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Central Administrative Tribunal

BOMBAY BENCH : AT BOMBAY.

O.A. No. 876/89.

Date of Decision : 22-11-91

~~T.A.No-~~

K.Hanumanthappa

Petitioner.

Shri G.S.Walia

Advocate for the
petitioner (s)

Versus

Union of India, through Director-General,
Dte. of Supplies & Disposals, Jeevan Tara,
Parliament St., New Delhi & 35 others

Respondent.

Shri R.K.Shetty

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. M.Y.Priolkar : Member(A)

THE HON'BLE MR. T.Chandrasekhar Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgment? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

[Signature]
HMYE
M(A).

[Signature]
HTCSR
M(J).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : BOMBAY BENCH
AT BOMBAY.

O.A.No.876/89.

Date of Judgment 22-11-91

K.Hanumanthappa

-- Applicant

Vs.

1. Union of India, through
Director-General,
Dte. of Supplies & Disposals,
Jeevan Tara, Parliament St.,
New Delhi.
2. Director(Admn),
Dte. General of Supplies &
Disposals,
Jeevan Tara, Parliament St.,
New Delhi.
3. Deputy Director(Admn),
Dte. General of Supplies &
Disposals,
Jeevan Tara, Parliament St.,
New Delhi.
4. Director of Supplies &
Disposals,
Dte. of Supplies &
Disposals,
Sapt Building,
Ballard Estate,
Bombay-400038.
5. D.K.Goswami
6. K.V.Ramaraju
7. S.B.Sen
8. R.K.Sahgal
9. T.P.Raghavan
10. M.C.Bhattacharjee
11. V.Subramanian
12. V.V.Balasubramanian
13. S.C.Malhotra
14. B.P.Aggarwal
15. M.M.Chhabra
16. A.K.Gupta
17. N.Srinivasan
18. H.P.Nagarajappa
19. K.K.Malhotra
20. Surinder Singh
21. J.A.Safvi.
22. O.P.Kapoor
23. S.K.Sharma
24. D.P.Gaur
25. R.P.Chopra
26. S.K.Talukdar
27. A.Basak
28. K.L.Sethi
29. Jagdish Singh
30. Deepchand
31. R.B.Baraja
32. N.D.Mandal
33. G.K.Das
34. R.C.H.Asnani
35. M.C.Banerjee
36. Hoshiar Singh

-- Respondents

Counsel for the Applicant : Shri G.S.Walia

Counsel for the Respondents : Shri R.K.Shetty

CORAM:

Hon'ble Shri M.Y.Priolkar : Member(A)

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

[Judgment delivered by Hon'ble Shri T.Chandrasekhar Reddy,
Member(J)]

The applicant herein has filed the present application under section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:

(a) To call for the records and proceedings which led to the issuance of the impugned seniority lists dated 31.8.1987 and dated 3.4.1989 and after going through the legality, propriety, validity and constitutionality thereof, quash and set aside the same.

(b) To order and direct the respondents to prepare a fresh seniority list of Asst. Directors, Grade II, in accordance with the principle laid down in the relevant rules annexed thereto at Exhibit 'B'.

(c) To accord all consequential benefits in respect of promotions, seniority, increments etc., as permissible.

(d) To pass such other orders as deemed fit and necessary in the facts and circumstances of the case.

2. The facts ^{narrated} ~~by~~ by the applicant ^{in the O.A.} ~~in~~ brief may be stated as follows:

The applicant joined the Department of Directorate General of Supplies & Disposals, as Asst. Director(Supplies), Grade II, in the month of September, 1977, after having been selected by the Union Public Service Commission.

The next promotion as available to the applicant is to the post of Asst. Director, Grade I. The applicant was direct recruit to the post of Asst. Director, Grade II, as 50% of the posts of Asst. Director, Grade II were to be

filled up by direct recruits and 50% by promotees and the seniority is to be maintained in the ratio of 1:1.

Some of the promotee officers were working on adhoc basis in excess of the quota reserved for the promotees at the time when the applicant joined the services of Asst. Director, Grade II. On 27.4.79, the Department issued a seniority list of Asst. Directors, Grade II as on 1.3.79. In the said seniority list, the name of the applicant was shown above the respondents and some of the respondents were not included in the seniority list as they could not be accommodated in the ratio of 1:1 against their quota. The said seniority list was prepared in accordance with the recruitment rules.

While so, one Mukul Chandra Banerjee & 5 others had filed T.A.No.616 of 1986 on the file of the Central Administrative Tribunal (C.A.T. for short) Calcutta Bench challenging the said seniority list that was prepared in the year 1979 and to give them seniority over the direct recruits that were appointed. It may be mentioned here that the applicants in the said T.A.No.616 of 1986 on the file of the C.A.T. Calcutta Bench were in service long before the present applicant and others were appointed as direct recruits. The said T.A.No.616 of 1986 as per the judgment of the Calcutta Bench of the C.A.T. was decided on 12.9.86 allowing the said application in part in favour of the applicants 1 to 3 therein.

Another application (T.A.No.807 of 1986) was filed by one Khageswar Das who was also a promotee and who had been in service before the applicant and others were recruited into service by direct appointments. The said Khageswar Das also challenged the seniority list of the year 1979 placing the applicant and other direct recruits as seniors to him. The said T.A.No.807 of 1986 filed by the said Khageswar Das was allowed by the Calcutta Bench of the C.A.T. as per its judgment dated 14.11.86 directing the respondents therein to regularise the service of the said Khageswar Das

with effect from such date as admissible to him and also to give promotion to the said Khageswar Das to the post of Asst. Director, Grade I with effect from such date as admissible under the law.

In another T.A.No.1663 of 1986 one Manish Chandra Bhattacharyya who was also a promotee and who is said to have been promoted to the post of Asst. Director, Grade II w.e.f. 13.9.71 challenged the seniority list of 1979 claiming promotion over the direct recruits who were recruited as Asst. Directors, Grade II. The said T.A.No.1663 of 1986 was allowed by the Calcutta Bench of the C.A.T.as per its judgment dated 26.2.87 and a specific direction was given to the respondents therein to prepare a ^{comprehensive} ~~seniority~~ list for the posts of Asst. Director, Grade II forthwith in the light of the observations made in the body of the said judgment and a further direction was given to regularise the service of the petitioner in the post of Asst. Director, Grade II and promote him to the post of Asst. Director, Grade I in accordance with the law and with effect from such date as was admissible before 30.4.87.

Another Dilip Kumar Goswami filed I.A.No.808 of 1986 before the Central Administrative Tribunal Calcutta Bench against the Union of India & others. In the said I.A.No.808 of 1986 before the Calcutta Bench of the C.A.T. the applicant herein was the 24th respondent ^{and} the 1st respondent was the Union of India. Some other direct recruits alongwith the applicant ~~were~~ also impleaded as respondents in the said I.A.No.808 of 1986 on the file of the Calcutta Bench of the C.A.T. who were direct recruits alongwith the applicant herein. In the said I.A.No.808 of 1986 the said seniority list of 1979 was also questioned. The applicant Dilip Kumar Goswami in the said I.A.No.808 of 1986 is said to have been in service in the post of Asst. Director, Grade II w.e.f. 2.7.70. The said I.A.No.808 of 1986 was decided by the

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Calcutta Bench of the C.A.T. on 12.9.86 and the Calcutta Bench directed in the said I.A.No.808 of 1986 to rectify the seniority list of Asst. Directors, Grade II on the basis of the applicant's date of joining that post on 2.7.70. The Bench further directed the respondents in the said I.A.No.808 of 1986 not to give effect to the seniority list prepared in 1979 and not to make any appointment by promotion on the basis of the seniority list which may effect the interest of the said Dilip Kumar Goswami, the applicant in the said I.A.No.808 of 1986.

In view of the various judgments of the Calcutta Bench of the C.A.T. that were decided as against the direct recruits and as some other O.A.s were pending before the Principal Bench of the C.A.T., Delhi, the Government decided to extend the benefit of the various judgments of the C.A.T. Calcutta Bench to all the officers who were similarly placed so that further litigation on this score could be avoided. As a result, the seniority list of Asst. Directors, Grade II of the year 1979 became defunct and a fresh seniority list of Asst. Directors, Grade II was prepared following the guidelines that were given by the C.A.T. Calcutta Bench in all the 4 O.A.s that are referred to above. It may be pointed out herein that in all the 4 judgments that were delivered by the C.A.T. Calcutta Bench to which a reference we have already made, had relied on the decision of the Supreme Court in Narender Chadha's case reported in A.I.R. 1986 SC 638. So, the respondents issued a seniority list on or about 29/30.6.87 purported to be comprehensive seniority list of the grade of Assistant Directors (Grade-II) as already pointed out in pursuance of the decision of the C.A.T. Calcutta Bench. In the said seniority list respondents 5 to 36 herein were shown as seniors to the applicant herein, though in the earlier seniority list all the said respondents were shown as juniors to the applicant herein. It is the grievance of the

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applicant that the ratio stipulated under the recruitment rules for the maintenance of seniority i.e., 1:1 had been departed and that it resulted in gross injustice to the applicant.

On seeing the said seniority list dated 29/30.6.87 which was provisional in nature the applicant immediately made a representation against the implementation of the said list by a telegram dated 9.7.87.

Another seniority list dated 31.8.87 was also issued by Respondent No.3 in which the direct recruits who were seniors in the seniority list of 1979 were made juniors in the said seniority list dated 31.8.87. As there was no response to the telegram dated 9.7.87 sent by the applicant to the concerned authorities, on 5.10.87 the applicant made a further representation against the said seniority list. The applicant also submitted a representation to the Addl. Secretary, Department of Supplies & Disposals on 24.11.87 requesting the promotions to be made under the 40 point roster. The applicant seems to have made a representation to the Director-General, Supplies & Disposals, New Delhi, who is the 1st respondent on 7.3.89 bringing the grievance of the applicant to the notice of the 1st respondent. None of the representations made by the applicant had any impact on the concerned authorities. So, the applicant had filed the present application before this Tribunal for the reliefs already detailed above.

3. A counter is filed by the respondents stoutly opposing the said application. It is contended that in view of the judgment in Dilip Kumar Goswami's case (I.A.No.808 of 1986 on the file of the C.A.T. Calcutta Bench) this application is not at all maintainable as the present application is hit by the principles of resjudicata.

Straightway we may say that ~~to~~ the ^{First} 3 T.As to which a reference we have made, the applicant herein is not a party. ~~So~~ As the applicant is not a party to the said T.As (T.A. No.616/1986, T.A.No.807/1986 and T.A.No.1663/1986 on the file

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of the C.A.T. Calcutta Bench the said Judgments (in those three T.A.s) do not bind the applicant, though the said judgments may be relevant pieces of evidence. But, we are concerned, with the above mentioned Dilip Kumar Goswami's case I.A.No.808 of 1986 on the file of the C.A.T. Calcutta Bench wherein the applicant herein was the 24th respondent. As already pointed out, the seniority list that was prepared in the year 1979 had been questioned by the applicant Dilip Kumar Goswami in the said I.A.No.808 of 1986. As could be seen from the said judgment, the application had been contested by the respondents opposing the said I.A.No.808/86 on the ground that the said Dilip Kumar Goswami, the applicant in I.A.No.808 of 1986 had been appointed as Asst. Director, Grade II, merely on an adhoc and temporary basis and as such the said Dilip Kumar Goswami cannot claim seniority over others. It was also the further case of the contesting respondents in the said I.A.No.808 of 1986 that although the applicant had started functioning as Asst. Director, Grade II w.e.f. 2.7.70 and as the said Dilip Kumar Goswami was regularised in the said post of Asst. Director, Grade II in the year 1979 that seniority was to be counted from the said date (2.7.79) and not prior to the said date. The operative portion of the judgment in I.A.No.808 of 1986 reads as follows:

-----"They are further directed to rectify the seniority list of Asst. Directors, Grade II, in the basis of the applicant's date of joining the post on 2.7.70. The respondents are also directed not to give effect to the seniority list prepared in 1979 and not to make any appointment by promotion on the basis of such list which may affect the applicant's interest"-----

So, in view of the said observation and in view of the other judgments in the other 3 T.A.s to which a reference is made the Government was forced to give a go-by to the 1979 seniority list and prepare another list giving seniority to the promotees over the direct recruits who were working as Assistant Directors, Grade II. So, as the applicant herein

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was a party to the said I.A.No.308 of 1986 on the file of the Calcutta Bench of the C.A.T. we are unable to understand how it is open to give a go-by to the said judgment by the applicant and contend that the seniority list prepared in the year 1987 on the guidelines contained in the said judgment in I.A.No.808 of 1986 does not bind the applicant. The subject matter in dispute in this O.A. and in I.A.No.808 of 1986 on the file of the Calcutta Bench of the C.A.T. is substantially the same. The main parties in this O.A. and the other O.A.s are one and the same. It is well settled law that decisions on an issue of mixed law and facts by a competent court, between the same parties operates ^{as} resjudicata. It is needless to point out that decision on an issue of law will be resjudicata in the subsequent proceedings between the same parties. So, that being the position, the present application is very much hit by the principles of resjudicata and appears to us that the filing of the application itself is a bar under law.

It is the contention of the learned counsel for the applicant herein that the applicant has not received any notice from the C.A.T. Calcutta Bench in I.A.No.308 of 1986, and, therefore, the judgment that has been rendered in the said I.A.No.308 of 1986 does not bind the applicant at all.

The applicant, as already pointed out, was the 24th respondent in the said I.A.No.808 of 1986 on the file of the Calcutta Bench of the C.A.T. If summons had not been served and if the applicant had no knowledge of the judgment delivered in the said I.A.No.808 of 1986, then for the non-service of the notice in the said I.A.No.808 of 1986 the ^{applicant} ~~applicant~~ could have filed a petition in the said I.A.No.308 of 1986 to set aside the judgment against the present applicant (24th respondent in I.A.No.808 of 1986) as and when the applicant had knowledge of the Judgment in the said

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I.A.808/86. The applicant never appears to have moved his little finger to see that the said judgment in I.A.No.808 of 1986 is set aside on the ground that it is an ex-parte one. No material is placed before us by the applicant to show that the applicant had not been served with the notice in the said I.A.No.808 of 1986 on the file of the C.A.T. Calcutta Bench. So, it is rather difficult to believe that the applicant had no knowledge of the said I.A.No.808 of 1986 on the file of the C.A.T. Calcutta Bench. It is needless to point out that even ex-parte judgments will have all the ~~crux~~^(crux) of the judgment that is delivered on contest. So far the applicant herein is concerned he was the 24th respondent in the said I.A.No. 808 of 1986. So the said judgment in I.A.No.808 of 1986 completely binds the applicant till it is set aside. Hence, the contention of the applicant that the judgment does not bind him on the ground that the summons were not served on him in the said I.A.No.808 of 1986 cannot be accepted.

We may point out that when the issue was raised and finally decided, the rule of resjudicata applies even decided ex-parte. The same is the principle with regard to O.A.s that are filed under section 19 of the Administrative Tribunals Act, 1985. So, we do not have any doubt in our mind to come to a conclusion that this O.A. is squarely hit by the principles of resjudicata.

The learned counsel appearing for the applicant pointed out that the validity of the recruitment rules of 1965 are not touched upon in any of the applications that had been decided by the Calcutta Bench of the C.A.T. and in view of this position that the earlier judgment rendered in I.A.No.808 of 1986 and also other judgments that are rendered in the other 3 O.A.s to which the applicant is not a party will not operate as resjudicata. No doubt, the recruitment rule that had been framed reads as follows:

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"6. Relative seniority of Direct Recruits and Promotees:

The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules."

As could be seen from ^{the Judgment} T.A.No.616 of 1986, wherein Mukul Chandra Banerjee & Others were the applicants, it is stated as follows:

"The petition has been opposed by the respondents. It is their bone of contention that as the applicants had been promoted to the posts of Asst. Director, Grade II, merely on adhoc basis they cannot claim any right or benefit attached to such posts. As per the recruitment rules they have every right to make direct recruitments to the said posts on the recommendation by the Union Public Service Commission".

As could be seen from para 6 of the judgment in the case of Mukul Chandra Banerjee & Others, it is observed as follows:

"It has been argued by the side of the respondents that when there is a specific provision in the quota rules to the contrary the applicants cannot claim for their permanent absorption to such posts. To meet that argument we would have to once again quote the decision as cited above. In the latter part of the judgment it has been held by the Supreme Court that the appointments made in excess of the quota as per rules should be taken as relaxation of the rules by the controlling authority. According to the Supreme Court when there is power on the controlling authority to relax the mandatory quota rule the appointments made in excess of the quota from any given source would not be illegal or invalid but would be valid and legal. The Supreme Court took that view accepting the decisions of 2-3 other cases decided by it earlier".

So, from the said judgment it is quite evident that the quota and rota rule had been very much considered by the Bench in deciding the said matter. In T.A. No.807 of 1986 as could be seen from the judgment, the respondents have raised the following plea:

"It is the case of the respondents that as per the recruitment rules for Asst. Director Grade II, 50% of the posts are filled up by direct recruitment through U.P.S.C. and the remaining 50% are filled up by promotion from the eligible candidates from the feeder categories provided 20% of the total number of posts are to be filled up by transfer on deputation, if found necessary. As recruitments through U.P.S.C. take some time, lot of observation of formalities, vacancies earmarked for direct recruits are temporarily filled up on adhoc basis by promoting officers from feeder categories till regular candidates are available. When the candidates by direct recruits are available the persons appointed on adhoc basis are reverted to their original posts according to their seniority".

At page 6 of the said judgment again the Bench has observed as follows:

"We are not at all satisfied with the explanation given by the respondents for not regularising the applicant's case for a long period of more than 12 years. In our opinion non-availability of sufficient vacancies would not at all be an impediment to the applicant's claim for regularisation and promotion. In that regard we may refer to the case of Narender Chada Vs. Union of India

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reported in AIR 1986 Supreme Court 638. In that case it has been held by the Supreme Court that when an Officer has worked for a long period in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances as the Supreme Court has held, the entire period of officiation has to be counted for seniority. In our opinion the principle laid down in that case would apply with all its force to the instant case. It is true that the present applicant was promoted to the post of Asst. Director - Grade II on adhoc basis from the departmental feeder categories. But as and when he has worked for a long period in that post without being reverted his continuous officiation to that post for the whole period should be counted for seniority. It must be said that the respondents had not considered the applicant's case from its true perspective. Even if the argument that the applicant being promoted from the departmental feeder categories cannot be allowed to exceed the quota reserved for such categories is considered it must be said following the decision of the above mentioned case that in that case the necessary quota rule shall be deemed to have been relaxed. By all means the applicant's case should have been regularised in time and his total period of officiation as Asst. Director - Grade II should have been counted for seniority".

We find similar pleadings and observations in Manish Chandra Bhattacharyya's case (T.A.No.1663 of 1986 on the file of the Calcutta Bench of the C.A.T.)

In I.A.No.808 of 1986 the contesting respondents therein have raised the following plea as could be seen from para 3 of the said judgment:

"The writ petition has been contested by the respondents. It is their contention that the applicant was appointed as an Asst. Director, Grade II merely on adhoc and temporary basis and as such he cannot claim any seniority over others. It is their further contention that although the applicant had started functioning as an Asst. Director, Grade II w.e.f. 2.7.70, he was regularised in the same post in 1979 and as such the seniority shall be counted from that date and not prior to that".

The said plea taken, as could be seen from the judgment, had been negatived. The Bench had delivered in I.A.808/86 the judgment dated 12.9.86 and we have extracted earlier the operative portion of the said judgment. So, considering the abovesaid quota and rota rule extracted above, not only I.A.No.808 of 1986 had been decided but also the other T.A.s to which a reference we have made are decided. So, it may not be correct to say that the Bench had decided the said

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matters without taking note of the quota and rota rule which is very much relied by the learned counsel for the applicant in this O.A. It is not open for us to go into the validity of the said quota and rota rule to which a reference has been made in the judgment referred to above and give a finding otherwise as the applicant is bound very much by the said judgment in I.A.No.808 of 1986. The Calcutta Bench of the C.A.T., as already pointed out, has very much relied on Narender Chadha's case AIR 1986 SC 638. The learned counsel for the applicant relied on ^{the Awadh Prasad Singh and others reported} Supreme Court decision ^{and other Supreme Court decisions} in 1990 (14) Administrative Tribunal Cases 717 wherein it is laid down that Adhoc and fortuitous service cannot be counted for the purpose of seniority, ~~Awadh Prasad Singh and Others (Applicants) Vs. State of Bihar and Others (Respondents) and some other Supreme Court decisions~~ and contended that decision in Narender Chadha's case does not ~~does not~~ apply to the facts of this case and that the Calcutta Bench of the C.A.T. was wrong in applying the said decision in all the four cases decided by the said Bench and in view of the said Supreme Court decisions cited by the learned counsel for the applicant that the application was liable to be allowed and that the seniority list of 1979 was to be restored. Even accepting for argument sake that the learned counsel for the applicant is correct in his argument, we may point out with great respect that a wrong decision by a court having jurisdiction is as binding as a right one. So, even though for argument sake we accept that all the four judgments of the Calcutta Bench of the C.A.T. are not correctly decided, we have to treat them as judgments that are correctly decided as the said judgments had become final, as the said judgments are not set aside by any competent court having jurisdiction.

The learned counsel for the applicant finally contended that the benefit of seniority may be restricted only to the applicant in I.A.No.808 of 1986 and a direction may be given


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to place the applicant in the seniority list below Dilip Kumar Goswami. He further elucidated his argument by contending that no benefit need be extended to those employees who had not approached the Tribunal for any relief and that it would be just and proper to restrict the relief only to the applicant in I.A.No.808 of 1986 in which the present applicant, as already pointed out, was the 24th respondent. He also further maintained ~~that~~ as this applicant is not a party to the other 3 T.A.s (T.A. No.616/1986, T.A.No.807/1986 and T.A.No.1663/1986) to which a reference is made, it would be just and proper in the circumstances of the case to place those applicants in the said 3 T.A.s (T.A.No.616/1986, T.A.No. 807/1986 and T.A.No.1663/1986) below the applicant in the seniority list and to give a direction accordingly. As already pointed out, the judgment in I.A.No.808 of 1986 in which the present applicant was the 24th respondent had become final. If the directions, as contended by the learned counsel for the applicant are given in the present O.A., virtually we will be amending and altering the terms of the judgment in I.A.No.808 of 1986. This Bench is not at all competent to amend or alter the judgment that had already been delivered by a different bench (in this case Calcutta Bench of the C.A.T.). Hence, the contention of the learned counsel for the applicant cannot be accepted.

In view of the facts of this case, we see no other alternative except to dismiss the application. Hence, we dismiss the application but we make no order as to costs in the circumstances of the case.

T. Chandrasekhara Reddy
(T. CHANDRASEKHAR REDDY)
MEMBER (J).


(M.Y. PRIOLKAR)
MEMBER (A).

Dated : 22-11-91