

49

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3113/1991

NEW DELHI THIS THE 24TH DAY OF JANUARY, 1996.

HON'BLE SHRI N.V.KRISHNAN, ACTING CHAIRMAN
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

Ms. Nilima Rani Singh,
D/o Shri R.N.Singh
R/o Near Biseshwar Bhavan,
Pathri Ganj,
P.D. Guljar Bagh,
PATNA-800 007.

Applicant

(By Advocate Sh.A.K.Behera) Vs.

1. Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
North Block,
New Delhi.

2. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

3. Chairman,
Railway Board,
Rail Bhavan,
New Delhi.

4. Principal,
Railway Staff College
Vadodara-390 004.

.... Respondents

(By Advocate Shri P.H.Ramchandani)

ORDER

Mr. N.V.Krishnan :

In this O.A., the grievance is about the Central Service to which the applicant should be allocated. The applicant contends that she has passed the 1990 Civil Services Examination and has been allocated the Group A Indian Railway Accounts Service and, therefore, she should be treated to belong to that Service. The respondents contend that she had passed the 1989 Civil Services Examination and was allocated the Group A Central Industrial Security Force and she had joined the foundation course for that Service. Therefore,

16

she cannot be allocated to another Group A Service on the basis of the 1990 examination in view of the provisions of Rule 17 regulating the examination.

2. A similar OA 3114/1991 -Pratap Singh Vs Union of India & others- filed almost at the same time and involving a similar issue, was heard along with this OA and dismissed by the order dated 8.7.1994 (1994(3) S.L.J. (CAT) 314). The main reason for not disposing of this OA also simultaneously was the dispute whether the applicant had already attended the foundation course for the officers of the CISF, as contended by the respondents. The proceedings in the OA lingered for various reasons till it was finally heard on 11.1.1996.

3. The brief facts which require to be noted are as follows.

3.1) The applicant appeared in the Civil Services Examination (CSE) 1989. The final results of the examination were declared by the Union Public Service Commission (UPSC) on 31.5.1990. Admittedly, the applicant's name did not figure in the list of selected candidates.

3.2) The applicant, therefore, appeared as an open market candidate in the C.S.E 1990 held on 9.6.1990. She successfully cleared the Preliminary Examination and appeared in the Main Examination which ended on 23.12.1990.

3.3) While so, the applicant was informed by the UPSC on 9.1.1991 (Annexure A.I) that her name was being recommended through a supplementary list to Government as a candidate for a Central Services Group A/Group B

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Service on the basis of the Civil Services (Main) Examination, 1989 because some candidates who had passed the 1989 Examination did not join for one or the other reason. She was also informed that as far as general category candidates are concerned, vacancies were available only in the C.I.S.F. Group A Service. She was, therefore, requested to intimate specifically whether or not she was interested to join the C.I.S.F. Group A Service. The applicant did not respond to this letter.

3.4) She cleared the 1990 CS (Main) Examination, the results of which were announced on 17.6.1991. She also appeared in the interview on 21.6.1991.

3.5) By the letter dated 21.6.1991¹ of the Directorate General, CISF, received by her on 1.7.1991, the applicant was given an offer of appointment as Assistant Commandant in the CISF (Group A) based on the 1989 CSE being made to her. Para 2 of this letter is important and reads as follows:

"2. If you are a candidate for the Civil Service Examination 1990, you will be required to obtain permission from the DP & Trg. to abstain from probationary training, as envisaged under 2nd proviso to rule 4 of the Civil Service Examination Rules. Hence please let us know telegraphically whether you are appearing at the 1990 examination. If you are not a candidate for the 1990 examination, you will be required to join by 13th July, 1991 at NISA, CISF Hyderabad. If you are a candidate for the 1990 examination, you will be required to join training in August 1991 details of which will be intimated to you in due course. It may also be clearly pointed out that once a candidate joins the service he shall not be eligible for consideration for appointment on the basis of subsequent examinations."

The applicant did not respond to this offer also in any way. In other words, she did not inform the authorities whether she accepted the offer or declined the offer or whether she had already appeared in the 1990 CSE.

3.6) On 31.7.1991, the final results of the CSE 1990 were declared. Admittedly, the applicant passed the Examination.

3.7) Thereafter the applicant received on 16.9.1991 a telegraphic message from UDYOGRAKSHA "detailing her to attend the Foundational Course beginning from 16.9.1991 at the National Academy of Direct Taxes, Chindwara Road, Nagpur". The applicant joined this Academy at Nagpur on the basis of this telegraphic message.

3.8) While she was attending the foundation course, the applicant received a letter dated 29.10.1991 (Annexure A-3) from the Ministry of Personnel, Public Grievances & Pensions (Respondent No.1) intimating her that on the basis of the CSE 1990, she was being considered for appointment to the Indian Railway Accounts Service (IRAS) which was a tentative allocation, which could undergo changes subsequently. It also informed her that a formal offer of appointment would be made subsequently by the cadre controlling authorities of the service to which she would be finally allocated and that she would be required to join the service in December 1991 if she was not a candidate for the ensuing CS(Main) Examination. She was asked to send a reply in the meanwhile whether she would accept the offer of appointment on the basis of the results of the CSE 1990 before 30th October, 1991. The applicant accepted the offer and communicated her acceptance on 7.11.1991 (Annexure A-4).

3.9) The applicant completed the foundational course of training at Nagpur. On such completion, the Course Director of the Academy informed her that, according to the instructions of the Ministry of Personnel, the applicant was to join the professional training course of CISF on the basis of the results of CSE 1989 and not that of IRAS on the basis of CSE 1990.

3.10) Surprised at this development, she rushed to Delhi and met the concerned authorities who informed her that as she had joined the CISF on the basis of CSE 1989, she could not be taken in the IRAS on the basis of CSE 1990. Her remonstrations against this decision and her request that she be allocated to the IRAS were not acceded to. Hence, she has filed this OA for a direction to the respondents to appoint her in the IRAS on the basis of the results of CSE 1990 with all consequential benefits.

4. The respondents have filed a reply in which the facts mentioned above have been substantially confirmed except for certain additions to which reference will be made shortly. Their contention is that in the circumstances of the case, the applicant was disentitled to get the benefit of her selection on the basis of the CSE 1990 because of the operation of Rule 17 of the CSE Rules. That Rule has been annexed as R-II to the reply and reads as follows:

" 17. Due consideration will be given at the time of making appointments on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment to various services will also be governed by the Rules/Regulations in force as applicable to the respective Services at the time of appointment.

16

Provided that a candidate who has been approved for appointment to Indian Police Service, Central Service, Group A mentioned in Col.2 below on the results of an earlier examination will be considered only for appointment in services mentioned against that service in Col. 3 below on the results of this examination.

<u>Sl. Service to which No. approved for appointment</u>	<u>Service for which eligible to compete</u>	
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1. Indian Police Service	I.A.S, I.F.S and Central Services, Group 'A'.	
2. Central Services Group 'A'	I.A.S, I.F.S and I.P.S.	

Provided further that a candidate who is appointed to a Central Service, Group 'B' on the results of an earlier examination will be considered only for appointment to I.A.S., I.F.S., I.P.S. and Central Services, Group 'A'."

It is contended that a person who has been approved for appointment to a Central Service, Group A on the basis of an earlier examination can compete in the subsequent CSE only for appointment to I.A.S., I.F.S. and I.P.S. and not to other Central Services, Group A. This applicant had already been approved for appointment to the CISF, a Group A Service, on the basis of CSE 1989. Hence, she could have competed in the CSE 1990 only for appointment to the I.A.S., I.F.S and I.P.S. She was not selected for any of these Services. In fact, in her application for the CSE 1990, she did not indicate that she would like to be considered for any of the three Services. Instead, she gave her preferences for 7 Central Group A Services. The respondents

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contend that in the circumstance, she cannot get the benefit of CSE 1990 and cannot be allotted to the IRAS. The respondents also state that as the applicant has already joined the foundational course for the CISF, she cannot change her service unless she resigned from the service as provided in Rule 4 of the CSE and wrote this Examination all over again.

5. OA 3114/91 to which reference has been made above raised an identical issue. The only difference is that in that OA, the applicant had not joined the foundational course of the CISF to which he was also selected on the basis of 1989 CSE but had joined the foundation course of Indian Revenue Service (IRS) on the basis of CSE 1990. That matter was heard by a Bench to which one of us (Shri N.V. Krishnan) was a party and a judgement was rendered upholding the contention of the respondents.

6. As far the legal issue in regard to application of Rule 4 and Rule 17 of the CSE Rules to the facts of the present case is concerned, the position is the same. Therefore, the learned counsel for the applicant was fair enough to admit that the judgement in Pratap Singh's case (supra) would apply to the facts of the present application. In the circumstance, we are of the view that on that legal ground, this application deserves to be dismissed.

7. However, the learned counsel for the applicant pressed for consideration of two other points. He pointed out that the judgement of the Tribunal in Pratap Singh's case is under appeal before the Supreme Court. However, assuming for the sake of argument that the interpretation given in Pratap Singh's case would be upheld by the Supreme Court also, he pointed out that the respondents have allocated a Central Service, Group A based

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to candidates on the 1990 CSE, who have been approved for appointment to another Central Group A Service based on the results of an earlier examination. In other words, there are instances where Rule 17 has not been rigidly applied. He refers to the appointments of Amand Shah and Rajesh Jindal in this connection as seen from this Tribunal's decision in Shailendra Kumar Sinha Vs. Union of India (1994 (2) SLJ 369). Amand Shah was allocated to the Indian Ordnance Factory Service on the basis of CSE 1988. He accepted that Service but was permitted to appear in the 1989 CSE. He did not appear therein. Instead, he appeared in CSE 1990 and was allocated to the Indian Customs and Central Excise Service which is another Group A Service. Rajesh Jindal was allocated to the Indian Postal Service on the basis of CSE 1989. He accepted the Service and sought permission to abstain from the probationary training to appear in the CSE 1990. The permission was given. On the results of the CSE 1990, he was allocated to the Indian Customs & Central Excise Service. In regard to both these persons, the respondents had contended that they had declined the offer given to them for appointment to a Group A Central Service based on the results of the earlier CSE and that, therefore, they were allocated to Group A Central Services on the basis of the 1990 CSE. This contention was examined and negatived by the Tribunal and a finding was given that their appointments are contrary to Rule 17. Therefore, Shri A.K.Behara pleaded that, in the present case also, the applicant should be allotted to the IRAS on the basis of the same CSE 1990.

8. In reply to a query whether we can compel the respondents to take one more decision in the matter of allocation, knowing that it is contrary to Rule 17, the learned counsel has relied on the Supreme Court's decision in

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Re. T. V. Choudhury (1987) 3 SCC 258) to contend that respondents have to apply Rule 17 uniformly and they cannot pick and choose candidates for selective application of the rule. In the above case, the Supreme Court found that three persons were liable for suspension of whom only one had been suspended. The Court felt this was discriminatory and that the other two persons too should be suspended. Accordingly, it directed the respondents to consider the question of suspending the others also failing which they were informed that the Court would consider revoking the suspension of the ^{person} one/who alone had been suspended.

96. The learned counsel for the respondents submitted that the respondents had not used Rule 17 selectively and he denied the charge of discrimination. Even in the case of Amand Shah and Rajesh Jindal referred to above, the respondents did not allocate them to Group A Central Service on the basis of the 1990 CSE knowing that this would be contrary to Rule 17. On the contrary, they bona fide concluded that on the facts concerning those two persons, neither Rule 4 nor Rule 17 applied. It was the Tribunal which rejected this view point and held that their appointments violated Rule 17. The Tribunal also did not direct Government to set right the matter, but left it to the discretion of Government. He admitted that no further order was taken to reverse the decision taken in respect of those two persons in the matter of allocation of service. He further submitted that it will not be proper for any such direction to be given by this Tribunal. In State

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of Orissa Vs. Durga Charan Das (AIR 1966 SC 1547), the Supreme Court has held that the appellant cannot claim, as a matter of right, that decision contrary to Rules should be taken in his case also merely because such a decision was taken in one case earlier.

10. We have considered the matter. The reliance placed by the applicant on the judgement of the Supreme Court in T.V. Choudhary's case is inappropriate. Suspension is not an illegal action. What the Supreme Court found was that there was justification to suspend all the three persons while only one was suspended. This was found by them to be discriminatory and unfair. Hence, the Court directed Government to consider suspending the other two persons also failing which it would revoke the suspension of the appellant. That decision does not help the applicant. In the present case, the respondents have held, as is evident from their action, that the applicant cannot get the benefit of the 1990 CSE contrary to Rule 17. We have also held that this is a correct decision. That was not the position in respect of Amand Shah and Rajesh Jindal. In their cases, the mere fact of Tribunal's decision, the ~~that in spite~~ Government did not take any action to allocate them to the proper service in accordance with Rule 17 does not mean that there has been discrimination in the application of that Rule. They were left with the discretion to act in this manner. Therefore, no relief is due to the applicant on the ground of discrimination. We cannot, therefore, give a direction to Government based on the examples of Amand Shah and Rajesh Jindal to allocate the applicant to the IRAS based on the 1990 CSE when we have held that this will be contrary to Rule 17.

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11. The other argument of the learned counsel for the applicant is that when this OA was filed, an interim direction was issued on 30.12.1991 directing the respondents to allow the applicant to join the professional training of Indian Railway Accounts Service which had commenced at Railway Staff College, Vadodara on 23.12.1992 (Sic-23.12.1991). That order continues to be in force. He submits that as this order has been in force for four years now, it should be made absolute even if on merits, the applicant's OA is dismissed. He relies on similar directions given by the Supreme Court in various cases.

It is pointed out that in SLP No. 14596/90 - Benny John Vs. U.D.I. arising out of OA 1771/89 decided by the Principal Bench of the Tribunal, the Supreme Court allowed the appellant the benefit of appointment to the Indian Revenue Service though the Tribunal's decision on merit was not disturbed. A copy of the order dated 15.1.1991 of the Supreme Court has been produced for our perusal and is on record. Apparently, that order was passed in the special circumstances of that case and the Court felt that an exception was required to be made as Government had admitted committing a mistake and could not offer any explanation. Hence, the appellant was allowed to continue in the Indian Revenue Service which was not his entitlement.

A similar direction was given on 10.9.1993 in Civil Appeal No. 5013 of 1993 (A. Subbaih Vs. Union of India), copy is on record. In that case the appellant who was a member of the Scheduled Tribe was appointed to the Indian Revenue Service on the basis of C.S.E. 1989. He joined that Service. He then appeared in the C.S.E. 1991 and was allocated to the Indian Administrative Service. The respondents held the view that the appellant could not appear in the 1991 C.S.E. unless he first resigned from

the Indian Revenue Service as provided in Rule 4 of the examination. It may be mentioned that it was the Supreme Court which permitted the appellant to appear in the C.S.E. 1991 by an interim order. The Court further noted that though Rule 4 required resignation from the service before appearing in the next examination and the rule existed during the years 1986-90, several candidates who had appeared in the later examinations without resigning their jobs were given the benefit of selection on the basis of the later examination. It is on this ground that the Supreme Court held that it would be a travesty of justice if the appellant was denied the fruit of his selection to the Indian Administrative Service. This order is also distinguishable on facts. The order is based on previous practice regarding giving effect to Rule 4. That does not help the applicant as no such contrary practice has been established in regard to Rule 17 with which we are concerned.

The judgment of this Tribunal in O.A. 206/1989-
Alok Kumar Vs. U.O.I. and a batch of cases is next referred to. That also is distinguishable. It held that the restriction directing resignation from service to appear in the next examination was bad in law. Rule 17 was held to be valid. The orders passed, *inter alia*, are as follows:

* 5.(i) ...

(ii) A candidate who has been allocated to the I.P.S. or to a Central Services, Group 'A' may be allowed to sit at the next Civil Services Examination, provided he is within the permissible age limit, without having to resign from the service to which he has been allocated, nor would he lose his original seniority in the service to which he is allocated if he is unable to take training with his own Batch.

6. Those applicants who have been allocated to the I.P.S. or any Central Services, Group 'A', can have one more attempt in the subsequent Civil Services Examination, for the Services indicated in Rule 17 of the C.S.E. Rules. The Cadre Controlling Authorities can grant one opportunity

to such candidates.

7. All those candidates who have been allocated to any of the Central Services, Group 'A', or I.P.S. and who have appeared in Civil Services Main Examination of a subsequent year under the interim orders of the Tribunal for the Civil Services Examinations 1988 or 1989 and have succeeded, are to be given benefit of their success subject to the provisions of Rule 17 of the C.S.E. Rules. But this exemption will not be available for any subsequent Civil Services Examination."

Therefore, allocation of service based on the later examination was to be done only subject to Rule 17.

12. In our view the situation obtaining in the present case is different. As mentioned above, this O.A. would have been disposed of along with Pratap Singh's case (supra) but for the disputed claim as to whether the applicant had joined the foundational course for C.I.S.F. or I.R.A.S. In our view, therefore, this applicant cannot get at our hands any better benefit than what has been given to Pratap Singh even though his O.A. was dismissed.

13. As the delay in disposal of this O.A. was due to the contest about the issue whether the applicant joined the foundational course of C.I.S.F. on the basis of 1989 CSE or he joined the foundational course for the I.R.A.S. on the basis of the 1990 C.S.E., it is only proper to give a finding thereon though, in view of the legal position, this is entirely irrelevant.

14. The learned counsel for the applicant states that the telegram she received on the basis of which she joined the foundational course at Nagpur did not indicate that she was to join the foundational course for the C.I.S.F. on the basis of C.S.E. 1989. The telegram itself is not available as it was surrendered at the Academy. Before the applicant got the telegram

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on 16.9.1991, the final result of C.S.E. 1990 had already been announced on 31.7.1991 and she had passed that. As she had not responded to either the Annexure A-1 or Annexure A-2 letters regarding offer of appointment to C.I.S.F. on the basis of the 1989 C.S.E., she presumed that she was being required to join the foundational course of I.R.A.S. as a result of passing the 1990 C.S.E. This is established by the Annexure A-5, claim for travelling allowance countersigned by the Course Director which shows that she is a I.R.A.S. probationer. She, therefore, claims that she be allowed to continue in that service.

15. We have considered this submission. We do not find any merit in it for the following reasons:

- (i) The applicant had received an offer of appointment only from the C.I.S.F. - vide Annexure A-2 based on the 1989 C.S.E. Without getting any such offer in respect of 1990 C.S.E., she had *prima facie*, no ground to assume that the telegram was connected with that Examination.
- (ii) The telegram was issued by UDYOGRAKSHA. This should ordinarily convey to any person who has already received an offer of appointment from the C.I.S.F. that UDYOGRAKSHA would only refer to the Central Industrial Security Force.
- (iii) On 29.10.1991, the applicant, for the first time, received intimation about the tentative allocation to the I.R.A.S. (Annexure A-3) based on the 1990 C.S.E. It specifically mentioned that she would receive an offer of appointment in December, 1991 and would be required to join in December, 1991. That should have set her thinking about the foundation course for which she had joined the Nagpur Institute on 23.9.1991. After the receipt of this letter, she could no more continue to assume that she has joined the course on the basis of the C.S.E. 1990. She could have made enquiries at that point of time. Instead, she admittedly,

accepted the offer of appointment on 7.11.1991 (Annexure A-4) without even mentioning that according to her she had already joined the foundational courses connected with that Examination and the question of acceptance did not arise at all.

(iv) The Annexure A-5 document is hardly the kind of proof one should produce to claim appointment as a probationer to the I.R.A.S. It is essentially a claim for T.A. The countersignature of the Director only vouches for the claim that a tour has been performed and no more.

16. However, what clinches the issue is the Annexure R-5 letter of the applicant of which the respondents have produced with their reply, which reads as follows:

"To

The Under Secretary,
Department of Personnel and Training,
New Delhi.

Subject: Civil Service Main Examination 1990.

Sir,

This is to inform you that I Nilima Rani Singh Roll No 32295/90 had asked for permission to abstain from probationary training from the DOP but since I did not receive any communication I joined F.C. Course according to the 1989 list. Now my name does not figure in the 1990 Civil Service list and my name remains in the CISF list as the DOP did not send the permission to abstain from training. Kindly take the appropriate steps as soon as possible.

Thanking you,

Sd/- Nilima Rani Singh
Roll No.32295."

This undated letter appears to have been given when she went to Delhi as stated in para 4.27 of the O.A. This letter completely knocks the bottom out of the applicant's case. No rejoinder has been filed to this reply and more particularly to Annexure R-5. The learned counsel for the applicant submitted that the applicant was so much shaken that without realising what she was writing, this Annexure R-5 letter was given.

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17. We have considered the matter. We are unable to accept this explanation. An officer selected for a Group A Service cannot claim that she forgot all the facts relating to what happened in the past three or four months, particularly in a letter written in her own hand. In para 4.27 of the O.A., the applicant has averred as follows:-

"That being surprised by this, the applicant rushed to New Delhi to contact the Ministry of Personnel personally. When she personally contacted the concerned authorities (i.e. Under Secretary and Deputy Secretary) on 23.12.1991, the applicant was told that since the applicant had joined the C.I.S.F. on the basis of C.S.E. 1989, she cannot be taken in Indian Railway Accounts Service on the basis of the results of Civil Services Examination, 1990. When the applicant submitted that she had not sent her acceptance to the offer of appointment dated 21.6.1991 to the Directorate General of C.I.S.F. even till today nor had she sent the requisite forms & a token of acceptance, that simply fell on deaf ears. When the applicant queried if she had joined C.I.S.F. on the basis of C.S.E. 1989 as the Ministry of Personnel now states, then why was the communication dated 29th October, 1991, issued to her? The cryptic reply of the authorities was that it was a routine matter and that she cannot be allowed to join the Professional Training of Indian Railway Accounts Service, which has commenced from 23rd December, 1991, at Railway Staff College, Vadodara."

18. In other words, it is her contention that when she went to Delhi, she insisted before the authorities concerned that she had not sent her acceptance to the offer of appointment dated 21.6.1991 to the Directorate General, CISF and, therefore, she should be deemed to have been selected for professional training course of I.R.A.S. on the basis of 1990 C.S.E. This is not

borne out by the Annexure R-5 which says that she had asked for permission to abstain from probationary training from the D.O.P. and as she did not receive a reply, she joined the foundational course according to 1989 list. She complained that her name did not find a place in the 1990 Civil Service list but continued to be in the C.I.S.F. list because the D.O.P. had not sent the permission to abstain from training. That is an entirely different story from what has been made out in the O.A. May be, she concocted this story of having sought permission to abstain from the probationary training of the C.I.S.F. in order to get a favourable order from the Ministry. For, if she really had sought such permission, the respondents would have produced that document, also, because that would also lend support to their contention that having accepted the offer, she cannot get benefit from the 1990 C.S.E. unless she had been selected for the I.A.S., I.F.S. or I.P.S. Alternatively, when she found that this did not work, she has now put forward a new story in this O.A. viz. that she never responded to the Annexure A-2 offer of appointment to the C.I.S.F. based on the 1989 examination. In the normal course, the suppression of facts about the Annexure R-5 letter in the O.A. would have disentitled the applicant to any kind of relief at our hands.

19. In the circumstance, we dismiss this O.A. also as we dismissed earlier the O.A. of Pratap Singh (supra). The interim order is vacated. As the applicant is found to have joined the foundational course of the C.I.S.F. based on the 1989 C.S.E., the respondents are directed to issue suitable orders for her further training in that service and posting thereafter. The service

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rendered by her till date in pursuance of the interim order shall, however, be deemed to be service rendered in the C.I.S.F particularly for purposes of fixation of pay, seniority etc. OA dismissed with the above directions. No costs.

Lakshmi

(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)

N.V.KRISHNAN
ACTING CHAIRMAN

N.V.KRISHNAN
24/11/86

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