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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 570 OF 2005
CUTTACK, THIS THE ~~08/~~ DAY OF February, 2008

Sri Pradip Kumar Pradhan Applicant

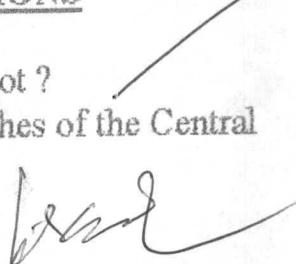
Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(C.R.Mohapatra)
MEMBER (A)


(K.B.S.Rajan)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 570 OF 2005
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CORAM :

HON'BLE Dr.K.B.S.RAJAN, MEMBER (J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

Sri Pradip Kumar Pradhan, B.Sc. (Hons.), AMIE, aged about 42 years, son of Sri Krupasinghu Pradan, at present working as Asst. Material Manager(Depot), C/o. Dy. CMM(D) Mancheswar Carriage Repair Workshop, Mancheswar, East Coast Railway, Bhubaneswar-17, District-Khurda.

.....Applicant

Advocate(s) for the Applicant- M/s. Dhuliram Pattnaik, N.S.Panda,
D.N.Pattnaik, N.Biswal, S.K.Rath,
Mr. B.B.Mohanty

VERSUS

1. Union of India represented through its General Manager, S.E.Rly. Garden Reach, Kolkata (West Bengal).
2. General Manager, East Coast Railway, At-Chandrasekharpur, P.O. Bhubaneswar, District-Khurda.
3. Chief Personnel Officer, E.C.Rly. Chandrasekharpur, At/PO bhubaneswar, Dist. Khurda.
4. C.P.O., S.E.Rly, Garden Reach, Kolkata (West Bengal).
5. Secretary, Railway Board, Rail Bhawan, New Delhi.
6. Director (Est.) Railway Board, Railway Bhawan, New Delhi.

7. D.Sethi (S.C.) D.M.S.-1 now working as AMM in East Coast Railway, At/PO Chandrasekharpur, Bhubaneswar, Dist. Khurda.
8. G.S.Mohanty (D.M.S.I) now working as AMM , Sambalpur, E.C.R;y. At/PO/Dist. Sambalpur.
9. S.K.Panda, D.M.S.-II, now working as A.M.M. E.C.Rly., Bhubaneswar, Dist. Khurda.
- 10.S.K.Biswal, O.S.-II, HQ/BB SR, E.C.Rly., At/PO Chandrasekharpur, Bhubaneswar, Dist. Khurda.
- 11.J.N.Pattnaik O.S.II/Stors/CR W/MCS, E.C.Rly., Mancheswar, under Dy. C.M.M., At/PO Mancheswar, Bhubaneswar, Dist. Khurda.

..... Respondents

Advocates for the Respondents – M/s. S.K.Ojha, A.K.Sahoo, B.K.Jena.

ORDER

Hon'ble Dr. K.B.S.Rajan, Member(J)

The applicant was inducted in the South Eastern Railway in 1989 and had been serving in that Railway in various categories and at various places within the said S.E. Railways. The said S.E. Railways were trifurcated on 01-04-2003 into (a) South Eastern Railways, (b) South East Central Railways and (c) East Coast Railways. When options were called, the applicant opted for East Coast Railways (Annexure 1/2 refers.) Vide Annexure 1, one post of DMS Gr. I in the scale of Rs 6,500 – 10,500 from Kharagput Depot was transferred to MCS/Depot and the applicant was posted as DMS Gr. I in the said scale at CKW/MCS w.e.f. 3-4-2003. The applicant was allotted East Coast Railway, vide Annexure 1/3 dated 06-05-2005.

2. Provision exists for a limited departmental competitive examination upto 30% of the vacancies in certain GR. B posts for which a panel would be prepared. The S.E. Railway issued notification dated 08-10-2003 in this regard and since the vacancies pertained to the pre-trifurcation period, all those who were eligible irrespective of their posting (whether SER or EcoR or SECR) were allowed to participate in the competitive examination and vide order dated 29-04-2004 at Annexure 3, the applicant (of EcoR) and one Shri Om Prakash of (SECR) were empanelled for promotion to ACOS (Group B). In pursuance of the same the East Coast Railway vide Annexure 4 order dated 3-5-2004 afforded promotion to ACOS(Group B) against 30% vacancies through LDCE in S.E. Railway. The applicant preferred annexure 5 representation for lien and seniority in the E.Co.R which was forwarded to the Dy. CPO, E.Co.R by Annexure 6 communication. Vide Annexure 9 order dated 19-05-2005, the East Coast Railways had rejected the claim stating that those who had been empanelled for Group B through combined selection held

by S.E. Railway, but presently working in the new Zones (E.Co.R) due to administrative requirements will have the lien and seniority with the parent Railway i.e. S.E. Railway only. It was advised that the applicant may apply for inter-zonal transfer accepting the bottom seniority or action be initiated for repatriation of the applicant to S.E.Railway. Reference to Railway Board's letter dated 13-02-2000 was cited as the basis of the above order. Vide Annexure 11, in the provisional seniority list published by the E.Co.R, the applicant was shown senior to Respondents 7 to 11 whereas in Annexures 12 and 13, his name has been shown junior to them. The applicant has prayed for quashing of Annexure A-9 impugned order dated 19-05-2005 and for a direction to the respondents to consider the case of the applicant for continuation of his lien in the roll of Group B service in E.Co.R with due seniority from the date of joining in Gr. B, with further direction to regularize his services in E.Co.R and for modifying the impugned provisional gradation list by fixing the seniority of the applicant above all the private respondents.

3. Notices to both private and official respondents were issued and acknowledgments obtained. While the official respondents had furnished reply, there was no response from the private respondents.

4. In their counter, the respondents have contended as under:-

(a) The last date for exercising option by the Group B officers was fixed latest by 29-09-2002 and any move to the new Zones after 01-04-2003 would be treated as transfer on request on bottom seniority subject to usual terms. In the instant case the applicant's option for transfer/permanent absorption in E.Co.R was not received within the cut off date i.e. on or before 23-9-2002 and hence subsequent request for absorption in E.Co.R was rejected vide order dted 07-06-2005. And on his repeated request, he was advised vide Annexure A-11 to seek transfer to E.Co.R on acceptance of bottom seniority, as per rules. (RBE 123/96 at Annexure R-1 refers). It has also been stated that mere option would

not imply automatic transfer to the other zone. It has further been submitted that in terms of Railway Board's letter dated 13-05-2003, vide Annexure R-2, fresh selections/LDCEs may be notified for vacancies upto 31-03-2003 for all vacancies of the undivided railway Group C staff who have opted for a new zone would also be eligible for these selections/LDCE, but an empanelled candidate can get Group B promotion only in the parent Railway and cannot be posted in Group B on the new zones based on this panel. It has also been specifically mentioned in Annexure R-2 vide para 5(c) thereof that those who are waiting for promotion after empanelment in the parent Railway may be posted immediate on administrative grounds against the vacancies within the jurisdiction of the New Zones **with their lien being retained on the parent Railway.**

5. The applicant had filed his rejoinder in which he had maintained that the contention that the applicant had not exercised his option before the cut off date for Group B Officer, i.e. 23-09-2002 is of least consequence since the applicant on the date of issue of notification was not a Group B officer. Circular vide Annexure R-1 is also not applicable inasmuch as the case of the applicant is one of an attempt by the respondents to transfer the applicant back to S.E. Railway in the promoted post much after his permanent transfer to E.Co.R in the pre-promoted post by de-linking the lien with the S.E. Railway. As regards the provisions of Annexure R-2 Railway Board order dated 13-05-2003, the same too is not applicable to him as it talks of those who were waiting for promotion after being empanelled. The applicant contended that he was transferred permanently from the jurisdiction of S.E. Railway to the jurisdiction of E.Co.R w.e.f. 28-02-2004 when he was holding a group C post and by such transfer, his lien with S.E. Railway was permanently de-linked. Hence, the question of his being repatriated back from E.Co.R to S.E. Railway is not at all conceived by Annexure R-2. The applicant has further contended that his colleague, Shri Om Prakash, who was similarly placed as the applicant, had also to face such a treatment in the hands of S.E.C. Railways and he had moved the

Jabalpur Bench of the Tribunal in OA No. 9/2006 and the Tribunal had allowed the OA and directed the Ministry of Railways and GM/SECR to absorb the said Shri Om Prakash in SECR on lien with due seniority and all consequential benefits.

6. Counsel for the applicant had taken us through the order dated 30th August, 2006 in the case of Om Prakash. Para 7 to 10 thereof reads as under:-

“ 7. All other applicants, who were admittedly holding group-C posts on the crucial date, subsequently on different dates as indicated below, were appointed to group-B post on the basis of selections conducted by the SER:

Case No.	Name of applicant	Dt. of promotion in Gr.-B
O.A. 7/2006	K. Srinivas	24.5.2004
O.A.8/2006	B.B.Roy	27.2.2003
O.A. 9/2006	Om Prakash	17.5.2004
O.A. 25/06	K.K.Pathak	12.3.2003
O.A. 25/06	A.M.Mesram	12.03.2003
O.A. 25/06	K.M.Gajbhiye	12.03.2003

8. Admittedly, in all these cases, the selection was conducted by the SER and it was mentioned in the notification dated 26.9.03 that “ the empanelled candidates on promotion to Group-B may be posted in any of the 3 zones (SER/SECR/EcoR)’. It is also an admitted fact that after appointment to group-B posts, these applicants continued to work in the SECR. The contention of the respondents is that since they were selected by the SER and Railway Board’s letter dated 22.08.2002 (annexure R/1) specially mentions that further recruitments were to be made after the completion of the process of transfer of officers, the selection made by the SER has to be treated as selection for SER. This contention does not appear to be correct specially because the notification issued by the SE Railway has clearly mentioned that the empanelled candidates may be posted to any of the three zones. The fact that the applicants have been posted in SECR even after appointment to group-B posts shows that vacancies are available in SECR. Moreover, there is no evidence to show that

any selection took place in group-B post in the SECR before the applicants appointment to group-B post. In view of these facts, it will neither be justified nor legally tenable to treat them as a part of SER and not of SECR after the trifurcation.

9. Further, it has been mentioned in the above notification dated 26.09.2003 that " in terms of Railway Board's letter no. E(GP) 2002/1/18 dated 13.5.2003 wherever 70% selection for the period up to 31.3.2003 has been held but the corresponding 30% LDCR has not been held so far, the 30% LDCE for vacancy period u to 31.3.2003 shall be held by the parent railway ask per the original assessment and zone of consideration". Hence holding of the selection by SER does not debar the applicants from retention in SECR in the higher post on regular basis.

10. In view of the above discussion, we are of the considered opinion that the applicants, whose names are mentioned in paragraph 7 above, are entitled to permanent absorption in SECR even against group-B posts, while other applicants whose names appear in paragraphs 4 & 5 have rightly been informed by the Railway Board that if they wish to remain in SECR, they have to apply for inter-railway transfer as per rules. Accordingly, it is ordered as follows:

(i)

(ii) Impugned order dated 16.3.2005 in O.A. 9/2006 is quashed so far as it relates to the applicant Om Prakash and the respondents are directed to absorb him on lien in SECR with due seniority and all consequential benefits. This exercise should be completed within three months from the date of receipt of this order.

(iii)"

7. Counsel for the respondents on the other hand referred to para 5 of Annexure R-2, which reads as under:-

"5. In regard to para 3 above, it has been decided by the Board, in partial modification of the instructions contained in Board's letter of even number dated 21.3.2003, that

(a) Since the new zones would not be able to hold selections for promotion to Group -B for quite some time, the parent Railway may hold the selections LDCEs for the period from 1.4.2003 onwards, for filling up Group -B vacancies in the parent Railway plus the vacancies in the divisions, workshops etc. which originally belonged to the parent Railway and which have now gone to a new zone. However, the

Group-B vacancies in the headquarters of the new zones may be excluded.

- (b) While making an assessment of the vacancies, the combined availability of officers working in Group-B in the parent Railway and the divisions, workshops etc. in the new Railway which originally belonged to the parent railway and also the number of officers who are already empanelled for Group-B but waiting for promotion should be taken into account.
- (c) Those who are waiting for promotion after empanelment in the parent railway may be posted immediately on administrative grounds against the vacancies within the jurisdiction of the new zones, with their lien being retained on the parent Railway. Similarly, if there are excess Group-B officers in the parent railway consequent to transfer of posts to any of the new zones (not necessarily to the new zone carved out of the parent railway), the junior most Group -B officers should, on administrative grounds, be posted against vacancies within the jurisdiction of the new zones retaining their lien on parent railway. This will help in immediately filling the vacancies in new zones and also restrict the size of the fresh Group-B panels to the extent of actual vacancies available in both parent railway an the new zone. Those Group-C employees who have already been empanelled for Group-B by the parent railway but have not been promoted to Group -B in accordance with the instructions contained in Board's letters of even no. dated 25.9.02 and 11.11.02, as they are working in divisions, workshops etc. which have been transferred to the new zone, may also be granted promotion to Group-B and posted against Group-B vacancies in the parent Railway/new zone with their Group-B seniority on the parent Railway.
- (d) For the selections/LDCEs to be conducted by the parent Railway, all Group-C staff who had earlier held a lien on the parent Railway and who are presently working in the new zone (whether in the headquarters office or in the divisions, workshops etc, transferred from the parent railway to the new zone) would also be eligible.
- (e) After formation of fresh panels for selection/LDCE the empanelled candidates may similarly be posted on either Railway depending upon the availability of vacancies, but they will have their seniority in Group 'B' on the parent Railway."

He had further submitted that the said order of the Jabalpur Bench had not taken into account the provisions of Order dated 13-05-2003 (Annexure R-2) and as such, the same cannot be taken as a precedence. He has also referred to the decision by the Apex Court in the case of *Indian Drugs & Pharmaceuticals Ltd. v. Workmen*, reported in 2007(1) SCC 408, where it has been held as under:-

41. No doubt, in some decisions the Supreme Court has directed regularisation of temporary or ad hoc employees but it is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent. Often the Supreme Court issues directions without laying down any principle of law, in which case, it is not a precedent. For instance, the Supreme Court often directs appointment of someone or regularisation of a temporary employee or payment of salary, etc. without laying down any principle of law. This is often done on humanitarian considerations, but this will not operate as a precedent binding on the High Court. For instance, if the Supreme Court directs regularisation of service of an employee who had put in 3 years' service, this does not mean that all employees who had put in 3 years' service must be regularised. Hence, such a direction is not a precedent. In *Municipal Committee, Amritsar v. Hazara Singh* the Supreme Court observed that only a statement of law in a decision is binding. In *State of Punjab v. Baldev Singh* this Court observed that everything in a decision is not a precedent. In *Delhi Admn. v. Manohar Lal* the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In *Divisional Controller, KSRTC v. Mahadeva Shetty* this Court observed as follows:

The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. "The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided."

8. In his rejoinder, the counsel for the applicant submitted that in so far as non-reference to order dated 13-05-2003 in the Jabalpur order is concerned, the same is not true as the same has been referred to in para 9 (already extracted). Again, in so far as the said order dated 13-05-2003 is concerned, while the counsel for the respondents relied upon para 5, (which relates to a situation where the new Zones not being able to hold any selections till such time the Group C cadres are closed and the seniority of Group C staff in the new zones is finalized and in respect of group C staff who are working in divisions, workshops

etc., which are now coming under the jurisdictions of the new zones, whether they would be eligible to be called for the parent zone for the selections/LDCEs to be notified by them,) what actually applies is para 2 and 4 which read as under:-

2. *With reference to Board's letter of even No. Dated 11.11.2002 mentioned above, doubts have been expressed by some of the parent Railways on the following points:-*

(i) *In cases where 70% selection for the period upto 31-03-2003 has been held but the corresponding 30% LDCE for the same period, has not been held so far, whether the 30% LDCE has to be held now separately or if the vacancies notified for the 30% LDCE can be added to the vacancy period from 01-04-2003.*

(ii) *In cases where neither 70% selection nor LDCE for the period upto 31-03-2003 were held, whether these selections and the corresponding LDCRs have to be held now separately or if the vacancies relating to such selections/LDCE can be added to the vacancy period from 1-4-2003.*

.....

4. It is, therefore, clarified with reference to para 2(i) above that, in cases where 70% selection for the period upto 31-03-2003 has been held but the corresponding 30% LDCE for the same period has not been held so far, the 30% LDCE for the vacancy period from 1-4-2003 has to be held as distinct from the 30% LDCE for the vacancy period from 1-4-2003 onwards. However, a single written examination and viva voce can be conducted for the 30% LDCE for both the vacancy periods, i.e. upto 31-03-2003 and from 1-4-2003 onwards, but separate panels should be formed for the LDCEs for the two periods.

4.2 *Similarly in cases where neither 70% selection nor 30% LDCE for the period upto 31-03-2003 were held, these selections and LDCEs have to be held as distinct from the selection/LDCE for vacancy period from 1-4-2003 onwards. However, in this case too, a*

single written examination and viva voce for 70% selection for both the vacancy periods may be held but separate panels formed for the two periods. Similarly, a single written examination and viva voce for 30% LDCE for both the vacancy periods may be held simultaneously but separate panels formed for the two periods.

Thus, the counsel for the applicant argued that the precedent quoted by him holds good and since the case of the applicant is identical to that of the applicant before the Jabalpur Bench, the same should be applied to his case as well.

9. Arguments were heard and documents perused. Admittedly, the applicant was holding a group C post when the trifurcation of the S.E. Railway was made. Again, that he had opted for East Coast Railway is evident from Annexure 1 /2 in December, 2002 and again, the applicant was relieved for the new Zone of East Coast Railway vide Annexure 1/3. That his lien stands transferred to E.Co.R is also evident from Annexure 6 internal communication of the E.Co.R between the Stores Department and the Dy. C.P.O (Gaz). Thus, in so far as the shifting of the applicant to new Zone as a Group C Railway Employee there is no dispute, manifest or implicit.

10. Order dated 13-05-2003 provides for conducting separate selection/LDCE and for separate panel for the period from 01-04-2003 and pre-01-04-2003. And, those eligible candidates, at the time when the vacancies arose, i.e. prior to 31-03-2003 and were in the pre-trifurcated Railways were allowed to participate in selection/examination. Presumably this was due to the fact that had the selection/LDCE been conducted, such individuals would have participated and this opportunity should not be denied to them for no fault of them when the selection/LDCE could not be held at the relevant point of time. Such of the selected candidates who have now been posted to new zones include Om Prakash and the applicant as is evident from Annexure 3. Again, by the said Annexure, the E.Co.R was requested to issue orders for promotion to the applicant. Order promoting the

applicant had also been issued by the East Coast Railway, vide Annexure 4 order dated 03-05-2004. Yet, the respondents refuse to entertain the applicant to be under E.C.R in Group B and insist either he accepts bottom seniority or should revert to S.E. Railway. The same situation is with reference to Shri Om Prakash who had been allotted to the S.E.C. Railway. When Om Prakash approached the Jabalpur Bench, as extracted earlier, the Bench had allowed the O.A. The applicant's counsel argued that the order of the coordinate bench should be followed.

11. Per contra, counsel for the respondents argued that the said order did not consider the decision of 13-05-2003. We decline to accept. The said order was to the full knowledge of the Jabalpur Bench and reference to the same had been made therein, as rightly pointed out by the counsel for the applicant at the time of argument.

12. Counsel for the respondents had further argued that there is no law declared in the said order and as held by the Apex Court in 2007(1) SCC 408, the said judgment cannot be treated as a precedent. This contention also cannot be accepted. For, Para 7 to 9 of the said judgment as extracted above renders a finding that notification issued by the SE Railway has clearly mentioned that the empanelled candidates may be posted to any of the three zones. Holding the selection by SER does not debar the applicants from retention in the new zone in the higher post on regular basis. Thus, the rules on the subject have been duly interpreted by the said judgment. In fact, in so far as decision by the coordinate Bench is concerned, the Apex Court has held in the case of *Sub-Inspector Roopal v. Lt. Governor, (2000) 1 SCC 644*:

"Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai* case and of Macleod, C.J., in *Haridas* case did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in *Bhagwan v. Ram Chand*

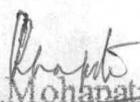
'It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.'

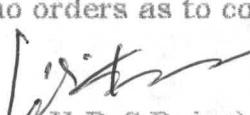
13. We are indeed sorry to note the attitude of the Tribunal in this case which, after noticing the earlier judgment of a Coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case. Because of this approach of the latter Bench of the Tribunal in this case, a lot of valuable time of the Court is wasted and the parties to this case have been put to considerable hardship.

And, we are in full agreement with the views held by the Jabalpur Bench in their OA No. 9/2006 which applies in all the four squares to the facts of this case.

In view of the above, the OA succeeds. Impugned order dated 19-05-2005 is hereby quashed and set aside. It is declared that the applicant is entitled to continue in E.C.O.R with his lien therein and in his group B service. His date of appointment in the said Group B shall be from the date he had assumed office in the higher grade by the orders of the E.C.O.R vide Annexure 4. His seniority be accordingly re-arranged after giving notice to the affected individuals.

Under the circumstances, there shall be no orders as to cost.


(C.R. Mohapatra)
MEMBER (A)


(K.B.S. Rajan)
MEMBER (J)