

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 565
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1990

DATE OF DECISION 17.2.1992

Shri Johnson S. Fernandez Applicant (X)

M/s C.P. Sudhakaraprasad & Advocate for the Applicant (X)
Babu Mathew P. Joseph
Versus

Chairman, ISRO, Bangalore & Respondent (s)
4 others

Shri N.N. Sugunapalan, SCGSC 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

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

The applicant commenced his service in the grade of Tradesman-A in the Vikram Sarabhai Space Centre on 19.1.1972. On the basis of normalisation scheme, he was appointed as Draughtsman-A with effect from 19.1.1972. He was promoted as Draftsman C-II with effect from 30.10.1975. He became eligible to be considered for review to the category of Draughtsman C-I as on 1.4.1978. Though he was reviewed for promotion, on all the years from 1978 to 1984, within two months

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of the reviews, he was informed that he was not selected to the post of Draughtsman C-I. He again appeared for review as on 1.4.1985. After the trade test and interview, the DPC recommended the applicant for promotion as Draughtsman C-I with effect from 1.4.1985.

2. The appointing authority, the 4th respondent, on 6.4.1984 approved the recommendation of the DPC. But while all others who appeared along with the applicant were intimated of the result in April, 1984 itself, the applicant was not so informed. By Annexure A1 communication dated 27.2.1986, he was informed that he was not approved for promotion to the post of Draughtsman C-I under review as on 1.4.85. Therefore, he made a representation to the 4th respondent claiming that on the recommendation of the DPC he was entitled to be promoted to the grade of Draughtsman C-I with effect from 1.4.85. The applicant was the Joint Secretary of the ISRO Staff Association from 1975 to September, 1985. He believed that the action of the appointing authority in changing his mind and disapproving the recommendation of the DPC was an act of victimisation for his union activities. Against the Annexure A1 communication, the applicant made a representation to the 4th respondent on 5th September, 1986. Finding no response to his representation, on 10th November, 1986, the applicant made a

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representation to the third respondent. In response to this representation, the applicant received the Annexure A2 reply dated 2nd January, 1987. He was informed that following the review as on 1.4.1985, he was found not suitable for promotion. Noting the inconsistency in the statements made in Annexure A1 and A2, that while in Annexure A1 he was informed that his case for promotion was not approved by the appointing authority, in Annexure A2, it was stated that he was not found suitable for promotion, the applicant filed a representation on 9th March, 1987 to the 2nd respondent. In response to this representation at Annexure A10, the applicant received the Annexure A3 reply dated 29th June, 1987 from the 2nd respondent informing him that the results of promotion review were determined on the basis of various parameters like performance in trade test, interview, overall performance during the review period etc, and that as the applicant had not satisfied some of these conditions, there was no ground to modify the decision. Dissatisfied by the Annexure A3 reply, the applicant submitted a representation on 2nd December, 1987 to the 1st respondent. Finding no response, on 26.2.1990, he made another representation. Thereafter, the applicant received the memorandum dated 8th March, 90 from the 3rd respondent (Annexure A4) informing him that his case could not be considered for promotion unless he appeared in the next review as and when called for. In

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3. The respondents, in their reply statement, have contended that though the appointing authority approved the recommendations of the DPC to promote the applicant to the post of Draughtsman CI with effect from 1.4.85, as it was noticed later by the appointing authority that the DPC had committed an error in over-looking the ACR ratings of the applicant, the case was again referred to the DPC, that the DPC did not make any change in its ~~xxxxxx~~ recommendations and that as on account of the inferior ratings obtained by the applicant for his ACRs, the appointing authority disapproved the recommendations of the DPC, after referring the case to the Head of the Department, namely, the Director, VSSC, who has the final authority on such matters for final decision and that as it was ^{finally} ~~decided~~ not to approve the recommendations of the DPC to promote the applicant to the post of Draughtsman CI with effect from 1.4.1985, the applicant is not entitled to the relief claimed by him.

4. We have gone through the pleadings and documents produced and have also carefully heard the arguments of the counsel on either side. Shri Sugunapalan, the learned counsel appearing for the respondents, made available for our perusal the recommendations of the DPC and the connected file and the ACR dossier relating to the applicant. From the minutes of the DPC dated 26.3.1985, we find that the applicant was recommended by the DPC for promotion as Draughtsman CI with effect from 1.4.85. It is also seen

that the appointing authority had on 6.4.85 approved the recommendations. But it is seen from the file that the 4th respondent, the appointing authority, finding that the applicant had secured only the following gradings:

1982 : Fair,
1983 : Fair, and
1984 : Fair to good,

in the ACRs, felt that the DPC had over-looked the requirement of the minimum marks to be obtained in regard to service records and had called for a clarification from the Chairman of the DPC. It is further seen from the file that the Chairman of the DPC in consultation with the members of the DPC, did not consider it necessary to make any change in its recommendation though the DPC had considered the ACR of the applicant for the year 1984 only as it was a repeat case. The appointing authority, being not satisfied with the recommendations of the DPC, placed the matter before the Director and with the Director's approval, the appointing authority had recorded that the recommendations of the DPC in regard to the applicant was not approved. This was recorded below the recommendation of the DPC. It is on the basis of the decision taken by the appointing authority the 4th respondent, with the approval of the Director, that the applicant was not promoted to the post of Draughtsman CI with effect from 1.4.1985. According to the circular of Government of India, Deptt. of Space, Vikram Sarabai Space Centre, Trivandrum, dated 30th July, 1977 where the appointing authority does not agree with the

recommendations of the DPC, the appointing authority should indicate the reason for disagreement and refer the entire matter to the DPC for reconsideration of its earlier recommendation and in case the DPC reiterates its earlier recommendation, giving also the reasons to support thereon, it is open for the appointing authority either to accept the recommendations or not to accept the recommendations and if the appointing authority does not accept the recommendations, it has to submit the papers to the next higher authority whose decision would be taken to be final.

In this case, the 4th respondent being not satisfied with the reasons given by the DPC, submitted the file to the Director, VSSC, and on the Director's approval, decided not to approve the recommendations of the DPC to promote the applicant as Draftsman CI w.e.f. 1.4.1985. We find that this action of the 4th respondent is according to the procedure laid down in this regard and that it cannot be faulted. As the practice is to consider the ACR of the official under review for 3 years even in repeat cases, we find that the 4th respondent was justified in disagreeing with the recommendations of the DPC to promote the official w.e.f. 1.4.1985, considering only the ACR for the year 1984. We, therefore, do not find any legitimate grievance for the applicant.

5. In the result, the application fails and the same is dismissed without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 565/90
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DATE OF DECISION 04.9.1992.

Mr Johnson S Fernandez Applicant (s)

Mr CP Sudhakara Prasad Advocate for the Applicant (s)

Versus

The Chairman, ISRO & 4 others Respondent (s)

Mr NN Sugunapalan, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

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

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant, Shri Johnson S Fernandez, commenced his service as Tradesman-A in the Vikram Sarabhai Space Centre (VSSC) on 19.1.1972. With effect from the same date, he was appointed as Draughtsman-A under normalisation scheme. He was then promoted as Draughtsman-C.II with effect from 30.10.1975. He became eligible for review to the category of Draughtsman-C.I on 1.4.1978. Though he was reviewed every year from 1978 to 1984, his case was not recommended for promotion to the grade of Draughtsman-C.I. But on all such occasions, within two months of the review

he was informed of the result. He was again reviewed for promotion with effect from 1.4.1985. He secured 61% marks in the trade test and the DPC recommended his case for promotion. The appointing authority also approved the recommendation of the DPC. But the order of promotion was not issued, nor was the applicant informed of the result of the review. Later, by order dated 27.2.1986 (Annexure A1) he was informed that he was not approved for promotion to the post of Draughtsman-C.I under review as on 1.4.1985. He, therefore, made a representation to the 4th respondent that in accordance with the recommendations of the DPC he was entitled to be promoted as Draughtsman-C.I with effect from 1.4.1985. Finding no response, he made a representation to the 3rd respondent on 10.11.1986. In response to this representation he ~~xx~~ received a reply dated 2.1.1987 (Annexure A2) informing that following the review, he was not found suitable for promotion. Noting the inconsistency in the statements in Annexure A1 and A2 that while in Annexure A1 he was informed that his name was not approved by the appointing authority, in Annexure A2 it was stated that he was not found suitable for promotion, the applicant made another representation on 9.3.1987 to the 2nd respondent. In reply to this representation, the applicant received Annexure A3 letter dated 29.6.1987 stating that the results of promotion review were determined on the basis of various parameters like performance in trade test, interview, overall performance during the review

period etc and that as he had not satisfied some of these conditions, there was no ground to modify the decision. Dissatisfied with the above reply, the applicant submitted a representation to the 1st respondent on 2.12.1987. As there was no reply, he made another representation. He was then informed by the 3rd respondent vide memorandum dated 8.3.1990 (Annexure A4) that his case could not be considered for promotion unless he appeared in the next review as and when called for. The 4th respondent replied to the applicant's representation dated 26.2.1990 by memorandum dated 24.5.1990 at Annexure A5 informing of the decision of the 1st respondent that since he did not attend the review held in subsequent years, his claim was rejected and that the authorities were willing to consider his case along with the next batch as on 1.10.1990. The applicant was the Joint Secretary of the ISRO Staff Association from 1975 to September, 1985. According to him the action of the appointing authority in changing its mind and disapproving the recommendations of the DPC was an act of victimisation for his Union activities. His case is that on the basis of the recommendations of the DPC, he was entitled to be promoted as Draughtsman-C.I with effect from 1.4.85, to be reviewed for the grade of Draughtsman-D (as) on 1.4.88 and for Draughtsman E as on 1.4.91. The action of the appointing authority in referring the matter to the Head of the Department, namely the Director, VSSC, was irregular and opposed

to the norms prescribed for review and promotion. In these circumstances, the applicant filed the Original Application under Section 19 of the Administrative Tribunals Act praying that the impugned orders at Annexure A1 to A5 may be quashed and the respondents be directed to promote him as Draughtsman C.I with effect from 1.4.1985 with consequential benefits such as review for promotion as Draughtsman-D and E with effect from 1.4.88 and 1.4.91.

2. The respondents contended that though the DPC recommended the case of the applicant for promotion and at the first instance the appointing authority approved the proposal, as it came to light that the DPC had committed an error in overlooking the ACR rating of the applicant, the case was again referred to the DPC, that ^{as} the DPC did not make any change in its earlier recommendations, the appointing authority noting the poor ratings in the applicant's ACRs, was constrained to refer the matter to the Head of the Department, namely the Director, VSSC and it was with the approval of the Director, who is the final authority in such matters, that a final decision was taken not to approve the recommendations of the DPC for promotion of the applicant to the grade of Draughtsman-C.I with effect from 1.4.1985. They have also contended that according to the instructions contained in OM No.HQ:ADMN:4.20(3) dated 6.1.1982 (Annexure R1) the appointing authority is competent to modify or amend the recommendations of the DPC and that in accordance with the guidelines contained in DQP&AR OM No.22011/6/75-Estt(D)

dated 30th December, 1976 forwarded to the VSSC by the Department of Space vide letter No.2/1(6)/77-I, dated 7.4.1977 (Annexure R2), the appointing authority was right in referring the matter to the Head of the Department with full facts to arrive at a final decision as there was a disagreement between the DPC and the appointing authority over the recommendations of the DPC. The respondents further contended that the DPC had erred ^{in not} taking into account the ACR ratings for 3 years immediately prior to the review and that the fact that the applicant had secured 61% marks in the trade test would not by itself entitle him to be promoted. Therefore, the respondents prayed that the application being devoid of any merit might be dismissed.

3. Hearing the arguments of the counsel on either side and a close scrutiny of the relevant records including the proceedings of the DPC, the application was disposed of by us by order dated 17.2.1992 dismissing the same. Pointing out that the order dated 17.2.92 suffered from error apparent on the face of records, the applicant filed RA 39/92. We have this day by a separate order allowed the RA and restored this application for fresh disposal. Hence, the matter is being considered afresh.

4. We have carefully gone through the minutes of the DPC for review of the applicant for promotion to Draughtsman-C.I as on 1.4.1985. The DPC had recommended the applicant for

promotion with effect from 1.4.85. The Chairman and Members of the DPC have also signed the minutes. It is seen that the appointing authority has on 6.4.85 approved the recommendations of the DPC. But on 26.4.85, the appointing authority the Head-PGA, referring to the minutes of the DPC dated 26.3.85 has adverted to the ACR gradings relating to the applicant for the years 1982, 1983 and 1984 which were recorded as 'Fair', 'Fair' and 'Fair to Good', directed that clarification from the Chairman of the DPC as to whether the candidate satisfied the requirement of 50% of the marks for the ACR as envisaged for the review to be obtained. The Chairman of the DPC has in his clarification dated 9th May, 1985 stated that as the case of the applicant was repeat case, the DPC considered only his ACR for the year 1984, the 'poor to fair' gradings till 1983 have not been communicated to him and that on a consideration of all the aspects, the DPC was satisfied that the applicant had satisfied the eligibility criteria for promotion and that the Committee in its collective wisdom recommended Shri Fernandez's promotion. If the appointing authority did not agree with the recommendations of the DPC, according to the instructions contained in the OM dated 6th January, 1982 at Annexure R1, the appointing authority could for reasons to be recorded in writing ~~xxx~~ modify or amend the recommendations of the DPC. The relevant portion of the Annexure R1 reads as follows:-

"In cases where the Reporting Authority has consistently held the view that the person does not deserve promotion due to unsatisfactory performance in work, irregularity

in attendance, absenteeism etc, the DPC has to take cognisance of these remarks. If the Committee fails to do so, the Appointing Authority who has to approve the minutes of the DPC has to take an appropriate decision in the matter. Such authority can decide to disagree with the recommendations of the DPC, for reasons to be recorded in writing. For these reasons, it has been decided that it would not be proper to lay down that though there is no screening, persons will be sent for review only subject to the criterion of the elimination of the unfit. The process of elimination of the unfit will form part of the review initiated by the DPC and finally approved by the competent authority. If there are matters within the knowledge of the Appointing Authority which render the candidate unfit for promotion, the Appointing Authority may for reasons to be recorded in writing modify or amend the recommendations of the DPC."

So, it is evident from the above extracted stipulations in the memorandum that only in cases where the DPC failed to take cognisance of the consistent remarks of the Reporting Officer that the person does not deserve promotion due to unsatisfactory performance in work, irregularity in attendance, absenteeism etc., the appointing authority can decide to disagree with the recommendations of the DPC for reasons to be recorded in writing. We have gone through the ACR of the applicant. It cannot be said that the reporting officers have consistently held that the applicant did not deserve promotion due to unsatisfactory performance in work, irregularity in attendance,, absenteeism etc. In the ACR for the period from 1.1.1984 to 31.12.1984, which ^{was} the ~~latest~~ ACR considered by the DPC, the applicant has been graded 'Fair to Good'. Proficiency in carrying out the work assigned has been assessed as 'Very Good'. It is true that in the ACR of the applicant for the year 1982 and 1983, he has been rated as 'Fair' only and it has been observed that he was

irregular in attendance. The DPC did not take into consideration these ACRs for two reasons: firstly that the review of the applicant ~~xxx~~ being a repeat case, the DPC was of the opinion that the ACR of the year immediately preceding alone need be considered and secondly, that the adverse entries in the ACR for 1982 and 1983 were not communicated to the applicant. If adverse entries in the ACRs are not communicated to the officer concerned, he would not get an opportunity to make a representation against such remarks and if such adverse remarks are taken into consideration by the DPC that would cause great prejudice to the officer concerned. So, the decision of the DPC that the adverse entries in the ACRs for two years prior to 1984 which were not communicated to the applicant cannot be taken into consideration is a just and proper decision. Considering the remarks obtained by the applicant in the trade test, the grading in the ACR for the relevant period considered and the overall effect of the interview, the DPC in its collective wisdom recommended the applicant for promotion. According to the memorandum at Annexure R1 only in cases where the circumstances specified therein exist, the appointing authority can disagree with the recommendations of the DPC. The circumstances specified in Annexure R1 do not exist in this case. Further, the appointing authority has to record reasons for disagreement. The appointing authority in this case has after approving the recommendations of the DPC on 6.4.85, disapproved the

recommendations of the DPC by his endorsement dated 26.2.1986. The endorsement reads as follows:-

"In accordance with notings dated 10.10.85, which was approved by Director on 24.2.86, the recommendations of the DPC is hereby not approved."

In the records produced for our perusal, there is nothing to show that the appointing authority has recorded any reason for disagreeing with the recommendations of the DPC to promote the applicant as Draughtsman-C.I with effect from 1.4.85. It is seen that the appointing authority has sought clarification from the Chairman of the DPC which was given. But thereafter, apart from the endorsement that in accordance with the notings dated 10.10.85 which was approved by the Director on 24.2.86 the recommendations of the DPC is hereby not approved, nowhere in the file any reason is seen ~~xxxxx~~ recorded by the appointing authority for the disagreement. The procedure that has been adopted by the appointing authority in getting the clarification from the Chairman of the DPC and referring the matter to the Director envisaged in Annexure R2 does not apply to the functioning of the DPC in VSSC because the note under Annexure R2 makes it clear that these instructions do not apply to the Department of Space. Therefore, we are of the view that the action of the 4th respondent in not approving the recommendations of the DPC which was formed by the collective wisdom of the DPC assessing the merits of the

applicant on the basis of his trade test, interview and ACR grading without even recording any specific reason for doing so and in the absence of the circumstances mentioned in Annexure R1 cannot be sustained. Therefore, we hold that the applicant, as recommended by the DPC, is entitled to be promoted with effect from 1.4.85 as Draughtsman C.I and to get the consequential benefits including consideration for promotion to Draughtsman D with effect from 1.4.88 and Draughtsman E with effect from 1.4.91.

5. In the result, the application is allowed, the impugned orders at Annexure A1 to A5 are set aside and the respondents are directed to promote the applicant as Draughtsman CI with effect from 1.4.85 with all consequential benefits, to review him for promotion for the grade of Draughtsman D as on 1.4.88 and for Draughtsman E as on 1.4.91 and to promote him from the respective ~~date~~ dates if he is found suitable for such promotion in accordance with law. Action on the above lines should be completed, fixation of pay should be made accordingly and arrears if any arising out of such promotion should be paid to the applicant within a period of 3 months from the date of communication of this order.

6. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

04.9.92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A. No. 39/92 in

O. A. No. 565/90

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DATE OF DECISION 04.9.1992

Mr Johnson S Fernandez Applicant (S)

Mr CP Sudhakara Prasad Advocate for the Applicant (S)

Versus

The Chairman, ISRO & 4 others Respondent (s)

Mr NN Sugunapalan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV 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

(Hon'ble Shri AV Haridasan, JM)

The applicant has filed this Review Application alleging that the final order in the OA suffered from error apparent on the face of records and is liable to be reviewed. In the final order dated 17.2.1992 in paragraph 4, we had observed as follows:-

"According to the circular of Government of India, Department of Space, Vikram Sarabai Space Centre, Trivandrum, dated 30th July, 1977 where the appointing authority does not agree with the recommendations of the DPC, the appointing authority should indicate the reason for disagreement and refer the entire matter to the DPC for reconsideration of its earlier recommendation and in case the DPC reiterates its earlier recommendation, giving also

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the reasons to support thereon, it is open for the appointing authority either to accept the recommendations or not to accept the recommendations and if the appointing authority does not accept the recommendations, it has to submit the papers to the next higher authority whose decision would be taken to be final. In this case, the 4th respondent being not satisfied with the reasons given by the DPC, submitted the file to the Director, VSSC, and on the Director's approval, decided not to approve the recommendations of the DPC to promote the applicant as Draftsman C.I w.e.f. 1.4.1985. We find that this action of the 4th respondent is according to the procedure laid down in this regard and that it cannot be faulted."

Referring to this observation and finding, the applicant has, in the Review Application, averred that this Tribunal has erred ^{by} placing reliance on the circular dated 30.7.1977 (Annexure R2) which did not apply to the review by the DPC of officers in VSSC for promotion. According to the applicant, the relevant guidelines are contained in Annexure R1 according to which if the appointing authority is of the opinion that the DPC has failed to take into consideration the opinion of the reporting authorities that the official concerned does not deserve promotion due to unsatisfactory performance in work, irregularity in attendance, absentism etc, the appointing authority can for reasons to be recorded in writing, refuse to give approval to the decision of the DPC. Therefore, according to the applicant, only under these special circumstances, the appointing authority is competent to disapprove the recommendations of the DPC for reasons to be recorded in writing. Once the appointing authority has approved the promotion, in the absence of the circumstances as stated earlier, it


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is not open for the appointing authority to cancel the approval. It is further alleged that as the appointing authority has not recorded any reason and has referred the matter to the Director for approval of unfavourable decision, substantial prejudice has been caused to the applicant since an opportunity for appeal against the decision of the appointing authority has also been taken away. Therefore, the applicant contends that the decision of the Tribunal overlooking these legal aspects which are specifically pleaded in the application and the rejoinder, is erroneous and so, the order is liable to be reviewed.

5. We have heard the counsel on either side and have re-examined the pleadings and documents on record. In paragraph 4 of our order dated 17.2.92 we had observed that the action of the 4th respondent was in accordance with the procedure laid down in Annexure R2 on the impression that Annexure R2 guidelines applied to review by DPC of officials in the VSSC. But there is a note below Annexure R2 which reads as follows:-

"The procedure for promotions and constitution and functioning of Departmental Promotion Committees in the Department of Space/Indian Space Research Organisation is governed by separate and specific orders issued by the Department of Space/Indian Space Research Organisation. The instructions contained in the Department of Personnel and Administrative Reforms Office Memorandum mentioned above will not have any direct relevance to the procedure followed in the Department of Space/Indian Space Research Organisation and hence this is only for general information and guidance."

The above note makes it clear that the instructions contained in Annexure R2 have no direct relevance to the constitution and functioning of the Departmental Promotion Committee in the Department of Space and that the procedure to be followed in the Department must be based on separate and specific orders issued by the Department. Therefore, the reliance placed by us on the instructions at Annexure R2 for finding that the action of the appointing authority in referring the question to the Director was in accordance with the procedure laid down in that regard suffers from a misunderstanding. We have no hesitation to hold that in this view of the matter, the order dated 17.2.1992 has to be reviewed. Hence the RA is allowed. Our order in the OA dated 17.2.92 is recalled and the OA is restored to file and is being considered afresh.


(AV HARIDASAN)
JUDICIAL MEMBER


4.9.92
(SP MUKERJI)
VICE CHAIRMAN

04.9.92