

(38)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: **15 DEC 1993**

APPLICATION NO(s) 509 of 1992.

APPLICANTS: Marappa and 7 Ors. RESPONDENTS: Chief Supdt, CTO, B'lore and Others.

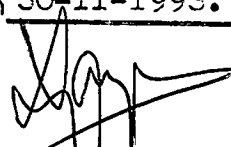
TO.

1. Dr.M.S.Nagaraja, Advocate, No.11, First Cross,
Second Floor, Sujatha Complex, Gandhinagar,
Bangalore-9.
2. Chief General Manager, Telecommunications,
Karnataka Region, No.1, Telecom Centre,
Old Madras Road, Ulsoor, Bangalore-8.
3. Sri.M.Vasudeva Rao, Central Govt.Stng.Counsel,
High Court Building, Bangalore-1.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 30-11-1993.



for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
BANGALORE

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APPLICATION NO.509/1992

DATED THIS THE THIRTIETH DAY OF NOVEMBER, 1993

Shri S. Gurusankaran, Member (A)

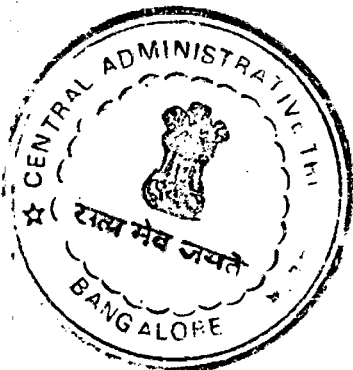
Shri A.N. Vujjanaradhya, Member(J)

1. Shri Marappa
Aged 30 years
C/o. Shri Kenchappa
Cholanayakanahalli
R.T. Nagar Post
Bangalore-560 032.
2. Shri D. Gunasheelan
Aged 30 years
310, Castle Green Compound
Deoravaninagar
Bangalore-560 017.
3. Shri R. Rangaswamy
Aged 25 years
26, Raghavendra New Timber
Yard Layout, Mysore Road
Bangalore-560 006.
4. Shri K. Subramani
Aged 32 years
Parangipalya, Sarjapura Road
Agram, Bangalore-560 034.
5. Shri M. Ramesh
Aged 32 years
Sujatha Side Shop
5th Main, Nanjambappa Agrahara
Bangalore-560 018.
6. Shri B. Siddaraju
Aged 28 years
20, 6th Cross, 7th Main
K.N. Extension, Yeshwantapur
Bangalore-560 022.
7. Smt. Shivamma
Kamakshipalaya
Chikkanna Compound
Near Amba Bhavan Devasthanam
Bangalore.
8. Shri G. Shravanan
Aged 32 years
3474, Kumaraswamy Layout
J.P. Nagar Post
Bangalore-560 078

.... Applicants

(By Dr. M.S. Nagaraja, Advocate)

Vs.



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1. The Chief Superintendent
Central Telegraph Office
Raj Bhavan Road
Bangalore-560 001.
 2. The Chief General Manager
Karnataka Region
Telecommunications
Kempagowda Road
Bangalore-560 009.
 3. The Director General
Telecommunications
Sanchar Bhavan, New Delhi.
 4. Union of India
represented by the
Secretary to Government
Ministry of Communications
Sanchar Bhavan, New Delhi. Respondents
- (By Shri M.V. Rao, C.G.S.C.)

Judgement delivered by Shri S. Gurusankaran, Member(A)

O R D E R

The applicants have filed this application aggrieved by the failure of the respondents to regularise their service even though they had already rendered service for a number of years as part-time casual labourers. They have prayed for the following reliefs:-

- (i) To direct the respondents to regularise the services of the applicants as regular chowkidar/watchman/Safaiwan on regular time scale of pay applicable to the cadre with retrospective effect from the dates of their continuous appointment.
- (ii) To grant all consequential benefits including arrears of pay and allowances and other service benefits like earned leave, right to contribute provident fund, medical facilities leave travel concession, overtime etc.
- (iii) To award exemplary cost of this application.
- (iv) To award exemplary damages.
- (v) To pass such other orders as this Hon'ble Tribunal deems fit and expedient in the circumstances of the case including specific categorical directions to the respondents not to resort to ingenious ways of circumventing the recruitment

(41)

and service rules and the instructions issued thereunder; "IN THE INTEREST OF JUSTICE, EQUITY AND FAIRPLAY IN ADMINISTRATION AND TO ENSURING THAT HUMAN EQUITABLE SYSTEM NOT SUBJECT TO ARBITRARY INDIVIDUAL FANCY IS PROMOTED".

2. The respondents have filed their reply contesting the application.

3. We have heard Dr. M.S. Nagareja for the applicants and Shri M.V. Rao for the respondents and carefully perused the pleadings. The essential facts of the case are not in dispute. ~~Not~~ ^{All} of the applicants were engaged as casual labourers on daily wages between 19.8.1985 and 24.1.1987. Pursuant to the letter dated 23.2.1988 (Annexure-A1) they were also paid Dearness Allowance. ^{Vide} letter dated 17.10.1988 (Annexure-A5). The Department of Telecommunication had directed preparation of a combined seniority list of casual labourers for absorption against regular posts in the order of their seniority with reference to the number of days of service rendered as on 31.3.1987. It was also indicated that for this purpose part-time casual labourers shall be merged with the full-time casual labourers by computing half of the total number of days of service in the case of part-time casual labourers. However, with the issue of circular dated 23.4.1990 (Annexure-A7), all part-time casual labourers engaged after 30.3.1985 are to be treated as contract labourers and are to be paid on monthly contract basis. For this purpose a declaration was also obtained from all such part-time casual labourers. In view of this the applicants were also treated as contract labourers and paid consolidated monthly wages. Since they were contract labourers the respondents have not included them in the combined seniority list and are not considering their cases for regularisation against normal vacancies or additional post created. Aggrieved by this action, the applicants have approached this Tribunal.



(42)

4. During the arguments, the learned counsel for the respondents pointed out that a temporary status can be conferred only to those casual labourers, who were engaged prior to 30.3.1985 and had worked for 240 days or more in a year. He has, therefore, submitted that the applicants who were engaged on daily wages after 30.3.1985 and who have been subsequently engaged on contract basis from 1.4.1990 are not eligible for being considered for granting of temporary status or for regularisation. This was strongly contested by Dr. M.S. Nagaraja pointing out that this will amount to unfair discrimination. We are unable to agree with the submission of the respondents. In this connection the judgement of the Supreme Court in Writ Petition No.1041/1988 dated 6.3.1992 in the case of Brij Kishore and Others Vs. Union of India and Others was brought to the attention of both the parties. In that order it has been pointed out that the said scheme fixing the cut off date as March 30, 1985 has been held to be invalid by the Central Administrative Tribunal. It was also pointed out that the Government has framed another scheme known as Casual Labourers (grant of temporary status and regularisation) scheme of the Department of Telecommunication, 1989 and under that scheme temporary status has to be conferred on all casual labourers currently employed and who have rendered continuous service of atleast one year, out of which they must have been engaged for work for a period of 240 days in the calendar year. Therefore, the writ petition was allowed with a direction that the petitioners in the Writ Petition should be given benefit of the 1989 scheme. We asked the counsel for the respondents as to why the benefit of the judgement of the Supreme Court has not been extended to the applicants herein and they could not give any satisfactory explanation.



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5. Apart from this, during the preliminary hearing of this case, it was brought out that the question of granting temporary status to part-time casual labourers in the department of Telecommunication had been referred to a Full Bench and it would be better to await the decision of the same before disposing of this case. A copy of the judgement of the Full Bench in the case of Sakkubai Vs. Secretary, Ministry of Telecommunication and others (O.A.912/92 decided on 7.6.1993 - Hyderabad Bench) has been produced before us. In the above case, the Full Bench have upheld the decision of the Ernakulam Bench and directed the respondents to confer upon the applicant therein, who was a part-time casual labour, the temporary status in Group-D post pending absorption in Group-D post in accordance with Casual Labour (Grant of Temporary Status and Regularisation) scheme dated 12.4.1991. It has also been held by the Full Bench that the letter no. 45-37/91-SPB-1 dated 16.8.1991 issued by the Director General of Posts that the benefit of the scheme dated 12.4.1991 is not applicable to part-time casual labourers in the matter of granting them temporary status has to be ignored for the reason that no executive authority can ~~take~~ ^{neutralise} a binding decision of the Tribunal by means of an executive order. In view of this decision, the applicants herein, who were originally part-time casual labourers and who are continued to be employed as contract labourers, are eligible to be considered for the grant of temporary status as well as regularisation in accordance with the scheme dated 12.4.1991 and their names should be included in the combined seniority list by computing half of the total number of days of service ^{but in by them as} ~~in the case of~~ part-time casual labourers.



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6. Nowhere in the application the applicants have alleged that the respondents after engaging the applicants as contract labourers from 1.4.1990 have engaged fresh casual labour as full time or part-time casual labour in the concerned seniority unit of the Telecommunication department. In view of this we are not going into the question as to ^{whether} any weightage should be given for the service rendered as contract labour for computing their seniority in addition to half of the total number of days of service already put in by them from the different dates of their initial appointment ^{up-} to 31.3.1990. However, this would not affect their position in the seniority list since no other part-time labour or fresh casual labour are engaged in their unit due to complete ban on recruitment of fresh casual labour.

7. Dr. M.S. Nagaraja finally argued that the applicants are getting lesser emoluments now than they were getting as part-time casual labour and the scheme of engaging them as contract labour is bad in principle and the respondents should not be allowed to circumvent their own circulars for granting temporary status and also regularisation by adopting such illegal methods. We may observe that the applicants have not prayed for striking down the scheme of engaging contract labour dated 23.4.1990 (Annexure-A7) as one of the reliefs. Apart from this, they were engaged as contract labour from 1.4.1990 and they have filed this application only in September, 1992. If they had any grievance regarding their appointment as contract labour, they should have made a suitable representation and in case there is no reply or the same had been turned down approach this Tribunal within the time limit specified in the Administrative Tribunal Act. This, they have failed to do. They have also not filed any M.A. for condonation of delay

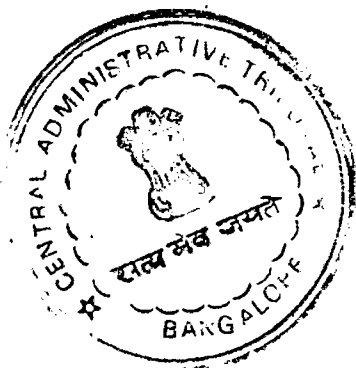


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indicating the reasons as to why they could not approach the Tribunal in time. Apart from this, it was pointed out to the learned counsel for the applicants that from the details given by the applicants it cannot be proved that they are performing the same duties as full time casual labour or regular group-D employees. Hence, this submission of the applicants has to fail.

8. In the result, we allow the application partly with the following directions:

- (i) The respondents are directed to take necessary action to include the names of the applicants in the combined seniority list of casual labour based on the principle of counting half of the part-time casual labour service for deciding the seniority and intimate the applicants individually their position in the combined seniority list.
- (ii) The respondents are directed to confer temporary status on the applicants as per extant instructions and as per their position in the combined seniority list as and when there are vacancies for regular casual labour or regular posts.
- (iii) Since there is a complete ban on recruitment of fresh casual labour, the respondents are directed to consider the applicants for engaging them as full time casual labour and they should also be considered for regularisation against regular vacancies of Group-D posts or additional Group-D posts created in accordance with their position in the seniority list, as per the scheme dated 17.4.1988 and 12.4.1991.
- (iv) The directions in sub-para (i) above regarding preparation of combined seniority list will be complied with within a period of 3 months.



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9. The application is disposed of
accordingly. No costs.

Sd-

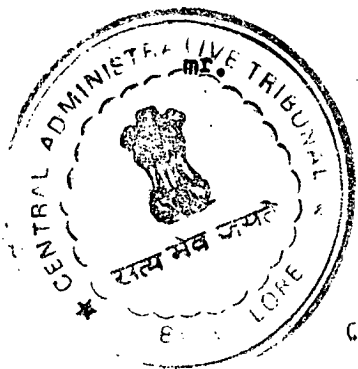
30/11/70

(A.N. VIJANARADHYA)
MEMBER (J)

Sd-

30/11/70

(S. GURUSANKARAN)
MEMBER (A)



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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

(82)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 25 JAN 1994

APPLICATION NO(s) 765 of 1993.

APPLICANTS: H.R. Arer and 8 Ors. RESPONDENTS: Secretary, M/o. Communications, New Delhi and Others.

TO.

1. Sri. Krishna S. Dixit,
Advocate, No. 532, 63rd Cross,
Fifth Block, Bashyan Circle,
Rajajinagar, Bangalore-10.
2. The Post Master General,
(North Karnataka Region)
Karnataka Circle, Bangalore-1.
3. Sri. M. Vasudeva Rao, C.G.S.C.,
High Court Bldg, Bangalore-1.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 17-01-1994.

*Received copy
for SI no - 1
27.1.94*

gm*

for *S. S. Sankar*
DEPUTY REGISTRAR 25/1/94
JUDICIAL BRANCHES.
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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

APPLICATION NO.765/1993

MONDAY THIS SEVENTEENTH DAY OF JANUARY, 1994

Present: Hon'ble Shri V.Ramakrishnan, Member (A)

Hon'ble Shri A.N.Vujjanaradhya, Member (J)

1. Sri H.R.Arer,
Age-Major, Occ: Postal Employee,
Working in the O/O the Supdt. of
Posts, R.M.S. Hubli Dvn.
HUBLI.
2. Sri M.B.Gorikhan,
Age-Major, Occ: Postal Employee,
Working in the O/O the Supdt.
of Posts, R.M.S. Hubli Dvn.,
HUBLI.
3. Sri S.M.Kulkarni,
Age-Major, Occ: Postal Employee,
Working in the O/O the Supdt.,
of Posts, R.M.S. Hubli Dvn.
HUBLI.
4. Sri N.S.Hulabani,
Age-Major, Occ: Postal Employee,
Working in the O/O the Supdt.,
of Posts, R.M.S. Hubli Dvn.
HUBLI.
5. Sri K.t.Hulakund,
Age-Major, Occ: Postal Employee,
Working in the O/O the Supdt.,
of Posts, R.M.S. Hubli Dvn.
HUBLI.
6. Sri S.M.Shindhe,
Age-Major, Occ: Postal Employee,
Working in the O/O the Supdt.,
of Posts, R.M.S. Hubli Dvn.
HUBLI.



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7. Sri A.M.Pawar,
Age-Major, Occ:Postal Employee,
Working in the O/O the Supdt.,
of Posts, R.M.S. Hubli Dvn.
HUBLI.
8. Sri Maruti M.Bhajantri,
Age-Major, Occ:Postal Employee,
Working in the O/O the Supdt.,
of Posts, Gadag Dvn. GADAG.
(Karnataka State).
9. Sri M.A.Uadwad,
Age-Major, Occ: Postal Employee,
Working in the O/O the Supdt.,
of Posts, R.M.S. Hubli Dvn.
HUBLI (Karnataka State)

...Applicants

By Advocate Shri Krishna S.Dixit.

Versus

1. The Union of India
by its Secretary, Ministry
of Communications (Postal Dvn)
Sansad Marg, New Delhi
2. The Postmaster General,
North Karnataka Region,
Saptapur,
DHARWAD. (Karnataka State).
3. The Superintendent of Posts,
R.M.S. Hubli Division,
HUBLI (Karnataka State).
4. The Superintendent of Posts,
Gadag Division,
GADAG Dist. Dharwad.

...Respondents

By Advocate Shri M.Vasudeva Rao, Addnl.C.G.S.C.

....3/-

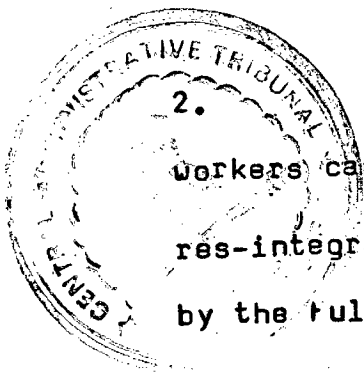
MA



O R D E R

Shri V.Ramakrishnan, Member (A)

We have heard Shri Krishna S.Dixit, the learned counsel for the applicant and also Shri M.V.Rao the learned standing counsel. The applicants herein have claimed that they are entitled to the grant of temporary status in accordance with the scheme prepared for the Department of Posts called Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. The learned standing counsel submits that so far as the other conditions stipulated in the scheme are concerned, the applicants fulfill the same, but contends that none of them has fulfilled the condition of full time service. He has relied upon D.G. Posts letter No.45-37/91-SPB-I dated 16.8.91 ^{which states} that the benefit of the scheme dated 12.4.91 is not applicable to part time casual labourers in the matter of granting them temporary status.



The question as to whether the part-time workers can be kept outside the scheme is no longer res-integral as the matter has already been disposed by the Full Bench, which had directed that this stipulation has to be ignored for the reason that no executive authority can ^{materialise a} ~~materialise~~ as binding decision

OR

(56)

of the Tribunal by means of an executive order. We also notice that in a similar case OA No.509/92 decided by the Bangalore Bench of this Tribunal, the applicant *Sharen* had been granted relief. Following the decision in OA 509/92 disposed by this Tribunal on 30th November, 93, we allow this application with the following direction:

- i) The respondents are directed to take necessary action to include the names of the applicants in the combined seniority list of casual labour based on the principles of counting half of the part-time casual labour service for deciding the seniority and intimate the applicants individually their position in the combined seniority list.
- ii) The respondents are directed to confer temporary status on the applicants as per extant instructions and as per their position in the combined seniority list as and when there are vacancies for regular casual labour or regular posts.
- iii) Since there is a complete ban on recruitment of fresh casual labour, the respondents are directed to consider the applicants for engaging them as full time casual labour and they should also be considered for regularisation against regular vacancies of Group-D posts or additional Group-D posts created in accordance with their position

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in the seniority list, as per the scheme dated
17.4.1988 and 12.4.1991.

iv) The directions in sub-para (i) above regarding
preparation of combined seniority list will be
complied with within a period of 3 months.

The application is disposed off accordingly.

No costs.

D.D.

Sd-

17/11/94

(A.N.VUJJANARADHYA)
MEMBER (J)

Sd-

17/11/94

(V.RAMAKRISHNAN)
MEMBER (A)

Gaja

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R. S. Sankar
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

25/11/94

(6)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Miscellaneous Appln.No.212/94 in

Dated:- 23 JUN 1994

APPLICATION NUMBER: 765 of 1993.

APPLICANTS:

RESPONDENTS:

To. H.R.Arer and Others v/s. Secretary, M/o. Communication, N Delhi
and others.

1. Sri.Krishna S.Dixit, Advocate,
532, 63rd Cross, Fifth Block,
Bashyam Circle, Rajajinagar,
Bangalore-560 010.
2. The Post Master General,
Karnataka Circle, Bangalore-1.
3. Sri.M.Vasudeva Rao, Addl.C.G.S.C.
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 09-06-1994.

S. Shanmugam
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

Ag
Issued
gm

(62)
In the Central Administrative Tribunal
Bangalore Bench,
Bangalore

ORDER SHEET
765

Application No..... of 1983

Applicant

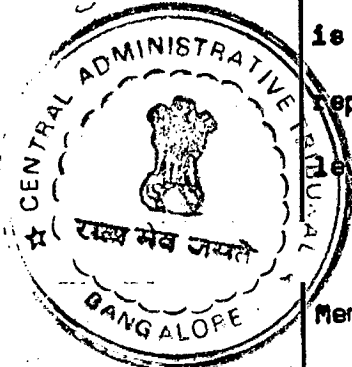
H.R. Arer & others

Advocate for Applicant

Respondent

Secy, M.P. Communications, Delhi & others

Advocate for Respondent

Date	Office Notes	Orders of Tribunal
		<p>UR (MA)/ANV(MJ) 9.6.94 ORDERS ON MA 212/94</p> <p>Heard MA 212/94 filed by the respondents in OA 765/93 seeking extension of time for compli- ance of the directions of the Tribunal by a further period of three months from 28.4.94 is allowed, having regard to the fact that the repercussions of the directions on all India level are being considered by the Directorate.</p> <p> Member (J) 9/6/94</p> <p>sd _____ Member (A)</p> <p style="text-align: center;">TRUE COPY</p> <p style="text-align: center;">S. Shauhar SECTION OFFICER CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH BANGALORE</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

(66)

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Misc. Appns. No. 348/94

Dated:- 26 AUG 1994

IN

APPLICATION NUMBER: 765 of 93

APPLICANTS:

H.R. Arer and 8 others
To.

RESPONDENTS:

Secretary, Mf. Communications,
N. Delhi and others.

① Sri Krishna S. Dixit, Advocate,
532, 63rd Cross, Fifth Block,
Bashyam Circle, Rajajinagar,
BANGALORE-560010

② Sri. M. Vasudeva Rao, Addl. C.G.S.C.,
High Court Bldg, BANGALORE-1

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 8-8-94

O/c issued
on 26-8-94
Gah

for S. S. Narayana
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

Sh. H.R. Arer & 8 ors, V/s. UOI, Secy, M/o. Communications.

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2
OA NO. 765/93

Date	Office Notes	Orders of Tribunal
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P. K. V. Iremu

8.8.94

Orders on MA 248/94

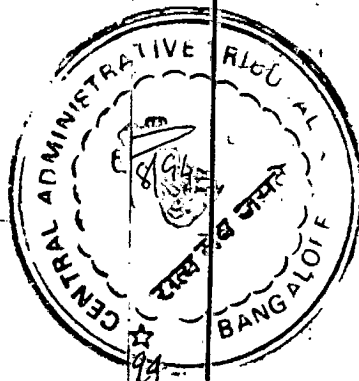
Heard. No grounds to extend time. We have already granted extension once. MA stands rejected

Sd-

Member (A)

Sd-

Vice-Chairman



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S. Shanthar
SECTION OFFICER 20/8
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE