

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXX

454

1990

DATE OF DECISION 16.8.91

K. Vijayakumari _____ Applicant (s)

Mr. K. J. Joseph _____ Advocate for the Applicant (s)

Versus

UOI rep. by Secy., Min. of Respondent (s)
Communications, Govt. of India,
New Delhi & 3 others

Mr. K. A. Chelian, ACGSC-For R1-3 Advocate for the Respondent (s)
Mr. G. Sasidharan Chempazhanthiyil- For R.4

CORAM:

The Hon'ble Mr. S. P. Mukerji - Vice Chairman
and

The Hon'ble Mr. A. V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *✓*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal? *✓*

JUDGEMENT

(Mr. A. V. Haridasan, Judicial Member)

The applicant has in this application filed under Section 19 of the Administrative Tribunals Act, challenged the appointment of the 4th respondent as Extra Departmental Sub Post Master, Karavaloor, and has prayed that the respondents 1 to 3 may be directed to appoint her to the ~~above said~~ *✓* post taking into account her qualifications and experience. *✓*

The facts can be briefly stated as follows.

2. The applicant, a matriculate who had registered *✓* ^{her name} with the Employment Exchange, Punaloor had worked as a substitute in the place of Radhamma, who was the regular incumbent *in of* [✓] the post of EDSPM, Karavaloor for some period intermittently

while Smt. Radhamma was on leave. As Smt. Radhamma was officiating as Postman from 28.12.1988 onwards, the applicant was allowed to officiate in the post of EDSPM, Karavaloor upto 31.8.89. After 31.8.1989 though Radhamma had not nominated anybody as her nominee to officiate as EDSPM, the applicant was allowed to continue. While the applicant was thus working as EDSPM, her services were terminated on 31.8.1989 and one Smt. D. Sushama Kumari was appointed in her place. Even while the applicant was officiating as EDSPM on 24.7.1989 at the instance of the second respondent, the Employment Exchange, Punalur issued a notification in the Mathrubhoomi Malayalam daily, inviting applications to the post of EDSPM, Karavaloor directing the intending candidates to appear before the Employment Officer on the very same date with all original certificates. As the applicant did not see the notification in time, she could not appear before the Employment Officer and therefore the Employment Officer forwarded a list of 9 candidates to the second respondent. Though the applicant approached the Employment Officer on 25th July, 1989 with all certificates requesting him to include her name also in the list, the request was not acceded to. Hence the applicant filed OA 530/89 challenging the termination of her services, ^{and} the appointment of Smt. Sushama Kumari in her place and praying that all proceedings pursuant to the notification dated 24.7.89 may be quashed. This application was disposed of by this Bench of the Tribunal

by order dated 6.11.1989, setting aside the notification dated 24.7.1989 and directing the respondents to initiate the selection proceedings denovo after giving sufficient time to all the intending candidates and to consider the applicant also if she was otherwise eligible for regular appointment to the post of EDSPM, Karavaloor alongwith the other candidates. It was also directed that the applicant should be inducted to the post as a nominee until a regular appointee takes over the charge. Pursuant to this order, the applicant was reinducted to the post with effect from 21.11.1989 as a nominee of Smt. Radhamma. Thereafter the second respondent proceeded to make the selection without issuing a fresh requisition to the Employment Exchange and without issuing a fresh notification calling upon the intending candidates to apply. The second respondent called the 9 candidates who were nominated by the Employment Exchange pursuant to the notification which was set aside in OA 530/89 and the applicant for an interview. Including the applicant 8 persons ~~xxxxxx~~ appeared for the interview. On completion of the process of selection, the 4th respondent was selected and appointed. The applicant has challenged the selection ~~xxxxxxxxxxxxxx~~ process on the ground that the entire selection process is arbitrary, illegal and unjustified as the respondents did not follow the directions contained in the order of the Tribunal in OA 530/89 inasmuch as the selection proceedings were not

initiated denovo ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ after issuing a notification calling upon the intending candidates to submit their applications and the selection of the 4th respondent in particular because, the 4th respondent do not have any more superior qualification than the applicant who is also a matriculate and who has been working as EDSPM, Karawaloor for about 10 years in various spells. The applicant prays that the records of the 4th respondent relating to the selection and appointment to the post of EDSPM, Karawaloor may be called for, the order of appointment of the 4th respondent may be quashed and the respondents 1 to 3 may be directed to appoint her to that post on the basis of her qualification and experience.

3. The respondents have in their reply statement contended that, a denovo selection as directed by the Tribunal in the order in OA 530/89 was held, that the applicant was found to be not a bonafide resident within the area of the Karavaloor Post Office and that, therefore, from among the persons who were residents of the area and otherwise qualified, the 4th respondent who was found to be the best candidate was selected and appointed. It has been contended that the 4th respondent had obtained ~~more~~ marks in the SSLC Examination in the first chance, and that the experience of the applicant as a substitute in the place of permanent EDSPM could not be considered

as a preferential qualification. However, it is admitted in the reply statement that, while making the fresh selection a fresh requisition was not placed with the Employment Exchange and a fresh notification was not issued.

4. As directed by us the learned Senior Central Government Standing Counsel appearing for the respondents produced for our perusal the file relating to the proceedings of the impugned selection. We have gone through the pleadings and documents and have also heard the arguments of the counsel on either side.

5. While disposing of the Original Application No. 530/89 this Bench observed that by directing the intending candidates to appear before the Employment Officer on 24.7.1989 in a notification published on the very same date, sufficient time and opportunity were not given to all the intending applicants to appear before the Employment Exchange. Therefore, the application was disposed of directing the respondents to initiate the selection process denovo. It is worthwhile to extract the operative portion of the judgement in the above case which runs as follows:

" Accordingly, we allow this application and set aside the notice at Annexure-A6(a) with the direction that the respondents should initiate the selection process denovo again by giving sufficient time to all the candidates. We also direct the respondents to consider the applicant before us also, if she is otherwise eligible for regular appointment to the post

which she has been holding. We close this application with the above directions. The applicant should be as indicated above, inducted to the post as a nominee until regular appointee takes over from her. The applicant should be reinducted within a period of fifteen days from the date of communication of this order."

It is evident from the above quoted direction that the selection process was directed to be initiated denovo principally on the ground that, by issuing a notification on 24.7.1989 directing the intending candidates to appear before the Employment Officer with all certificates on the very same date, those who were desirous as candidates for offering themselves did not get sufficient opportunity to offer their candidature. Since the notification issued by the Employment Officer inviting applicants to appear before him on 24.7.1989 has been set aside and as the respondents have been directed to initiate selection process denovo the respondents should have caused the Employment Officer to issue a fresh notification or the respondents 1 to 3 themselves should have published the notification, giving sufficient time to all the intending candidates to apply for the post. Inspite of the clear direction in that line the respondents 1 to 3 have failed to do so. What they did was, calling those who were nominated by the Employment Exchange pursuant to the notification which had been was set aside and also the applicant for an interview and to proceed to make the selection. This action of the respondents is against the direction contained in the order in Original Application No.530/89.

For this reason alone the entire selection process is liable to be quashed and set aside. Going through the proceedings of the interview at Serial Nos. 200 to 203 in the file produced by the department, we find that the applicant was not considered as a resident of Karavaloor. One of the reasons for reaching to that conclusion was that, she got her name included in the ration card in the name of Shri Gopala Pillai, Padippura Veedu, Karavaloor only on 2.8.1989, i.e. after the selection proceedings had been initiated. The selection proceedings in this case can be said to have been initiated only after the issuance of a notification. If the notification issued on 24.7.1989 was a valid one, then it could be said that the applicant had got her name included in the ration card only after the selection proceedings were initiated. But, since the above notification has been set aside and no notification has been issued thereafter it cannot be said that the applicant got her name included in the ration card during the pendency of the selection process. It is also seen from the file that, the applicant had obtained 241 marks out of 600 in her SSLC Examination whereas the 4th respondent had obtained only 220 marks. According to the respondents, the criteria for selection among the candidates who were matriculates is the higher marks obtained in the SSLC Examination. The respondents in the reply statement have contended that the 4th respondent had obtained higher marks in the SSLC Examination in the first chance. In the selection file it is seen recorded

that the applicant had passed the SSLC Examination at 7th chance, but the total marks obtained by her in the SSLC Examination is 241. The instruction of the Post Master General on the subject only says that, among matriculates the person who has highest marks in the SSLC Examination will have the best chance to be selected and does not indicated whether any preference would be given to a person who had passed in the first chance over the persons who had passed in several chances. So, ^{on} a careful scrutiny of the entire selection proceedings, we find that the respondents 1 to 3 have not made the selection in accordance with law and also in accordance with the direction in the order of the Tribunal in OA 530/89. The 4th respondent who has been selected had already been appointed and she is presently holding the post, (the applicant states that it was done when she was on maternity leave). In these circumstances we are of the view that, in the interest of justice, the selection and appointment of the 4th respondent has to be set aside and the respondents 1 to 3 have to be directed to make a fresh selection, after inviting the intending candidates by issuing a notification afresh giving sufficient time to those who are interested to offer their candidature. Our discussion regarding the interse merits of the applicant and the 4th respondent are not conclusive of their comparative merits and we discussed the matter only with a view to illustrate that the respondents have not followed the proper procedure.

The fresh selection to be made should be made by the respondents 1 to 3 untrammelled by above observations. The applicant has prayed that, she may be directed to be appointed to the post considering her qualifications and experience. We direct that the respondents 1 to 3 has to make a fresh selection and in the process of selection the respondents will have to consider the qualifications of all the candidates, their experience and entitlement in accordance with law and the instructions on the subject.

6. In the result, the application is allowed in part. The entire process of selection and appointment in which the 4th respondent is selected and appointed being in violation of the direction contained in OA 530/89 are set aside. The respondents 1 to 3 are directed to initiate the ~~action~~ process of recruitment to the post of EDSPM, Karavaloor denovo after issuing a fresh notification through the Employment Exchange inviting applications to the post, giving the intending candidates sufficient time to offer their candidature. The applicant though not sponsored by the Employment Exchange should be considered alongwith the candidates sponsored by the Employment Exchange. The selection should be made on the basis of the merits of the candidates including the applicant and regarding the experience, the relevant rules and instruction should be followed.

Now that the 4th respondent is working as EDSPM, Karavaloor on the basis of the appointment which ^{has} ~~is~~ now been set aside the respondents 1 to 3 may allow the 4th respondent to

continue in that post on a purely provisional basis until a fresh selection and consequent appointment is made. The process of selection and the appointment of the regularly selected candidates should be made within a period of three months from the date of communication of this order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

16/8/91


(S.P. MUKERJI)
VICE CHAIRMAN

16.8.91

16.8.1991

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

RA 56/91 in

O. A. No. 454/90

XXXXXX

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DATE OF DECISION 27.2.1992

Smt. Prasannakumari

Applicant (s)

Shri G Sasidharan Chempazam-

Advocate for the Applicant (s)

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Versus

Smt K Vijayakumari & others

Respondent (s)

Shri K.J. Joseph and

Shri K.A. Cherian.

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. To be circulated to all Benches of the Tribunal ? *no*

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

This review application is filed by the 4th respondent in O.A.454/90. A brief discussion of the history of the case is essential for understanding the scope of this review application. Smt.K.Vijayakumari, the applicant in the original application, who was working as a substitute E.O. S.P.M. when Smt. Radhamma, the previous incumbent in the post was absorbed in the regular establishment of the Postal Department filed O.A.530/89 challenging the order of the Sub Divisional

Inspector of Post Offices, Punaloor, terminating her services as also the notification ~~xxxxxxxxxxxxxxxxxxxxxx~~ appearing in the Malayalam Newspaper, Mathrubhumi, dated 24th July, 1989 directing intending candidates ^{apply} for the post of E.D. S.P.M., Karavaloor, to appear in the Employment Exchange, Punaloor, on 24th July itself and also for a direction to consider her candidature for regular appointment to that post. The ^{above} application was disposed of by order dated 6.11.89 with the following directions:

"Accordingly, we allow this application and set aside the notice at Annexure-A6(a) with the direction that the respondents should initiate the selection process *de novo* again by giving sufficient time to all the candidates. We also direct the respondents to consider the applicant before us also, if she is otherwise eligible for regular appointment to the post which she has been holding. We close this application with the above directions. The applicant should be as indicated above, inducted to the post as a nominee until regular appointee takes over from her. The applicant should be reinducted within a period of fifteen days from the date of communication of this order."

The above direction was given as it was felt that replacement of the applicant by another substitute during the process of regular selection was irregular and that the notification dated 24.7.89 did not give sufficient time and opportunity to all the applicants to appear at the

Employment Exchange on the same date. Pursuant to the above order of the Tribunal, the applicant was reinducted to the post with effect from 21.11.89 and the Sub Divisional Inspector issued notices to the nine candidates who have been nominated by the Employment Exchange earlier as also the applicant to appear for the interview. After the interview, the 4th respondent was selected and appointed to the post on regular basis. As the applicant was not considered as a bonafide permanent resident in the Karavaloor village as she had got her name included in the ration card within the area of the village only on 2.8.89 after the selection process had commenced, she was not considered eligible for appointment as E.D. S.P.M., Karavaloor on a regular basis. The 4th respondent being a resident of Karavaloor village and a candidate satisfying all the eligibility criteria and as she had obtained the highest marks in the SSLC examination among the eligible candidates, she was selected and appointed. The applicant aggrieved by her non-selection and the selection and appointment of the 4th respondent, filed O.A.454/90 challenging the appointment of the 4th respondent and praying for a direction to the respondents 1 to 3 in the original application to appoint the applicant to the post of E.D. S.P.M., Karavaloor, taking into account her qualification and experience. It was averred in the application that the respondents 1 to 3 in the original application had flouted the directions contained in the order in O.A.530/89 as they did not publish a fresh

notification since the notification dated 24.7.89 had been set aside by the Tribunal in the judgement in O.A.530/89 and that the selection process was, therefore, vitiated. The respondents 1 to 3 had contended that the selection process was held *de novo* as directed by this Tribunal in the final order in O.A.530/89 after calling all the candidates sponsored by the Employment Exchange earlier as also the applicant and that the contention of the applicant that the direction contained in the order in O.A.530/89 were flouted is not true to fact. It was also contended by the respondents that as the applicant got her name included in the ration card in the Karavaloor village only on 2.8.89, she did not satisfy the residential qualification prescribed for the post of E.O.S.P.M. The 4th respondent also had filed a reply statement opposing the application contending that the applicant, who was a resident of Punaloor Municipality had got her name included fraudulently in the ration card of Shri P. Gopala Pillai Babu Pillai, Padipura Veedu, Karavaloor with effect from 2.8.89 after the recruitment process to the post of E.O.S.P.M., Karavaloor had already been initiated and that, therefore, she was not eligible to be considered for appointment to the post. After hearing the arguments of the counsel for the parties, by the final order dated 16.8.91, this Bench allowed the application in part, quashed the selection and appointment of the 4th respondent and directed the respondents 1 to 3 to initiate the process of

recruitment to the post of E.D.S.P.M., Karavaloor, denovo after issuing fresh notification through the Employment Exchange inviting applications to the post giving the intending candidates sufficient time to offer their candidature.

It was also directed that the applicant ^{though not} ~~and~~ sponsored by the Employment Exchange should also be considered. However, as the 4th respondent had already been appointed, it was directed that until a fresh selection is made, the 4th respondent ~~will~~ ^{should} be permitted to continue in the post on a provisional basis. Pursuant to this order, the respondents 1 to 3 in the original application had initiated the denovo selection process. It was at this time, that the petitioner the 4th respondent in the original application, has filed this review application. It has been averred in the review application that the decision of the Tribunal in O.A.454/90 was based on an erroneous presumption that the Employment Exchange, Punaloor, had issued a notification in the Mathrubhoomi daily on 24.7.1989 inviting application for the post of E.D. S.P.M., Karavaloor, while in fact, the Employment Exchange had not issued any such notification but had intimated the eligible persons who had registered their names in the Employment Exchange sufficiently in advance to appear before the Exchange on 24.7.89 to be nominated. It has, further been averred that as the recruitment process had been initiated by the Sub Divisional Inspector long prior to 19.7.89, the applicant who had got her name included in the ration card in the name of

Shri Gopala Pillai on 2.8.89 not being a bonafide resident of the village on the date on which the vacancy was notified, she had no right to be considered for appointment to the post and that this aspect though pleaded by the 4th respondent in her reply statement, was overlooked by the Tribunal.

2. The respondents 1 to 3 who are respondents 2 to 4 in the review application, have filed their reply statement stating that the recruitment process had been initiated long prior to the filing of O.A.530/89 and the applicant in the original application was considered ineligible for appointment to the post as she had got her name included in the ration card of Shri Gopala Pillai, Padippura Veedu, only with effect from 2.8.89. It has also been averred that as per direction contained in the final order in O.A.454/90 a denovo selection was held and the selected candidate, one Shri Ashokan, has been put incharge of the post of E.D.S.P.M., Karavaloor, informing him that the appointment was purely provisional and subject to the outcome of the review application.

3. We have heard the counsel for the parties and have carefully gone through the pleadings and documents. In the order sought to be reviewed, we had observed as follows:

"Since the notification issued by the Employment Officer inviting applicants to appear before him on 24.7.89 has been set aside and as the respondents have been directed to initiate selection process denovo the respondents should have caused

the Employment Officer to issue a fresh notification or the respondents 1 to 3 themselves should have published the notification, giving sufficient time to all the intending candidates to apply for the post. Inspite of the clear direction in that line the respondents 1 to 3 have failed to do so. What they did was, calling those who were nominated by the Employment Exchange pursuant to the notification which had been set aside and also the applicant for an interview and to proceed to make the selection. This action of the respondents is against the direction contained in the order in Original Application No.530/89. For this reason alone the entire selection process is liable to be quashed and set aside. Going through the proceedings of the interview at Serial Nos.200 to 203 in the file produced by the department, we find that the applicant was not considered as a resident of Karavaloor. One of the reasons for reaching that conclusion was that, she got her name included in the ration card in the name of Shri Gopala Pillai, Padippura Veedu, Karavaloor only on 2.8.89, i.e. after the selection proceedings had been initiated. The selection proceedings in this case can be said to have been initiated only after the issuance of a notification. If the notification issued on 24.7.89 was a valid one, then it could be said that the applicant had got her name included in the ration card only after the selection proceedings were initiated. But since the above notification has been set aside and no notification has been issued thereafter it cannot be said that the applicant got her name included in the ration card during the pendency of the selection process."

We have allowed the application and quashed the selection of the 4th respondent on the ground that there was a direction in the final order in O.A.530/89 to issue a fresh notification and that this was not carried out by the respondents 1 to 3. It was also held that there was

a notification in the Mathrubhoomi daily dated 24.7.89 by the Employment Exchange. We have perused the records in O.A.530/89. A copy of the Mathrubhoomi daily dated 24th July, 1989 also was obtained for our perusal. It is evident from the newspaper that what was produced as R6 and R6(a) in O.A.530/89 was only a photocopy of a news item which appeared in the Mathrubhoomi daily dated 24th July, 1989 to the effect that there were two vacancies of E.D. Post Masters in Aryankavu and Karavaloor and that the intending candidates should appear before the Employment Office, Punaloor on that date. This was only a news item published in the paper and not a notification issued by the Employment Exchange. As the Employment Officer, Punaloor, the 4th respondent in O.A.530/89, did not appear and file any statement, this aspect was not brought to our notice. Though this aspect was brought to our notice by the 4th respondent in her reply statement in O.A.454/90 that aspect had been overlooked by us. For nominating a candidate, it is not necessary for the Employment Exchange to issue any notification. It is sufficient if the Employment Exchange issues notices to the eligible candidates asking them to appear before it for having their names sponsored. Annexures A3 and A3(a) produced along with the original application was only an intimation issued by the Employment Exchange to one of the candidates. Annexure A6 in O.A.530/89

was only a news item published by the reporter and not a notification issued either by the Employment Exchange or by the Postal Department. We were under the impression that the Postal Department had issued a notification in the Malayalam newspaper, Mathrubhoomi on 24.7.89 and this notification was quashed in O.A.530/89. It was also considered by us that in the final order in O.A.530/89, the respondents 1 to 3 in original application have been directed to issue a fresh notification through the Employment Exchange. It was in such circumstances that we ^{had} held that by calling only the nine candidates sponsored by the Employment Exchange prior to filing of O.A.530/89 and the applicant for an interview, the respondents 1 to 3 have not fully complied with the directions contained in the final order in O.A.530/89. But a close scrutiny of the direction contained in the final order in O.A.530/89 would show that what was directed was to initiate the selection process denovo and not the recruitment process denovo.

The recruitment process has been initiated long before 24.7.89. In fact, the requisition to the Employment Exchange was issued by the Sub Divisional Inspector as early as on 26.6.89. Therefore, the vacancy had been notified on 26.6.89. According to the requisition, the Employment Exchange was required to sponsor candidates who were permanent residents within the Karavaloor village. Though the selection process was directed to be held denovo as the vacancy had already been notified on 26.6.89

candidates who satisfy the residential qualification and other qualifications as on 26.6.89 only could be considered eligible. This aspect of the case was overlooked by us in our judgement in O.A.454/90. Being under the impression that the respondents were, by the final order in O.A.530/89, bound to issue a fresh notification, we held that though the applicant in the original application had got her name included in the ration card of Shri Gopala Pillai in Karavaloor village only on 2.8.89 as no fresh notification was issued by the Employment Exchange or by the Postal Department as directed, the respondents have gone wrong in holding that the applicant did not satisfy the residential qualification. Now we are convinced that as per the final order in O.A.530/89, it was not necessary to issue a fresh notification, and ^{that} it was sufficient if all the candidates are given sufficient opportunity to appear for the interview. As the applicant has no case that the candidates did not get such an opportunity, we are of the view that the denovo selection process was duly performed by the respondents 1 to 3 as directed in the final order in O.A.530/89. Our decision contained in the order sought to be reviewed was based on a mistaken impression as mentioned earlier. In such circumstances, as the vac-
ancy was notified to the Employment Exchange on 26.6.89,
O.A.
the applicant in the ~~application~~ ^m not being a bonafide
resident of Karavaloor village on that date, ~~the application~~ ^m

has been properly considered ineligible for appointment as E.D.S.P.M. by the respondents. In such circumstances, the applicant in the original application is not entitled to any relief as prayed for in the application. The selection and appointment of the 4th respondent who was found to be the most suitable among the eligible candidates cannot, therefore, be faulted.

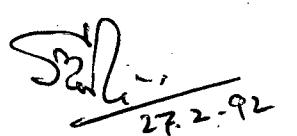
4. It appears that pursuant to the order sought to be reviewed, the Department has made a denovo process of selection and that one Shri Ashokan was selected and appointed purely on a provisional basis informing that his appointment was subject to the result of the review application. Since the denovo selection process happened to be held and Shri Ashokan happened to be selected only on account of the erroneous decision rendered by us, we are of the view that that should not prejudice the case of the 4th respondent who has been holding the post of E.D.S.P.M., Karavaloor and is entitled to be appointed to that post.

5. On an anxious consideration of the facts, evidence and circumstances broughtout in the review application and revealed from the files in connected cases, we find that the final order passed by us in O.A.454/90 on 16.8.91 has to be reviewed and that the original application O.A.454/90 has to be dismissed. We, therefore, have no

hesitation to review the said judgement and to dismiss the original application. We do so without any order as to costs allowing this review application. The 4th respondent on the basis of her selection to the post of E.O.S.P.M., Karavaloor is entitled to be appointed in that post replacing Shri Ashokan who has been subsequently selected and appointed provisionally and subject to the outcome of the review application.


(A.V. Haridasan)

Judicial Member


(S.P. Mukerji)

Vice Chairman

27.2.92

*PS