director (Rubber) to which the applicant was appointed. Thus, there being no other rule in position in order to take care of applicant's promotion to the higher post, he was to fall back on the rules laid down in the IREC Volume-I as already mentioned in the offer letter dated 13/14.2.1972. Rule 209 (D) of the aforesaid Code is relevant in this context. The same provides as under:

"(D) Promotion from senior scale to higher grade posts. - (1) Promotions to the Administrative Grade are dependent on the occurrence of vacancies in the sanctioned establishment and are made wholly by selection; mere seniority does not confer any claim for such promotion.

(2) Appointments to the posts in the Junior Administrative Grade shall be made by selection on merit from amongst the officers ordinarily with not less than 5 years' service in the senior scale.

(3) Appointments to the posts in the Senior Administrative Grade (Level-II) shall be made by selection on merit from amongst the officers ordinarily with not less than 3 years' service in the Junior Administrative Grade.

(4) Appointments to the posts in the Senior Administrative Grade (Level-I) shall be made by selection on merit from amongst the officers ordinarily with not less than 2 years'

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service in the Senior Administrative Grade (Level-II).

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The aforesaid indicates that since the applicant had already been placed in the senior scale of Rs.700-1300/- even as Deputy Director (Rubber), he could look forward to further promotions to the JAG 5 years thereafter and to the subsequent post in the SAG (Level-II) after another 3 years. Yet another 2 years thereafter, he could look forward to promotion to a post in the SAG (Level-I). In the circumstances, the applicant's case has been that subject to availability of vacancies, he could well look forward to occupying a post in the SAG (Level-I) 10 years after he was appointed as Deputy Director (Rubber). That is, by 1982 or so he could validly prefer a claim for appointment to the post of Director (M&C) which is a SAG (Level-I) post. The applicant has filed a statement (Annexure A-9 to OA No. 212/1991) to show that vacancies in the posts of Joint Director (Chemical) and Director (M&C) had indeed arisen from time to time during the period ending 1982 and thereabout. In any case, the aforesaid vacancies do seem to have arisen before 7.9.1985 on which date modified Recruitment Rules known as Indian Railways including RDSO Chemical and Metallurgical Department (Group 'A' and 'B') (Recruitment) Rules, 1985 came into force in supersession of the aforesaid 1965 Rules. The applicant's plea is that his services cannot be governed by the aforesaid 1985 Rules either. The respondents themselves seem to subscribe to the aforesaid view as they have, at one stage in their pleadings, stated that the applicant

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✓ neither belongs to the M&C Cadre of the RDSO nor to the CMT Cadre of the Indian Railways. The applicant has stressed non-application of the aforesaid 1985 Rules especially since, as already stated above, it is his case that he should have been promoted to the post of Director (M&C) in the RDSO even before the aforesaid 1985 Rules came into force.

8. The applicant has also relied on the provisions made in rules 108 and 111 of the IREC Volume-I. The aforesaid rule 108 clearly shows that the posts of Director, Addl. Director, Joint Director and Deputy Director in the RDSO are group 'A' posts, and that whereas the aforesaid posts in the RDSO fall in category No.3, the posts included in the Chemical and Metallurgical Department fall in category No.13 listed under group 'A' in the aforesaid rule. The aforesaid rule 111 provides that separate cadres shall be maintained for each Indian Railway. Having regard to the aforesated positions, the applicant has stressed that the RDSO cadre is separate and distinct from the other Indian Railway Cadres. This being so, according to the applicant, he must find place in the M&C cadre of the RDSO since he was posted in the M&C Directorate from the very beginning and has continuously stayed on in the RDSO and within the RDSO, in the M&C Directorate. The offer letter dated 13/14.1.1972 also indicated that for all practical purposes the applicant had been put in the RDSO for all time to come. Further, the post of Deputy Director (Rubber) was created by the Railway Board's letter dated 4.10.1969 and the same was to be located in

a Laboratory of the M&C Wing of the RDSO. That is to say once again, ~~that~~ the applicant was destined to remain in the M&C Directorate.

9. At one stage in the career of the applicant, when he was engaged in sorting out his case for seniority and promotion, the RDSO had recommended his case to the Railway Board for his encaderment in the CMT cadre of the Indian Railways. This was done by the RDSO in their letter of 27.1.1989 (Annexure A-14 to OA No.212/1991). The Railway Board thereupon proceeded to consider the matter and sought the RDSO's comments vide their letter of 3.5.1991 (A-17 to OA No.212/1991). It appears that the aforesaid proposal was abandoned thereafter. On an earlier occasion, i.e., way back on 27.11.1978 the RDSO had vide their Memorandum of same date conveyed to the applicant that since the qualifications prescribed for the post of Deputy Director (Rubber) were different from those laid down for the posts of Chemists and Metallurgists, the proposal to include the post of Deputy Director (Rubber) of the RDSO in the CMT Cadre of the Indian Railways had been found to be not feasible. Thus, the applicant could not be assigned any seniority whatsoever in the CMT cadre of the Indian Railways.

10. In the aforesated circumstances,, it was clear that the applicant was to be included, if at all and in any case, in the RDSO cadre and within the RDSO in the sub cadre relating to the M&C Directorate in which his post as Deputy Director (Rubber) was admittedly located. The aforesaid view is fortified by the fact that the

applicant had never been appointed to an ex-cadre post. Furthermore, the organisation chart of the M&C Directorate issued by the respondents themselves with their letter dated 31.7.1986 (Annexure AR-6 of Rejoinder in OA No. 212/1991) places the applicant, then designated on promotion as Joint Director (Rubber), on par with Joint Directors (Chemical) and Joint Directors (Metallurgical). This would again show that the applicant's post was accepted as being included in the M&C Directorate cadre of the RDSO. The applicant was promoted to the post of Joint Director (Rubber) as a result of restructuring of cadres vide Railway Ministry's letter dated 10.4.1980 (Annexure AR-5 of Rejoinder in OA 212/1991). He assumed charge as Joint Director (Rubber) w.e.f. 19.7.1980.

11. A comparative chart placed on record in OA No.254/1993 shows that while the applicant joined as Deputy Director on 16.3.1972 and remained a Deputy Director until 18.7.1980, his juniors S/Shri M.P. Verma (Respondent No.5) and Dr. S.N. Chakravarty (Respondent No.6) joined as Deputy Director on 19.3.1980 and 21.12.1976 respectively and continued to work in the post of Deputy Director respectively upto 2.9.1982 and 23.12.1978 before getting reverted to their respective parent departments. Of the two private respondents, Shri M.P. Verma held a lien in the North Frontier Railway (C&M/CMT), and Dr. S.N. Chakravarty held lien in Chittranjan Locomotive Works (C&M/CMT). Thus, the aforesaid private respondents evidently belonged to cadres other than the RDSO cadre. On being promoted to

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the rank of Joint Director, the applicant joined the said post on 19.7.1980, whereas the aforesaid private respondents S/Shri Verma and Chakravarty respectively joined the higher post of Joint Director on 30.6.1984 and 18.6.1984 respectively. Of them, Shri Verma worked in the post of Joint Director only upto 28.6.1988 before his reversion to his parent department. The other private respondent, namely, Shri Chakravarty occupied the post of Joint Director upto 25.6.1987. Since the applicant's case for seniority and promotion remained undecided for nearly two decades, the aforesaid private respondent Shri Verma rose to become Addl. Director on 20.5.1991, whereas the other private respondent, namely, Shri Chakravarty had become Addl. Director on 26.6.1987. The aforesaid Shri Verma was still occupying the post of Addl. Director, whereas Dr. Chakravarty occupied that post upto 31.10.1989. Thereafter, w.e.f. 11.10.1990, the aforesaid Dr. Chakravarty became Director M&C in the RDSO. The aforesaid private respondents have been promoted to the post of Addl. Director and Direct even though both of them are juniors to the applicant. What is required to be specially noted is that the aforesaid private respondents came to work in the RDSO on deputation on tenure basis while retaining their lien in their respective parent departments. On the other hand, the applicant has remained in the RDSO continuously and without break.

12. Based on the aforesaid facts and circumstances and the various pleas advanced on behalf of the applicant with regard to his seniority and promotion and his claim

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for the post of Deputy Director/Joint Director (Rubber) being treated as part of the RDSO's M&C Directorate cadre, the Division Bench of this Tribunal by its order dated 11.9.1998 passed in OA No.254/1993, providing as follows:-

"(1) Respondents shall consider determining/redetermining applicant's seniority with effect from the date he joined RDSO as if he was appointed in M&C cadre. This shall be done by putting on prior notice to those likely to be affected. (emphasis supplied)

(2) Respondents shall consider issuing appropriate orders conferring upon the applicant benefits of seniority as well as notional promotion from the time it fell due to applicant in all the grades including that of Additional Director (MET). This is to ensure that applicant's case for further promotions, when due, does not get prejudiced on grounds of seniority in the cadre.

(3) To put an end to the ongoing injustice to the applicant, respondents shall also consider upgrading his present post temporarily to the level of Additional Director (MET) or equivalent from the date applicant had become eligible for that post till he gets adjusted against the post of Additional Director (MET) in normal course without disturbing R-5. While the benefits of notional promotion/seniority to the next higher grade accrue to the applicant with retrospective effect, but the actual financial benefits shall be allowed only from the date the post is upgraded and the applicant takes over. This is because he has not shouldered the responsibilities of the higher post physically.

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(5) For the reasons recorded in item (3) aforesaid, there shall be no arrears of salary or backwages.

(6) Applicant shall have the liberty to re-agitate the issues, as set out in this OA, in case his grievances continue unresolved

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13. In compliance of the aforesaid order dated
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11.9.1998, the respondents issued a notification on
29.6.1999, providing as follows:

.....Shri S.P. Malik (applicant) shall be deemed to have been appointed as Chemist and Metallurgist in the scale 700-40-1100-50/ 2-1300 (AS) in the Indian Railways w.e.f. 16.3.1972 in relaxation to the recruitment rules. He will be governed in respect of all matters by the provisions in Recruitment Rules of the Indian Railways Chemists and Metallurgist and Assistant Chemist and Metallurgist Recruitment Rules, 1965 and 1985 as amended from time to time and Indian Railways Estt. Code and other extant orders as amended/issued from time to time. (emphasis supplied)

14. Clearly, by the aforesaid order, the applicant was encadered in the CMT cadre of the Indian Railways and not in the RDSO's M&C Directorate's cadre. Moreover, while, according to the applicant's case, he was not to be governed by the aforesaid 1965 and 1985 Rules, by the aforesaid Notification dated 29.6.1999 he was subjected to the very same rules. The matter was, therefore, agitated in a Contempt Petition, being CP No.208 of 1999. However, the Tribunal did not agree with the applicant's contention that the respondents had willingly or contumaciously disobeyed the orders of the Tribunal dated 11.9.1998. The Contempt Petition was accordingly dismissed with a direction to the respondents to consider and determine the applicant's seniority with effect from the date he joined RDSO as if he was appointed in M&C cadre. The order dated 11.1.2000 passed in the aforesaid Contempt Petition was taken before the High Court of Delhi in CWP 1603/2000. The High Court disposed of the Writ Petition by its order of 25.7.2001 by providing as under: *dh*

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"Impugned order dated 11th January, 2000 shall stand set aside. Tribunal is directed to re-examine direction No.1 of its order dated 11th September, 1998 passed in OA No.254/1998 and to clarify the import and context of words "as if he was appointed in M&C cadre" so as to indicate whether petitioner's seniority was to be determined/redetermined in M&C cadre of RDSO only. It is required to pass fresh appropriate orders in this regard". (emphasis supplied)

15. In the above background, this Tribunal set out to clarify the matter as directed by the High Court and passed orders on 10.9.2001 laying down was under:

"On considering the claims made on behalf of the applicant as also the contentions of the respondents, in our considered view, the ends of justice will be duly met now that the respondents have claimed to have accorded all the claims made by the applicant if they shall consider the applicant as having been appointed in M&C cadre of RDSO on actual basis and not notionally and accord the consequential benefits of determining/redetermining seniority, promotions and emoluments etc. as admissible under the order of the Tribunal dated 11.9.1998 passed in OA No.254/1993. The respondents are hereby directed to re-examine whether the applicant has been accorded seniority and other benefits treating him as having been appointed in the M&C cadre of RDSO only from the very beginning.....". (emphasis supplied)

The same order further provided that in the event of any deficiency in compliance of the orders of the Tribunal dated 11.9.1998, the respondents shall pass fresh orders failing which any act of omission/commission on their part shall entail contempt proceedings against the respondents. Be it noted at this very stage that by the aforesaid order dated 10.9.2001, the Tribunal has, in

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clear enough term, held by way of clarification, that the applicant should be deemed to have been appointed in the M&C cadre of the RDSO in actual term. What needs to be stressed in this context is that by further directing the respondents (by the same order of 11.9.2001) to accord to the applicant consequential benefits flowing from a determination/ re-determination of his seniority etc. in accordance with the earlier orders of 11.9.1998, it has been made clear that the aforesaid order of 11.9.1998 will stand unchanged and will have to be implemented. No alteration therein by way of clarification or otherwise was indicated.

16. We have noted that the respondents have, one way or the other, relied on the provisions made in the aforesaid 1965 and 1985 Rules which we have perused. The aforesaid rules do not by themselves create cadres whether in the RDSO or in the Indian Railways or else in respect of the various Production Units of the Railways. These rules are Recruitment Rules and have been brought in place for enabling the various departments of the Railways to recruit duly qualified and experienced persons for manning the various posts in the Chemical and Metallurgical Wings, in whichever cadre, whether RDSO or any other, such posts existed. Cadres are, in our view, formed on the basis of strength of a service or a part of a service. The only condition is that such strength or a part of it should be sanctioned as a Unit. The conditions envisaged in the aforesaid definition of a cadre are fully met in the case of M&C Directorate of the RDSO. The posts in the said Directorate, therefore,

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clearly constitute a cadre and it is beyond doubt that the posts held by the applicant are to be included in the same cadre. In these circumstances, even if it is assumed that the aforesaid 1985 rules find application in this case, the applicant will undoubtedly have an edge over the others for the simple reason that he has been held to belong to the M&C Directorate's cadre from the very beginning i.e. from 16.3.1972, and, that being so, it is the applicant who should inevitably move up the ladder through promotions to the encadered posts of Additional Director and Director (M&C), both the aforesaid posts being part and parcel of the M&C Directorate's cadre. The private respondents in this case, who admittedly belong to the other cadres and hold lien in those other departments cannot be considered for promotion within the M&C Directorate's cadre. They can only come on deputation or on transfer, but that can happen only if a suitable candidate within the aforesaid cadre is not available for promotion to the posts of Additional Director and Director (M&C). The applicant is very much available, is a competent and efficient officer and is fully qualified and is also, as already stated, eligible for promotion to the aforesaid posts.

17. Be that as it may, in compliance of the Tribunal's order dated 11.9.1998 and 10.9.2001, as amended by Tribunal's order dated 1.10.2001, the respondents have, apart from issuing the aforesaid notification dated 29.6.1999 encadering the applicant in the CMT Cadre of the Indian Railways, also passed orders dated 18.3.1999 promoting the applicant from the post of

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Director (M&C), RDSO to the post of Additional Executive Director (M&C), RDSO in the pay scale of Rs.16,400-20000 by upgrading the post then held by the applicant on personal basis temporarily for one year or until the applicant got adjusted against a regular post in the M&C Cadre. Subsequently by their letter of 1.11.1999, the Railway Board has proceeded to issue the final inter-se seniority list of Chemists and Metallurgists (Senior Scale) on the Indian Railways. In the aforesaid list, the applicant has been shown to have been included in the cadre of Chemists and Metallurgists (senior scale) of the Indian Railways w.e.f. 16.3.1972, i.e. the date from which the applicant was appointed Deputy Director (Rubber). The date of the applicant's substantive appointment to the said post has, however, not been indicated. By a subsequent letter issued on 19.11.1999, the applicant has been deemed to have been empanelled in the JAG w.e.f. 26.6.1981. By the same letter, the applicant has been empanelled as Additional Director (MET) w.e.f. 23.3.1991. It is to be noted that the applicant was actually placed in the JAG w.e.f. 19.7.1980, i.e. from the date on which he stood promoted to the post of J.D.(Rubber). Clearly, the respondents have while passing the aforesaid orders treated the applicant as part of CMT cadre of the Indian Railways. In other words, they have failed to treat the post held by the applicant as being included in the RDSO's M&C Directorate's cadre.

✓ 18. We have considered the submissions made by the learned counsel on either side at length and have perused

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the various orders passed by the Tribunal as also those passed by the respondents ostensibly in compliance of the orders of the Tribunal. We have, in particular, considered the question of applicant's encaderment not only in the background of the detailed discussions contained in this order, but also having regard to the definition of cadre contained in the Fundamental Rules. According to the relevant FR, cadre is defined as the strength of a service or part of a service sanctioned as a separate unit. Looking at this definition also, it is clear to us that a separate cadre, namely, that of M&C Directorate of the RDSO did in fact exist and the post to which the applicant was appointed in 1972 as well as the post to which he was upgraded in July 1980 both stood included in the aforesaid cadre. By going through the Tribunal's order dated 11.9.1998 carefully and in detail, we have also arrived at the conclusion that all the material controversies raised had been satisfactorily and adequately settled. We are thus left in no doubt that the respondents have, by failing to comply with its direction in letter and in spirit as submitted by the learned counsel appearing for the applicant, acted in defiance of the clear orders passed by this Tribunal on 11.9.1998 and vividly clarified by the subsequent order passed on 10.9.2001. In the circumstances, the Review Application fails and is rejected. MA No.2580/2001 is also disposed of accordingly.

19. Since the act of defiance referred to in paragraph 18 above, in our view, borders ^{on} ~~on~~ contumacious and wilful disobedience of the Tribunal's orders, the

prayer made in MA No.2628/2001 is, for the reasons mentioned in the preceding paragraphs, granted. The respondents Nos. 1 and 2 both will appear in person before us to reply to the charges of contempt and to take orders such as might be passed by us in the circumstances of this case. It goes without saying that any failure on the part of the respondents to appear in person will be seriously viewed. The respondents will appear before us on 23.01.2002.

Issue dasti.


(S.A.T. RIZVI)
Member(A)


(ASHOK AGARWAL)
Chairman

/pkr/