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In the Central Administrative Tribunal
Principal Bench, New Delhi

RA-159/90 and
RA-144/90 In
DA-1181/90.

Date: 25.1.1991.

Shri Gursewak Singh Sodhi Petitioner

Versus

Union of India through the Respondents
Secy., Miny. of Defence and
Another

For the Petitioner in In person
RA-159/90
(original applicant in
DA-1181/90)

For the respondents Shri K.S. Dhingra, Sr.
Administrative Officer

For the Petitioners Shri K.S. Dhingra, Sr.
(original respondents in
DA-1181/90)
in RA-144/90

For the respondents In person
(original applicant in
DA-1181/90)

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant is a Stenographer, Grade 'A' in the Ministry of Defence. He filed DA-1181/90 in the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking the following prayers:-

1. That Order No.1 be quashed and directions issued that the applicant will continue to serve in Air HQ as per the laid down policy.

2. That order No.2 be quashed and directions issued to expedite finalisation of the alleged imputations of misconduct on the part of the applicant as per CCS(CC&A) Rules, 1965. Pending finalisation of the case, the applicant to continue to serve in the Medical Directorate where the alleged complaint originated.

3. That Dy. CAO(A), SAO/CAO-P/2 and ADPC-2 who have exercised powers recklessly or powers which were not delegated to them in an arbitrary manner be punished as these officials are not immune from legal action if they have violated the Rules and have not acted in good faith but in an arbitrary and dictatorial style. Type of such punishment and quantum of such punishment the applicant prays that the Hon'ble Court may kindly prescribe and directions be issued for its circulation in all departments.

4. Cost of the case be made good to the applicant.

2. The applicant has also sought the following interim relief:-

That his salary for the month of April and May, 1990 be disbursed to him urgently as

the applicant was neither given any opportunity as to why his pay and allowances not be stopped nor the Medical Directorate, where he continued to report for duty, were aware of such an extreme step; moreover the issuing authority of such an order was not competent nor delegated any such power to stop the applicant's pay and allowances.

3. The application was filed in this Tribunal on 7.6.1990. On 8.6.1990, the applicant stated before the Tribunal that his application may be considered only in regard to the relief prayed for in para.8(1) and if necessary, he will file a separate application in regard to the relief prayed for in para.8(2).

4. On 3.7.1990, when the application came up for hearing, it was stated on behalf of the respondents that they had intimated to the applicant as to the action which was to be taken by him in regard to payment of the salary for the months of April and May, 1990, vide their letter dated 27.7.1990. The applicant, in his reply of the same date, wrote back that the Air Headquarters may be directed to release his salary for the months of April, May and June, 1990 so far withheld by the Air Headquarters. The applicant stated that he will prefer

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his claims in the form of pay bills as required by the respondents. The respondents undertook to pass orders on these pay bills within three working days of the receipt of the pay bills from the applicant. In view of this, the Tribunal observed that no further orders are necessary on the question of salary for the months of April and May, 1990. As regards payment for the month of June, 1990, the Tribunal observed that if the applicant had worked during that period, similar action may be taken for the month of June, 1990 also. It was further observed that "If, however, this fact is in dispute, this will have to wait for the final adjudication in the O.A."

5. The case was listed for further directions on 30.8.1990, when both the parties were heard and judgement was reserved. The application was disposed of by judgement dated 10.9.1990.

6. Both parties have filed review petitions. RA-159/90 has been filed by the applicant while RA-144/90 has been filed by the respondents. After considering the grounds mentioned in these review petitions, the Tribunal decided to hear the matter further. Accordingly, both parties were heard afresh, recalling the judgement dated 10.9.90. We have gone through the records carefully and have considered the rival contentions. We have also considered the numerous decisions cited by both sides.

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7. The applicant was appointed in the grade of Private Secretary/Stenographer Grade 'A' on 4.1.1983 and was confirmed in that grade on 1.5.1986.

8. The Armed Forces Headquarters Stenographers' Service Rules, 1970, made in exercise of the powers conferred by the proviso to Article 309 of the Constitution, applies to the applicant. Rule 3 provides that there shall be four grades in the Armed Forces Headquarters Stenographers' Service - Grades 'A', 'B', 'C' and 'D'. The posts specified in the Second Schedule shall constitute the Grade 'A' of the Service and those specified in the Third Schedule, shall constitute Grade 'B' of the Service. The posts in Grade 'A' and Grade 'B', shall be gazetted posts and those in Grades 'C' and 'D', shall be non-gazetted posts.

9. The Duty posts included in Stenographer Grade 'A' of the Armed Forces Headquarters Stenographers Service are the following:-

1. All posts of Private Secretary to Lieutenant Generals and above and officers of equivalent rank/status in Army Headquarters.
2. All posts of Private Secretary to Vice-Admiral and above and officers of equivalent rank/status in Naval Headquarters.
3. All posts of Private Secretary to Air Marshal and above and officers of equivalent rank/status in Air Headquarters.
4. All posts of Private Secretary to officers of the rank/status of Lieutenant General or equivalent and above in Inter-Service Organisations of the Ministry of Defence."

10. The Duty posts included in Stenographers Grade 'B' of the Service are the following:-

- "1. All posts of Senior Personal Assistant to Major Generals and officers of equivalent rank/status in Army Headquarters.
2. All posts of Senior Personal Assistant to Rear Admiral and officers of equivalent rank/status in Naval Headquarters.
3. All posts of Senior Personal Assistant to Air Vice Marshal and officers of equivalent rank/status in Air Headquarters.
4. All posts of Senior Personal Assistant to officers of the rank/status of Major Generals or equivalent in Inter-Service Organisations of the Ministry of Defence."

11. On 25.2.1988, the Office of the Chief Administrative Officer and Joint Secretary in the Ministry of Defence wrote to the Chiefs of Staff of the Army, the Navy and the Air regarding the authorisation of Stenographers to officers of different levels in AFHQ and I.S. Organisation, together with the following statement showing the entitlement of officers for stenographic assistance:-

"Statement showing the entitlement of officers for stenographic assistance

Category of officers (a)	Category of Stenographers authorised (b)	Number as at (b) (c)
General/equivalent	Steno Gde 'A' in the pay scale of Rs.3000-4500 Steno Grade C	1 1
Lt Gen/equivalent having the status of Vice-Chief of Staff	Steno Grade 'A' in the pay scale of Rs.3000-4500 Steno Grade C	1 1
Lt Gen/equivalent	Steno Grade A in the pay scale of Rs.2000-3500 Steno Grade C	1 1

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Maj Gen/Brig and equivalent Steno Grade 'B'
in the pay-scale of
Rs.2000-3500

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Col/SCSO/equivalent Steno. Grade 'C'

Note: Lt Col/CSO are not entitled to stenographic assistance. However, based on functional requirements, stenographic assistance i.e. one Grade 'D' Steno to each such officer or one Grade C Steno to two such officers may be considered provided respective Standing Establishment Committees find justification for it."

12. On 19.2.1990, the office of the Chief Administrative Officer issued the following Memorandum addressed to the applicants:-

MEMORANDUM

It has been reported that on 2.2.1990 at about 1500 hrs, Shri G.S. Sodhi, Steno Grade 'A' of Air Headquarters shouted, used abusive language and made derogatory remarks against Shri Kewal Ram, SCSO, DDGMS (Coord), Air HQrs in protest against issue of a note relieving him from DDGMS (Air) on transfer to DCAS Sectt. The above act on the part of Shri Sodhi was highly unbecoming of a Govt. servant and in violation of CCS(Conduct) Rules, 1964. Shri G.S. Sodhi, Steno Grade 'A' is, therefore, directed to show cause as to why disciplinary proceedings should not be initiated against him for violating Rule 3 of the CCS(Conduct) Rules, 1964. His reply should reach this office within 10 days of the receipt of this memorandum.

Receipt of this Memorandum should be acknowledged by Shri G.S. Sodhi".

13. On 23.2.1990, the impugned order of posting and transfer of Stenographers Grades 'A' & 'B' was issued according to which the applicant was transferred from Air Headquarters to QMG's office with immediate effect.

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The impugned order reads as follows:-

" The following Stenographers Grade 'A' & 'B' are transferred with immediate effect.

<u>S.No.</u>	<u>Name S/Shri</u>	<u>From</u>	<u>To</u>	<u>Remarks</u>
1.	B.R. Thakur (DOB 20-10-43)	Air HQ	DGQA	Vice Shri J.K. Sharma transferred
2.	J.K. Sharma (DOB 01-08-34)	DGQA	R&D	Vice Shri P.N. Murgai transferred
	XXX	XXX	XXX	XXX
10.	G.S. Sodhi (DOB 05-10-40)	Air HQ	QMG	Vice Shri K.L. Bhatia transferred
11.	K.L. Bhatia (DOB 17-09-35)	QMG	Air HQ	Vice Shri G.S. Sodhi transferred

2. The officers at S.No's 1,4,8 & 10 will move first and their move shall be completed by 31st March, 1990 positively. The move of others shall be completed within a week of the arrival of their replacement. Charge relinquishment/assumption report may be forwarded to all concerned, under intimation to this office, CAO/P-2."

14. The applicant has stated that he met Dy. CAO(P) on 27.2.1990 and brought to his attention that he could only be posted to a Lt. General as per the AFHQ Steno Service Rules and that he also wished to know as to how he has been ordered to move out of Air Headquarters after completion of $5\frac{1}{2}$ years of service against the enunciated policy according to which he was to stay in the Air HQ. for another $4\frac{1}{2}$ years. Dy. CAO(P) is stated to have informed him that Director of Personnel, Airmen in Air HQ had so desired in view of a complaint against him.

15. The applicant has stated that he brought to the attention of Dy.C.A.O.(P) that there were the following

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posts of Lt. Generals or equivalent in Naval and Air Headquarters where he could be posted and that the Dy. C.A.O.(P) may consider posting him against one of these posts in case he was to be transferred out of Air Headquarters:-

- (a) Deputy Chief of the Army Staff.
- (b) Adjutant General, Army HQs.
- (c) Engineer-in-Chief, Army HQ.
- (d) Director General Infantry, Army HQ.
- (e) Signals Officer Incharge, Army HQ.
- (f) Director General, Military Training, Army HQ.
- (g) Director General Armoured Corps, Army HQ.
- (h) Master General Ordnance, Army HQ.
- (i) Director General Ordnance, Army HQ.
- (k) Addl. Director General, Medical Services
- (l) Commandant, National Defence College.

16. The applicant is stated to have pleaded with Dy. CAO (P) that in case the applicant was to be posted to QMG's Branch and orders once issued could not be cancelled, then the applicant could easily be posted vice Shri K.S. Rangan, Steno. Grade 'A' who was working with Director General, Supply and Transport for the last 7 years and was already overdue for turnover as the aforesaid policy.

17. On 9.4.1990, the respondents issued an order to the effect that on transfer to QMG Branch, the

applicant was relieved of his duties with effect from 9.4.1990 and directed to report to QMG Branch forthwith. It was added that his name was being struck off the strength of the Air HQ with effect from the same date.

18. The applicant has stated that he received the said letter by post at his residence on 19.4.1990.

19. The applicant has contended that the impugned transfer is violative of AF HQ Steno Service Rules, that the aforesaid rules being statutory, the same cannot be amended retrospectively if anyone is adversely affected, that the statutory rules are still in operation, that if he accepts duty post of Grade 'B' Steno., only half the length of service put in this grade shall count for promotion to the grade of Civilian Staff Officer, that sufficient number of posts of Grade 'A' Stenographer were available to the day the impugned order was issued, that he could have been posted vice K. S. Rangan, Steno. Grade 'A', if he was to be moved to QMG's Branch, that his request is in accordance with the authorisation of Stenographers as per Govt. of India, Ministry of Defence letter dated 25.2.1988, that the transfer out of Air HQ was against the transfer policy, that the impugned transfer is punitive

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in nature, and that it has damaged his reputation and tarnished his image in the eyes of others.

20. The respondents have contended in their counter-affidavit that as far as the Second and Third Schedules to AFHQ Stenographers Rules, 1970 are concerned, these stand merged by virtue of Civilian in Defence Services (Revised pay) Rules, 1986 issued under the proviso to Article 309 of the Constitution. Further, the provisions of 2nd and 3rd Schedules read with Rule 3 of AFHQ Stenographers Service Rule, 1970, are directory in nature. These provisions do not create any substantive right in favour of applicant. The provisions were incorporated solely for the purpose of working out duty posts in Steno. Grade 'A' and Grade 'B'. The posts of Private Secretary to three Service Chiefs, as these existed before Oct.1986, although manned by Steno. Grade A of AFHQ Stenographers Service, were not included in the duty posts. Similarly, a large number of duty posts of Steno. Grade 'B' sanctioned prior to 1.1.1986 for officers of the rank of Brig. and equivalent, have not been included in 3rd Schedule. On the other hand, certain officers of the rank of Lt. Gen. and equivalent (Eg. Director General of Inspection, Director General NCC, etc.) prior to 1.1.1986 were authorised Steno. Grade 'B'

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only. Therefore, 2nd and 3rd Schedule to AFHQ Stenographers Service Rules, 1970 are not the ultimate provisions in regard to deployment of Stenographer Grade 'A' and Grade 'B' (merged).

21. According to them, the posting of the applicant in QMG's Branch does not lower his status. His transfer out of Air HQ does not involve any violation of turn over policy. Turn over policy does not preclude respondents from transferring individuals before expiry of 10 years for administrative reasons. The turn-over policy prescribes the maximum period of stay in a particular HQ/Branch/Organisation and no minimum period for stay has been laid down, in the turn-over policy. They have also denied that his transfer is ~~not~~ punitive in nature. His transfer is not visited by any evil consequences. It does not involve any dislocation on his part.

22. The respondents have stated that his request for posting to the officers mentioned in the application, could not be acceded to due to non-availability of clear-cut vacancy. They have, however, stated that his posting vice K.S. Rangan could be considered by Coordination Section of QMG's Branch only after he reported to that Branch for duty.

23. The respondents have averred that on Central Secretariat side also, the duties and responsibilities of erstwhile Steno, Grade 'A' and Steno, Grade 'B' are being interchanged.

24. The respondents have stated that there is a well laid down Turn Over Policy for Civilians in AFHQ, etc. The said policy also applies to members of the AFHQ Stenographers' Service. The basic features of the policy are:-

- (a) No person is allowed to serve for more than 10 years in one HQ/Branch/Organisation.
- (b) No person is allowed to serve for more than three years in a sensitive section (to be identified by the HQ/Branch/Organisation).
- (c) Stenographers and personal staff attached to Senior Officers are to be rotated internally by Coordination Section of the HQ/Branch/Organisation themselves on completion of three years or even earlier in the interest of security.

25. The applicant has been serving as Private Secretary to Director General, Medical Services(Air) since 1.9.1984. The respondents have contended that he became due for Turn-over internally in Air HQ.

He was posted to Deputy Chief of Air Staff Secretariat on 11.1.1990. They have stated that on 2.2.1990, when the applicant was given relieving note by Deputy Director General Medical Services (Coord.), the applicant shouted, used abusive language and passed derogatory remarks against him in protest against issue of relieving note from Director General Medical Services (Air) to Deputy Chief of Air Staff Secretariat. A complaint to this effect was lodged by the Deputy Director General, Medical Services (Coord.). The said complaint dated 5.2.1990 which has been reproduced as Annexure R-II to the counter-affidavit, reads as under:-

"REPORT ON THE INCIDENT OF MISBEHAVIOR
BY SHRI GS SODHI, STENO GDE 'A' (PS)
WITH SENIOR STAFF ON 02 FEB 90 AT
1500 HRS.

It is reported that Shri GS Sodhi, Steno. Gde 'A' entered my room at 1500 hrs on 02 Feb. 90 and started shouting and making derogatory remarks in protest against issuing of the relieving note to him by me. In a raised voice he said that since DPA has rules to withdraw this note I may make its roll and take it. Shri Sodhi, when advised by me to restrain himself and not to use unparliamentary language further retorted in the abusive language 'Mera Ganta Pakad Lo'. In this connection copies of witness statements from Shri NS Potukuchi, Asstt. Med-1 and Shri Prakash Sharma, UDC, Med-1A are enclosed as appendices 'A' and 'B' respectively."

26. The respondents have stated that in the light of the above incident, the applicant's further continuance

in Air HQ was considered subversive to office discipline and decorum, and warranted his immediate suspension. However, keeping in view the guidelines issued by Government of India, and upheld by various Courts and Central Administrative Tribunal, it was considered desirable to transfer the applicant out of Air HQ in the first instance, leaving the question of his suspension open in the light of further investigation that might be carried out. Accordingly, the applicant was transferred to QMG's Branch, Army HQ, against a merged duty post of Stenographer Grade 'A' and Stenographer Grade 'B'.

27. The Fourth Pay Commission recommended a common pay-scale for Stenographers Grade 'A' and Grade 'B'. The respondents have stated that prior 1.1.1986, AFHQ Stenographers Service comprised of Stenographers Grade 'A' (Pay scale Rs.650-1200) and Stenographers Grade 'B' (Pay scale Rs.650-1040), among others. The posts specified in the 2nd Schedule to AFHQ Stenographers' Service Rules 1970, constituted Grade 'A' of the Service and those specified in the 3rd Schedule to AFHQ Stenographers Service Rules, 1970, constituted Grade 'B' of the Service. Consequent upon acceptance of recommendations of 4th Pay Commission, the duty posts in Stenographer Grade 'A' and Stenographer Grade 'B' have been

merged and a common pay scale of Rs.2000-3500 has been sanctioned. The merger of duty posts in Stenographer Grade 'A', and Stenographer Grade 'B' was notified in the Gazette in terms of Civilian in Defence Services (Revised Pay) Rules, 1986, framed under proviso to Article 309 of the Constitution. Formal amendment to 2nd and 3rd Schedule of AFHQ Stenographers' Service Rules, 1970 has not been issued. The respondents, however, have contended that for all practical purposes notification issued under Civilians in Defence Services (Revised Pay) Rules, 1986 has the effect of merging both the Schedules. It has not been possible to issue formal notification merging 2nd Schedule and 3rd Schedule to AFHQ Stenographers' Service Rules because overall review of these rules is under consideration with Respondent No.1. As a natural corollary of merger of duty posts in Stenographer Grade 'A' and Stenographer Grade 'B', as sanctioned before 1.1.1986, became inter-changeable with effect from 1.1.1986. Further, in view of the merger of two grades, fresh appointments to Stenographer Grade 'A' are not being made.

28. In the above factual matrix, we may consider the merits of the respective contentions.

29. Prior to the Fourth Pay Commission, there had been some difference in the pay-scales of Stenos, Grade 'B' and Grade 'A' in the Armed Forces Headquarters Stenographers' Service. Duty posts included in Grade 'B' carried a pay-scale of Rs.650-1040 while duty posts included in Grade 'A' carried a pay-scale of Rs.650-1200. After the Fourth Pay Commission, the two scales of pay were merged into one scale, namely, Rs.2000-60-2300-EB-75-3200-100-3500, by the Civilians in Defence Services (Revised Pay) Rules, 1986 which were notified on 23.9.1986. The position thereafter is that both categories of Stenographers receive the same pay-scales. The AFHQ Stenographers' Service Rules, 1970 have not, however, been formally amended. Till such amendment, the said Rules will have force and validity.

30. Rule 7 of the AFHQ Stenographers' Service Rules, 1970 provides that "Every Duty post shall, unless declared to be excluded from the Service under Rule 6 or held in abeyance for any reason, be held by an officer of the appropriate Grade". By virtue of this Rule, every Stenographer continues to hold the duty post to which he was appointed. The Rules are silent on the postings and transfers of Stenographers.

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The authorisation of Stenographers to the officers of different levels has been made by administrative instructions. Under the instructions issued on 25.2.1988, General and Lt. General and equivalent are entitled to Steno. Grade 'A' and one Steno. Grade 'C', while Major General/Brigadier and equivalent are entitled to Steno. Grade 'B'.

31. The question arises whether the posting of a senior Stenographer with a junior officer can give rise to any cause of action.

32. By the impugned order of transfer, the applicant will not be placed in a position of disadvantage, as regards the pay and allowances. He will continue to draw the same pay and allowances as in his previous place of posting. The transfer will not cause disruption in his family life in that he can continue to stay at the same residence. It is for the competent authorities of each Ministry or Department to decide as to where an officer is to be posted, having regard to the exigencies of service and the public interest. In the instant case, the applicant is holding a transferable post. In our view, the mere fact that the applicant has now been posted with an officer who is not of the rank of Lt. General, cannot, therefore, be said to be illegal or unconstitutional. At the same time, it will be in the interest of good administration to post a senior Stenographer with an officer of appropriate status as far as possible and subject to the exigencies of service.

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33. In the instant case, a complaint had been made against the applicant in regard to his alleged misconduct and the matter is still at the stage of allegations and investigations. Though the incident of alleged misconduct which occurred in the room of the Deputy Director General, Medical Services (Coordination) on 2.2.1990 may be the motive for transferring the applicant from Air Headquarters to QMG's Branch, the transfer cannot be said to be penal in nature on that score. As observed by the Full Bench of the Tribunal in Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another, 1988 (7) A.T.C. 253, transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigencies of service without giving any finding on the allegations, the same cannot be called in question.

34. In the light of the foregoing discussion, we see no justification to interfere with the impugned transfer of the applicant from the post of Stenographer in Air Headquarters to the post of Stenographer in QMG's Branch by the impugned order dated 23.2.1990.

35. The applicant has prayed for quashing the impugned order dated 19.2.1990 passed by C.A.O. (Admn.), whereby he has been asked to show cause as
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to why disciplinary proceedings should not be initiated against him for violating Rule 3 of the C.C.S. (Conduct) Rules, 1964. We refrain from expressing any view on the legality of the said order at this stage. One cannot anticipate what view the authorities concerned would take after receiving the explanation given by the applicant. In case he is aggrieved by the order passed by the authorities concerned, the applicant will be at liberty to file a fresh application in the Tribunal in accordance with law, after he has exhausted the remedies available to him under the relevant service rules.

36. The respondents have stated in their counter-affidavit that the applicant stood relieved from Air Headquarters with effect from 9.4.1990 and thereafter, he is being treated as unauthorisedly absent from office. The applicant has denied this in his rejoinder affidavit. According to him, he has not been relieved so far and, therefore, the question of his having been struck off the strength of Air HQ does not arise.

37. In the facts and circumstances, in a case of this kind, equitable considerations should be applied to regulate the period of service of the applicant from

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10.4.1990. The applicant appears to have not worked in any office since 10.4.1990. In the interest of justice and fairplay, we are of the view that the respondents shall regulate the period from 19.4.1990 to the date of the applicant's joining at the place of posting as leave of any kind, including leave not due, extraordinary leave, etc., in accordance with the relevant rules. He would, therefore, be entitled to the said period being regulated accordingly. The respondents shall not treat the said period as unauthorised absence from duty for any purpose. Leave salary admissible to him from 10.4.1990 should be released to him within a period of one month from the date of receipt of this order.

38. RA-159/90 filed by the applicant and RA-144/90 filed by the respondents in OA-1181/90 and the main application OA-1181/90, are disposed of on the above lines. There will be no order as to costs. All MPs filed in this case are also disposed by this order.

D. K. Chakravorty (1/2/91)
(D. K. Chakravorty)
Administrative Member

P. K. Kartha (1/2/91)
(P. K. Kartha)
Vice-Chairman (Judl.)