

FINAL ORDERCENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

(13)

PRESENTThe Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman  
and

The Hon'ble Shri R. Venkatesan, Administrative Member

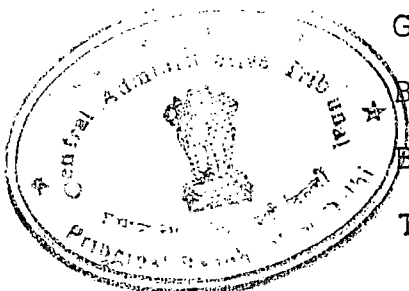
Original Application No. 1572 of 1988

-do-	No. 58	of 1988
-do-	No. 551	of 1988 ✓
-do-	No. 548	of 1988 ✓
-do-	No. 944	of 1988 ✓
-do-	No. 1574	of 1988
-do-	No. 1818	of 1988 ✓
-do-	No. 74	of 1988
-do-	No. 310	of 1989

C.L. Malik	..	Applicant in OA 1572 of 1988
Madan Lal Tiwari	..	-do- OA 50 of 1988
Kalu Ram 'D'	..	-do- OA 551 of 1988
Balu Lal Sharma	..	-do- OA 548 of 1988
A. Michael	..	-do- OA 944 of 1988
Gopal Singh	..	-do- OA 1574 of 1988
B.R. Sharma	..	-do- OA 1016 of 1988
Basant Lal	..	-do- OA 74 of 1988
Tara Singh	..	-do- OA 310 of 1989

-Vs.-

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1. Union of India, through  
Chairman, Railway Board,  
Rail Bhavan, New Delhi

2. The General Manager, .. Respondents  
Northern Railway, Baroda  
House, New Delhi

G.D.Bhandari

.. Advocate for the  
applicants

Sh. Romesh Gautami with  
Sh. O.P. Kshatriya

.. Advocate for the  
respondents

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Order pronounced by the  
Hon'ble Shri R.Venkatesan, Administrative Member

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The applicants in this batch of

cases have a common cause of action and a  
common ~~prayer~~ for relief. Accordingly, they  
are dealt with by this common order.

2. The applicants belong to what

are known as Running Staff in Railways and

include categories such as Drivers, Shunters,

Fireman, Guards and Brake's Man, who are directly

connected with the charge of moving trains. They

have been entitled all along to an allowance

known as "Running Allowance" which has been

defined under Rule 507 of the Indian Railway

Establishment Code as "an allowance ordinarily

granted to running staff for the performance of

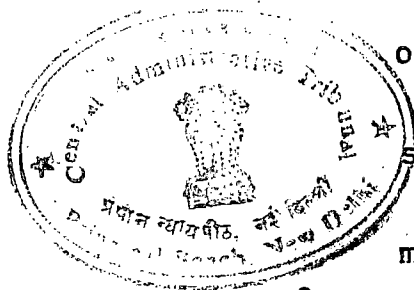
duties directly connected with the charge of

moving trains and includes of 'mileage allowance

or allowance in lieu of mileage', but excludes

special compensatory allowances etc, This

mileage allowance is paid on the mileage basis



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calculated at rates per 100 miles or

on the basis of per day of 8 hours of duty.

Although running allowance varies from

month to month depending on the mileage

or the number of days covered, the actual

running allowance is drawn subject to

<sup>a</sup>the ceiling percentage related to the

basic pay of the employee, which was fixed

at 75% for a long time, ~~and this~~ was allowed

to count as pay for the purpose of leave

salary, medical attendance and treatment,

educational assistance and, most importantly,

retiral benefits. It was also counted

for certain other purposes, such as passes

and PTOs, House Rent Allowance and City

to  
Compensatory Allowance, up/the same

percentage. The provisions relating to

the counting of the running allowance, up

to 75% of the basis pay for various purposes

were incorporated formally in various rules

of the Indian Railway Establishment Code.

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It has been averred by the respondents that prior to the recommen-

dations of the revised pay scales, effective from 1.1.1973 after the Third Pay

Commission, in most cases the actual

average running allowance earned by the

running staff vastly exceeded 75% of the

basic pay in almost all cases and therefore

retirement benefits were paid on the basis

practically in all

of basic pay plus 75% of the basic pay// the cases.

from 1st January.

As the revised scales/1973 had raised the

pay scales of running staff, the Railways

considered that a ceiling revised percentage had

after

to be fixed for this date. This entailed

a lot of detailed exercise. Pending this,

interim orders were issued on 21.1.1974 in

which it was stated that the question of

revision of rules for the regularisation

of various allowances consequent upon the

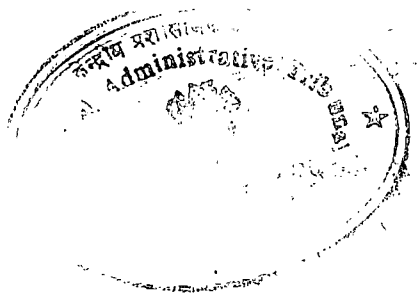
introduction of the revised pay scales

under Railway Services (Revised Pay) Rules, 1973

It was further stated that is under consideration of the Board. Pending

final decision thereon, the Board had decided

2 am 11/11/73



as under:-

(8)

(1) Treatment of Running Allowance for various purposes in case of Running Staff

The existing quantum of Running Allowance based on the prevailing percentage laid down for various purposes with reference to the pay of the Running Staff in Authorised Scales of Pay may be allowed to continue (emphasis added).

(2) The payments as above will be provisional subject to adjustment on the basis of final orders.

Subsequently, by orders dt.22.3.1976,

as modified by another subsequent order

of 23.6.1976, the Railways have fixed the

running allowance percentage of 1/4 counting for the

purpose of leave salary, medical attendance

and treatment, educational assistance and

retirement benefits as the pay plus actual amount of

running allowance drawn, subject to a maximum

of 45% of pay for those running staff who

are drawing pay in the revised pay scales.

For these orders

were given effect to from 1.4.1976.

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4.

Certain running staff, some

retired and some working, moved the

Delhi High Court in a writ petition

seeking annulment of the above order

dt.22.3.1976 which reduced the quantum

of running allowance for retirement

and other benefits from the prescribed

maximum of 75% to 45% of pay and prayed

for the restoration of the percentage of 75%.

That writ petition was transferred to this

Tribunal and was heard and decided by the

Delhi Bench on 6.8.1986. The order of the Tribunal

quashed the impugned order of the Railways

dt.22.3.1976 and directed the Railways to

continue to make payment beyond 31.3.1976 of

certain allowances, including retirement and

other specified benefits by treating the

running allowance for various purposes in

accordance with the interim orders of the

Railway Ministry dt.21.1.1974 "till such

time as the relevant rules in this regard

are or have been amended in accordance with

law, if so advised". The ground on which

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this Tribunal gave the above order was

that it was not permissible to amend

the statutory rules by executive orders

or instructions, as had been done in the

present case.

5. The respondents thereafter have

amended the relevant rules of the Indian

Railway Establishment Code,

by orders dt.17.12.1987. Under

these orders, the revised percentage of pay,

representing the pay element in the running

counting for pension etc.

allowance/as notified in the executive orders

of 22.3.1976, which had been quashed by the

order of this Tribunal, were formally given

statutory force, with effect from the same

date on which the executive instructions

viz. 1.4.1976.

were earlier given effect to. These were

subsequently notified in the Gazette of India

dt.5.12.1988.

6. The applicants in the present

batch of applications have come before this

Tribunal again challenging the letter dt.22.3.1976

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as well as the amendments to the rules

of the Indian Railway Establishment Code, and with a <sup>prayer</sup> 21

the running allowance to count  
to allow for the purpose of retiral and  
other benefits in terms of the letter

dt.21.1.1974, which has been referred to.

7. The learned counsel for the

applicants advanced the following main

arguments in support of the above prayer:-

(i) The letter dt.17.12.1987 issued

by the Ministry of Railways announcing corrections

~~amendments~~ to the various rules of the

Indian Railway Establishment Code <sup>was</sup> ~~was~~ stated

to have been issued by the President in

exercise of the powers conferred by proviso

to Art.309 of the Constitution of India. But

they were actually issued by a Director of

the Railway Board. According to counsel, the

orders had not been issued by competent

authority.

(ii) It had been stated in the above

said order that "it is certified that

retrospective effect given to these rules

will not adversely affect any employee to whom



21/1/87

(2) -10-

these rules apply". It was contended that

retrospective effect would ~~effect~~ the  
employees and therefore in view of the  
effect  
certificate, only prospective could be  
given.

(iii) The counsel then contended that

dt.  
the order/19.12.1987 was not a formal

notification and quoted case law on the

subject to the effect that publication is

a condition-precedent for operation of amended  
rules.

8. The learned counsel prayed that  
in the light of the submissions made by him,  
the application may be allowed.

9. The learned counsel for the  
respondents referred to the judgement of  
dt. 6.8.1986  
this Tribunal/and pointed out that the Tribunal  
had not held the amendment to be invalid on  
merits, but had quashed the amending order  
only on the ground that an executive instruction/  
order cannot amend a statutory rule. The  
learned counsel would say that this Tribunal

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merely  
had/directed the respondents to  
continue to make payment of retirement  
and other benefits as also allowances,

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treating the running allowance in  
accordance with the earlier orders  
only till

of 21.1.1974 ~~until~~/such time as the

relevant rules in this regard are or  
have been amended in accordance with

law, if so advised. This clearly ~~shows~~ showed

that the Tribunal gave liberty to the

~~the~~ respondents to amend the rules formally

and give effect to the impugned order. The

respondents had proceeded to do that. The

learned counsel refuted the contention of

of the applicant that the amendment of the

rules had not been duly publicised. In

this behalf, the learned counsel for the

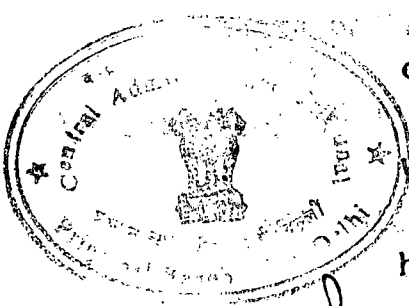
respondents produced a copy of the Gazette

Notification in the Gazette of India

dt.5.12.1988 in which the said amendment

which had been initially issued on 17.12.1987

had been formally notified and published.



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He therefore stated that the revised rules had become effective and valid.

[0. The counsel for the respondents also refuted the contention that consequent

upon the issue of the amendment, ~~some~~ of the employees had been adversely affected.

In this behalf the learned counsel produced

a comparative statement showing the emoluments calculated in terms of the Railway Board's order dt.21.1.1974 and in terms of the

amending orders dt.22.3.1976 to show that

there was a significant improvement in the quantum of running allowance

that would count <sup>as pay</sup> for various purposes

as well as in the pay itself and in the

total emoluments, consequent on the introduction

of the revised pay scales and the issue of

the order dt.22.3.1976. We reproduce the

table showing the comparison of emoluments of

pay and running allowance counting as pay as worked

out by the respondents:

*Annexure*

Emoluments calculated  
in terms of Board's  
Order No.PC III/73/RA  
dt.21.1.1974  
(i.e. pay in revised  
scale + 75% of pay in  
authorised scale)

Emoluments calculated  
in terms of Board's  
Order No.PC III/75/RA/1  
dt.22.3.1976 (i.e.  
Pay in revised scale +  
45% of pay in revised  
scale)

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Cate- gory	Revi- sed	Autho- rised	Scale (Rs.)		75% of pay in A.S. Min./ Max.	Total Pay in revised scale	45% of pay in revised scale	Total
			Pay Min./Max					
Guard Gr. 'A'	425-600	205-280	425		153.75	578.75	425	616.25
			600		210	810		
Guard Gr. 'B'	330-560	150-240	330		112.5	442.5	330	478.5
			560		180.0	740	560	812
Guard Gr. 'C'	330-530	130-225	330		97.50	427.5	330	478.5
			530		168.75	698.75	530	768.5

II. The learned counsel for the  
respondents pointed out that in

terms of the Railway Board's order dt.21.1.1974

(which we have extracted earlier), the running

allowance that would count for the purpose

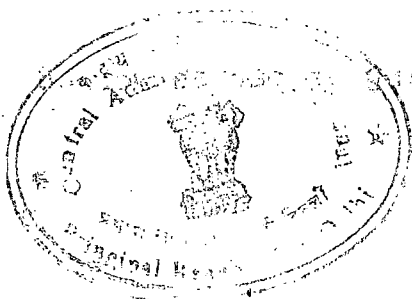
of pay was limited to 75% of the pay in the

Authorised Scales, as per the rules and not

the pay in the revised pay scale which had

come into effect on 1.1.1973. The Authorised

Scales were the scales of pay introduced by the



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Second Pay Commission and <sup>were</sup> / much lower

than the revised pay scales introduced

after the Third Pay Commission, which

would now be taken into account under

the order dt.22.3.1976 and the amendment to the Rules

dt.17.12.1987 which formally gave effect to it.

The counsel contended that

12. / It would be clear from the

comparative tabulation(reproduced above)

that the prayer of the applicants was

therefore totally misconceived and was

based on a misunderstanding of the effect

of the Railway Board's order dt.21.1.1974.

If the Board's order dt.21.1.1974 were to

be strictly implemented as prayed for by

the applicants, there might be cases where

they would suffer reduction in emoluments.

13.

The learned counsel then

contended that the Govt. had the power to

amend the rules retrospectively, without

the consent of the Govt. servant, when it

did not entail any adverse civil consequence

on the employees. He referred to the decision

of the Supreme Court in Roshanlal Tandon-Vs.-

Union of India(1967(1)-SLR-832) wherein it was

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held by the Supreme Court that although the origin of Govt. service is contractual and there is an offer and acceptance in every case, but once appointed to a post, the Govt. servant acquired a status and his rights and obligations were no longer determined by the consent of both parties, but by Statutes or the Statutory Rules, which may be framed and altered unilaterally by the Govt., without consent of the employee. The learned counsel contended ~~submitted~~ that the applications/ were therefore without merit and had to be dismissed.

14. We find that the present case has been filed by certain retired Running Staff who claim that they were not given the benefit of the judgement of this Tribunal dt.6.8.1986, which was allowed only to the applicants in that transferred application. They have essentially prayed for the same relief which was given to the applicants in that case. In this behalf, it will be useful to reproduce the relevant paragraphs of the judgement of this Tribunal in the earlier matter, ~~in~~ in which

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after dealing with various contentions and arguments advanced by the petitioners therein, the Tribunal finally allowed the petition only on the following grounds:

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"10. The next challenge of the petitioner is about the legality of the impugned order, i.e. as to whether the impugned order dt. 22.3.1976 issued by the Railway Ministry is a statutory order passed by the President. This order has been annexed by the respondents as Annexure R-3 to their counter affidavit which is reproduced as under.

.....  
.....  
.....  
.....

A bare reading of the aforesaid order makes it abundantly clear that the same is patently an executive order or instruction. The mere fact that it is issued with the sanction or approval of the President does not clothe it with the character of statutory rule. Statutory Rules are framed by the President in exercise of powers conferred upon him under proviso to Article 309 of the Constitution and they are legally required to be notified in the official Gazette. It is a settled law that a mere executive instruction cannot amend or derogate from a statutory rule. There are catena of cases to reiterate and support this view. In Prem Prakash - Vs. - Union of India and thers (1984)(2)-SLJ-376 (Supreme Court), it was held that administrative instructions cannot be

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allowed to prevail over statutory rules if the former are contrary to the latter. In the case of B.N.Nagarajan - Vs.- State of Karnataka, reported in 1979(3)-SLR-116(Supreme Court) it was observed that what could not be done under the Rules could not be allowed to be done by an executive fiat and that such a course is ~~is~~ not permissible because an act done in exercise of executive power of the Govt. cannot over ride Rules framed under Art.309 of the Constitution. In yet another case - Sant Ram Sharma - Vs.- State of Rajasthan and others reported in AIR 1976-SC-1910, it was observed by the Supreme Court that if Rules are silent on any particular point, the Government can fill up the gap and supplement the Rules by issuing executive instructions. But Government cannot issue such instructions if the same go contrary to any provision of the Rules nor can the Govt. amend or supersede Statutory Rules by administrative instructions. The Delhi High Court has also confirmed the above observations of the Supreme Court in the case of D.K.Gupta - Vs.- M.C.D and others, reported as 1979(3)-SLR-416(Delhi) when it reiterates that the statutory rules cannot be modified by executive instructions.

11. It is thus evident that where a sphere is covered by statutory rules, Govt. cannot exercise its inherent discretionary or executive powers in a manner contrary to Constitutional and Statutory provisions. There is no scope to exercise of any inherent or executive power if there be proper provisions covering the sphere in which such inherent powers are sought to be exercised and in any event no such exercise can be done in violation of such provisions. This principle is uniformly and universally settled and sanctified by the decisions of the Supreme Court and various High Courts, as noted above.



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In the instant case, the respondents have merely produced a copy of the 1985 Edition of the Railway Establishment Code and have sought to place reliance on Para 909 of the Code which nowhere indicates as to when the said amendment relied upon was incorporated amending the earlier statutory rule, which provides for 75% of the running allowance to be counted as pay for purposes of retirement benefits, leave salary, medical attendance and educational assistance.

12. Viewed in the light of the above discussions and for the foregoing reasons, we hold that the impugned order dt.22.3.1976 is a mere executive order or instruction and as such the same cannot be accepted to be a statutory amendment of the existing Rules governing the running allowance.

13. In the result, the petition is allowed and the impugned order dt.22.3.1976 is quashed. The respondents are directed to continue to make payment beyond 31.3.1976 of certain allowances including retirement and other specified benefits by treating the running allowance for various purposes in accordance with the Railway Ministry's letter No.PC III/73/RA dt.21.1.1974 till such time as the relevant rules in this regard are or have been amended in accordance with law, if so advised. There will be no order as to costs.

15. It would be clear from the above order that this Tribunal quashed the order

dt.22.3.1976 only on the ground that the statutory rules cannot be amended by an executive instruction and not on any of the various other grounds of the petitioners therein. The final

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paragraph of the order which we have  
quoted above, makes it abundantly clear

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that the relief granted was only till such  
time as the relevant rules are amended in  
accordance with law.

16 We find that the respondents have

been to show that they have acted in accordance

with the order of this Tribunal and have amended

the rules formally. The publication in the

Gazette of India meets the legal requirement

of promulgation/publication practised in a

recognisable way, which was held to be a sine qua non

for the operation of amended rules in Harla - Vs.-

State of Rajasthan (AIR 1951-SC-467), which was

cited by the counsel for the respondents. We

may also state that the judgement of the Supreme

Court in State of Maharashtra -Vs.- Mayer Hans

George (AIR 1955-SC-722) in support of this.

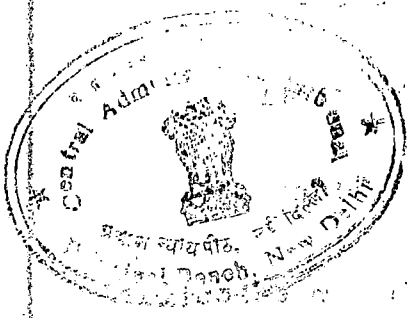
17. The contention of the counsel for

the applicants that the order has not been issued by

the competent authority cannot also be sustained.

It is well settled that where an order is passed

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in the name of the President, it is not

necessary that it should have been personally

approved by him. It is enough if the order

has been passed by the competent functionary

authorised in this behalf by the Rules of Business.

If the order is expressed to be in the name of

the President and authenticated by an official

authorised in that behalf, the Court has to

presume that it was passed by the Competent

authority. We accept the averments of the

<sup>counsel for the</sup> averments of the respondents that the order has

been Gazetted and that it has been subsequently

issued by the official authorised in that behalf.

18. We shall take up the argument of the

learned counsel for the applicant that the rules

cannot be amended retrospectively and that the

interest of the persons covered by the rules are

affected adversely. It maybe noted that the

counsel refuted the certificate in the amending

order that retrospective effect given to the rules

will not adversely affect any employee to whom the

rules apply. <sup>324</sup> The applicants have not been able to show

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that they have been in any way adversely

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affected in terms of their total emoluments

or even in regard to the quantum of the running

allowance counting as pay, consequent upon issue

of the impugned amendment of the rules. They

have not disproved or disputed the computation

made by the respondents which we have reproduced

above, in support of their contention that the

applicants have been affected by the impugned

order/amended rules. It will not be in accordance

with the Statutory Rules to hold that the

percentage of 75% should be applied to the revised

pay after the Third Pay Commission recommendations.

We do not therefore find that the amended rules

involve the applicants in any adverse civil

consequences such as reduction in emoluments or

recovery of over-payments. The amendment is

legally valid and has been properly notified.

19. We notice that in terms of the interim

order dt.21.1.1974, the running allowance counting

as pay for various purposes should be limited to

the existing quantum on the prevailing percentage

of pay in the Authorised scales of pay.

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The expression "Authorised Scales of Pay"

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in which the word "Authorised" is used with capital letters at the beginning, can only be taken to mean the specific scales of pay, as contained in the Railway Establishment Code or in the Railway Establishment Manual. The provisions contained in the Indian Railway Establishment Manual - Second Edition, relevant for the period in question, indicate the Authorised Scales of Pay for various categories, which were nothing but the old scales prior to 1.1.1973 and these have been adopted by the respondents in their working sheet, cited supra. Therefore, the new pay scales introduced after 1.1.1973 could not be taken as the Authorised Pay Scales for the purpose of the order dt.21.1.1974, in the absence of formal amendment to the relevant provisions. We therefore hold that the argument of the applicants is based on a misinterpretation of the order dt.21.1.1974, as pointed out by the

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respondents.

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20. In the result, the applications fail

and it is dismissed with no order as to costs.

( R.VENKATESAN )  
ADMINISTRATIVE MEMBER

(RAM PAL SINGH)  
VICE CHAIRMAN

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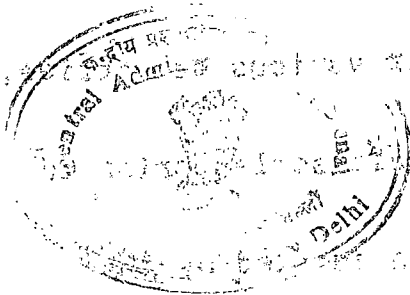
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दिनांक/Dated:.....



जनसूचना अधिकारी/Section Officer  
केन्द्रीय प्रशासनिक अधिकरण  
National Administrative Tribunal  
New Delhi, New Delhi