

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 365 OF 2013

Thursday, this the 11th day of August, 2016

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

1. M.B. Vijayakumar,
S/o. Balan Nair (late),
Ammunition Mechanic-II,
Ammunition Workshop,
Naval Armament Depot, Aluva,
Southern Naval Command.
Residing at : Karivelilparambil House,
Thottakkattukara (P.O), Aluva.
2. E. Godfred, S/o E. Bharathan (late),
Ammunition Mechanic-II,
Ammunition Workshop,
Naval Armament Depot, Aluva,
Southern Naval Command.
Residing at : Joys Villa,
Kunjattukara, Aluva - 683 651.
3. M.T. Thomas, S/o. M.P. Thomas,
Ammunition Mechanic-II,
Ammunition Workshop,
Naval Armament Depot, Aluva,
Southern Naval Command.
Residing at : Malite House,
Chalakudy, Pariyaram (P.O),
Thrissur District.

Applicants

(By Advocate Mr. P. V. Mohanan)

Versus

1. The Union of India represented by
Secretary, Ministry of Defence,
New Delhi.

2. The Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi.
3. N.V. Babu,
Ammunition Mechanic-II,
Ammunition Workshop,
Naval Armament Depot,
P.O . Aluva.
4. V.T. Ayyappankutty,
Ammunition Mechanic-II,
Ammunition Workshop,
Naval Armament Depot,
P.O . Aluva.
5. C.K. Valsalan
Ammunition Mechanic-II,
Ammunition Workshop,
Naval Armament Depot,
P.O . Aluva.

- Respondents

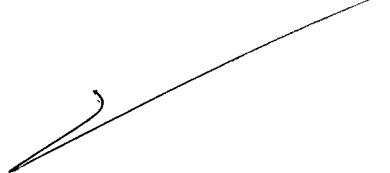
(By Advocate Mr. N. Anilkumar, Senior PCGC for R-1&2)

The application having been heard on 20.07.2016, the Tribunal on 11.8.2016 delivered the following:

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member

Annexure A4 promotion order dated 01.04.2013 is under challenge in this case, in so far as Respondent No. 3, 4 & 5 are concerned as they were promoted enbloc as Ammunition Mechanic-I (AM-I) in reservation quota. The applicants commenced service as Semi-Skilled labourers. They belong to general category (UR). Respondents 3, 4, and 5 commenced service much later as semi-skilled labourers. They belong



to SC category. The next promotion post is Ammunition Mechanic II (Skilled); Method of appointment being promotion, subject to passing of qualifying test.

2. Respondents 3, 4 and 5 and other candidates of SC/ST category were granted accelerated promotion applying roster point reservation. Their seniority in the cadre of AM-II were reckoned taking note of their officiating in that cadre. The applicant and other UR candidates were promoted on later dates and their seniority was reckoned on the date of officiation. Thus, respondent No. 3, 4 and 5 and other SC candidates were granted accelerated seniority as well. The applicants, respondents 3, 4 and 5 and other candidates on passing departmental test were empanelled for promotion to the cadre of AM-I. Serial No. 1 to 19 in that panel were treated as UR candidates and were granted promotion as AM-1 without application of roster point reservation. Respondent No. 3, 4 and 5 were promoted enblock treating them as candidates of reserved category and thereby excess promotions of candidates belonging to SC/ST were made when 25 posts were filled. If post-based roster is applied strictly, then point numbers 7, 15 and 20 have to be filled by appointing SC category candidates; if 25 posts are filled up, and point No. 14 must be given to ST candidate taking note of the seniority in the cadre. Thus, according to the applicant point No. 7 is to be filled by

promoting Shri T.N. Surendran (SC); point No. 14 to be filled up by Shri P.R. Purushothaman (ST); point No. 15 to be filled up by promoting Shri E. Ramachandran (SC) and point No. 20 should be filled up by promoting Shri N.V Babu (SC).

3. Thus the applicants contend that Respondent No. 3, 4 and 5 and other SC/ST candidates are not entitled to get the accelerated seniority in view of the law laid down by the Apex Court in *R.K. Sabharwal v. State of Punjab & Ors. – AIR 1995 SC 1371*. According to the applicant in a post based reservation roster issued in purported implementation of the judgment in Sabharwal (supra), in a cadre of 27, point Nos. 7, 15, 20, 27 are reserved to be filled up by promoting SC candidates and point Nos. 14 is reserved to be filled up by promoting ST candidates. Since point Nos. 1, 2 & 3 are already occupied by employees of previous recruitment, the rotation has to start from point No. 4; in a post based reservation roster. Going by the seniority list, (Annexure A-6) the post of AM-1 must be filled by appointing Shri P.S. Vikraman (SC) at point No. 1, Shri T.N. Surendran (SC) at point No. 6, Shri P.R. Purushothaman (ST) at point No. 15, Shri E. Ramachandran (SC) at Sl. No. 11 and Shri N.V. Babu (SC) at Sl. No. 27. Challenging the appointment evidenced by Annexure A-4 to the extent of respondents 4 and 5 this application has been filed.

4. The gist of the contention raised by the respondents is stated as under:-

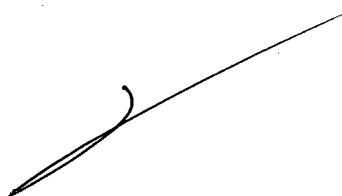
As per Office Memorandum dated 10.08.2010, it was clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualification will be adjusted against unreserved points of reservation roster irrespective of the fact whether the reservation was made by selection method or non-selection method (vide Annexure R-1). Annexure R-1 was issued as directed by the C.A.T. Madras Bench in O.A No. 900/2005. That decision was upheld by the High Court of Madras. Thus the respondents are bound to implement the order of the Government. There were 24 vacancies available in which 3 vacancies were reserved for SC candidates, 2 vacancies for ST candidates and 19 vacancies for UR. The senior most 19 individuals in AM-II, who fulfilled the eligibility criteria for promotion were considered for 19 UR posts. Those 19 individuals were promoted on their own merits and not going by reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method. The reserved vacancies of SC category were filled up from those SC candidates, who have completed the requisite qualifying service and also passed the departmental qualifying tests. ST vacancies could not be filled up due to non-availability of

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eligible candidates in that category. The respondents contented that the claim made by the applicant is devoid of merit and they pray for the dismissal of the Original Application.

5. In MA No. 342/2016, which is actually an application to accept additional document, the applicant has raised certain additional points which are to be treated as rejoinder. The total cadre strength in the grade of AM-1 is admittedly 27; three senior most incumbents in the cadre of AM-II had already been promoted namely Shri T. Vasudevan Unni (SC) Shri M.V. Radhakrishnan and Shri N.V. Yacob and they are already in position. Therefore, 24 vacancies remained unfilled. The post-based reservation roster was introduced as per O.M dated 02.07.1997 which was done as directed by the Hon'ble Apex Court in Sabharwal's case (supra). Instead of strictly adhering to the post-based roster as directed in Sabharwal's case, the first 19 posts were filled up by promoting the senior most personnel and the last three vacancies were filled up by junior most Scheduled Caste candidates. It actually violates the reservation roster.

6. In the additional reply statement filed by the respondents, it is stated that the promotion to the post of AM-1 was made on the basis of availability of post-based reservation roster. In the cadre strength of 27 posts of AM-1, 22 points are earmarked for unreserved, 3 for SC and 2

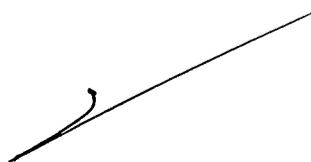


for ST; out of this 3 individuals had occupied in 2003 UR points; remaining 19 UR, 3 SC and 2 ST were vacant as on 01.01.2013. Hence, 19 UR points were filled from eligible employees strictly as per their position in the seniority list. Remaining 3 SC points were filled from the next senior eligible candidates as per regular roster. Hence, the promotion made at Annexure A-4 in the post of AM-1 is strictly in accordance with the existing rules. The principle that SC/ST candidates appointed by promotion on their own merit and seniority, and not owing to reservation and relaxation of qualifications, will be adjusted against UR points of reservation roster is fully complied with. It fully satisfies the dictum laid down by the Apex Court in Sabharwal's case. Hence, the respondents prayed for dismissal of the application.

7. The point for consideration is whether Annexure A-4 promotion order is in compliance with the principle laid down in Sabharwal's case and whether a proper post-based roster has been prepared by the respondents in tune with the directions contained in Sabharwal's case followed by the Apex Court in the subsequent decisions.

8. We have heard the learned counsel appearing for the parties and have also gone through the pleadings and records.

9. Prior to the pronouncement of the judgment by the Apex Court

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in Sabharwal's case, vacancy based rosters were prescribed in order to implement the Government's policy relating to reservation of jobs for SC/ST and candidates belonging to OBC. But the Apex Court in Sabharwal's case held that the reservation of jobs for SC/ST/OBC should apply to posts and not to vacancies. It was further held that the vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre reaches the prescribed percentage of reservation. It was held by the Apex Court in *Sabharwal (supra)*.

"5. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said 356 posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services."

It was further held that:

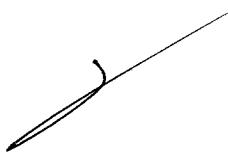
".....When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be

varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats."

It was also held that:

"the fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/ Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed." It was further held that "despite any number of appointment/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition....." We, therefore, see no force in the first contention raised by the learned counsel and reject the same.

10. In purported implementation of the judgment in Sabharwal, Annexure A7, the post based roster instead of vacancy based roster was issued by DoPT O.M No. 36012/12/2/96/Estt. dated 02.07.1997. Specific reference has been made in this O.M about the judgment rendered by the Constitution Bench in Sabharwal's case as to how the roster has been prepared. The fact that persons belonging to the reserved categories who are appointed on the basis of merit - and not on account of reservation - are not to be counted towards the quota meant for reservation was also noted in Annexure A-7. It was done with a view to bringing the policy of reservation in line with the law laid down by the



Hon'ble Supreme Court. It was decided that in the existing 200 points, 40 points and 120 points vacancy based rosters are ordered to be replaced by post based rosters. All Ministries and Authorities were directed to prepare the respective rosters based on the principle elaborated in the explanatory note given in that O.M. It was done in terms of the directions issued by the Hon'ble Supre Court in *Sabharwal*.

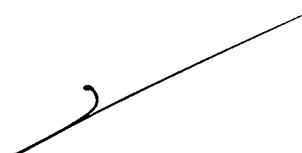
Paragraph 4 of the Annexure A-7 reads:

"The principle for preparing the rosters elaborated upon in the Explanatory Notes are briefly recapitulated below:

- (a) since reservation for OBC does not apply in promotions, there shall be separate rosters for direct recruitment and for promotions;*
- (b) The number of points in the roster shall be equal to the number of posts in the cadre. In case there is any increase or decrease in the cadre strength in future, the rosters shall be expanded/contracted correspondingly.*
- (c) Cadre, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Thus, in a cadre of, say, 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, two rosters - one for direct recruitment and one for promotion (when reservation in promotion applies) - each comprising 100 points shall be drawn up on the lines of the respective model rosters."*

In para 5 it is stated thus:

"At the stage of initial operation of a roster, it will be necessary to adjust the existing appointments in the roster. This will also help in identifying the excesses/shortages, if any, in the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark - "utilised by SC/ST/OBC/Gen.", as the case may be,



against each point in the rosters as explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging to SCs/STs/OBCs which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments.

5. While cadre is generally to be construed as the number of posts in a particular grade, for the purpose of preparation of roster, it shall comprise posts required to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. To illustrate, in a cadre comprising 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotions, the roster for direct recruitment shall have 100 points and that for promotion shall have 100 points - thus making a total of 200.

10. The roster is to be operated on the principle of replacement and not as a "running account" as hitherto. In other words, the points at which reservation for different categories applies are fixed as per the roster and vacancies caused by retirement, etc., of persons occupying those points shall be filled by appointment of persons of the respective categories."

It was further explained by Annexure A-9 O.M dated 11.07.2002 that:

".....While it is clear from the O.M dated 02.07.1997 that the SC/ST/OBC candidates appointed by direct recruitment on their own merit and not owing to reservation will be adjusted against unreserved points of the reservation roster, doubts have been raised about SC/ST candidates promoted on their own merit. It is hereby clarified that:

(i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points....."

11. As per O.M dated 31.01.2005, it was clarified that O.M dated



11.07.2002 (Annexure A9) takes effect only from the date of its issue; that is; from 11.07.2002 but however in cases where SC/ST candidates were promoted on their own merit before 11.07.2002 and were adjusted against unreserved points, that need not be reopened.

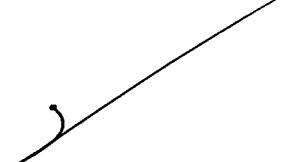
12. According to the respondents, the post of AM-1 was made on availability of the post based roster points. It is not disputed that the cadre strength is 27. It is also not disputed that out of this three individuals had already been in position and so these roster points would start from No. 4. According to the respondents, there should be 19 UR points, 3 SC points and 2 ST points, which were vacant as on 01.04.2013. They assert that since 19 UR points were filled from the eligible employees under UR and as they were fitted in their position in the seniority list, and since the remaining three SC points were filled from the next senior eligible SC candidates as per regular roster, Annexure A4 order is perfectly correct. But the gravamen the of the contention raised by the applicants is that 3 SC candidates were given appointment en bloc without following the post-based roster points as directed in **Sabharwal (supra)**. Though it can be contended that the percentage of reservation would remain satisfied by appointing 19 persons under UR, 3 under SC that is not what was required to be done as per Sabharwal. There is no dispute regarding the fact that the SC/ST

candidates appointed by promotion on their own merit and seniority and not owing to reservation and relaxation of qualifications will be adjusted against UR points of reservation roster. But the question is how the roster is to be prepared following the directions contained in Sabharwal. A model roster was actually appended to the O.M issued by the DoPT. But according to the applicants, it was not strictly followed by the respondents while issuing Annexure A-4 order. It is not the total number of UR or SC or ST that becomes relevant but the actual points where those persons were fitted or given slots.

13. Annexure A3 is the list as per which it can be seen that the first three persons were already in position from the date of preparation of Annexure A4. Therefore, the list is to start from point No.4. Annexure A1 is the model roster for promotion where the cadre has large number of posts. It is the admitted case that in AM-II, total number of posts is

27. If so, the points Nos. 1, 14, 21 and 27 are to be occupied by SC whereas point Nos. 15 is to be occupied by ST.

14. In *Union of India v. Virpal Singh Chauhan (1995) 6 SCC 684* which followed R.K. Sabharwal and *Ajit Singh Januja and Others v. State of Punjab and Others (1996) 2 SCC 715*, it was made clear that the candidates belonging to reserved category but selected/promoted on their own merit (and not on virtue of rule of reservation) shall not be



counted as reserved category candidates. It was also held that the expression 'appointment' in the absence of any indication to the contrary includes appointment by promotion. There is no dispute regarding the fact that at the stage of initial operation of a roster it is necessary to adjust the existing appointments in the roster which will help in identifying the excesses/shortages in the respective category in the cadre. It was stated that it has to be done starting from the earliest appointment and making an appropriate remark, utilised by "SC/ST/OBC/Gen." as the case each may be in the rosters as explained in the explanatory notes appended to the model rosters.

15. The Official Memorandum referred to earlier also makes it pellucid that while making such adjustment, appointment of candidates belonging to SCs/STs/OBCs which were made on merit shall not to be counted towards reservation so far as direct recruitment is concerned.

16. Subsequent to the decision of the Madras High Court in *Union of India v. S. Kalgugasalamoorthy dated 31.01.2005* it was clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of reservation roster, irrespective of the fact that whether the reservation is made by selection method or non-selection method. It was also made clear that the directions given in

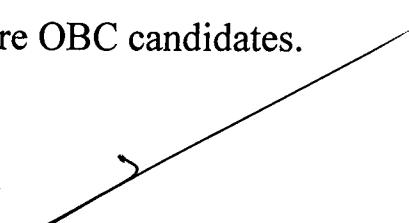
Sabharwal (supra) applies not only to direct appointments but also to promotions including the promotions on the basis of seniority-cum-merit (non-selection method). The principle of not counting SC/ST candidates promoted/appointed on their own merit against reserved vacancies became applicable to all promotions including the promotion on the basis of seniority-cum-merit (non-selection method).

17. The case for the respondents is that the SC/ST candidates were selected for promotion to the post, based on lesser benchmark on the relaxed standard and lesser period of qualifying service bringing them in zone of consideration because of the reason of their being SC/ST category. Only in such cases they will be deemed as promoted against reserved vacancies. Here, that question did not arise at all. It was only a case of appointment by promotion and therefore, the comparative assessment based on merit had no role to play in this case. So far as the actual position in this case is concerned, the total strength in the cadre of [REDACTED] Ammunition Mechanic Grade AM-1 is admittedly 27. It is also not in dispute that the senior most incumbents had already been promoted namely Shri Vasudevan Unni, Shri M.V Radhakrishnan and Shri N.V Yacob and they were already in position. Therefore, only 24 vacancies remained unfilled. The computation, therefore, should start from the fourth point. There can also be no doubt, that as directed by the

Constitution Bench in **Sabharwal** a post based reservation roster is to be maintained. Based on the model reservation roster it must also be noted that point No. 7, 15 20 and 27 are reserved to be filled up by promoting reserved SC candidates and point No. 14 is reserved to be filled up by promoting the ST candidate.

18. As per the draft seniority list (Annexure A6) it can be seen that Shri V.S. Vikraman, who is shown as No.1, as per the roster should occupy the fourth point. Though he is a SC candidate, he comes under the UR and so it should not be counted towards SC quota.

19. The 2nd person in the seniority should occupy the 5th place. There is no dispute regarding that fact. It is occupied by Shri N.M Philip. Shri P.K. Vijayan, who is the 3rd man in Annexure A-6 (who is to occupy the 6th point) is a ST candidate. Since 6th point is not one reserved for ST, Shri P.K. Vijayan should be reckoned as coming under UR category. The 7th point is reserved for SC candidate. The person, who is in that position is Shri I.V. Sasidharan. Since he is not a SC candidate, the senior most SC candidate (Shri T.N. Surendran), who is otherwise occupying the 9th place should occupy the 7th point. Therefore, Shri I.V Sasidharan, Shri P.R Sanadhanan and Shri K.S Haridas who are to occupy the points 8, 9 and 10 would come under UR category though among them, 9 and 10 are OBC candidates.



20. There is no reservation for OBC in the matter of promotion.

Shri V. Gopalakrishnan who is just below is to be put in the roster point to occupy point No. 11. Shri K.K. Sasidharan, Shri P.C.

Madhusoodhanan Sl. Nos. 9 and 10 are to occupy roster points 12 and

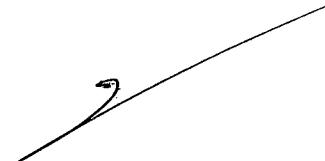
13. Then comes the 14th roster point which is reserved for ST candidates. The senior most ST candidate (Shri Purushothaman who is at Sl. No. 15) is to occupy point No. 14. Then the 15th roster point is to be reserved for SC. Therefore, the 15th roster point which is to be occupied by the SC candidate was to be filled up by promoting Shri E. Ramachandran. But it is stated that he subsequently retired on superannuation.

14. Annexure A-4, the promotion order which was directed to take effect from 01.04.2013 would show that Shri N.V. Babu, Shri V.T. Ayyappankutty and Shri C.K. Valsalan who are SC candidates, are en bloc given appointment at points 20, 21 and 22 without putting them in the respective slot as per the nodal roster issued by the DoPT pursuant to the direction issued by Hon'ble Supreme Court in *Sabharwal* (supra). As per Annexure A6 seniority list Shri N.V. Babu, is at Sl. No. 27. He is to be filled at slot No. 20 as per the post-based roster. Sl. Nos. 19, 20, 21, 22 and 23 are to be placed at roster points 21 to 25. If so, Shri E. Godfred, the 2nd applicant who is at Sl. No. 24 is to be given the slot -



roster point No. 26. Shri Ayyappankutty, is shown at Sl. No. 30 and Shri C.K. Valsalan is at Sl. No. 32. They are SC candidates. Shri Ayyappankutty has to occupy the 27th roster point meant for SC. The contention raised by the respondents that since 19 UR points were filled up from eligible employees as per their position in the seniority list and the remaining 3 SC points were filled from the next senior most SC candidates cannot hold good since the roster should denote with respect to SC/ST points. It is not intended to have a promotion or appointment, which cannot be en bloc as done by the respondents as the post based rosters are to be prepared and maintained by the respondents to effect appointment in view of the directions contained in **Sabharwal** and Annexure A7 O.M issued by the DoPT.

15. Respondents 3 to 5 did not enter appearance and no reply statement was filed. As per Annexure A7, Shri V.T. Ayyappankutty and Shri C.K. Valsalan are shown as Sl. No. 21 and 22. They are to be placed at the respective roster points as per the roster points in tune with the directions contained in **Sabharwal** and the subsequent O.M issued by DoPT. It has to be held that Annexures A3, A4 and A5 to the extend indicated above are liable to be set aside. Consequently the respondents are directed to effect promotion strictly in accordance with the directions contained in **R.K Sabharwal**. They should prepare a post-based roster



strictly in compliance with the directions contained in those judgments and the Official Memorandum referred to above. It is not mere percentage of reservation that is to be followed but the reserved candidates are to be given the respective slots. What have been shown in Annexure A4 and other documents relied upon by the applicants is that three SC candidates were enbloc appointed at slots Nos. 20, 21 and 22 as shown in Annexure A4 but without following the directions to appoint them at the respective roster points. That has affected the positions to be occupied by the applicants as well. Hence the respondents are directed to recast the roster, effecting promotion to the respective slots from among the candidates who are shown in the seniority list and in the light of what have been stated above. That seniority is to take effect from 01.04.2013. This exercise should be done within three months from the date of receipt of a copy of this order.

18 The Original Application is disposed of as above. No order as to costs.

Dated, this the 11th day of August, 2016)


(Mrs. P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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