

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 13/1/88

APPLICATION NO 218 / 87(F)

W.P. NO.

ApplicantRespondent

Shri O.M. Gangadharam
To

V/s The Secy, M/o Defence & 4 Ors

1. Shri O.M. Gangadharam
312, 1st Cross
Sri Madhurama Koil Street
Old Byappanahalli
Maruthi Seva Nagar Post
Bangalore - 560 033
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050
3. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011
4. The Scientific Adviser to
Raksha Manthri & Director General
Research & Development Organisation
Ministry of Defence
DHQ P.O.
New Delhi - 110 011

5. The Director
Aeronautical Development Establishment
(ADE)
Bangalore - 560 075
6. Shri R. Balakrishna
Chief Administrative Officer
Aeronautical Development Establishment
(ADE)
Bangalore - 560 075
7. Shri M.F. Jaindani
Scientist 'D'
Aeronautical Development Establishment
(ADE)
Bangalore - 560 075
8. Shri M.S. Padmarajaiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Received SL No. 5,627

Admission

(M. Raghavendra Achar) OS
MD-3/6/88
18/1/88

RECEIVED 7 Copies 14.1.88

Diary No. 1620/CR/87

File Date: 14.1.88

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~STAY/INTERIM ORDER~~
passed by this Tribunal in the above said application on 11-1-88.

Receipt

O.M. Gangadharam

R.V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

14/1/88 - OC

Received one copy on 14.1.88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THE 11TH DAY OF JANUARY, 1988

Present

THE HON'BLE SHRI L.H.A. REGO .. MEMBER(A)
THE HON'BLE SHRI Ch RAMAKRISHNA RAO .. MEMBER(J)

APPLICATION NO.218 OF 1987(F)

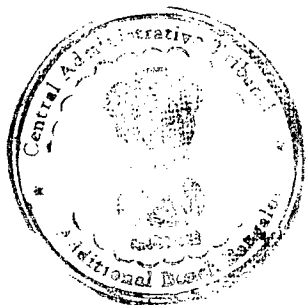
O.M.Gangadharam
312, 1st Cross,
Sri Madhuramma Koil Street,
Old Byappanahalli,
Maruthi Sevanagar post,
Bangalore-560 033. .. Applicant

(By Shri M.Raghavendrachar, Adv.for the applicant)

-vs.-

1. The Union of India
by the Secretary in the
Ministry of Defence, South Block,
New Delhi-110 011
2. The Scientific Adviser
to Raksha Manthri,
Director General,
Research and Devt.Organisation,
Ministry of Defence,
New Delhi-110 011.
3. The Director,
Aeronautical Development
Establishment (ADE)
Bangalore-560 075
4. Mr.R.Balakrishnan
(Chief Admn.Officer)
A.D.E. Bangalore-560 075
5. Mr.M.F.Jaindani,
Scientist 'D'
A.D.E.Bangalore-75 .. Respondents.
(Shri M.S.Padmarajaiah, Senior Standing Counsel
for Central Government, for respondents).

The



The application coming on for hearing, SHRI L.H.A. REGO, HON'BLE MEMBER(A), made the following:

ORDER

In this application, filed under Sec.19 of the Administrative Tribunals Act, 1985 (Act), the main prayer is, that the punishment imposed on the applicant, in the three departmental enquiries (DEs for short), on 14-11-1979, 23-3-1983 (which date should actually be 16-5-1983) and 31-12-1985, be set aside, these DEs being illegal and that he be granted promotion, with effect from 26-7-1976 and 26-9-1977 (i.e., the dates on which his juniors were promoted) along with consequential benefit. When this application came up for admission, before another Division Bench of the Tribunal, on 1-4-1987, it was pointed out, that the application suffered from an infirmity, in that, the above two reliefs sought by the applicant, did not arise out of a single cause of action. The applicant therefore confined his prayer, only in regard to the validity of the DEs as set out at S.No.1 thereof, at the end of the application. Accordingly, the above Division Bench negatived the relief prayed for by the applicant at S.No.2 ibid. before admitting the application.

2. The following are the salient features of this case. The applicant was appointed as Laskar, in the

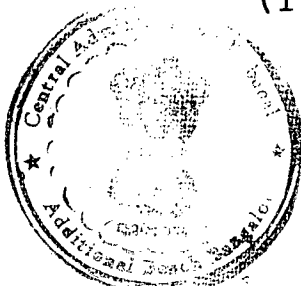


Aeronautical Development Establishment at Bangalore (ADE, for short) on 26-7-1976. He applied for the post of Fitter-Mate (now designated as Tradesman 'E'), in the higher grade, against the direct recruitment quota, for which he was selected and appointed on 26-7-1977.

3. The applicant has alleged that his superior Shri M.F.Jaindani, Scientist 'C', ADE (now Scientist 'D') Bangalore, - Respondent (R)5, - was inimically disposed towards him, as he did not oblige^{de} his wife who was a LIC agent, in regard to payment of LIC premia, on account of which, he was victimised, by being subjected to as many as three DEs between 1978 to 1985 and penalised thereon, after placing him under suspension.

4. The following is a synopsis of the relevant details of these 3 DEs held against the applicant for violati^{de}va of Rule 3 of the CCS(Conduct) Rules, 1964:

Sl. No.	Date when the charge-sheet was framed	Nature of the charge framed	Date of imposition of penalty	The details of the penalty imposed.
(1)	(2)	(3)	(4)	(5)
(1)	4-12-1978	(1) Unauthorised transmission of ADE property. (2) Indisciplinary behaviour with colleagues and superiors.	14-11-1979	Annual increment due on 1-9-1980, withheld for one year, without cumulative effect. (Charge(1) not proved)



(1)	(2)	(3)	(4)	(5)
(2)	30-11-1980	Indisciplinary behaviour towards the Accounts Officer and use of insulting language against him.	16-5-1983	Basic pay reduced from Rs.214/- to Rs.210/- per mensem for one year, without cumulative effect.
(3)	16-7-1984	(1) Indisciplinary behaviour towards the CAO and use of insulting language against him. (2) Insubordinate behaviour and use of offensive language against the CAO.	31-12-1985	Removal from service with immediate effect, without disqualification for future employment.

5. The applicant appealed to the competent authority for redress, against the punishment imposed on him as above, in the three DEs, but to no avail. He has therefore come before this Tribunal, through his present application, for relief.

6. Shri M.R.Achar, learned Counsel appeared for the applicant, when in the course of hearing of this application, it was brought to his notice by us, that the prayer of the applicant in regard to the first two DEs, wherein the punishment was imposed on 14-11-1979 and 16-5-1983, was barred by limitation, he submitted, that he would confine his prayer, only in regard to the third DE, wherein the punishment of removal from service was inflicted, on his client, on 31-12-1985. He stated, that his client had preferred an

appeal

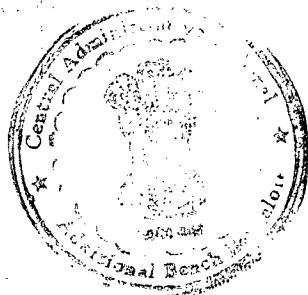
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appeal thereon, on 6-1-1986, to R2, against the order of penalty imposed on 31-12-1985 by R3, but the same was rejected by R2, on 30-4-1986. Thereafter, he said, his client filed an application before this Tribunal on 27-3-1987, under Sec.19 of the Act, which was well within the period of limitation. We have verified these facts and are satisfied, that the application is not hit by limitation, in so far as the relief prayed for, is confined to the third DE, where the appeal of the applicant was decided by R2 on 30-4-1986.

7. The leit motif of Shri Achar's allegation was, that the applicant was being harassed by R5(Sri M.F.Jaindari) in particular, with the help of his confreres in the ADE, as he did not favour his wife who was a LIC agent, in regard to payment of LIC premia, and that as a result, spurious charges were repeatedly trumped up against him, since 1978 almost with impunity, solely with the ulterior motive of running his career. For ease of reference, we shall designate the DEs initiated on 4-12-1978, 30-11-1980 and 16-7-1984 as the first, second and the third DEs respectively. Even though Sri Achar confined his argument to the third DE, initiated against his client on 16-7-1984, he referred to the earlier two DEs instituted against him, for the limited purpose of bringing home, that the charges framed against his client were false, imaginary and stereotype in nature and that on each of these occasions, his client was denied the benefit of a legal counsel and of reasonable opportunity, of pleading his defence, in violation of the principles of natural justice.

8. Inviting our attention to the provisions of Rule - 14(8) of the CCS(CCA)Rules, 1965, Shri Achar asserted, that

according



according to these provisions, his client was entitled to assistance of a legal practitioner, considering specially, that the third DE initiated on 16-7-1984 (to which only he confined his arguments, as stated earlier) was complex in nature and the Presenting Officer was legally trained and therefore, his client did not have the necessary educational background and legal expertise, to plead his case but this facility was denied to him. Sri Achar relied on the Supreme Court ruling in 1983(1)SLR 464 (BOARD OF TRUSTEES OF THE PORT OF BOMBAY v NADKARNI & ORS) to establish, that denial of permission to his client, for being represented through a legal practitioner, was tantamount to denial of reasonable opportunity and natural justice.

9. Sri Achar further alleged, that the concerned witnesses were not examined in the course of the third DE and his client was not given the opportunity to cross examine the witnesses, who had deposed against him, which was also a negation of the principles of natural justice. Worse still, he complained, that his client was physically prevented, from entering the premises, where the third DE was to be conducted and thus he was incapacitated from participating in this DE. In order to overcome this obstacle he said, his client had even requested for a change of venue of the DE, so that he could cooperate in the smooth conduct of the DE and participate therein fully. Even this opportunity, he averred, was denied to his client. Sri Achar pointed out, that the applicant had complained to the Regional Labour Commissioner, Bangalore, on 12-7-1985, that he was being prevented from participating in the DE, and that this was a repetition of his plight in the second DE but there was no redress.

10. The efforts of the applicant in securing conciliation under the provisions of the Industrial Disputes Act 1947, in regard to the dispute of punishment of removal from service imposed on him, under the third DE, Sri Achar pointed out, ended in failure, as the views of the management, on the merits of the dispute, could not be ascertained, as it did not attend conciliation. Conciliation therefore, was held ex parte, according to the letter dated 28-8-1986 (Annexure-21) addressed by the Assistant Labour Commissioner(Central) II, Bangalore, to the Secretary, Government of India, Ministry of Labour, New Delhi. The applicant however, for reasons best known to him, was averse to refer the dispute to arbitration.

11. Sri Achar stated, that his client had represented to R3, on 18-11-1985 (Annexure 19), about victimisation and harassment by R5, and had in these circumstances, requested for interview along with another person, to present his case and explain the facts, so that R3 in his capacity as the Disciplinary Authority (DA, for short) could examine the matter in all its aspects, before coming to a decision, whether or not to impose penalty on the applicant. This representation, as also the appeal dated 6-1-1986 to R2, Sri Achar submitted, fell on deaf ears.

12. In the end, Sri Achar pleaded that as compared to the gravity of the charges framed against the applicant, the punishment imposed on him was not commensurate with his guilt if any, but was far too severe.



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13. The respondents have filed a reply to the application, rebutting each of the contentions therein. Sri M.S. Padmarajaiah, learned Counsel for the respondents stated, that the applicant had not made any complaint or representation, in regard to alleged harassment or victimisation by R5, at the relevant time. On the contrary, he submitted, that the applicant had repeatedly misbehaved towards his official superiors and other officers in the administration, in violation of discipline, for which DE was initiated against him by the DA, under the CCS(CCA) Rules, 1965, for misbehaviour and gross misconduct not only once, but thrice during the period from 1978 to 1984. He furnished details of the charges framed against the applicant, in each of these three DEs and stated, that the applicant admitted the charge of misbehaviour in the first DE, before the Inquiry Authority (IA for short), but did not cooperate with him in regard to the other two DEs.

14. As regards the third DE, to which Sri Achar had confined his arguments, Sri Padmarajaiah contended, that the applicant failed to attend the DE, even though he was duly intimated on as many as seven occasions, on 5-10-1984, 12-10-1984, 26-10-1984, 5-11-1984, 16-7-1985, 4-11-1985, and 19-11-1985 to remain present. Sri Padmarajaiah stated, that on the date indicated by Sri Achar namely 12-7-1985, as when the applicant is alleged to have been prevented by the administration, from attending the third DE, the DE proceedings in fact, were not conducted and therefore, this allegation was without basis. The allegation of victimisation of or harassment to the applicant by R-5, by subjecting him

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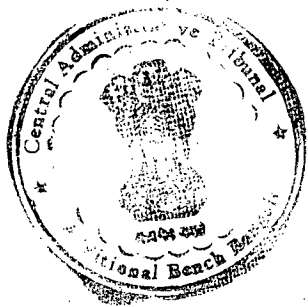
maliciously to DEs repeatedly, on this account, was denied by Sri Padmarajaiah, as not borne by any evidence.

15. Sri Padmarajaiah pointed out, that the applicant did not present himself and participate in the third DE, even though he was given an opportunity by the IA to do so, on as many as seven occasions. On 12-10-1984, he was directed by the IA, by a memorandum, to inspect the documents (a list of which was sent to him along with the charges) within five days of receipt of this memorandum, to submit a list of witnesses to be examined on his behalf, as also a list of additional documents if any, to which he desired access and to attend the third DE on 26-10-1984. The applicant failed to do so, inspite of the further opportunity given to him by the IA, on 26-10-1984 and thereafter. On the contrary, the applicant is seen to have threatened the IA, by his letter dated 3-10-1984 (Annexure R8), to get his appointment as IA cancelled or "face an unpleasant situation". In these circumstances, the IA had no other alternative he said, but to proceed with the DE, ex parte. Nevertheless, the IA examined the following witnesses, on behalf of the respondents, the names of whom he had communicated to the applicant, by his memo dated 5-11-1984.

S/Shri R. Balakrishna	..	CAO
George M Kadavan	..	CLO
K.P. Thomas	..	Stenographer III
R. Kantharaj	..	UDC
R. Yesuprasad	..	Tradesman 'A'
S. Appaiah	..	Record Keeper

16. The following were the two articles of charges, framed against the applicant, in the third DE, as constituting

conduct,



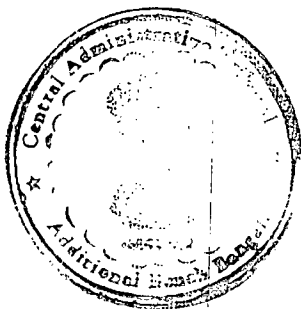
conduct, unbecoming of a Government servant, in violation of Rule 3 of the CCS (Conduct) Rules, 1964.

- (1) That while serving as Tradesmen 'E' in ADE, he behaved in an indisciplined manner and resorted to use of insulting language towards Sri R. Balakrishna, CAO, on 23-6-1984, amounting to gross misconduct.
- (2) That he, when asked by Sri R. Balakrishna, CAO, to move out of his office, further behaved in an insubordinate manner, stayed on in the office of the CAO and shouted, using unparliamentary language against Sri Balakrishna.

17. Sri Padmarajaiah affirmed, that in the above circumstances, ^{by the} applicant was given more than one opportunity, to participate in the third DE and to put forth his defence. Yet, he failed to do so. This DE had necessarily therefore, to be proceeded with ex parte, but nevertheless, as many as 6 witnesses were examined by the IA, as above mentioned and all these witnesses unanimously testified, to the veracity of the two articles of charges, framed against the applicant in the third DE.

18. As regards the contention of Sri Achar, that his client was denied the facility of a legal practitioner, to plead his defence, Shri Padmarajaiah pointed out, that the Presenting Officer in the third DE, was not a legal practitioner and that the charges framed against the applicant, were plain and simple and therefore the case was not of a complex nature, as made out by Sri Achar. The truth he said, was, that the applicant was indulging in dilatory tactics, to delay finalisation of the third DE and therefore, the DA had rightly, not acceded to the request of the applicant, to engage a legal practitioner to plead his case. Sri Padmarajaiah referred to the judgment

of



of this Tribunal in A.No.1653 of 1986(T) (corresponding to W.P.No.1174 of 1985) where under more or less similar circumstances, it was upheld, that the delinquent was not entitled to engage a legal practitioner, to plead his defence.

19. We heard both sides at length and examined carefully, the rival contentions and the material placed before us. The facts reveal, that the applicant was not involved in a DE in just a stray case or in a lone incident. On the other hand, it is noticed that over a period of 6 years from 1978 to 1984, he has been contumacious in insubordinate and indisciplined behaviour, against various officials in the organisation. This tendency has been almost recidivist. The respondents gave him adequate opportunity and caution, to make amends, as can be seen from the fact, that the punishment meted to him in the first two DEs, was not severe. In the first DE, his annual increment was withheld for one year and in the second, he was reduced in pay by one stage for a year, without cumulative effect in both cases. Yet, the applicant proved himself incorrigible. We are not persuaded by the argument of Sri Achar, that all the three DEs were ulteriorly motivated, as the applicant did not favour the wife of R5, in the matter of payment of LIC premia, as there is considerable gap between the three DEs held against the applicant and the officials with whom he is seen to have misbehaved, were not the same in all these three DEs. It is apparent therefore, that the applicant was suffering from a kinky mind, which did not enable him to get on well with his colleagues and superiors in the organisation even though sufficient opportunity was given to him, to show

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improvement. It is therefore manifest, that the applicant became a victim to this aberration and not to victimisation or harassment by R-5 as alleged. This allegation in the circumstances, is only a figment of imagination of the applicant, in a vain effort, to wriggle out from a situation, to which he himself led, by persisting in his indisciplined behaviour, despite more than adequate opportunity given to him to turn over a new leaf.

20. Sri Achar relied on Rule 14(8) of CCS(CC&A) Rules, 1965, to justify the claim of the applicant, to engage a legal practitioner to plead his case, on the ground, that the case was of a complex nature and that the applicant did not have the requisite educational qualification and legal expertise, to substantiate his defence. The said Rule reads as follows:

"(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

NOTE

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NOTE:- The Government servant shall not take the assistance of any other Government servant who has two pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to - present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf."

21. This Tribunal has dwelt on this aspect at length, in a case more or less alike in circumstances, in Application No.1653 of 1986(T) (corresponding to W.P.No.1174 of 1984) in S.K.SRINIVASAN v DIRECTOR GENERAL EMPLOYMENT STATE INSURANCE CORPORATION & ORS, where, the very same ruling of the Supreme Court viz AIR 1983 SC 109 (THE BOARD OF TRUSTEES OF BOMBAY PORT TRUST v R.NADKARNI & ORS) relied upon in the present case by Sri Achar, was cited, in addition to nine others and it was held in that case, that the applicant was merely making a fetish of the so called denial of reasonable opportunity by the respondents, to engage a legal practitioner, to defend his case, particularly, when he was not prevented from engaging a defence assistant of his choice. The Tribunal had in the said case, referring to the treatise on jurisprudence by Roscoe Pound and by another eminent jurist on the question of "fair hearing" and "natural justice", elaborated, that in the facts and circumstances of that case, no injustice was caused to the applicant, as inter alia "fair hearing" in a proceeding, did not necessarily depend on legal representation and that by allowing legal representation, "fair hearing" was not ensured ipso facto.



22. The aforesaid Rule 14(8), vests discretion in the DA, to permit assistance of a legal practitioner, having regard to the circumstances, that such assistance is justified and ^{LR}that the applicant cannot claim this assistance as a matter of right. In the case before us, we notice, that the applicant was not denied the benefit of a Defence Assistant of his choice and for reasons best known to him, the applicant did not avail of this benefit. The nature of the charges framed against the applicant, the documentary and oral evidence to be examined during the enquiry, were not such, as to cause any impediment to the applicant to plead his defence as desired. The applicant was given an opportunity on as many as seven occasions to participate in the DE, to examine the relevant documents, and to furnish the list of his witnesses. He not only failed to do so, but threatened the IA, by his letter dated 3-10-1984(R8) to get his appointment cancelled, lest he should face an "unpleasant situation". To say the least, this behaviour on the part of the applicant was not only highly indisciplinary but reprehensible. The facts and circumstances in the present case, in regard to the request of the applicant, for engaging a legal practitioner to plead his defence, being more or less akin to those in SRINIVASAN's case, referred to



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above,

above, we for like reasons stated in that case, find no merit in the contention of Sri Achar, that the rules of natural justice were violated in the case of the applicant in this case and he was denied reasonable opportunity to defend himself, as his request for engaging a legal practitioner was not acceded to.

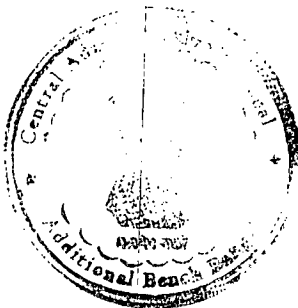
23. The third DE against the applicant had to be finalised ex parte, owing to the recalcitrant⁴² and non-cooperative attitude of the applicant, who did not participate in the DE, despite repeated opportunity given to him. Nevertheless, the IA examined as many as 6 witnesses on behalf of the respondents, who testified to the veracity of the charges of misconduct framed against the applicant, in the third DE.

24. The conciliation proceedings under the Industrial Disputes Act 1947, could not be pursued to the end, as the applicant for reasons best known to him, did not choose to refer the dispute to arbitration. It is thus apparent, that the applicant himself has been responsible for the situation, to which he has led himself by his non-cooperation and recalcitrant behaviour.



25. In the light of the above discussion, we hold, that there was no infirmity in the third DE held against the applicant and therefore, we see no reason to set aside the same.

26. As a second string to his bow, Sri Achar pleaded, that in case his client was held guilty of the charges in the third DE, the punishment of removal from service imposed on him, was far too severe and disproportionate to the nature of the charges framed against him. Sri Padmarajaiah resisted this submission of Sri Achar, on the score, that the applicant was inveterate in his insubordinate and indisciplinary behaviour, towards his superiors and others in the organisation and had not made amends, despite sufficient opportunity given to him. On the contrary, he averred, that he had the temerity to threaten the IA, as can be seen from his letter dated 5-10-1984 (Annexure R-8). Any levity in such circumstances, he submitted, would gravely undermine discipline, in the organisation and therefore pleaded, that the Tribunal should not interfere with the punishment imposed in the third DE, which was condign. We cannot countenance such despicable behaviour on the part of the applicant and are convinced that such mis-conduct should be dealt with sternly, in the interest of discipline in the organisation. We notice, that even though the applicant has been meted the punishment of removal from service, the respondents have been gracious enough, not to debar him from further employment. This in itself shows, that the respondents were ^{not vindictive} as alleged but show



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the utmost sympathy^{to} the applicant, despite his repeated indisciplined behaviour. In view of this, we see no justification, to modify the punishment imposed on the applicant in the third DE, as pleaded by Sri Achar.

27. In the result, the application fails and we dismiss the same. Parties to bear their own costs.

Sd/-

(Ch. Ram a krishna Rao)
Member (J)

Sd/-

(L.H.A. Rego)
Member (A)

- True copy -

bsg/-



[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
13/11