

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 193/2005

WEDNESDAY THIS THE 21st DAY OF NOVEMBER, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

- 1 P. K. Venu
Assistant Binder,
Government of India Press
Khanna Nagar Post
Koratty.
- 2 P.P. Chandran
Assistant Binder,
Government of India Press
Khanna Nagar Post
Koratty.
- 3 A.K. Raveendran
Assistant Binder,
Government of India Press
Khanna Nagar Post
Koratty.
- 4 K.M. Shivashankaran
Assistant Binder,
Government of India Press
Khanna Nagar Post
Koratty.
- 5 M. Devassia
Assistant Binder,
Government of India Press
Khanna Nagar Post
Koratty.
- 6 N. Ramachandran
Assistant Binder,
Government of India Press
Khanna Nagar Post
Koratty.

7 M.K. Subramanian
Assistant Binder,
Government of India Press
Khanna Nagar Post
Koratty. ..Applicants

By Advocate Mr. S. Radhakrishnan

Vs.

1 The Manager
Government of India Press
Khanna Nagar Post
Koratty

2 The Director of Printing
Directorate of Printing
B-wing, Nirman Bhavan
New Delhi-11

3 Union of India
represented by the Secretary
Government of India
Ministry of Urban Development and
Poverty Alleviation
Nirman Bhavan, New Delhi-11

..Respondents.

By Advocate Mr. George Joseph, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The above OA is filed by the applicants for the following reliefs:

(a) call for the records connected with the case

(b) declare that the applicants are entitled for 2nd financial upgradation under the ACP Scheme on completion of 24 years continuous service in the Government of India Press, Koratty

(c) declare that the higher grade promotion granted to the applicants not to be next higher scale in the defined hierarchy cannot be treated as first financial upgradation for granting the benefit under ACP Scheme

(d)quash Annexure A-7 (a) to (g) orders and the order of the director of Printing referred to therein as they are illegal, irregular and unjust.

(e) direct the respondents to grant the 2nd financial upgradation to the applicants in the scale of Pay of Binders with effect from the respective dates under the ACP Scheme with all consequential benefits and

(f) pass such other reliefs as this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case

2 The facts have been narrated as follows. The applicants were initially appointed as Labourers in the Government of India Press, Koratty. Before the implementation of the Fourth Pay Commission Recommendations, the Labourers were placed in the pay scale of Rs. 750-940. The Government of India Department of Personnel & Training by OM No. 35034/1/97-Estt.-D dated 9.8.1999 introduced a new scheme of ACP for Central Government employees providing for two financial upgradations on completion of 12 years and 24 years of regular service if they have not earned regular promotions during these periods. As per clause 5.1 of the above scheme, two financial upgradations in the entire career of an employee shall be counted against regular promotions availed from the grades in which the employee was appointed. In Clause 7 it is specifically stipulated that financial upgradation shall be given to the next higher grade in accordance with the existing hierarchy in the cadre. In the "existing hierarchy" the next higher grade of the applicants is that of Assistant Binder in the scale of Rs. 3050-4590. But the Respondents on 6.5.2001 issued an order granting the first financial upgradation

to all the applicants under the ACP Scheme to the scale of Rs. 2650-4000 w.e.f. 9.8.1999. Later the applicants were granted their actual functional promotion to the next higher post in the routine hierarchy by order dated 22.7.2002 (Annexure A3). In Annexure A-3 it is specifically stated that promotion to the post of Assistant Binder is from the post of Labourer. It is evident that the Department has thus recognised that the first normal promotion in the routine hierarchy is to the post of Assistant Binder. Therefore the first upgradation given to them should have been in the next higher grade in the existing hierarchy. It was not correctly done as the scale of Rs. 2650—4000 was not part of the defined hierarchy. Explaining all these aspects the applicants have made several representations and one such representation is at Annexure A-6. But the representations have been rejected by the impugned order dated 10.11.2004 holding that the applicants are not entitled for any further financial upgradation under the ACP Scheme, which has now compelled the applicants to come before this Tribunal. It is also submitted that certain other Labourers who had originally joined subsequent to the applicants were given next higher grade of Binder and similar grade in the scale of pay of Rs. 4000-6000. Therefore the respondents are denying the legitimate claims of the applicants based on the above interpretation of the scheme and the stand of the respondents is arbitrary and violative of Article 14 of the Constitution of India. The applicants have also relied on the orders of the Tribunal in O.A. 588/2002 holding that "in situ" promotion

which is not a part of the hierarchy should not be counted as promotion for the purpose of ACP scheme. They have also cited the judgment in the Inderpal Yadav Vs. Union of India (1985 2 SLR 2481), K.C. Sharma Vs. Union of India and Ashwini Kumar Vs. State of Bihar (1997 2 SCC 3) upholding the settled principle of law that relief being granted to certain individuals in law could not be denied to those who are similarly placed on the ground that they have not come to the court.

3 The respondents have filed a reply statement. As regards the contentions of the applicants, it has been submitted that the applicants were granted the first financial upgradation w.e.f. 9.8.1999 in the pay scale of Rs. 2650-4000 which was the scale of pay of the next promotion post a per the Recruitment Rules prevalent up to 30.5.2003. The Labourers of Government of India Press had more than one channel of promotion as per the rules prevalent, in the scale of Rs.2650-4000 including the post of Machine Attendant (Letter Press), Proof Press Man Grade-II (both in the scale of Rs. 2650-4000). Thus the first financial upgradation allowed in the existing hierarchy to the scale of Rs 2650-4000 was in accordance with the provisions of the ACP Scheme. It is admitted that all the applicants are working as Labourers (Group-D industrial) in the Government of India Press, Koratty and they were placed in the pre-revised scale of Rs. 750-900 and were continuing as such till implementation of the ACP Scheme w.e.f. 9.8.1999. Consequent

on the notification of the new Recruitment Rules on 30.5.2003, the channel of promotion was limited to Assistant Binder and Machine Attendant etc. in the scale of Rs. 3050-4590. The applicants were granted the financial upgradation much before 30.5.2003, the date of coming in to effect of the new Recruitment Rules. It is further submitted that according to the statement produced by the applicants at Annexure A-4 to the O.A, it is clear that even in 2003, there existed the category of Proof Press Man Grade-II in the pay scale of Rs. 2650-4000. The incumbents of these posts retired from the post only on 7.9.1999 and 30.6.2000 respectively. As such, the contention of the applicants that after 1998 the sole channel for promotion to the post of Labouer is Assistant Binder is not sustainable. They have also denied that any of the Assistant Binder who have joined subsequent to the applicant were given the next higher grade of Binder in the scale of pay of Rs. 4000-6000 as contended by the applicants. It is also pointed out that the applicants had not chosen to make any complaint till the Recruitment Rules were amended consequent to the abolition of the Letter Press posts such as Proof Press Man Grade-II in the pay scale of Rs. 2650-4000.

4 We have heard Shri S. Radhakrishnan appearing for the applicant and Shri George Joseph, ACGSC appearing for the respondents. It was strenuously contended by the learned counsel for the applicants that the stand taken by the respondents that the

post of Proof Press Man Grade-II is in the existing hierarchy and in the normal channel of promotion is not at all sustainable in as much as the respondents have themselves stated at different places in the reply statement that promotion to the post of Assistant Binder is being made from the post of Labourer and also in view of the Annexure A3 order in which they have promoted the applicants on regular basis to the post of Assistant Binder in the pay scale of Rs. 3050-4500 in which the designation of the applicants has been shown as Labourers. It was also contended that the Tribunal had considered identical matter in O.A. 920/2004 filed by the Machine Attendants, Government of India Press, Koratty who were given *in situ* promotion in which the respondents contended that it was equivalent to the first financial upgradation and therefore they had been denied the second financial upgradation. The Tribunal was pleased to uphold the contention of the applicants in the light of the clarification of the Deptt. Of Personnel and Training and the judgment of the Hon'ble High Court of Kerala confirming the earlier judgment of this Tribunal in O.A. 588/2002 and held that the applicants are eligible for second financial upgradation. According to the learned counsel the same ratio will be binding on the respondents in the case of the applicants in the case on hand also, in the light of the clarification of the Department of Personnel OM dated 10.2.2000 against point NO.2. it is also submitted that after the Government of India Press Koratty was converted in to a fully modernized one in 1998, there was no post of Proof Press Man.

The only avenue for promotion for a Labourer was that of Assistant Binder. Therefore the applicants should have been given, on implementation of the ACP scheme, the first higher grade in the scale of pay of the post of Assistant Binder and the second financial upgradation will be to the scale of pay attached to the post of Binder. On the respondents side, it was submitted that their action is entirely in accordance with the ACP Scheme as also the further clarification in Annexure R-1 OM dated 18.7.2001.

5 The short question which arises for consideration is whether Annexure A-2 order dated 6.5.2001 granting the first financial upgradation under the ACP Scheme to the applicants is in accordance with the guidelines stipulated under the Scheme. The order at Annexure A-1 for grant of benefits under the ACP Scheme stipulates that financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. Further clarifications issued by the DOPT in this regard clarifying various doubts raised by the Departments, have reiterated that the benefit of financial upgradation had to be allowed as per the existing hierarchy and if a new hierarchy has come into existence, the financial upgradation may be allowed only in the restructured hierarchy after finalisation of the Recruitment Rules, but the benefits may be allowed from the due date.

6 Admittedly, the applicants were recruited as Labourers in the scale of Rs. 750-940. This scale was revised to Rs. 2550-3200 pursuant to the implementation of the Vth CPC Recommendations. The point of contention here is what was the next promotion post/grade? According to the respondents, the next promotion post for the Labourers is that of Proof Press Man in the grade of Rs. 2650-4000 as there was a multiple channel of promotion available to Labourers under the Recruitment Rules in force at that time whereas according to the applicants, the regular promotion in the hierarchy was to the post of Assistant Binder in the scale of Rs 3050-4590. Hence, the issue to be determined is what is the position of the existing hierarchy in this cadre and how it operated at the time of introduction of the ACP Scheme. Both the parties have not produced the Recruitment Rules, old or new. The respondents contend that there was multiple channel of promotion before 30.5.2003 according to which the Labourers can be promoted on functional basis to the post of Machine Attendant, and Proof Press Man in the scale of Rs. 2650-4000 and also Assistant Binder in the pay scale of Rs.3050-4590. But on the notification of the Recruitment Rules on 30.5.2003, the above channel of promotion was modified to Assistant Binder/Offset Machine Attendant And Assistant Mechanic in the pay scale of Rs 3050-4590. In the absence of the Recruitment Rules, it is not possible to get a clear picture. However, the statement produced by the applicants at Annexure A-4 (1-4) showing the Establishment as it stood on

1.3.2003 relating to Group-C and D industrial posts, is somewhat indicative of the scenario which existed prior to the new Recruitment Rules which were brought in to force on 30.5.2003. It is evident from this statement that the posts of Labourer, Cleaner, Driver and Proof Press Man Grade-II were in Group-D industrial category in the scale of Rs. 2650-4000 (A-4(3). The posts of Offset Assistant, Machine Assistant, Assistant Binder, Binder, etc. are shown under Group-C (industrial). There is no scale of Rs. 2650-4000 in the Group-C category. This scale is available only to Group-D posts of Proof Press Man Grade-II, etc. Further it is seen that there are only two posts in the grade of Proof Press Man Grade-II against 46 posts of Labourers. There are three grades under the Group-D category with minor differences in the minimum and maximum of the scale. The posts of Assistant Binder which is the normal promotion category are 97 in number. It is therefore inconceivable that the category of Proof Press Man Grade-II with only two posts, represents the promotion channel for 46 posts labourers. If the contention of the respondents that this was the existing hierarchy is to be believed, the Labourers have to necessarily get promotion to the post of the Proof Press Man Grade-II first to become eligible for promotion as Assistant Binder. In fact it was mentioned during hearing that a Proof Press Man cannot get promotion to the post of Assistant Binder which is not his line of promotion. It thus appears looking at the statement that the posts of Labourer, Proof Press Man Grade-II etc. are all part of one grade/hierarchy with slight variations in the

pay scales and the promotion channel for these Group-D posts to the next category of Group-C was only to the post of Assistant Binder or Off Set Machine Attendants, Assistant Mechanic, etc. in the pay scale of Rs. 3050-4590. The respondents have also not produced the pre- 2003 Recruitment Rules to show that any promotional channel existed to the post of Proof Press Man as contended by them. Normally for a Group-D employee, elevation to Group-C category is to be considered as a promotion. This view is also fortified by the Annexure A-3 order dated 22.7.2002 promoting the applicants from labourers to Assistant Binders which was issued prior to the introduction of the Recruitment Rules. It is evident from the order that even prior to the new Recruitment Rules the normal promotional channel for the Labourers was to the post of Assistant Binder. Therefore, we find merit in the contention of the applicants that the ACP Scheme should have been implemented in the case of the applicants by giving them the first financial upgradation in the scale of pay of Assistant Binder namely Rs.3050-4590 and not to the scale of Proof Press Man Grade-II (Rs. 2650-4000).

7 It is also contended that the applicants herein are similarly placed as the applicants in O.A.588/2004 which was allowed by this Tribunal. The facts of that case as well as the grounds on which the reliefs were given were slightly different though it has a bearing on this case also. The main difference being that the applicants

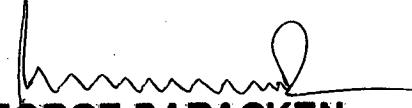
therein were granted *in situ* promotion to a higher scale of pay consequent to the recommendations of the 4th CPC which was held to be not equivalent to normal promotion and therefore could not be counted against first financial upgradation under the ACP Scheme. The applicants in this case had not been covered by any such *in situ* promotion but had been granted the first financial upgradation under the ACP Scheme to a post which is not found in the existing hierarchy of promotion contemplated under the Recruitment Rules.

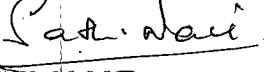
8 The respondents have also contended that the applicants' case that the post of Proof Press Man did not exist has been negated by the statement produced by them at Annexure A-4 and that such a post existed upto 2003 in the Government of India Press Koratty. The respondents are factually correct in this regard as the above statement does indicate that such a post existed though they remained vacant as seen from the statement as on 1.3.2003. But the mere existence of these posts cannot be taken to imply that the posts were in the normal channel of promotion. To establish the hierarchy the mere existence of a higher grade in the department is not sufficient but has also to be in conformity with the channels of promotion prescribed under the Recruitment Rules which is not established in the case of the applicants in this case.

9 In the result, Annexure A-7 series of proceedings are quashed. We also quash Annexure A-2 order in respect of the applicants and

direct the respondents to grant the first financial upgradation to the applicants in the scale of Rs. 3050-4590 with all consequential benefits. Thereafter the second financial upgradation shall be granted in the next scale of pay w.e.f. the respective due dates as prescribed under the ACP Scheme. This order shall be complied with within a period of three months from the date of receipt of this order. The Application is allowed as above. No costs.

Dated 21.11.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

kmp

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

the 10th August, 2007

O.A. NO. 193 OF 2005

CORAM:

**HON'BLE Ms. SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr. GEORGE PARACKEN, JUDL. MEMBER**

1. PK Venu, Asstt Binder,
Govt. of India Press, Khanna Nagar Post,
Koratty.
2. P.P. Chandran, Asstt. Binder,
Govt. of India Press,
Khanna Nagar Post, Koratty.
3. AK Raveendran, Asstt. Binder,
Govt. of India Press,
Khanna Nagar Post, Koratty.
4. KM Sghivashankaran, Asstt. Binder,
Govt. of India Press,
Khanna Nagar Post, Koratty.
5. M. Devassia, Asstt. Binder,
Govt. of India Press,
Khanna Nagar Post, Koratty.
6. N. Ramachandran, Asstt. Binder,
Govt. of India Press,
Khanna Nagar Post, Koratty.
7. MK Subramanian, Asstt. Binder,
Govt. of India Press,
Khanna Nagar Post, Koratty.

[By Advocate: Mr. S.Radhakrishnan)

...Applicants

-Versus-

1. The Manager,
Government of India Press,
Khanna Nagar Post,
Koratty.
2. The Director of Printing,
Directorate of Printing,
B-Wing, Nirman Bhawan,
New Delhi-11.
3. Union of India,
Represented by the Secretary,
Government of India,
Ministry of Urban Development &
Poverty Alleviation,
Nirmal Bhawan, New Delhi-11.

... Respondents

[By Advocate: Mr George Joseph, ACGSC]

The application having been heard on 27th July, 2007 the Tribunal delivered the following:-

ORDER

[Ms. Sathi Nair, Vice Chairman]

This application has been filed by the applicants, who are labourers working in the Government of India Press, Koratty, claiming second financial up-gradation in the scale of Rs.3050-4590/- and for a declaration that the grade promotion granted to them cannot be treated as the first financial up-gradation as per provisions of the ACP Scheme. This Tribunal after hearing the learned counsel for the parties allowed the application by order dated 21.11.2006 directing the respondents to grant the first financial up-gradation to the applicants in the scale of Rs.3050-

4590/- of the Assistant Binder, which was declared as the next hierarchical post in the ACP Scheme, and consequently to regulate the second financial up-gradation in the next scale of pay under the ACP Scheme. Being aggrieved by the order, the Respondents filed a writ petition before the Hon'ble High Court of Kerala, being numbered as WP(C) No.17348 of 2007(S). The Hon'ble High Court by its order dated 25th June, 2007 set aside the order of this Tribunal and directed as follows:

"Several contentions were urged by the parties before us. We have perused the order of the Tribunal. The Tribunal itself says that in the absence of the Recruitment Rules, it is not possible to get a clear picture. It is also stated in paragraph 6 of the order that both the parties have not produced old or new Recruitment Rules. In such circumstances, we set aside the order of the Tribunal and direct the petitioners to produce old and new Recruitment Rules before the Tribunal and the Tribunal will examine the matter on merits and pass appropriate orders in accordance with law. It would be appropriate that the OA be disposed of afresh within three months from the date of receipt of a copy of this judgment."

Writ petition is disposed of as above."

In accordance with the order of the Hon'ble High Court, the matter is re-examined afresh in the light of the Recruitment Rules. Notices were issued to the parties. The respondents have filed a Misc. Application No. 550/07 for acceptance of the documents, viz. the Old Recruitment Rules

dated 14.9.1993 and the New Recruitment Rules dated 3.5.2003 governing the post of Assistant Binders etc., which was allowed.

2. We have heard Mr. S Radhakrishnan, learned counsel for the applicants and Mr. George Joseph, learned ACGSC for the respondents and have re-examined the matter afresh in the light of the Rules now produced.

The applicants were initially appointed as Labourers in the pay scale of Rs.750-940/- which is a Group-D category. The Government of India, Department of Personnel & Training vide OM dated 9.8.99 introduced a new Scheme of ACP for Central Government employees providing two financial up-gradation on completion of 12 years and 24 years of regular service, if they have not earned regular promotions during these periods. As per clause 7 of the said Scheme, financial up-gradation under ACP Scheme shall be given to the next higher grade in accordance with the "existing hierarchy" in a cadre/category of posts. The main question which arose in the OA was what is the "existing hierarchy" was as far as the applicants are concerned. The Respondents by Annexure-A/2 order dated 1.6.2001 had granted financial up-gradation to all the applicants under the ACP Scheme in the scale of Rs.2650-4000/- with effect from 9.8.99. On the other hand, the applicants had contended that the next higher post in the hierarchy was that of Assistant Binder in the pay scale of Rs.3050-4590/- and as per the Recruitment Rules,

the promotion post for labourers is that of Assistant Binder in the pay scale of Rs.3050-4590/- (revised). The Respondents by Annexure-A/3 order dated 22.7.2002 also granted the actual functional promotion to the applicants to the higher post of Assistant Binder.

The respondents contended that the labourers in the Government of India Press were entitled to multiple channel of promotion to the post of Proof Pressman Grade-II, Machine Attendant, which were in the pay scale of Rs. 2650-4000/- and also to the post of Assistant Binder in the pay scale of Rs.3050-4590/-. Therefore, the financial up-gradation, which was to be given only to the next higher grade can only be in the lower grade of Rs.2650-4000/-. This is the crux of the argument of the respondents, then and now.

3. We had earlier examined the issue thoroughly in the light of the facts and circumstances of the case with reference to the averments of the respondents stated above. We had perused the Establishment list as on 1st March, 2003 of the Government of India Press, Koratty (Annexure-A/4) produced by the applicants. From the above, it was evident that the post of Proof Pressman Grade-II, which is the lower grade to which the respondents have given the financial up-gradation, was a defunct post for all purposes and the two posts were lying vacant. It had been averred before us that there are two types of Presses, viz.

Photolitho and Letter Presses. Consequent to modernization, the Letter Presses were converted as Phtolitho Presses and the post of Galley Proof Pressman became redundant and has not been operational at all. The fact that the labourers in the press have multiple channel of promotion was averred in OA and it was not disputed by the applicants. It is not a new argument. It was specifically noted in para 6 of our earlier order, though a mention was made that in the absence of Old or New Recruitment Rules, a clear picture had not emerged. Now the Recruitment Rules have been produced. The position is now confirmed. According to the Old Rules, the labourers had multiple channel of promotion to the posts of Machine Attendant, Proof Pressman Grade-II in the scale of Rs. 2650-4000/- and to the post of Assistant Binder in the scale of Rs. 3050-4590/-. Under the Old Rules eligibility for promotion to the post of Machine Attendant was labourers with four years regular service in the grade subject to qualifying in a trade test and the eligibility for the post of Proof Pressman Grade-II, was labourers with four years regular service in the grade subject to qualifying in the trade test. For the post of Assistant Binder in the pay scale of Rs.3050-4590/- (revised), labourers with nine years regular service in the grade subject to qualifying the trade test was the eligibility criteria for promotion. Admittedly, all the applicants herein have completed more than 9 years of service and were eligible to be promoted as Assistant Binders. The real question to be answered is whether

the post of Proof Pressman Grade-II is in the regular hierarchical line of promotion for the post of Group-D category, to which the applicants belong. As already discussed above, there were only two posts in the entire Press in that category and the posts were also not functional and the mere fact that the post existed in paper and remained in the Recruitment Rule, as the Recruitment Rules had not been amended which exercise was done only in the year 2003 cannot be taken as constituting a normal channel of promotion. When the applicants had already completed 9 years of service, it would be natural to assume that they would be considered for the posts of Assistant Binder in the higher grade than to the lower grade post for which only 4 years service was required. After examining various aspects, we had come to the conclusion that these posts were not in the functional hierarchy for promotion of Grade-D employees to Group-C posts. The channel of promotion of Assistant Binder is available as per the old and new Recruitment Rules. The fact that the respondents themselves by order dated 22.7.2002 (Annexure-A/3) which was issued before proclamation of the New Recruitment Rules granted the actual functional promotion to the applicants to the post of Assistant Binders in the pay scale of Rs.3050-4590/- is itself the confirmation of the fact that the post of Assistant Binder is the next hierarchical post for the applicants. The respondents are emphasising on the words "next higher grade" in the ACP Scheme, but it has to be read along with

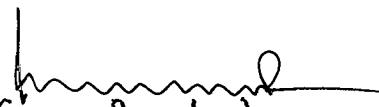
the words occurring "next in the existing hierarchy". The post of Proof Pressman are not in the hierarchical line of promotion having been made defunct and the Recruitment Rules as produced now also do not give a different picture. The applicants had the necessary period of service required for promotion to the post of Assistant Binders, by which time the ACP Scheme came into existence.

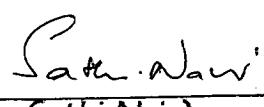
In view of the above position, we are of the view that our earlier order does not require any modification as no new facts have come to light on production of the Recruitment Rules.

4. In the light of the above discussions, we confirm our earlier order and the application stands allowed with the direction to the respondents to grant the first financial up-gradation to the applicants in the scale of Rs. 3050-4590/- with all consequential benefits. The applicants will be eligible for the second financial up-gradation thereafter in the next scale of pay with effect from the respective due date, in accordance with the ACP Scheme.

5. This exercise shall be completed within a period of three months from the date of receipt of this order. No costs.

Dated the 10th August, 2007


(George Paracken)
MEMBER-JUDICIAL


(Ms. Sathi Nair)
VICE CHAIRMAN

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