

**Central Administrative Tribunal
Lucknow Bench**

OA 149/2006

Lucknow this the 16th day of April, 2009

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)**

R.P. Tripathi,
C-1/215, Sector-G,
Janki Puram, Lucknow-21

-Applicant.

(By Advocates: Shri A.Moin and Shri AN Tripathi)

-V E R S U S-

1. Union of India and others
through its Secretary, Department of
Secondary Education,
Ministry of Human Resource Development,
Union of India, New Delhi
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi-16
3. Joint commissioner (Administration)
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi-16
4. The Dy.Commissioner(Administration)
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi-16
5. The Dy.Commissioner(Personal)
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi-16
6. The Dy Commissioner(Finance)
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi-16
7. The Asstt Commissioner.
Kendriya Vidyalaya Sangathan,
Lucknow Region, Sector-J, Aliganj, Lucknow

8. The Principal,
 Kendriya Vidyalaya
 AMC, Cantt. Lucknow
 Respondents

(By Advocate: Shri Surendran 'P')

O R D E R

Dr. Veena Chhotray:

The applicant, a retired Post Graduate Teacher (Hindi) under the respondents Kendriya Vidyalaya Sangathan (KVS), is aggrieved at his non-promotion as Vice Principal from the date of his juniors and non-payment of some other service entitlements. The instant OA is second in series. The earlier OA No. 547/2004 was disposed in limine vide the Tribunal's order dated 5.1.2005 with the directions to the respondents to consider the representation of the applicant regarding his non-promotion and as Vice Principal in August, 2003 and his subsequent representations on this subject by a reasoned and speaking order. It is further directed that similar orders should also be passed in respect of his pending representations relating to the interest in respect of delayed payment of GPF. A composite order was to be passed in respect of all pending representations of the applicant within a stipulated time frame.

In compliance the order dated 1.4.2005 has been passed (NX 5). Assailing this order, the instant OA seeks, by way of relief, the following directions:-



“8.1 Notional promotion with retrospective effect from the date the juniors of the applicant were promoted on April 16, 2003, after quashing the order dated 1.4.2005 and promotion lists dated 16.4.2003, 28.8.2003 and 3.3.2004;

8.2 Payment of full interest over the GPF amount for the entire period from July 1999-2000 (paid in August 1999) to March 2003);

8.3 To rectify the pay fixation anomaly and provide benefit of FR 22 C (now known as FR 22-1), after quashing the letter of the KVS dated 29.6.1983;

8.4 Payments in shortfall in the GPF contribution of Rs.500 for July, 1999 paid in August, 1999 along with interest, till date after quashing the order dated 11.2.2005 and a letter of the Principal for monthly deduction dated 16.10.2003;

8.5 Decision of the issues (related to short payment in arrears of Vth Pay Commission) raised in Para (E) at page 3 of the representation of the applicant dated 2.12.1999 in light of the Tribunal’s

order dated 5.1.2005 in OA No. 547/2004.

8.6 To issue any other order or direction deemed fit by the Tribunal and in favour of the applicant.

8.6 To allow costs against the respondents."

2. The OA deals with basically three issues: (i) the claim for promotion as Vice Principal; (ii) payment of some missing GPF amounts and the claimed interest and (iii) rectification of pay fixation relating to 1983 and short payment of arrears consequent to the Vth Pay Commission. As the applicant is a retiree since 31.10.2003 and has been pressing these issues for long, with a view to secure the ends of justice, as per the powers vested under Rule 24 of the CAT (Procedure) Rules, 1987, it is proposed to consider all the issues raised herein on merit. Further, even though some of the issues are quite old, as they have effect on the pension and other retiral dues of the applicant, we are also considering them, keeping in view the settled proposition of law that such issues constitute a recurring cause of action.

3.1 The applicant is claiming his promotion as Vice Principal from 16.4.2003 the date his juniors were promoted. That he has a Post Graduation Degree with IIIrd division is not disputed. However, his contention is that at the relevant

point of time, the Recruitment Rules did not envisage stipulation of PG Degree being in IIInd Division (50% marks and above considered as equivalent) (Para 4.3 of the OA). Parallelly the plea of 45% marks being considered as IIInd Division has also been taken (RA-Para 7)

3.2 It is averred that the applicant had become eligible for promotion to the post of Vice Principal from November 2002 (Para 4.12 of the OA) and when the names of PGT had been called, at that time his name also should have been sent (Para 5 of the Rejoinder). In support, a letter dated 28.11.2002 has been annexed as SA-1 along with the supplementary affidavit.

The applicant, who superannuated from service w.e.f. 31.10.2003, contends that he should have been given promotion in 2003 when his juniors were promoted. It is also stated that his name had figured at Serial No. 2394 in the seniority list released on 16.4.2003. Making an averment of hostile discrimination, Para 4.23 of the OA states that while the applicant had been denied promotion, one Shri AS Bhatnagar with less than 50% marks had been promoted on 3.3.2004. Similarly, instance of another Mr. Navab Singh Pal posted at KVS, Gaya, Bihar has also been cited.

3.3 The respondents' stand, as revealed from the impugned order, is that in order to give effect to promotions of PGT to the post of Vice Principal for the year 2003-04, the prescribed eligibility qualifications inter alia including at least 2nd Class



Masters Degree (50% marks and above considered as equivalent) in one of the subjects taught in Kendriya Vidyalaya. It is further stated that the DPC for the purpose was held on 31.3.2003 and again on 29.7.2003. Eligible PGTs upto seniority list 2497 were considered and promoted vide orders dated 16.4.2003 and 28.8.2003. It is also asserted that no PGT having less than 50% marks in Post Graduation was promoted during the academic year 2003-2004. On receipt of representation, the case of the applicant was examined and it was found that since he had Post Graduate Degree in IIIrd Division, he was not eligible for promotion as Vice Principal.

Later on by amendment of Rules this condition of IIInd class (50 % marks or above) in Masters Degree was done away with and revised rules were circulated on 23.8.2003. On the basis of the amended Rules, the proposals of promotion to the post of Vice Principal for the year 2004-2005 were invited vide letter dated 10.9.2003 and the meeting of the DPC was held on 9.2.2004. However, as Shri Tripathi had, in the meanwhile, retired on 31.10.2004 before the meeting of the DPC, his case for promotion could not be considered.

These averments have been reiterated in the counter affidavit (Paras 10, 11, 12 & 13).

3.4 The applicant, however, insists that even the aforesaid amendment would not effect his claim. Para 6 of the

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supplementary affidavit avers that as the names for promotion to the post of Vice Principal had been called on 28.11.2002 and the juniors had been promoted on 16.4.2003, the amendment of the Rules w.e.f. 22.8.2003 would not have made any difference to the promotion of the applicant, who had to be promoted on 16.4.2003 but for non-sending his name by the respondents. Para 8 of the rejoinder also asserts about the applicant's entitlement to notional promotion even after his retirement from the date when persons junior to him were promoted.

4.1 The core issue here is eligibility of the applicant for promotion as per the Recruitment Rules at the relevant point of time. The consistent stand of the department is that prior to 22.8.2003, the eligibility condition for promotion to the post of Vice Principal included Post Masters Degree at least in IIInd Division (50% marks or above as equivalent). Para 17 of the counter affidavit makes the following averment:-

"It is stated that as per recruitment rules dated 22.2.2001 the post of Vice Principal were filled from Post Graduate Teacher on the basis that (i) having at least 2nd Class Masters Degree (50% marks and above considered as equivalent) in one of the subjects taught in Kendriya Vidyalaya. (ii) University Degree/Diploma in Education/Teaching. (iii) At least 10 years experience as PGT in a recognized High/ Higher Secondary School of which at least 3 years should be in Kendriya Vidyalaya."

Later on, this condition, however, was done away with. Para 13 of the counter affidavit mentions as follows:-



"Later on recruitment rules were amended and the condition of 2nd Class (50% marks) in Master's Degree for promotion to the post Vice Principal was done away with. The revised recruitment rules were circulated vide order dated 22.8.2003...."

4.2 The applicant who seeks to challenge this factual position, has not been able to adduce convincing supportive proofs. Even as per KVS (Appointment, Promotion, Seniority etc.) Rules, 1971, annexed along with the OA, Appendix 3 Schedule 1 prescribing Recruitment Rules for the post of Vice Principal states at least IInd Class Master's Degree in one of the subjects taught in Kendriya Vidyalaya, as included in the prescribed eligibility qualification. Further from the annexed copy of the corrected version of the Education Code for the Kendriya Vidyalaya purported to be corrected up to 1980, the relevant page about Vice Principal is found to be missing. It is also noted that the letter dated 28.11.2002 (SA-1), by which full particulars of PGT for consideration for promotion to the post of Vice Principal during 2003-04 were invited, mentions the educational qualification inter alia at least IInd Class Masters Degree (50% marks and above) in one of the subjects taught in Kendriya Vidyalaya. Incidentally, this document annexed as SA-1 with the supplementary affidavit has been specifically relied upon by the applicant.

4.3 As, admittedly, the applicant does not have IInd Division (50% marks or above) in his PG, he was not eligible to be

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considered for promotion before the abolition of this condition by the amendment Rules w.e.f. 2.8.2003. The explanation submitted by the respondents in Para 18 of the counter is clear on this count:

“....that in its meeting on 31.3.2003 Departmental Promotion Committee considered those eligible Post Graduate Teachers upto seniority number 2497 who were having 2nd Class Master Degree (50% Marks and above) fulfilling the other conditions as per Recruitment Rules prevalent at that time. Since the applicant is having III Division in Post Graduate Degree he was not eligible to be considered for promotion to the post of Vice Principal during the years 2003-04. As such, he name was not figuring in the promotion lists dated 16.4.2003 and 28.8.2003 to the post of Vice Principal for the year 2003-04. “

For want of eligibility, the averment by the applicant that prejudice has been caused to him by the respondents not sending his name in response to the letter of November, 1992 is not found to be tenable.

4.4 The impediment of IIInd Division in PG qualification was done away with by the amendment in Recruitment Rules effective from 22.8.2003. Para 21 of the counter affidavit submits as to under what circumstances, even after the amendment, the case of the applicant could not be considered:

“It is stated that revised recruitment rules has been amended on 22.08.2003 and thereafter the first meeting of the Departmental Promotional Committee has been held on 9.2.2004 but the applicant was already retired on 31.10.2003 hence his case for promotion could be considered”.

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In view of above, the argument of hostile discrimination or of entitlement to notional promotion even after retirement does not cut any ice.

5.1 On the point of GPF related payments, the grievances of the applicant can be categorized into three sub heads: (a) some contributions are still missing and have not been reflected in the final payments made (b) on certain contributions the interest component has not been calculated as required under the Rules (c) as per Rules, the final payments should be made within one month after retirement of a Govt. servant; in this case, even though these were delayed much beyond that, the prescribed interest has not been paid.

5.2 Before enlisting the details, we may cite the relevant rules referred to by the applicant in his OA and annexed as Accounts Code for the Kendriya Vidyalaya along with it (Page 405-406). While dealing with the contributory Provident Fund, it is stated that the Rules for GPF and CPF are the same except the listed differences. The Rule 5 (b) relates to the interest on arrears:

"Interest on Arrears-where any contribution is deposited in respect of arrears received from a retrospective date, interest shall be payable from such retrospective date."

The provision regarding interest payable on the GPF balance runs as follows:



"5 (c) Interest o retirement/Death/Resignation-the PF balance becomes payable on the next day. Interest in such cases shall be calculated on the balance up to the month preceding that in which payment is made or up to one month 'after the money' in which it becomes payable whichever is less. (Rule 11 (4) and read with OM dated 5.8.1994)."

Under Part VI dealing with **final payment of PF accumulations**, the amount standing at the credit of an employee becomes payable in various contingencies, one of which is his retirement from service. In relation to the interest, the provision is :-

"Interest: If the payment cannot be made within one month after retirement or after the date of receipt of application in the prescribed form due to administrative reasons, interest is payable on the balance up to six months fro the period beyond one year by the Head of Accounts Office and beyond that period by the immediate superior to the Head of Accounts Office. Rule 1 (4) GID (2) below Rule 34 GPF Rules & Rule 13 and Note thereunder, CPF Rules."

A bare perusal of the above rules makes the frame work very clear. The statutory rules envisage mandatory stipulation for payment of interest: (i) in case of payment of arrears from retrospective effect (ii) on the balance accrued, as per the two options provided under sub-Clause (C) (iii) besides there is a provision for interest if the final payment is not made within the prescribed time-limit of one month after retirement or receipt of application in the prescribed form.



5.3 As per the direction of the Tribunal in the OA No. 547/2004 the GPF related representations were also required to be disposed of by the respondents under a composite order. We may, therefore, at this point, take into account the contents of the impugned order on this subject. Para 3 (iii) (iv) and Par 4 (v) of the order dated 1.4.2005 (Annexure No.5 with the OA) pertain to GPF. By way of his grievance, it is mentioned that though the applicant was paid GPF for the period from July 1999 to March 2003, yet despite the repeated requests and representations, he was not paid interest on the said amount. Further, it is mentioned that the final payment of GPF and Group Insurance Payment were deliberately delayed by more than three months.

In response the stand of the department is that on the submissions of the applicant, his GPF account has been reviewed and the amount of Rs. 8416/-, which was payable had already been paid by the cheque dated 10.2.2005. The allegation of deliberate delay on the part of the KVS in payment of GPF and Group Insurance amount has been rebutted.

5.4 The applicant is not satisfied with the response of the department and according to him, he still has several subsisting claims in the matter. These are listed below indicating against which the position of the respondents wherever available: (a) Para 4.21 of the OA avers that the

statement received vide the OM dated 11.2.2005 of Rs. 8416/- is short by way of Rs. 500/- for the month of July, 1999. Against a monthly contribution of Rs. 2000/- only Rs. 1500/- has been shown. In support Annex. 3 encloses a copy of this letter dated 11.2.2005 forwarding the cheque of Rs. 8416/- along with the detailed statement of month-wise deposits and withdrawals for the period 1999 to 2003-04. This shows the deposit of Rs. 1500/- for the month of July and August, 1999. Annexure 4 encloses a letter dated 16.10.2003 from the Principal in respect of supplementary schedules of the applicant for the month of April, 2003 showing an amount of Rs.500 as GPF contribution from the arrear payment for the month of July, 1999.

This averment is sought to be rebutted by the respondents in their counter affidavit (Para 24). In support it annexes as CA-1 letter dated 5.9.2006 from the Principal of the concerned school stating that no GPF reduction has been made while preparing the applicant's arrears w.e.f. July 1999 to March 2003. However, para 15 of the rejoinder rebuts this averment further by stating that this GPF subscription was, in fact, shown in April, 2003.

5.5 Besides the following are said to be still pending on account of non-payment of interest on GPF accruals: (a) Para 4.17 reiterates regarding non-payment of interest on the deposits from July 1999-2000 to July 2002 and to March



2003 (b) Para 15 of the rejoinder mentions about the payment of interest on the amount of Rs.500/- from July 1999 (credited in August 1999) (c) the supplementary affidavit Para 7 mentions about the respondents themselves admitting a short payment of Rs.1014/-, which was made on 7.7.2004. Hence, interest at market rate from 31.10.2003 till 7.7.2004 is claimed (Annexure SA-2).

5.6 Regarding delayed final payment of GPF/GIS, (a) Para 9 of the supplementary affidavit mentions that the amount of Rs. 206384/- was as final payment of GPF, though purportedly paid by means of letter dated 30.10.2003. Interest was received by means of cheque dated 7.1.2004, interest at market rate from 31.10.2003 till 7.4.2007 is claimed. In support Annex. SA/4 has been appended. (b) Para 10 also mentions regarding payment of interest at market rate w.e.f. 31.10.2003 till 11.2.2005 on amount of Rs. 8416 as it was actually paid by the applicant by means of letter dated 11.2.2005. (c) Para 8 of the supplementary affidavit makes an averment of the net amount of Rs.8244/- towards the Employees Welfare Scheme being paid by means of a letter dated 19.1.2004. Interest at market rate on this amount from 31.10.2003 till 29.1.2004 has been claimed (Annexure SA-3).

5.7 Without going into any further hair splitting, we note that the department as per its stand in the impugned order as

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also in the counter affidavit does not make any mention of having taken into account the calculations by way of interest to be paid on the GPF accruals as required under the Statutory Rules. Besides, despite the claim of the GPF having been reviewed; as per the applicant, there are still some loose strands. These need to be looked into again.

6.1 As area of grievance relates to alleged anomalies in pay fixation in 1983 at the time of promotion of the applicant to the post of PGT and also at the time of payment of arrears consequent to the Vth CPC. The impugned order dated 1.4.2005 states as the grievance of the applicant that at the time of his retirement during fixation of pay for purposes of pensionary benefits, it came to his knowledge that there was an anomaly in the pay fixation's order dated 10.7.1990 effected from 1.1.1986. The basic pay of the applicant had been reduced by Rs.5/- contrary to rules.

The stand of the respondents, as revealed in Para (vi) of the impugned order, is that on the date of promotion i.e. 30.6.1983, pay of Rs.845/- being drawn by the applicant in the selection Grade of the lower post of TGT had been protected by grant of a personal pay. This is said to be because the equivalent stage in the higher post time-scale of Rs.500-900 was only Rs.840. Therefore, with a view to ensure pay protection, the applicant had been given a personal pay of Rs.5 which had also been absorbed in future



increments as well. It is further stated that the applicant's case had been examined and it was found that the benefit of FR 22 (C) were not applicable in this case in the light of the Ministry of Education and Social Welfare letter dated 11.10.1972. This had been conveyed to the applicant by the KVS letter dated 29.6.1983.

6.2 Para 4.24 of the OA avers that the applicant had preferred a representation dated 2.12.1999 requesting the respondents for a decision regarding some short payments in arrears of pay after implementation of the Vth Pay Commission; this, however, is said to be still pending. Para 4.25 of the OA refers to the provisions of FR 22 (C) (now said to be known as FR 11 (1). It also refers to the representation dated 2.7.2001 regarding corrections in the pay fixation. A copy of this letter has been annexed as Annex. 9 and it raises the claim of erroneous pay fixation by Rs.5 on 30.6.1983. It further mentions that the dated of increments having been wrongly changed from 1.4.1983 to 30.6.1983 without given any benefit of promotion.

6.3 The relevant rule, referred to in the OA, is in fact, rule FR 22-1. This provides guidelines for fixation of the initial pay where a Government servant is appointed to a higher post with duties and responsibilities of greater importance. The relevant provisions are extracted below:-

"Rule 22 (I) (a) (1) Where a Government servant holding a post other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities

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of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or [rupees one hundred only], whichever is more."

However, these rules need to be read with the instructions issued by the letter dated 11.10.1972, as reiterated in the respondents' letter dated 29.6.1983. A copy of the letter has been appended as Annexure No.11 to the OA. It mentions regarding non-applicability of FR 22 (C) in cases where a teacher holding a higher post is given the benefit of selection grade of lower post with retrospective effect.

6.4 As per the details of the case available in the impugned order dated 11.4.2005, Shri Tripathi was working as a TGT in the scale of Rs.440-750/-. On 1.4.1981 he was getting a pay of Rs.750/-. In 1987, he was granted retrospectively from 1.4.1981 selection grade as TGT in the scale of Rs 740-880. On grant of notional selection grade, the pay was fixed at Rs.775/-, as the same scale was not available in the selection grade. This was subsequently raised to Rs.810 and Rs.845 as on 1.4.1982 and 1.4.1983 respectively.

However, in between on 30.6.1983, Shri Tripathi had been promoted as PGT in the scale of Rs.550-990. This involved a peculiar situation in which pay fixation of an employee drawing a selection grade scale in the lower post was to be fixed in a higher post. The corresponding stage in PGT scale was Rs.840/-. Hence to protect the existing pay of the applicant, a personal pay of Rs.5/- was granted as per the aforesaid circular. This was also decided to be absorbed in the future increments to save the applicant from any financial loss.

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Since the pay fixation of the applicant has been done in accordance with the prescribed instructions on the subject, we do not find any infirmity in this aspect.

6.5 Para 20 of the rejoinder submits that under the CCS (Revised Pay) Rules, 1986, the applicant was entitled for two increments, as he had been stagnating for more than two years. This is reiterated in the supplementary affidavit in Para 12. Para 13 mentions regarding the pay fixation having been done erroneously, and Para 14 encloses a detailed chart showing the claimed pay fixation of the employee w.e.f. 1.1.1986 till the date of the retirement. It is contended that instead of Rs.11500 fixed by the respondents, his basic pay should have been Rs.12000. A copy of this chart has been enclosed as SA-7.

Rule 8 of the CCS (Revised Pay) Rules, 1986 on the subject of date of next increment in the revised scale containing the relevant guidelines on this subject has been cited. The relevant extracts are as under:-

“8. Date of next increment in the revised scale

The next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of Rule 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale:

Provided that in cases where the pay of a Government servant is stepped up in terms of Note 3 or Note 4 or Note 7 to sub-rule (1) of Rule 7, the next increment shall be granted on the completion of qualifying service of twelve months from the date of the stepping up of the pay in the revised scale:

Provided further that in cases other than those covered by the preceding proviso, the next increment of a Government servant, whose pay is fixed on the 1st day of January, 1986, at the same stage as the one fixed for another Government servant junior to him in the same cadre and drawing pay at a lower stage than his in the

existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier:

[Provided also that in the case of persons who had been drawing maximum of the existing scale for a year or more as on the 1st day of January, 1986, next increment in the revised scale shall be allowed on the 1st day of January, 1986:

Provided also that in the case of Government servants who were in receipt of an ad hoc increment on their stagnating for two years or more at the maximum of the existing scale of pay as on the 1st day of January, 1986, one more increment in the revised scale shall be allowed to them on the 1st day of January, 1986, in addition to the increment already allowed under the preceding proviso.]

If the applicant has not been given the required increments and the date has not been fixed as per the rules, this need to be looked into.

7. To conclude, of the three prayers made in the OA, the one regarding promotion to the post of Vice Principal is not found to be tenable. Likewise, in the matter of pay fixation, on appointment to the post of PGT, the decision of the respondents vide their letter dated 29.6.1983 is also found to be in accordance with the relevant instructions on the subject. However, the claims of non-grant of stagnation increments, change of date of increment and consequent fixation of pay need to be re-looked into in the light of the relevant rules and instructions. Similarly, in the matter of GPF, even after the respondents' claim of having paid the recast GPF amount of the applicant, there are still some subsisting grievances regarding non-counting of some credits; besides the interest due as per the rules are said not to have been paid. These issues affect the pensionary benefits of the retiree employee and



constitute a recurring cause of action. We feel these need to be re-looked in accordance with rules.

To serve the ends of justice, the applicant is directed to submit a consolidated representation relating to his pending grievances on the point of pay fixation as also GPF along with his supportive proofs. Such a representation, if submitted, has to be disposed of by the respondents within a period of three months' from the date of receipt of a copy of this order and disposed of as per the rules and instructions on the point by a speaking and reasoned order. No order as to costs.

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(Dr. Veena Chhotray)

Member (A)

S. Raju
(Shanker Raju)

Member (J)