

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 625 OF 1994
Cuttack, this the 3rd day of Aug., 1999

Narendra Kumar Bhuyan Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO.*

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
28.8.99

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CUTTACK BENCH, CUTTACK.

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Cuttack, this the 3rd day of Aug. , 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Narendra Kumar Bhuyan, aged about 54 years,
son of late Ghanashyam Bhuyan,
At-Aviation Research Centre,
PO-Charbatia, District-Cuttack Applicant

Advocates for applicant - M/s C.A.Rao
S.K.Purohit
S.K.behera
P.K.Sahu.

Vrs.

1. Union of India, represented by the Secretary to Government, Cabinet Secretariat, R.K.Puram, New Delhi-110 066.
2. Director, Aviation Research Centre, Cabinet Secretariat, Block-V, East R.K.Puram, New Delhi-110 066.
3. Deputy Director, Aviation Research Centre, At/PO-Charbatia, District-Cuttack.
4. Sunakar Behera, ARC, Charbatia, Cuttack.
5. B.K.Sinha, A.R.C.Charbatia, Cuttack.
6. Laxman Samal, ARC ,Charbatia, Cuttack.
7. Surendra Nayak, ARC,Charbatia, Cuttack.
8. Batakrushna Rout, ARC,Charbatia, Cuttack.
9. Pitambar Samal, ARC,Charbatia, Cuttack.
10. Rama Chandra Malik, ARC,Charbatia, Cuttack.
11. Maheswar Lenka, ARC,Charbatia, Cuttack.

Sl.Nos. 4,6 to 11 are Sr.Armourer, Sl.No.5 Jr.Armourer
..... Respondents

Advocates for respondents - Mr. Akhāy Ku.Misra, ACGSC for R.1
to 3; and M/s
A.S.Naidu, A.K.Rath, P.K.Mohapatra

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SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to grant him promotion as Sub-Inspector even by creating post on supernumerary basis as has been given to his juniors and to fix his seniority in his due place and to grant consequential service and financial benefits from such placement.

2. The case of the petitioner is that he was appointed as Driver in Aviation Research Centre (A.R.C.), Charbatia on 2.12.1965 in appointment order dated 20.11.1965 at Annexure-1. It is stated that at that time pay scale of Driver was Rs.110-139/- which was equivalent to pay scale of Havildar (C.S.D.) and Head Constable. At the relevant period Constable and Junior Armourer were in the lower scale of Rs.80-110/-. Because of his good work he was appointed to the post of Senior Armourer with effect from 8.6.1976 in Central Store Depot in pay scale of Rs.260-350/- vide order dated 9.6.1976 at Annexure-2. It is further stated that while fixing the pay of the applicant as Senior Armourer at the level of Rs.308/- he was given pay protection for his past service. The applicant has further stated that in the Police Department originally in the A.R.C. the posts below Sub-Inspector were Havildar, Naik and Constable. Later on in the ARC the ranks below Sub-Inspector were designated as Senior Armourer and Junior Armourer. In the Central Store Depot the earlier designations of Naik, Havildar, Sub-Inspector and Inspector were redesignated as Junior Armourer, Senior Armourer, Sub-Inspector and Inspector respectively. In the technical side the hierarchial

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designations are Constable, Head Constable, Assistant Field Officer and Deputy Field Officer, and in the M.T. Section the designations are Field Assistant, Senior Field Assistant, Assistant Field Officer and Deputy Field Officer. The applicant states that after redesignation Junior Armourers of C.S.D. Cadre was made equal to Field Assistant in M.T. Cadre and Constable in Technical Cadre. Similarly, Senior Armourers were made equivalent to Senior Field Assistant and Head Constable. The applicant has stated that in view of the above position, respondent nos. 4 to 11 are much lower in status and pay scale than the applicant from their entry into service. It is further stated that in case of respondent no. 6 Laxman Samal, his initial service as Aircraft Cleaner was taken into consideration for the purpose of seniority. It is also stated that the departmental respondents have taken into consideration the service of one S.A. Ganeshan as Carpenter and one U.K. Das as Daftary and one C. Naik and Alekh Das as Aircraft Cleaners for the purpose of their seniority. This, according to the applicant, shows the prevalent practice in ARC, Charbatia. The applicant has stated that not taking his service as Havildar Driver from 2.12.1965 to 7.6.1976 for the purpose of seniority and continuous Government service is discriminatory. It is further stated that in 28.12.1983 Aviation Research Centre (Ordnance) Service Rules, 1983 came into force. Rule 4 provides for designation, classification and scales of pay of different categories of posts. Below Sub-Inspectors there are Senior Armourers and below them Junior Armourers. Junior Armourers are in Group-D, and Senior Armourers and Sub-Inspectors are in Group-C. Rule 6 provides for initial constitution of the service. Sub-rule (1) of Rule 6 provides that all persons holding on the

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appointed date i.e., 28.12.1983 any of the categories of posts specified in Rule 4, whether in a permanent or temporary or officiating capacity or on deputation basis, shall be eligible for appointment to the service at the initial constitution of the Cadre subject to their being found suitable by the Screening Committee. Rule 7 provides that seniority of the persons appointed in each grade at the initial constitution of the service shall be in the order in which they are shown in the relevant list prepared in accordance with the provisions of rule 6 by the Screening Committee. The applicant has stated that Directorate General of Security circulated the list which was served on the applicant in letter dated 6.4.1985. In this list of Senior Armourers, serial no.1 was one U.R.Ghose who was a Sub-Inspector. All persons who held the post of Senior Armourer on 28.12.1983 either by way of promotion from the post of Constable and Naik or directly recruited are only contained in this list. A copy of this seniority list is at Annexure-4. Names of respondent nos.4 to 11 do not figure in this seniority list. The applicant has further stated that Deputy Director (A) by office order dated 25.3.1992 at Annexure-5 has published service particulars of 18 persons who are Senior Armourers as also ^{of} seven Sub-Inspectors. In the office order dated 25.3.1992, eleven persons have been promoted to the post of Sub-Inspector against eleven supernumerary posts consequent upon judgment of Central Administrative Tribunal, Cuttack Bench and subsequent order of the Hon'ble Supreme Court. These eleven persons have been promoted to the grade of Sub-Inspectors with effect from 1.12.1976. In response to the representation of the petitioner for promotion to the post of Sub-Inspector, he was informed in letter dated 24.9.1994 at Annexure-6 that in accordance with the decision of the Tribunal in O.A.Nos.

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389 and 390 of 1992 the applicants therein are to be promoted to the post of Sub-Inspector with effect from 1.12.1976 taking into account their appointment as Senior Armourer with effect from 1.1.1973 and 22.9.1975 and as such the applicant whose appointment as Senior Armourer was with effect from 8.6.1976 would become junior to those persons. The petitioner states that the eight applicants in OA Nos. 389 and 390 of 1992 were not holding any of the posts described in Rule 4 of A.R.C.(Ordinance) Service Rules and as such the departmental respondents while giving them promotion in response to the order of the Tribunal should have placed them below the applicant in the rank of Senior Armourers. It is also stated that the orders of the Tribunal in those two cases are not binding on the applicant as he was not a party in those cases and therefore the orders of the Tribunal cannot affect his position. The applicant has further stated that respondent nos. 4 and 6 to 11 were promoted from Junior Armourer to Senior Armourer in the year 1986 and respondent no.5 is at present continuing as Junior Armourer. The applicant submitted a representation praying for promotion to the post of Sub-Inspector and he has been assured in letter dated 13.5.1992 in respect of his earlier representation that at present no vacancy in the rank of Sub-Inspector is available and his case will be considered along with others when vacancies are available. The applicant has stated that Director General of Security had created 11 supernumerary posts of Sub-Inspector and the existing four posts against which promotions were given earlier in 1986 were subsequently cancelled. It also appears that the applicants in OA Nos. 389 and 390 of 1992 became senior to the applicant in the rank of Senior Armourer and were promoted to the rank of Sub-Inspector with effect from 1.12.1976

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without giving opportunity to the applicant to present his case. It is further submitted that the seniority given to respondent nos. 4 to 11 being on the basis of a judicial decision, the same spirit of the judgment should be applied to the petitioner in which case he will become senior to the applicants in OA Nos. 389 and 390 of 1992 and would be entitled to be promoted to the rank of Sub-Inspector with effect from the date those applicants got promotion. In view of the above, the applicant has come up in this petition with the prayers referred to earlier.

3. Departmental respondents in their counter have opposed the prayers of the applicant. They have pointed out that the representation of the applicant for promotion to the post of Sub-Inspector has not been rejected. He has been informed that as and when vacancy arises his case will be considered along with others subject to eligibility. The departmental respondents have further stated that the applicant on his own volition applied for the post of Senior Armourer while he was working as Driver and he was appointed as Senior Armourer. He then

technically resigned from the post of Driver and took up his appointment and as per rules the benefit of past service was given to him for the purpose of drawal of pay, pension, etc. The departmental respondents have stated that his past service was counted only for pay protection and not for seniority in the sense that he was not made senior to those who had been appointed as Senior Armourer earlier than him. They have also stated that in case of Laxman Samal, Shri Ganeshan, U.K.Das, C.Naik and A.C.Das, the previous service was not taken into account for the purpose of seniority. The departmental respondents have stated that

with effect from coming into force of the Ordnance Service Rules from 28.12.1983 the applicant was made Senior Armourer in a substantive capacity. The departmental respondents have admitted that the seniority list at Annexure-4 to the O.A. does not include names of respondent nos. 4 to 11. It has been pointed out that in accordance with the judgment of the Tribunal in OA Nos. 389 and 390 of 1992 respondent nos. 4 to 11 were to be regarded as senior to S/Shri P.C.Jena, S.K.Das, U.K.Das and A.C.Das. These four persons who were respondents in OA No. 389/92 are senior to one J.K.Bhattacharya who is admittedly senior to the applicant in the list of Senior Armourers. As a result by implementation of the judgment respondent nos. 4 to 11 became senior to S/Shri P.C.Jena, S.K.Das, U.K.Das and A.C.Das and also senior to J.K.Bhattacharya and the applicant. It is further stated that respondent nos.8 to 11 joined service in the cadre earlier than him and were duly in the rolls of Aviation Research Centre on 28.12.1983. Their names had figured in the seniority list of Junior Armourers. As the applicant was a direct recruit in the post of Senior Armourer, his name did not find place in the seniority list of Junior Armourer. Later on seniority of respondent nos. 4 to 11 had to be re-fixed consequent upon decision of the Tribunal in the two O.As. referred to earlier. The departmental respondents have stated that promotion of respondent nos. 4 to 11 would not have been done but for the verdict of the Tribunal in those two cases and therefore the applicant has no cause of action. On the above grounds, the departmental respondents have opposed the prayers of the applicant.

4. Private respondent nos. 4 to 11 have filed ~~xxxxxx~~ counter styling it as showcause in which they have stated that respondent nos. 4 to 11 were appointed as Constables on different dates between 10.3.1965 and

1.5.1967. The posts of Constables were redesignated as Field Assistants and the promotional post of Constable was Naik which was redesignated as Junior Armourer. Similarly, the promotional post above Naik was Havildar which was redesignated as Senior Armourer. These private respondents have stated that in the year 1971 some posts of Naik redesignated as Junior Armourer fell vacant. Even though respondent nos. 4 to 11 were senior as Constables their cases were ignored and some others were promoted on ad hoc basis as Havildars. The representations filed by respondent nos. 4 to 11 were rejected at the relevant time on the ground that ad hoc promotions do not confer any right and whenever regular promotions would be given, the cases of respondent nos. 4 to 11 and others would be taken into consideration. But surprisingly this was not followed and further promotions were given. Their subsequent representations were again rejected on the ground that none of their juniors have been promoted. Because of this respondent nos. 4 to 11 came to the Tribunal in OA Nos. 389 and 390 of 1992. The Tribunal directed that the applicants before them in these two O.As. should be promoted on the basis of which their juniors were promoted. In pursuance of the decision respondent nos. 4 to 11 were promoted in order dated 15.12.1994. These respondents have mentioned in paragraph 5 of the showcause that this order dated 15.12.1994 has been enclosed but actually this has not been enclosed. The private respondents have stated that they are entitled to be promoted to the posts of Junior Armourer in 1971 and Senior Armourer in 1973 to 1975 and accordingly the authorities have rightly issued their orders of promotion rectifying the mistakes committed earlier. It is further stated that the applicant was appointed to the post of Senior Armourer with effect from 8.6.1976 and his seniority as Senior Armourer will count

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only from that date. But the respondents were promoted as Senior Armourers with effect from 1.1.1973 and 22.9.1975 and as such they have become senior to the applicant in the rank of Senior Armourer and accordingly, they were promoted to the rank of Sub-Inspector with effect from 1.12.1976. On the above grounds, these private respondents have opposed the prayers of the applicant.

5. The applicant in his rejoinder has pointed out that the respondents have relied solely on the order of the Tribunal in OA Nos. 389 and 390 of 1992 for giving promotion to respondent nos. 4 to 11 over the head of the applicant. It has been stated that the applicant was senior to the private respondent nos. 4 to 11 who were applicants in OA Nos. 389 and 390 of 1992 in the CSD Cadre and hence leaving him aside, respondent nos. 4 to 11 could not have been promoted. It is also stated that at the time of promulgation of the Recruitment Rules, the applicant was already holding a permanent post of Senior Armourer. It is also stated that the applicant was duly selected in interview on 18.5.1976 and therefore his seniority should have been counted with effect from 18.5.1976. If this is accepted then the applicant becomes senior to J.K.Bhattacharya and therefore he should have been placed above J.K.Bhattacharya. It is also stated that Hon'ble Supreme Court have held that no person can be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely affect others and amongst members of the same grade seniority is reckoned from the date of their initial entry into service. Therefore, as the private respondents have entered the cadre much later than the applicant, they cannot steal a march over the applicant. On the above grounds, the applicant in his rejoinder has reiterated his prayers.

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6. We have heard Shri C.A.Rao, the learned counsel for the petitioner, Shri Akhaya Ku. Mishra, the learned Additional Standing Counsel for departmental respondent nos. 1 to 3, and Shri P.K.Mohapatra, the learned counsel for respondent nos. 4 to 11, and have also perused the records.

7. The main grievance of the applicant is that he was appointed as Senior Armourer with effect from 8.6.1976 and with the coming into force of the Ordnance Service Rules he became Senior Armourer in a substantive capacity at the time of initial constitution of the cadre on 28.12.1983. Private respondent nos. 4 to 11 were never inducted as Senior Armourers. But because of the decision of the Tribunal in OA Nos. 389 and 390 of 1992 these private respondents became Junior Armourers and also Senior Armourers with effect from the dates prior to the date of appointment of the applicant to the post of Senior Armourer and thereafter they were promoted to the rank of Sub-Inspectors ignoring the case of the applicant. As the applicant was not a party in the above two O.As., his chances of promotion and his position in the seniority list could not have been adversely affected by the departmental respondents while implementing the above decision of the Tribunal in the two earlier O.As. Before dealing with this contention, two other points raised by the applicant in his pleadings will have to be disposed of first.

8. The applicant has stated that he was appointed as Driver in Aviation Research Centre, Charbatia with effect from 2.12.1965 in a scale higher than the then scale of Constable and while he was appointed as Senior Armourer with effect from 8.6.1976 his previous service as Driver was ^{not} taken into account. He has also stated that in case of several other persons mentioned by him in his O.A.

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and referred to by us earlier, previous service in other cadres was taken into account for the purpose of fixing seniority. The departmental respondents have clearly denied this assertion. They have stated that in case of the applicant his previous service was taken into account as per rules only for the purpose of giving him pay protection and pension and not for the purpose of seniority. It has been specifically mentioned that when the applicant was appointed as Senior Armourer with effect from 8.6.1976 his pay was fixed at the level of Rs.308/- in the scale of Rs.260-350/- taking into account his previous service and his pay as Driver. But he was not given any higher seniority and was not shown above the Senior Armourers who were appointed prior to him. The departmental respondents have also stated that in the case of other persons mentioned by the applicant their previous service was also not taken into account for the purpose of fixing their seniority. In view of this, the applicant's contention that his previous service as Driver should have been taken into account for the purpose of seniority as Senior Armourer is held to be without any merit and is rejected.

9. The second contention of the applicant is that even though he was appointed as Senior Armourer with effect from 8.6.1976 he was interviewed for the post of Senior Armourer on 18.5.1976 and his seniority in the post of Senior Armourer should count from 18.5.1976. This contention is also without any merit. Under the Rules a person has to get seniority from the date he joins the post and not from the date he was interviewed for the post. In any case the applicant has stated that if his seniority as Senior Armourer is taken into account from the date of interview, i.e., 18.5.1976, he would become senior to

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J.K.Bhattacharya. The applicant has been shown junior to J.K.Bhattacharya in the seniority list circulated long ago. In the seniority list drawn up in accordance with the list of the Screening Committee at the time of initial constitution of the Cadre he has been shown junior to J.K.Bhattacharya and therefore he should have agitated this point at that time. He cannot be allowed to raise this point after a lapse of so many years. In any case we have already held that this contention and the contention regarding counting of his past service as Driver are without any merit and are therefore rejected.

10. That brings us to the main contention of the applicant that he was not a party in OA Nos. 389 and 390 of 1992 and therefore the decision of the Tribunal in those cases is not binding on him. The applicant has enclosed a copy of the decision in OA Nos. 390 of 1992 at Annexure-8. The decision in OA No. 389/92 has been given in line with the decision in OA No. 390/92. In OA No. 390/92 the Tribunal held that the petitioners before them who were Laxman Samal, Sunakar Behera, Surendra Nayak and B.K.Sinha who are respondent nos. 4 to 7 in this OA are senior to P.C.Jena, Umakanta Das, C.Naik and A.C.Das and accordingly the Tribunal directed that these four applicants before them, i.e., Laxman Samal, Sunakar Behera, Surendra Nayak and B.K.Sinha shall be deemed to have been promoted to the rank of Naik from the date on which S/Shri P.C.Jena, S.K.Das, Umakanta Das and Alekh Ch.Das were so promoted. There was a further direction that the applicants be given all consequential benefits including financial benefits in terms of the scale of pay and further promotion as would be due to them until the present. The departmental respondents have pointed out in their counter that P.C.Jena, S.K.Das, U.K.Das and A.C.Das were admittedly senior to

J.K.Bhattacharya who again is senior to the applicant and therefore by the Tribunal declaring the applicants in those two earlier OAs senior to P.C.Jena and three others, as mentioned above, those applicants before the Tribunal in the earlier OAs became senior to the present applicant before us who is admittedly junior to J.K.Bhattacharya. The departmental respondents have pointed out that in pursuance of the decision of the Tribunal in the two earlier OAs, these private respondents have been appointed as Senior Armourers with effect from 1.1.1973 and 22.9.1975. Their date of appointment in the rank of Junior Armourer is not relevant vis-a-vis the applicant because the applicant was never a Junior Armourer. He was directly recruited in the rank of Senior Armourer. So the position is that while the applicant became a Senior Armourer with effect from 8.6.1976 and his seniority was counted as Senior Armourer with effect from 8.6.1976, these private respondents became Senior Armourers by virtue of the decision of the Tribunal with effect from 1.1.1973 and 22.9.1975. Naturally therefore in the rank of Senior Armourers they became senior to the applicant and were therefore rightly promoted to the rank of Sub-Inspectors with effect from 1.12.1976 in their turn according to their seniority in the rank of Senior Armourers. The applicant coming lower down these private respondents in their seniority list of Senior Armourers could not therefore claim promotion to the rank of Sub-Inspector from the date these private respondents were promoted to the grade of Sub-Inspectors. In support of his contention, the learned counsel for the petitioner has relied on the decisions of the Hon'ble Supreme Court in the case of State of Bihar and others v. Akhouri Sachindra Nath and others, AIR 1991 SC 1244. For the present purpose it is not necessary to go into the facts of that case. It

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is only necessary to note that the Hon'ble Court held in that case that the position of law is well settled that no person can be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely affect others. It is well settled that among members of the same grade, seniority is reckoned from the date of their initial entry into the service. It is submitted by the learned counsel for the petitioner that private respondents in this case were not members of the cadre of Senior Armourers when the applicant was appointed as Senior Armourer and therefore they cannot claim seniority over the applicant in the rank of Senior Armourers and the departmental respondents should not have declared the private respondents senior to the applicant in the rank of Senior Armourers. The private respondents in this case were given promotion retrospectively to the rank of Senior Armourers in compliance of the orders of the Tribunal in OA Nos. 389 and 390 of 1992. The Tribunal directed that these private respondents should be given consequential promotion from the date their juniors were given promotion. Accordingly, these private respondents were given retrospective promotion to the rank of Senior Armourers from dates prior to the date on which the applicant became Senior Armourer. Therefore, these private respondents were rightly reckoned as senior to the applicant in the rank of Senior Armourers. The decision of the Hon'ble Supreme Court in the case of Akhouri Sachindra Nath (supra) is therefore not applicable in the facts and circumstances of the present case.

11. The second submission made by the learned counsel for the petitioner is that under the Recruitment Rules the private respondents could not have been promoted to the rank of Senior Armourers on the dates they were given retrospective promotion because they did not have three years regular service as Junior Armourers.

It has been stated that by way of notional promotion a person may occupy a post in a cadre, but his period of occupation of a post in the cadre by way of notional promotion would not amount to regular service in the cadre which can be taken into account for the purpose of promotion to the next higher level. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Union of India and another v. M.Bhaskar and others, etc., 1996 (2) SLJ 25. In that case rules provided two years experience in the lower grade as eligibility condition for promotion. The respondent was promoted in 1989 with effect from notional promotion in 1987. On that basis he claimed that he has acquired experience by 1989. The Hon'ble Supreme Court held in that case that the notional promotion does not give experience and the respondent who was actually promoted in 1989 with notional effect from 1987 cannot be said to have two years experience. In the instant case, for the post of Senior Armourer, the Recruitment Rules enclosed by the applicant at Annexure-3 provide that Junior Armourers with three years regular service in the grade will be eligible to be considered for promotion. On that basis and in the light of the law as laid down by the Hon'ble Supreme Court in M.Bhaskar's case (supra) it has been urged that the private respondents were not eligible to be promoted to the rank of Senior Armourers from the dates from which they have been given such promotion. As we have earlier noted, such promotion has been given to the private respondents to the rank of Senior Armourers from the date their juniors got such promotion strictly in accordance with the decision of the Tribunal in the two Original Applications referred to earlier. In view of this, it cannot be argued that the departmental authorities should not have promoted the

private respondents because of absence of regular service in spite of the orders of the Tribunal for giving them promotion from the dates their juniors were promoted. This contention of the applicant is therefore held to be without any merit and is rejected.

12. In the result, the Original Application is held to be without any merit and is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

3.8.99
VICE-CHAIRMAN

AN/PS