

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 890/88

198

~~T.A. No.~~

DATE OF DECISION 9-7-1990

SHRI MORESHWAR BALWANT APPALWAR Petitioner

Mr. V. V. Pai Advocate for the Petitioner (s)

Versus

The Union of India and ors. Respondent

Mr. V. S. Masurkar Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. U.C. SRIVASTAVA, Vice-Chairman

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER(A)

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. Whether it needs to be circulated to other Benches of the Tribunal ?
- lm*

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

ORIGINAL APPLICATION No. 890/88

SHRI MORESHWAR BALWANT APPALWAR,  
Dy. Secretary to Government of  
Maharashtra, Agriculture,  
Animal Husbandary, Dairy Development  
and Fisheries, Dept. Mantralaya-32

.... Applicant

Vs.

Union of India  
and others.

CORAM : HON'BLE JUSTICE SHRI U.C. SRIVASTAVA, Vice-Chairman

HON'BLE SHRI M.Y. PRIOLKAR, MEMBER(A)

Appearance:

Mr. V.V. Pai, Adv,  
for the applicant

Mr. V.S. Masurkar, Adv,  
for the respondents

JUDGMENT

DATED: 9.7.1991.

(PER: JUSTICE U.C. SRIVASTAVA, Vice-Chairman)

In this application though involving dispute of seniority is not amongst direct recruit and promotees but between promotee I.A.S. Officer inter-se. The applicant and respondents are promotee I.A.S. officers having been promoted from P.C.S. Cadre of Maharashtra State, the applicant admittedly was senior to the private respondents viz Respondents No. 3 and 4 in the P.C.S. Cadre was not only appointed but was also confirmed earlier than these respondents in P.C.S. The applicant was placed in the Selection Grade in 1979. His name was included in the Select list prepared for appointment of I.A.S. officer from Maharashtra and in the year 1978 and in the Select

OA NO.890/88

list too the name of applicant was placed above the names of said respondents 3 and 4. The respondents were assigned 1979 and 1980 as year of allotment respectively having officiated on the post of Deputy Secretary in the Secretariat from the month of June 1983 while the applicant was assigned the year of 1981 ignoring the period during which he has been appointed by the State Government as officer on Special Duty in Tribal Development Department which according to applicant carried on similar duties and responsible as the post of Deputy on which he was appointed on 25th October 1983. According to State Government the post of officer on special duty was not a cadre post. The State Government has further stated that the applicant was proposed to a Cadre post in 1986 and he was appointed to the I.A.S. by promotion vide Notification dated 21.8.1986 was posted as Chief Executive Officer Zila Parishad, Akola a Cadre post which he gained after having been relieved from the post of Officer on Special Duty Tribal Development Department. The averments made by the applicant that on being appointed as officer on Special duty in 1980 he was given a special pay of Rs.200/- while which is only paid to a Deputy Secretary from I.A.S. Cadre and Rs.60 in lieu of peon which is given to I.A.S. officer only have not been denied by the State or Central Government. The said averment to the effect that the post was also upgraded vide order dated 18th July 1984 (ES Asthapana/ 1984/162/162/CA 1) and that was availing all the

(13)

OA NO.890/88

benefits and/or perquisites which are extended to Senior time scale I.A.S. officer and that nature of duties functions and powers were of officer on Special Duty Tribal Development are only exercised and/or can be exercised/and/or entrusted only to a Senior Time Scale I.A.S. too have not been ~~described~~<sup>that</sup> by the two private Respondents. In their short reply <sup>they</sup> have stated <sup>that</sup> he was appointed O.S.D. and not Deputy Secretary and that a non Cadre post does not become a Cadre post simply ~~as~~ being declared equivalent to a Cadre post <sup>but</sup> only after it is included and specified in Schedule I to the I.A.S. fixation of Cadre strength Regulation 1955 (hereinafter known as Cadre Regulation). Respondent No.3 who was given Selection grade in P.C.S.cadre prior to applicant was nominated in I.A.S. in 1985. In his detailed reply <sup>he</sup> has ~~stated~~ that the grade of Officer on Special Duty is that of ordinary cadre of Deputy Collector viz 680-40-1000-EB-50-1500 as such he was not officiating continuously as Deputy Secretary. The upgradation of the post of Officer on Special Duty Tribal Development held by applicant with effect from 18th July 1984 made in the pay scale of 1300-1700 which is Selection grade of a Deputy Collector and as such the applicant was not appointed a Deputy Secretary. It has also been stated by <sup>him</sup> that incumbent in the Secretariat if not found fit or absorbed to work as Deputy Secretary is always designated and made to work as officer on Special Duty. According to the said respondent, at the most the applicant could be treated <sup>as equivalent</sup> to a Deputy Secretary only after 18th July 1984 and the special pay to Officer on Special Duty would not make him Deputy Secretary. But the

(14)

OA NO.890/88

said respondents too has not specifically contravened the averments made by the applicant to the effect that the duties, functions and responsibilities of Officer on Special Duty Tribal Development Department are not like that of a Deputy Secretary. It is to be seen that not only the normal practice but tenor of the relevant rule is that one whose name occurs first in the select list is promoted to I.A.S. cadre prior to promotion of those whose name is placed below his name in the matter of posting or officer has no hand in appointment to non cadre post under certain circumstances would be deemed the appointment on cadre post for the purposes of continuous officiation.

2. The applicant who was given special pay of Rs.200/- and Rs.60/ as of peon allowances has placed reliance on the State Government resolution dated 26th August 1978 providing that Deputy Collectors in the Selection grade should be considered eligible for appointment to the post of Deputy Secretaries in the Secretariat. For the present their appointment will be against the unfilled cadre posts in the Cadre of Deputy Secretaries. A Deputy Collector in Selection grade will be entitled to draw a special pay of Rs.150/- per month in addition to his grade pay. The applicant was given special pay of Rs.200/-(may it be, it was subsequently raised to Rs.200/-). The question is as to whether the post of Officer on Special Duty is to be taken as Senior Post as well as a temporary addition to cadre post or deemed cadre post entitling the applicant to get benefit in the matter of year of allotment and to cause that period also towards seniority.

15

DA NO.890/88

Thus according to the applicant who was due for appointment to a clear cadre post to which those who were below in Select list was deemed to have been appointed to a cadre post even prior to its upgradation and was thus for all practical purposes and even by fiction of Law was Deputy Secretary in the State of Maharashtra. The post thus being a Senior post within the meaning of I.A.S. Seniority Rules, 1954 and in any view of the matter being temporary addition to Cadre post his year of allotment should have been fixed accordingly and he was entitled to count this period also towards the period of 'Continuous officiation' within the meaning of Rule 3(3)(4) of the I.A.S. (Regulation of Seniority Rules) 1954 (hereinafter known as Seniority Rule)

Rule 4 of the Indian Administrative Service (Recruitment) Rules provides the method of recruitment to the service. Apart from Competitive Examination, the other mode is by promotion of substantive member of a State Civil Service. Rule 8 provides for the recruitment by promotion or selection for appointment to State and Joint Cadre. It is the Central Government on the recommendation of the State Government and in consultation with the Commission and in accordance with the Regulation and after consultation with State Government and Commission recruits by way of promotion from amongst the substantive members of State Civil Service.

(16)

OA NO.890/88

The number of persons to be recruited under rule 8 is provided under rule 9. Rule 7,8, and 9 of the same have been extracted above. The Indian Administrative Service (Appointment by Promotion) Regulation, 1955 have been framed under Rule 8 of the Indian Administrative Service (Recruitment Rules) 1954.

3. The year of allotment of both the direct appointees as well as of promotees is provided in Rule (3) of the Regulation of Seniority Rules. Sub-Clause (9) refers to those who are appointed to service by competitive examination and the year of allotment for them would be the year following the year in which examination was held. Clause 3 deals with the year of allotment of promotee officers which has been extracted above. The proviso to the Rule is not material for this case. Explanation I provides that for officers appointed under Rule 8(1) of Indian Administrative Service Recruitment Rules by promotion for the purposes of determination of service by the period of continuous officiation on senior post count only from the date of inclusion of name in the select list or from the date of officiation on a senior post whichever is later. Explanation II introduces a legal fiction and provides that if from a certain date prior to the date of confirmation in the senior grade he continues to hold without any break or reversion the senior post otherwise than as a purely local arrangement he will be deemed to have officiated continuously. Explanation 4 deals with the event of officiation in a non-cadre post and it thereby

(17)

OA NO.890/88

provides that benefits of officiation in a non-cadre post can also be admissible in certain circumstances. An officer will be treated as having officiated on a senior post during this appointment on a cadre post if State Government certifies within 3 months that he would have so officiated for a period not exceeding one year and for a period not exceeding two years with the approval of the Central Government to a non-cadre post in the time scale identical to the time scale of the senior post. This explanation rather enjoins upon the State Government the duty to certify it in the manner provided in which the officer concerned has no say or hand.

4. The stress in all these explanations is on the expression 'Senior Post'. This expression is defined in Rule 2(g) of the aforementioned I.A.S. senior post and reads as under:

'Senior post' means a post included and specified under item 1 of the cadre of each State in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 and includes a post included in the number of post specified in items 2 and 5 of the said cadre and a post temporarily added to the cadre under the second proviso to Sub-rule 2 of rule 4 of the Indian Administrative Service (Cadre) Rules, 1954, when held on senior scale of pay, by an officer recruited to the Service in accordance with rule 7 of the Recruitment rules".

'Senior Post' as defined thus means a post included and specified in item 1 of the state cadre in the schedule to I.A.S. Fixation of Cadre Strength Regulation 1955 (for short, cadre Regulation). It also includes a post included in the number of posts specified in items 2 and 5 of the said



DA NO. 890/88

cadre and a post temporarily added to the cadre under second proviso to sub-rule 2 of rule 4 of the Indian Administrative Service (Cadre) Rules 1954 when held on a senior scale of pay by an officer recruited to service in accordance with rule 7 (competitive examination) of Recruitment Rules. Item 2 and 5 referred to above are Central Deputation @ 40% of item above and item 5 is Deputation Reserve at 22.5% of item 4, while item is the number of senior posts under the State Government.

5. Under the I.A.S. (Cadre) Rules, 1954 'cadre post' has been defined Section 2(4) as meaning any of the post specified under item 1 of each cadre in the schedule to the I.A.S. (fixation of cadre strength) Regulation, 1955, while 'cadre' officers' has been defined (Rule 29) to be a person who is member of service. Rule 4 provides that the strength and constitution of each of the cadres constituted under rule 3 shall be determined by regulation to be made by Central Government in consultation with the State Government. The Second proviso to this Rule 4 provides that State Government may add for a period not exceeding one year and Central Government not exceeding two years to a State or Joint cadre one or more posts carrying duties or responsibilities of a like nature to cadre post. The Government of India vide its decision dated 9.2.1965 (G.I.M.H.A. letter No. 6/9/63-AIS(1)) clarified that the pay scale of the cadre post to which it corresponds. Thus where the pay of the post of Secretary in its cadre is in the senior time scale it would not be in order to add temporarily

GA NO.890/88

added should also be the same as that of the cadre post to which it corresponds. Thus where the pay of the post of Secretary in its cadre is in the senior time scale it would not be in order to add temporarily to the cadre post of Secretary in the Super time scale. This decision of Government of India is conformity with the I.A.S. (Pay) Rules. 1954. The Regulations framed under the cadre rules are known as I.A.S. (Fixation of Cadre Strength) Regulation 1955. The posts borne on the strength and composition of the cadre of the I.A.S. of the various states are specified in the Schedule to the regulation. For every State item No.1 is the senior posts under the State Government item 2 and 5 are Central Deputation reserve and the Deputation reserve (means State).

6. In view of the meaning of word cadre post given in Cadre Rules that is post specified under item 1 of each cadre in the Schedule to the Regulation referred to above makes it more than clear that every cadre post is a senior post. But every senior post within the meaning of Section 2(g) of the I.A.S. Service Rules would not be a cadre post as the schedules to the Regulation includes certain posts viz. Central Deputation Reserve Posts and the Cadre Schedule post would not become cadre post though the same are senior posts. But for direct recruit the post temporarily added to cadre would be senior post as provided in Rule 4(2) of the Cadre Rules extracted above and to the extent provided in the said rule. There is no rule adding its benefit to the promotees also. But Rule 9(2) of the Cadre Rules provides for the Temporary appointment of non-cadre officer to cadre post. This can be

22

OA NO.890/88

done if the vacancy is not to last for more than 3 months or that no suitable officer is available for filling the vacancy. The appointments can be made from amongst select list and non-select Officer. If it is filled in by a person who is a non-select officer or not next in the select list, matter is to be reported to the Central Government along with reason for the same. But for appointing a non-select list officer or a select list officer not next in cadre in select list prior concurrence of Central Government is necessary. If an officer other than a cadre officer is appointed to a cadre post for a period exceeding three months matter is to be reported to Central Government together with reasons for the same. Sub-Rule(3) of Rule 9 provides that on receipt of reports or otherwise Central Government may direct that State Government shall terminate the appointment of non-cadre officer and appoint a cadre officer then State Government shall give effect to the said direction. If the cadre post is to be filled in by a non-cadre officer for a period exceeding six months the Central Government shall report full facts to Union Public Service Commission with the reasons that no suitable officer is available for filling in the post then the Central Government will give suitable direction to the State Government in the light of advice given by the Central Government. The provisions of Rule 9(2) (3) and (4) summarised above came up for consideration in the case of K.L.Jain V.Union of India (connected with Union of India V.K.L.Jain) AIR 1985 S.C. page 348). The High Court observed

"In the instant case, the Central Government never directed the State Government to terminate the

21

OA NO.890/88

petitioner's appointment. It is also not the case that the UPSC tendered any advice to the Central Government that the appointment be terminated. It is true that there is no specific approval of the Central Government to the appointment of the petitioner but that is not a condition precedent for a valid appointment under Rule 9 and the petitioner's officiation in a senior cadre post from 10th November, 1975 to 30th September, 1976 cannot be ignored on the ground that the appointment was not specifically approved by the Central Government. The petitioner's said officiation cannot also be ignored on the ground that there was no vacancy during this period in the promotion quota of the cadre officers.... It may be that if the Central Government thought that the State Deputation Reserve Quota which gave rise to a vacancy of a cadre post, it could have directed the State Government to terminate the petitioner's appointment but such a course was never adopted. As the Central Government did not issue any direction to the State Government to terminate the petitioner's appointment, the appointment has to be held to be valid and given effect to"

7. In the case of Shri Amrik Singh and Others V. Union of India AIR 1980 S.C., which was a case under various rules pertaining to Indian Police Service provisions of which are in pari material with the rules pertaining to Indian Administrative Service, with reference to Rule 9 of the I.P.S. cadre Rules, the Court observed that Rule 9 has a crucial impact in regard to temporary appointment of non cadre officers to cadre post. With reference to the State Government failure to report to Central Government reasons therefore and to consult UPSC regarding officiation in cadre post by a non-cadre officer beyond six months the Court held that same was not fatal to the period of officiation. In Harjat Singh V. Union of India A.I.R. 1980 S.C. which was also a case under I.P.S. Rules the Court held that if owing

to the situational demands and exigencies of the administration the State Government is compelled to utilise the service of experienced non-cadre officers to fill cadre posts in strict compliance with the cadre rules there is no reason to hold that service rendered by a non-cadre officer in such post be ignored behind it.

8. Reverting back in this light too to the measuring and import of expression 'senior post' as defined in Seniority Rules, 1954 it specifically includes the post temporarily added to cadre under second proviso to sub-rule 2 of Rule 4 of Cadre Rules when held on senior scale of pay by a direct recruit. But the rule is silent so far as promotees are concerned, so far as direct recruits are concerned. The reasons may be that exigencies of situation may require creation of two posts temporarily and though a direct recruit in senior time scale pay is posted against it, but in the absence of any rule an officer who otherwise was holding senior post may not be taken or held to be holder of senior post. But so far as promotees are concerned this position in view of the Rules referred to above is implied and that may also be a reason as to why no specific reference to the same finds place in the definition of 'Senior Post'. The State Government has power to make temporary addition to State cadre (Rule 4(2) of cadre Rule) and can appoint a non-cadre officer against it (Rule 9(1) whether his name is included or not included in the select list or he will be holder of a cadre post and the holding by him of the said post would not make cadre post to be non-cadre post as such the holder of the said post would be deemed to be holding a senior post. The post may not be a post in the cadre as

such but will be a cadre post. It is to be noticed that no declaration by the State Government that post is equivalent to 'Senior Post' is required after 1967. The definition of 'senior Post' as originally stood in the Rules defined it as a post included and specified under item I of the cadre of each State in the Schedule to I.A.S. (Fixation of Strength) Regulation and as including posts declared by the State Government as equivalent to such post was amended on 17th April, 1967 and the present definition no longer includes posts declared equivalent by State Government to cadre post.

9. Now comes the question of continuous officiation within the meaning of Rule 3(3)(b) of the 'Seniority' Rules which have been extracted earlier on which seniority depends. Rule 3(b) fixes the year of allotment of promotees will be the year of allotment of the junior most of the direct recruit who officiated continuously in a senior post from a date earlier than the commencement of such officiation by the promotee is the determinative factor in allocation of year of allotment. The proviso to rule enjoins that the year of allotment of an Officer allotted to the service in accordance with sub-rule (c) of Rule 8 of Recruitment Rules who started officiating continuously in a senior post from a date earlier than on which one of the direct recruits started officiating shall be determined ad hoc by the Central Government in consultation with State Government concerned. Explanation I to Rule 3(3) (b) provides for promotees that period of continuous officiation in a senior post shall for purposes of determination of his seniority would count from the date of inclusion of his

24

name in the select list or from the date of his officiating appointment to such senior post which ever is later. It may be that some officer starts officiating on senior post prior to inclusion of his name in the select list. He may not get advantage of the same before entitlement to be appointed in the I.A.S.cadre. The later of the two viz.inclusion of name or officiating appointment has been made the determinative point for determining seniority. This thus safeguards against any violation of Article 14 and 16 of the Constitution of India on which ground the explanation in the absence of phase whichever is later can be assailed. It is to be noted that the Explanation I the starting point is 'date of his officiating appointment' while in the proviso to Rule 3(3)(b) the material date is the date on which the direct recruit started officiating meaning thereby that the date of appointment would not be starting point but the date on which officer started officiating will be starting point for purposes of determination. In the I.A.S. (Fixation of Cadre Strength) Regulation 1955 framed under the cadre Rule the post of Deputy Secretary is also shown to be senior post. The Maharashtra Government vide its communication dt.26 the August, 1978 referred to earlier had circulated its decision that Deputy Collector in the Selection Grade should be considered eligible for the post of Deputy Secretaries in the Secretariat. For the present their appointment will be against unfilled I.A.S. cadre post in the cadre of Deputy Secretaries. Thus a post of Deputy Secretary in the Secretariat being a senior post

was included in I.A.S. cadre. The provision of Rule 3(3)(b) along with provisions of other rules and regulations came for interpretation before the Supreme Court in G.N.Tiwari's case(supra). In the said case the non-cadre officers(members of State Civil Service) were temporarily appointed by the State Government to cadre post (I.A.S.) for a period exceeding six months under Rule 9 of I.A.S (Cadre) Rules, 1959. The Court held:

- i) The continuous officiation in the cadre post from the date of commencement of such officiation pursuant to the appointment by State Government to cadre post is in accordance with Rule 9 of the cadre Rules and the same would ensure to their benefit for reckoning seniority under Rule 3(3) (b) of the seniority Rule.
- ii) Such appointees are also entitled by reason of legal fiction contained in Explanation 2 to the Rule 3(3) (b) of the seniority Rules to have the entire period of their continuous officiation without a break in senior post from the date of their officiating appointment till the date of their appointment into the service counted for purposes of determining their year of allotment under Rule 3(3) (b) of the Seniority Rules.
- iii) Neither prior approval of the Central Government to the appointment of a non cadre officer to a cadre post nor existence of a vacancy is a condition precedent to such appointment under Rule 9 of cadre Rules.
- iv) The failure of the Central Government to give a direction under Rule 9(3) to terminate the appointment of the respondents implies that their continuous officiation on a cadre post had the tacit approval of the Central Government and particularly when as required by it State Government submitted proposal for approval of non-cadre officers on cadre post which was followed by State Government report and Central Government approval.



- v) There is no provision in the Cadre Rules empowering the Central Government to direct curtailment of period of officiation of a non-cadre officer on a cadre post for purposes of reckoning his year of allotment under Rules 3(3)(6) of the seniority Rules. 9(2) of the cadre Rules which confers powers on the Central Government to direct termination of appointment of a non-cadre officer to a cadre post.
- vi) The over utilisation by State Government of the Deputation Reserve quota can not also have any bearing on the question of validity of appointment made by the State Government and the non-cadre officers can not be denied the benefit of continuous officiation in a senior post merely because the State Deputation Reserve Quota were over utilised.

The law laid down by the Supreme Court is the law of the land and even its obiter are binding. With this legal position it is thus quite clear that the applicant was not in a position to benefit from the seniority rules extracted above. It is thus spelt out that, as a matter of facts one who is senior in the select list is to be promoted first, in the instant case the applicant although was given promotion earlier, but was given appointment in the Tribal Development Department, and those who were next to him in the select list were given appointment on the post regarding which no view has been expressed, that the same was not a cadre post. The applicant had no say in his posting. It was the action of the State Government and no one can suffer, because of lapse or mistake of the Government, even otherwise as has been discussed above, the applicant will be deemed to have been appointed on the cadre post after placing him in the select list. After Tribal Development Department he was sent to Zilla Parishad, Akola, which is admittedly a Cadre post. Though applicant's earlier posting in the Tribal Development Department obviously was not deemed to be a cadre post, but in any case

will have to be deemed to be on a cadre post as has been discussed earlier. Even if, the respondents' contention is accepted regarding the upgradation of the post in the year 1984, the benefit of the same has not been given to the applicant. Now the applicant is entitled to count previous service for seniority.

10. On behalf of the applicant it was contended that the Rule 3(3) (2) of the Seniority Rule has been amended on 18th January 1988 by the Indian Administrative Service (Regulation of Seniority) and in view of the amendment rulee also he was to become senior to the respondent. The said rule reads as under:

1. i) These rules may be called the Indian Administrative Service (Regulation of Seniority) First Amendment Rules, 1988.

ii) They shall come into force on the date of their publication in the Official Gazette.

2. In the I.A.S. (Regulation of Seniority) Rules, 1987, Rules 3(3) (ii) shall be amended as below:

" (ii) The year of allotment of a promotee officer shall be determined in the following manner.

a) For the service rendered by him in the State Civil Service upto twelve years, in the rank not below that of Deputy Collector of equivalent, he shall be given a weightage of four years towards fixation of the year allotment;

28

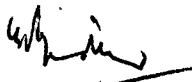
- b) he shall also be given a weightage of one year for every completed three years of service beyond the period of twelve years, referred to in sub-clause(a) subject to a maximum weightage of five years, in this calculation, fractions are to be ignored;
- c) The weightage mentioned in sub-clause(b), shall be calculated with effect from the year in which the officer is appointed to the service.

Provided that shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier Select list"

Considering the above amended rule of 1988 the applicant's year of allotment was to be calculated in accordance with the same. It has been contended on behalf of respondents that their allotment year was decided first and rules were amended later on, so these rules cannot be applied with retrospective effect. The question of seniority was still in dispute and such rules cannot be taken into account. Obviously, under these rules the applicant became senior to the said respondents, but as already held, the applicant was to be deemed to hold a senior post since he has been appointed in the Tribal Development Department and entire period is to be counted as continuous in the cadre of senior scale. The applicant in that period is to be given appointment on a cadre post. The applicant's year of allotment thus changes and

the applicant is also senior to the said respondents accordingly.

11. In view of the above observations, the application deserve to be allowed. Respondent <sup>NO 1 and 2 are</sup> ~~No. 2~~ is directed to re-fix the year of allotment in the light of the observations made above in the judgment, and the applicant shall be placed in the seniority list above the said respondents No.3 and 4. The correction in the seniority list and the year of allotment shall be made within a period of 3 months from the date of communication of this order by the respondents. There will no orders as to costs.

  
(M.Y. PRIDLKAR)  
Member(A)

  
(U.C. SRIVASTAVA)  
Vice-Chairman

Corrected vide order

dtd 10-1-92 in

RP 9/92

  
V/c

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