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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. : 151 OF 1991.
~~XXXXXX Application No.~~

Date of Decision 31/10/91

1. Shri Payyuruly Santhosh.
2. G. Subramanian.

Petitioner/s

Shri D. V. Gangal,

Advocate for
the Petitioners

Versus

Union Of India & Others,

Respondent/s

Shri R. K. Shetty,

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B. S. Hegde, Member (J).

Hon'ble Shri. M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

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(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 151 OF 1991.

1. Payyuruly Santhosh.
2. G. Subramanian.

Applicants

Versus

1. Union Of India through
Ministry Of Defence,
Department of Defence Production,
South Block, New Delhi 110 011.
2. Chairman and Director General,
Ordnance Factory Board,
6, Esplanade East,
Calcutta - 700 069.
3. The General Manager,
Machine Tool Prototype Factory,
Ambernath - 421 502.
4. The General Manager,
Ordnance Factory,
Bhusaval.

.. Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri D. V. Gangal,
Counsel for the applicant.
2. Shri R. K. Shetty,
Counsel for the respondents.

JUDGEMENT :

DATED : 31/10/91

[PER.: SHRI M. R. KOLHATKAR, MEMBER (A)]

1. The applicant no. 1 was recruited as Supervisor 'A' Non-technical by D.G.O.F. in 1976 and was posted to Ordnance Factory, Bhusaval on 11.05.1977. The applicant no.2 was similarly recruited as Supervisor 'A' Non-technical in Ordnance Factory by D.G.O.F. and was posted to Ordnance Factory, Bhusaval on 11.05.1977. In the seniority list which

is placed at Annexure 'C', the applicant no. 1 is shown at Sl. No. 1 and the applicant no. 2 is shown at Sl. No. 13. It is the contention of the applicant that they were recruited in terms of S.R.O. No. 4 dated 04.01.1956 and S.R.O. No. 124 dated 20.04.1956 and that the appointments to the post to which they are recruited are all made by the Director General and under Rule(8), appointments by ^{also} promotion shall be made by the Director General on the basis of selection lists prepared for the different grades by the duly constituted Departmental Promotion Committee and that theirs is an All India cadre. Inspite of this, the respondents vide order dated 12.02.1980 at page 23, Annexure 'B' decentralised their cadre to the factory level. The applicants came to know about this decentralisation only sometime in 1985. The applicant no. 1 had made a representation against this decentralisation ^{in 1989,} as a result of which the chances of promotion would vary from factory to factory according to the strength of an individual factory and change the character of an All India cadre. Applicant no. 2 made such a representation in 07.02.1985. According to the applicants, as a result of this decentralisation, their juniors Shri Jacob John and Shri R. K. Chakraborty, have become senior to them. They have been appointed as Assistant Store Holder at Ordnance Factory, Trichi and Vehicle Factory, Jabalpur, respectively. The relief claimed by the applicants is parity in fixation of their pay and promotion at par with Jacob John and R.K. Chakraborty respectively and to hold and declare that the annexure 'B' namely, the order dated 12.02.1980 and annexure 'C' namely, the S.R.O. dated 04.05.1989 titled 'Indian Ordnance Factory Group 'C' Supervisor and Non-gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989' may held to be ultra-vires.

2. The respondents have opposed the O.A. According to them, the order dated 12.02.1980 inter alia introducing factory level seniority instead of All India level seniority upto the level of Chargeman Grade-II was issued pending formal amendment to the recruitment rules, as was stated in para 3 thereof. Although formal amendment was brought about by the S.R.O. 13(E) dated 04.05.1989, parallel with the order regarding decentralisation, there was also a separate order passed on 11.02.1980, which is to be seen at annexure-IV, page 31, which was a statutory order by which, in terms of CCS(CCA) Rules, 1965, the General Manager of the Ordnance Factory was appointed to function as Appointing Authority as well as Disciplinary Authority in respect of Chargeman Grade-II, technical as well as non-technical in the non-gazetted establishment. There is a delegation of powers dated 14.02.1964 under the head - Delegation of Administrative and financial powers to the D.G.O.F. and General Managers of Ordnance and Clothing Factories. Two schedules are attached to this order. There is a separate delegation given to the General Managers of Factories and in this schedule, the General Managers have been delegated powers of recruitment of staff in respect of (a) Industrial employees, (b) Non-industrial employees and (c) Non-gazetted officers, vide item no. 7 to the delegations and it is also clarified that full powers have been delegated in respect of industrial and non-industrial employees without financial concurrence and so far as non-gazetted officers are concerned, full powers upto and including Assistant Foreman without financial concurrence have been given.

3. The respondents would therefore contend that

although the formal S.R.O. was issued only on 04.05.1989 in the period between 04.01.1956 and 04.05.1989, the action taken by the D.G.O.F. on decentralisation of the cadre and the action taken by the General Managers of Ordnance Factory in making promotions according to the recommendations of D.P.C. were fully covered by these delegations.

4. The applicants would contend that in terms of Supreme Court judgement in AIR (1979) SC 1776 - S.L. Sachdeva V/s. Union Of India, statutory rules cannot be superseded by executive instructions and notifications on executive instructions are not statutory rules. Further the applicants contend that a similar issue came to be considered by the Jabalpur Bench of the Central Administrative Tribunal in Union Of India & Others V/s. S.K. Mukhopadhyay vide O.A. No. 458/87 decided on 12.12.1990 & 2 Others and the Tribunal had held that it was not open to the respondents to amend the S.R.O. by means of executive instructions and therefore the relief claimed by the applicants was granted to them. In para 9 of the judgement, the Tribunal observed as below :-

"The order on which the respondents are relying for the decentralised scheme is order dated 12.02.1990 (annexure-5) issued by the Ministry of Defence, Ordnance Factory Board delegating certain administrative and financial powers including the powers of appointment and disciplinary control to the General Managers in the context of what is being termed as the decentralised scheme. This order is not a Presidential Order having the force of rule and cannot prevail over the rules as laid down in SRO-4 which has been issued by the President in exercise of powers under Article 309 of the Constitution. To the extent this order is inconsistent with SRO-4, it is a legal nullity."

A part of the same para reads as follows :-

"We may also observe that it is a general rule that a delegated authority cannot re-delegate powers. Rule 4 to SRO-4 shows that the Director General, Ordnance Factory cannot re-delegate these powers to the General Manager. Hence the appointment made by the General Manager of this order would be bad and at the most could only be treated to be provisional. The respondents also failed to produce any amendment to the SRO-4 which is a regular recruitment rule in exercise of powers under article 309 of the Constitution indicating position to the contrary."

5. We are inclined to agree with the Jabalpur Bench that the order dated 12.02.1980 ~~does not~~ have the effect of amending S.R.O. dated 04.01.1956. The powers of delegation dated 14.02.1964 were not cited before the Jabalpur Bench but we also note that these are financial and administrative delegations ~~and~~ they do not have the bearing on the procedure of promotion and seniority which is contained in S.R.O. We are however required to note that the subsequent S.R.O. dated 04.05.1989 does not appear to have ~~cited~~ before the Jabalpur Bench. The applicants also challenge this S.R.O. on the ground that these instructions cannot take away the vested rights of the applicants to the various promotions. We agree that S.R.O. dated 04.05.1989 cannot take away the vested rights of the applicants which accrued to them from the date of appointment till the date of issue of the S.R.O. However, the challenge to S.R.O. itself ~~must~~ fail and any action taken by the respondents in terms of SRO 13(E) dated 04.05.1989 is not open to be challenged by the applicants.

6. The respondents have relied on two judgements

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of this Tribunal. In Amarjit Singh Gujral V/s. Union Of India & Others - O.A. No. 194/91 decided on 08.03.1994, the issue was regarding appointing authority in terms of Rule 14 of CCS (CCA) Rules, 1965. In R.P. No. 59/94 in O.A. No. 347/90 - Narayan D. Apte V/s. Union Of India & Others decided on 17.10.1994, to which one of us was a party (Member (A)), we had followed the reasoning in Amarjit Singh Gujral in holding that the General Manager was the Disciplinary Authority in respect of non-gazetted staff upto and including Assistant Foreman. The respondents depend on C.A.T. judgement of Allahabad Bench in R.A. No. 213/1986 decided on 01.09.1987 in which a contrary view was held that the General Managers of the Ordnance Factories though they were enjoying the delegated powers of appointing authorities, they were not conferred the powers of disciplinary authorities in the matter of imposition of penalties. further it was stated that the S.L.P. against this judgement was dismissed. In our view, it is not necessary for us to go into the question as to whether there is any conflict between C.A.T. Judgement of Allahabad Bench and the C.A.T. judgements of Bombay Bench, mainly because the issue involved is not that of disciplinary powers but the issue involved is that of validity of the executive instructions viz-a-viz the S.R.O. (Here) the Learned Counsel for the applicant who has pointed out that so far as the Jabalpur judgement is concerned, the R.P. against that judgement was dismissed vide R.A. No. 142/91 decided on 19.10.1993 and the S.L.P. against Jabalpur judgement was also dismissed by the Supreme Court on 27.3.1995.

7. The Counsel for the respondents had earlier stated that the S.L.P. against the Jabalpur judgement was pending but he did not question the photo-copy of the order of dismissal of the S.L.P. produced by the Learned Counsel for the applicant.

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8. The Learned Counsel for the respondents had made a feeble attempt to say that the matter was barred by limitation in as much as the applicants have made the representations very late on the ground that 1982 order regarding decentralisation came to their notice only in 1985. In our view, the basic issue is regarding action of the respondents in violating the statutory orders by resorting to executive instructions and the representations were being made to the respondents by the applicant no. 2 as early as 1985, to which there has been no reply. We are therefore not inclined to dismiss the matter on the ground of latches. In any case, the judgement of the Jabalpur Bench directing the respondents to prepare a fresh seniority list in terms of S.R.O. of 1956 for the posts of Supervisor/Chargeman Grade-II having become final, the respondents must have already initiated action to prepare and review the seniority lists. We would only like to add that this seniority list should be prepared only for the period from 1978 upto 04.05.1989, when the new S.R.O. came into force. The seniority lists after the coming into force of S.R.O. of 1989, would be governed by that S.R.O. and to that extent only our directions diverse from those of Jabalpur Bench. If on preparation of revised seniority lists, the applicants stand to be benefitted in terms of seniority viz. above Shri Jacob John and Shri R.K. Chakroborty, the respondents are directed to grant the benefits of such revised seniority to the applicants on a notional basis from relevant date and on actual basis for one year prior to the date of filing of the application. There will be no order as to costs.

M.R.Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

B.S.Hegde
(B. S. HEGDE)
MEMBER (J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
MUMBAI

(27)

REVIEW PETITION NO: 32 OF 1996 IN O.A. 151/1991

Signed this, the 4th day of APRIL 1996

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

P.SANTOSH & ANOTHER

.. Applicants

-versus-

UNION OF INDIA & OTHERS

.. Respondents

O R D E R (BY CIRCULATION)

(Per M.R.Kolhatkar, Member(A))

In this Review Petition the review petitioners/original respondents viz. Union of India & Others have sought the review of our judgment dt. 31-10-1995 which allowed the prayer of the applicants mainly relying on judgment of the Jabalpur Bench of the C.A.T. in O.A. 458/87 decided on 12-12-1990. It is contended by the review petitioners that there are patent errors of law and facts apparent on the face of the record which makes the judgment liable to be reviewed. Firstly, it is contended that the orders issued by the President of India under Article 53(1) of the Constitution of India read with Articles 77(1) and 309 of the Constitution of India have as much validity as the statutory order under proviso to Article 309 of the Constitution. It is next contended that the order under CCS(CCA)Rules,1965 is also relatable to Article 309 of the Constitution. It is contended that the disciplinary power of dismissal would also include the lesser power of drawal of seniority lists factorywise.

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2. We have considered the matter and we are not impressed by the grounds adduced. Article 53(1) relates to the Executive power of the Union and it is well settled that the Executive power must be exercised in accordance with the constitution. Article 77 relates to conduct of business of the Government of India and it is also well settled that Article 77 applies to all executive action of the Government of India including constitutional or statutory functions. However, this contention of the review petitioners do not obliterate the distinction between mere executive order of Govt. of India and the statutory orders issued under Article 309 of the Constitution which specifically relates to Recruitment and conditions of Service of persons serving the Union or a State. Therefore SRO issued under proviso to Article 309 certainly would have a greater authority than the executive orders which are not SRO's. ~~nor can the~~ contention that disciplinary power of dismissal would also include the lesser power of drawal of seniority lists factory wise be accepted. CCS(CCA) Rules occupied different field and cannot be called in ~~the~~ aid to amend ~~SRO~~ dealing with recruitment and conditions of service.

3. Since our judgment relied on Jabalpur Bench judgment we consider what the respondents have to say on this point. It is stated that the Jabalpur judgment has not so far been implemented by the respondents as it cannot be implemented. In relation to our judgment also one of the grounds for review urged by the respondents is that the judgment ~~is~~ not implementable. In our view this is not a valid ground for review and if the respondents are not able to implement a particular

^{we}
judgment which are bound to follow as per the
doctrine of ~~Stare~~ ^{we} ~~Decisis~~ then the respondents
have other avenues open but review is not certainly
one of them.

4. We, therefore, find that no grounds for
review of our judgment relatable to rules under
Order 47 of the CPC have been made out and the
review petition therefore has no merit and is liable
to be dismissed. We dismiss the same by circulation
as provided under the rules.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

B.S.Hegde
(B.S.HEGDE)
Member(J)

~~order/Judgement despatched~~
on 11/4/96
to Applicant/Respondent(s)
on 11/4/96

16/4/96

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

W W

C.P.No.81/97 in OA.NO.151/91

Dated this the 15th day of March 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

1 Hon'ble Shri S.L.Jain, Member (J)

G.Subramanian,
Chargeman Gr.I NT/MM Section,
Heavy Alloy Penetrator Project,
Tiruchirappalli.

...Applicant

By Advocate Shri D.V.Gangal

V/S.

1. Shri S.S.Natarajan,
I.O.F.S., The Chairman
& DGOF, Ordnance Factory
Board, 10-A, Auckland Road,
Calcutta.

2. Shri Rajgopalan,
Chairman & DGOF,
Ordnance Factory Board, Calcutta.

... Respondents

By Advocate Shri R.K.Shetty
along with Shri R.R.Shetty

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

The Contempt Application has been filed by the applicant
alleging non implementation of the order dated 31.10.1995 in
OA.NO.151/91.

2. The applicant had filed OA.NO. 151/91 seeking seniority and promotion for the post of Assistant Store Holder at par with his juniors. This OA. was decided as per the order dated 31.10.1995 with directions in para 8 as under :-

" In any case, the judgement of the Jabalpur bench directing the respondents to prepare a fresh seniority list in terms of S.r.O. of 1956 for the posts of Supervisor/Chargeman Grade-II having become final, the respondents must have already initiated action to prepare and review seniority lists. We would only like to add that this seniority list should be prepared only for the period from 1978 upto 4.5.1989, when the new S.R.O. came into force. The seniority lists after the coming into force of S.R.O. of 1989, would be governed by that S.R.O. and to that extent only our directions diverse from those of Jabalpur Bench. If on preparation of revised seniority lists, the applicants stand to be benefitted in terms of seniority viz. above Shri Jacob John and Shri R.K.Chakraborty, the respondents are directed to grant the benefits of such revised seniority to the applicants on notional basis from relevant date and on actual basis for one year prior to the date of filing of the application. There will be no order as to costs.)"

3. The applicant filed a Contempt Application No.84/96 which was dismissed as per the order dated 28.7.1997 as extracted below :-

" Pursuant to the direction of the tribunal dated 31.10.1995 directing the respondents to grant the benefit of such revised seniority to the applicant notionally from the relevant date and on actual basis for one year prior to the date of filing of the application. The respondents vide their letter dated 25.7.1997 granted notional seniority to P.Santosh and G.Subramanian in the grade of Chargeman Gr.II (NT) with effect from 30.8.80 and their pay may

be fixed notionally from 30.8.1980 and that they will not be entitled to arrears of pay and allowances for the above notional seniority but they will draw arrears of pay and allowances from the date of their assumption of higher responsibility based on regular DPC recommendations.

Learned counsel for the respondents states that the direction given by the Tribunal is being implemented and that the DPC has recommended more than what is granted and seeks eight weeks time to make payment.

We direct the respondents to make the payments within 8 weeks failing which the respondents are directed to pay 12% per annum interest of the amounts after 8 weeks.

C.P. discharged with the above directions."

4. Subsequent to dismissal of the above referred Contempt application, the applicant has filed the present Contempt Application No. 81/1997 alleging ^{that} the respondents has not ~~fully~~ implemented the order dated 31.10.1995. The applicant submits that the respondents as per the order dated 25.7.1997 have granted notional seniority to the applicant in the grade of chargeman Grade II (Non-technical) w.e.f. 30.8.1980 with pay fixation benefits but the respondents have not granted the consequential benefits of such revised seniority above his junior, namely, Shri R.K.Chakarborty. It is further submitted that the applicant has not been granted notional promotion and seniority in the grade of Chargeman-I/Assistant Store Holder and further promotion as Store holder above or at least at par with Shri R.K.Chakarborty who has been promoted as Assistant Store Holder/Chargeman-I from 25.1.1984 and Store Holder from 25.10.1991 as per the order dated 11.10.1991. In view of faulty fixation of pay and non granting of consequential promotions, the

applicant has not accepted the arrears of pay offered by the respondents. It is also alleged that the seniority list dated 27.8.1997 issued by the respondents for the Assistant Store Holder/Chargeman-I is erroneous as the respondents have not carried out any revision of the seniority list on All India basis as per orders of the tribunal. By this seniority list, the benefit of notional seniority granted as per the order in OA.No.151/91 gets nullified. The applicant has therefore filed the present Contempt application alleging non implementation of the order fully and thereby committing contempt of the court and for which the respondents deserve to be punished.

5. The applicant has in addition to above has made several other prayers also as under :-

- (a) To direct respondents to give promotion and seniority in the grade of Chargeman-I/Assistant Store holder and Store Holder at par with his junior.
- (b) declare the seniority list dated 27.8.1997 as illegal and stay the operation of the same.
- (c) Direct respondents to prepare amend and revise seniority lists of Chargeman-II, Chargeman-I and Store Holder/Foreman NT on the basis of revised seniority position of supervisors & Chargeman-II prepared as per directions in OA.NO.151/91 of this Bench and OA.No.458/87 of Jabalpur Bench.

6. The applicant has made Shri S.S.Natrajan, Chairman of Ordnance factory Board (OFB) as party respondent. However, in the reply filed by one Shri M.G.Burde, Dy.General manager/Admn., it is brought out that Shri S.S.Natrajan has since retired and the written statement has been filed on behalf of the present incumbant of the post of Chairman. Subsequent to this, the applicant through amendment application has made Shri Rajgopalan as the party respondent. Another written statement has been also filed by One Shri Rajesh Kumar, Director OFB on behalf of Shri Rajgopal (Applicant has indicated the name wrongly as pointed out in the written statement). The respondents maintain that order dated 31.10.1995 has been fully complied with as per the letter dated 25.7.1997. The order dated 25.7.1997 has been noted in the order dated 28.9.1997 in C.P.84/96. This order has been complied with as per letter dated 30.9.1997 offering payment of Rs.15523/- as arrears of pay but as brought out by the applicant, he has refused to accept the same. The respondents contend that the applicant has therefore falsely filed the present Contempt Application alleging the non-compliance of the order dated 31.10.1995. It is also contended that this order also does not cover refixation of seniority in higher grades and consequential retrospective promotions on the basis of notional seniority. It is further stated that reference to seniority list issued on 27.8.1997 made by the applicant is a fresh demand and gives a fresh cause of action if the applicant feels aggrieved and this cannot be agitated in Contempt application.

7. The applicant has filed the rejoinder reply controverting the submissions of the respondents and restating that the respondents have not implemented the order fully and thus committed contempt of court.

8. We have heard the arguments of Mr.D.V.Gangal for the applicant and Shri R.K.Shetty along with Shri R.R.Shetty for the respondents.

9. The counsel of the applicant strenuously argued to make out a case that the respondents have not fully implemented the order dated 31.10.1995. The respondents on the other hand have contended that matter stands concluded with the order dated 28.7.1997 in earlier C.P.No. 86/96 and the directions in the order dated 31.10.1995 have been implemented as per letter dated 25.7.1997. We have carefully gone through the order dated 28.7.1997 in C.P.84/96 and find merit in the stand of the respondents. The applicant had filed this contempt application alleging non implementation of order dated 31.10.1995. During the pendency of this contempt application, the respondents passed the order dated 25.7.1997 fixing notional seniority in Chargeman Grade II (NT) w.e.f. 31.8.1980. This was brought to the notice of the bench on 28.7.1997. The bench has noted this order and concluded that order dated 31.10.1995 has been complied with except for payment of arrears for which on the request of the respondents time was allowed. The contempt application was

accordingly dismissed. This order was passed when the counsel for the applicant who is also the counsel in the present contempt application was present. Keeping in view the order dated 28.7.1997, we are of the considered opinion that the applicant cannot file another contempt application to agitate the matter again that the implementation of the order is not in full as per the letter dated 25.7.1997. In a contempt application, it is to be seen that there is no wilful disobedience and the order if any passed has substantially complied with the directions in the Tribunal's order. If such an order still causes grievance to the applicant, then this give a fresh cause of action for seeking legal remedy by way of filing OA. Filing of another Contempt application is not a remedy to seek redressal of the grievance. Going into merits of the order passed to comply with the directions of the Tribunal's order is not within the scope of the contempt of Court proceedings. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of J.S.Parihar vs. Ganpat Suggar & Ors., 1997 (1) SLJ 236. It will be pertinent here to reproduce an extract from para 4 as under :-

"The question is : whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful isolation of the order."

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In the present case, as stated earlier, the matter with regard to implementation of the Tribunal's order stood concluded with the issue of order dated 27.7.1997. The applicant in the present contempt application has made averments which are seriously contested by the respondents. If the applicant is aggrieved by the order dated 27.7.1997, he can agitate the matter as a fresh cause of action as per the law. Contempt Application for the same is not maintainable in view of the law laid down above by the Hon'ble Supreme Court.

10. In the result of the above deliberations, the Contempt Application is without merit and is accordingly dismissed. Contempt notices are discharged. No order as to costs.

JLJ
(S.L.JAIN)

MEMBER (J)

DSB
(D.S.BAWEJA)

MEMBER (A)

mrj.