

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:- 22 JUN 1994

APPLICATION NUMBER: 934/93 and 183 and 184 of 1994.

APPLICANTS:

Sri. A.N. Taragundi and two others v/s. Secretary, M/o. Communications,
To. New Delhi and Others.

1. Sri. P.A. Kulkarni, Advocate,
No. 48, 57th-A-Cross, 4th Block,
Rajajinagar, Bangalore-560010.
2. The Chief General Manager,
Telecom Quality Assurance (QA),
No. 61, Cockburn Road, Bangalore-560 051.
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 10th June, 1994.

S. Shaukat 22/6
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

9/6 *Issued*
g/m

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE**

APPLICATION NOS. 934/1993 AND
183 & 184/1994

DATED THIS THE TENTH DAY OF JUNE, 1994

Shri A.N. Vujjanaradhy, Member (J)

Shri T.V. Ramanan, Member (A)

1. Shri A.N. Teragundi
S/o. Late N.R. Teragundi
Occn. Assistant Engineer
(TES Group 'B' cadre)
O/O the Chief General Manager
Telecom Quality Assurance (QA)
No.61, Cockburn Road
Bangalore - 550 051.
2. Shri K.P. Narayana Rao
S/o. Late P. Krishna Rao
Occn: Assistant Director
(TES Group 'B' cadre)
O/O the Deputy Director General
Telecom Engineering Centre
No.61, Cockburn Road
Bangalore- 560 051.
3. Shri N. Ramanathan
S/o. R. Natarajan
Occn: Assistant Engineer
(TES Group 'B' cadre)
O/O General Manager
Component Approval Centre Telecom
(CACT), Dooravani Nagar
Bangalore - 560 016.

(By Shri P.A. Kulkarni, Advocate)

vs.

1. Union of India to be represented by its Secretary to Ministry of Communications, New Delhi.
2. Department of Telecommunications to be represented by its Head of the Department, Sanchar Bhavan New Delhi.
3. Chief General Manager Telecom Quality Assurance (QA)
No.51, Cockburn Road
Bangalore-560 051.

... Respondents

(By Shri M. V. Rao, A.C.G.S.C.)

O R D E R

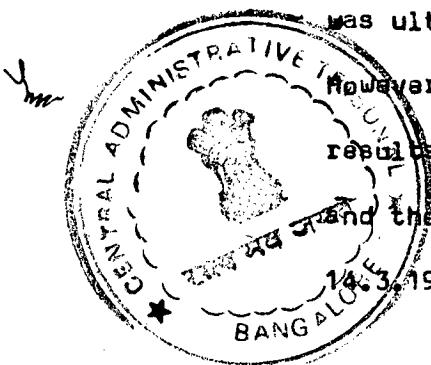
(Shri T.V. Ramanan, Member(A))

The applicants herein have sought for the following reliefs:-

- (a) To hold that eligibility class prescribed by the Department of Telecommunication for promotion as Senior A.E. from the cadre of TES Group 'B' so far as the same refers to 12 years of regular and continuous service as stated in para(ii) of Annexure-4, cannot be applied for considering the case of the promotion of the applicants from the cadre TES Group 'B' to Sr. A.E. cadre especially when a relatively junior officer in the cadre of TES Gp. 'B' to all these applicants came to be promoted as a Senior Asstt. Engineer as per Annexure-8 and consequently
- (b) For issue of further directions to the respondents to consider the case of the applicants for promotion to Sr. A.E. cadre from the same date as contained in Annexure-8 without insisting 12 years service condition.
- (c) To extend all the benefits including the monetary benefits flowing out of reliefs 1 and 2 above.
- (d) Any other order or reliefs that this Hon'ble Tribunal deems it fit and necessary in the circumstance of the case, in the interest of justice and equity.

The facts of the case in brief are that the applicants herein belong to the Telegraph Engineering Service (Group 'B') ('TES Group 'B' for short) cadre of the Department of Telecommunications in the Union Ministry of Communications. According to the TES Group 'B' Recruitment Rules, 1981 ('Rules of 1981' for short) method of selection to this cadre as Assistant Engineer is from 2 sources: (i) 66 2/3% by selection on the basis of Departmental Qualifying examination and (ii) 33 1/3% by selection on the basis of a limited Departmental Competitive examination

on the basis of merit. The schedule to the Rules of 1981 makes it clear that induction as Assistant Engineers by these methods of recruitment is considered to be by promotion. The Rules of 1981 further provides that the inter se seniority of the officials who have qualified in the Departmental Qualifying examination and those who have qualified in the limited Departmental Competitive examination shall be in the ratio of 2 : 1 starting with the officers selected by the method of selection by the Departmental Promotion Committee on the basis of the Departmental Qualifying examination. Against the vacancies in the TES Group 'B' relating to the year 1981, 1200 vacancies were to be filled up by DPC on the basis of passing TES Group 'B' Qualifying examination. The DPC for such promotion was held in May, 1981 and promotion orders were issued on 11.5.1981. As regards recruitment through Departmental Competitive examination for the remaining vacancies, the examination was scheduled for the 12th and 13th November, 1981. However, due to certain administrative exigencies, the said examination on its second day was postponed to March, 1982 and the examination was held on the 11th and 12th March 1982. Some writ petitions were filed in a few High Courts against holding of the competitive examination and the Hon'ble High Courts of Kerala and Calcutta granted interim stay against announcement of the results of the examination held in March, 1982. The department filed an SLP against the judgements of the High Court and it was ultimately decided by the Hon'ble Supreme Court on 24.5.1985. However, based on an interim order of the Supreme Court, the results of the written examination were declared on 29.10.1984 and the final results on the basis of C.R. evaluation on 16.3.1985. Those who came out successful, including the applicants,

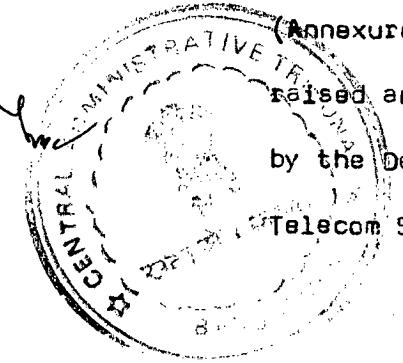


were promoted with effect from 17.6.1985. Further, the inter se seniority of these officers was fixed along with those promoted against the 2/3 quota of vacancies in 1981 in accordance with the provision contained in the Rules of 1981 referred to above.

2. The grievance of the applicants is that although they had taken the competitive examination on 11th and 12th March 1982, due to Court injunctions, considerable delay took place, for no fault of theirs, in the declaration of the results of the examination and their promotion/appointment as Assistant Engineers subsequently; only in June 1985 ~~that~~ their delayed appointment by promotion as Assistant Engineers resulted in their non-consideration for promotion to the newly created posts of Senior Assistant Engineer. In this connection, they have referred to the Government of India letter no.5-2/90-TE.I dated 25th September, 1990 addressed to all Chief General Managers, Telecom Circles and others on the subject of improvement in promotional prospects of Assistant Engineers in TES Group B (Annexure-4). In the said letter, apparently, to remove stagnation in the cadre of Assistant Engineers in TES Group B, instructions were issued for the creation of sufficient posts designated as Senior Assistant Engineer in the scale of Rs 2200-75-2800-EB-100-4000 from year to year to promote eligible TES Group 'B' officers, that is, Assistant Engineers, who have completed 12 years of regular and continuous service as Assistant Engineers. Promotion to the posts of Senior Assistant Engineers which will be distinct and outside the cadre of the Indian Telecommunication Service Group 'A' will be on the basis of seniority.

subject to rejection of the unfit. In pursuance of the aforesaid letter, one Shri Vijayasekharappa, among others, was promoted by the Chief General Manager, Telecom QA Circle, Bangalore, as Senior Assistant Engineer in the pay scale of Rs 2200-4000 and the promotion of Shri Vijayasekharappa was to take effect from 1.9.1993 (order at Annexure-8). The applicants being senior to Vijayasekharappa, who was recruited as Assistant Engineer by promotion under the 2/3 quota in 1981 now claim that the junior of theirs having been promoted to the post of Senior Assistant Engineer, they should also be promoted with effect from the same date as their junior as Senior Assistant Engineers notwithstanding the fact that they had not put in 12 years of regular and continuous service as Assistant Engineers which the essential pre-requisite for promotion to the post of Senior Assistant Engineer according to the scheme of promotion as contained in the letter dated 25.9.1990 (Annexure-4)

3. We have heard the learned counsel for the applicants and the learned Additional Central Govt. Standing counsel appearing for the respondents. Rebutting the claim of the applicants, learned Additional Central Government Standing counsel stated that the essence of the scheme for promotion to the posts of Senior Assistant Engineer is not seniority but length of continuous and regular service of 12 years in the grade of Assistant Engineer. To support his argument, he cited the clarification given by the department of Telecom on 30.1.1991 (Annexure-5) and 11.1.1991 (Annexure-7). The relevant point raised and the clarification given in the letter dated 30.1.1991 addressed by the Department of Telecom to the Chief General Manager, Telecom Services reads as follows:-



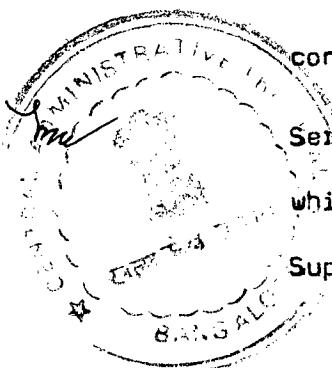
<u>Point raised</u>	<u>Clarification</u>
1. While TES Gp'B' officers who have completed 12 years of eligible service have been promoted as Sr. AEs cases are reported to be there where certain seniors (seniors to those already promoted) could not be considered for promotion as Sr. AEs, since they have not completed the eligible service period of 12 years. The reasons for the non-completion of eligible service by Sr. officers include circumstances such as incumbents declared successful in competitive examination for promotion from JTO to AEs joined later after the examination because there was delay in declaring the results of competitive exam., as compared to the results of qualifying exam. which were declared promptly. The point raised is whether such Sr. TES Gp.'B' officers may be extended the benefit of the scheme.	No. The placement in higher scale of pay of seniors before the completion of 12 years of service would not be within the scope of the scheme of "Improvement in promotional prospects of TES Group'B' officers.

The relevant point raised and the clarification given in Department of Telecom letter dated 11th January, 1991 addressed to all the Heads of Telecom Circles etc., is as follows:

<u>Point raised</u>	<u>Clarification</u>
5. In some cases where senior officers have joined late in TES Gp-B whereas their juniors have joined earlier and have thus become entitled for promotion as Sr. AE. In that case whether such 'seniors' shall also be considered or not?	Since this is a time bound promotion where 12 years period is the essence of the scheme, the officer may be considered only after completion of specified period.
4. We have carefully considered the arguments advanced from both sides. The plea made by the learned counsel for the applicants that the seniority of the applicants having been rightly fixed by the department from the year 1981 to which year's 1/3 quota their promotion to TES Group-B cadre relates, their proforma promotion should also be extended to them with effect from 12th March, 1982, the date on which	

which they all completed their competitive examination and not from 17.6.1985 is not acceptable to us because if the applicants had any grievance of this account, they should have sought remedy soon after the orders promoting them to the TES Group 'B' were issued by the Department of Telecommunication in January, 1986 promoting them with effect from 17.6.1985. At this point of time, after considerable delay, this contention cannot even be considered by this Tribunal. As regards the relief sought that the prescription of 12 years of regular and continuous service in the grade of Assistant Engineers as a pre-requisite for consideration for promotion to the posts of Senior Assistant Engineer should be overlooked in the circumstances of the case and they should also be considered for promotion with effect from the date their junior, who had put in 12 years of regular and continuous service as Assistant Engineer was promoted, we are afraid that the relief sought cannot be extended to the applicants. In this respect, we rely on the rule laid down by the Supreme Court in R. Prabhadevi and Others Vs. Government of India and Others (1988) 7 ATC 63. In that case the direct recruit Section Officers challenged the condition of eligibility as in the Central Secretariat Service Rules 1962 which provided for rendition of not less than 8 years service both by the direct recruits in the Section Officers grade as also the promotees in that grade for being

considered for promotion to Grade-I of the Central Secretariat Service. Agreeing with the Central Administrative Tribunal which rejected the case of the Direct recruit applicants the Supreme Court has observed as follows:-



"13. This Court in the case of H.V. Pardasani V. Union of India considered the question of the validity of rule providing for fixation of seniority between the direct recruits and promotees in the grade of Section Officer on the basis of quota reserved for direct recruits and held that the prescription of quota becomes necessary to work out a scheme constituting a service manned by both the direct recruits as well as promotees. Such a scheme is unexceptionable and seniority based upon the rota is also not open to attack. The scheme does not appear to be arbitrary and the rules and regulations to give effect to the scheme are not ultra vires either Article 14 or Article 16 of the Constitution. Therefore, the inter se seniority of direct recruit and promotee Section Officers on the basis of quota-rota rules has been held to be valid. This does not mean that the direct recruits who are senior to the promotees are entitled to be considered for promotion to a higher post even though they do not fulfil the eligibility qualification specified in the rule framed by the rule-making authority. The rule-making authority by the amendment made in 1984 has brought in an uniform eligibility qualification of eight years' approved service to be rendered by the Section Officers - both promotees and direct recruits before coming within the zone of consideration for promotion to Grade I. Thus it treats all Section Officers equally and there is no discrimination between the Section Officers. It has been submitted that this rule is arbitrary and unreasonable as it prescribes a certain minimum service in a lower post for promotion to a higher post on the ground that it has no nexus to suitability for holding the higher post. This submission in our considered opinion, cannot be sustained in as much as experience over certain number of years in service and also due performance of the duties and responsibilities attached to the posts of Section Officer is very relevant and as such prescribing such an eligibility qualification has nexus to the suitability for the promoted post. The directly recruited Section Officers are not totally excluded from the zone of consideration for promotion. They will be considered like the promotee Section Officers as soon as they have rendered eight years' approved service as Section Officer. The Tribunal has held that:

The qualification for any post are prescribed having regard to the nature of the post and the duties and responsibilities attached to it. For due discharge of duties attached to a post, academic excellence alone may not be sufficient. Factors like experience over certain number of years in service and holding a post of a certain level are relevant. That gives them the opportunity to deal with several files, handle different situations, tackle varied problems, extract work from subordinates of varying capabilities and serve under superiors with differing styles of functioning. They acquire knowledge of men and matters and the necessary acumen to deal with issues arising from time to time. Academic brilliance and excellent performance at the competitive examinations by themselves cannot wholly

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substitute experience. They can only supplement. However brilliant a person may be, he needs experience such as can be gathered only by discharging the duties and responsibilities attached to a post. If recruitment to a post is by way of promotion, the minimum number of years one should serve in the lower post would have to be prescribed. Valuable experience gained in service, better equips a person to shoulder higher responsibilities and man the superior post. Period spent in discharge of duties of a post has nexus to the object of enlisting experienced officers of proven merit with consistent good record over sufficiently long period to a man the higher posts by way of promotion.

14. The 1984 amendment of the rules providing an eligibility condition of rendering eight years' approved service as Section Officer for coming within the zone of consideration for promotion to Grade I post of CSS is not at all arbitrary and unreasonable as it prescribes a minimum period of eight years' of service as Section Officer both for direct recruits and promotees as a condition of eligibility for consideration for promotion to the higher post. This rule is, therefore, not violative of Articles 14 and 16 of the Constitution of India.

15. The rule making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years' approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I post of CSS. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Section Officers. The submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. The rule in question which prescribes

*/elibility condition are being considered for promotion to the higher



an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Article 14 or 16 of the Constitution. It has been rightly held by the Tribunal:

When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience.

16. It has also been observed:

In any event, the appropriate rule-making authority is the best judge in this regard. The rule-making authority is certainly competent to amend the rule and extend the period from six years to eight years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the rule-making authority; The Tribunal cannot sit in judgement over the opinion of the rule-making authority. No court or tribunal can substitute its own view in a matter such as this. Such a rule framed by a competent authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution.

17. We do not find any infirmity in the above findings arrived at by the Tribunal. "

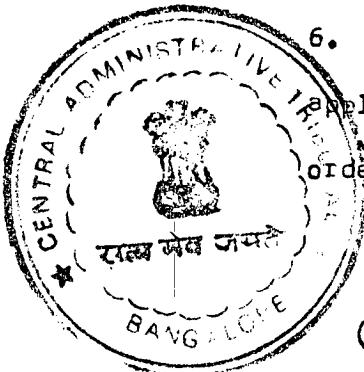
5. A perusal of the extracts reproduced from the Supreme Court's judgement makes it very clear that seniority cannot be substituted for eligibility and that when certain length of service in a particular cadre can validly be prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment and that prescription of eligibility condition for entitlement to consideration for promotion is within the competence of the rule making authority. As law in this regard is settled it will be difficult for us to accede to the reliefs sought by the applicants. Learned counsel for the applicants has cited the provision contained in the Indian Telecommunication Service (Group A) Recruitment Rules, 1992 ('Rules of 1992' for short)

which provides that the eligibility for considering for promotion to and within the said service should be prepared in such a manner that when the juniors fulfilling the prescribed eligibility condition are being considered for promotion, the senior officers who would not have completed the requisite service shall also be considered provided that such senior officers have completed the probation period and passed the departmental test as applicable.

Contention of the learned counsel for the applicant was that having made a provision to this effect in the aforesaid Rules which govern, *inter alia*, the promotion of Assistant Engineers in TES Group 'B' to the next higher grade, i.e., Junior Time scale of I.T.S. Group 'A' included in the Rules of 1992, the department failed to make such a provision in the scheme of promotion to posts of Senior Assistant Engineer, as contained in the letter dated the 25th September, 1990 (Annexure-4) but despite this failure the applicants are entitled to be considered along with their juniors for promotion as Senior Assistant Engineers. This argument is not quite valid for the reason that we are not considering here the non-promotion of the applicants to the posts in Junior Time Scale of I.T.S. Group 'A' governed by the Rules of 1992. No doubt, there is a specific provision in the Rules of 1992 to the effect that if a junior person were to be considered for promotion to a grade in the Group 'A' service, his seniors, although they may not fulfill the prescribed eligibility condition, should also be considered. However, there is no such provision in the scheme governing provision to posts of Senior Assistant Engineer under implementation in accordance with the letter dated 25th September, 1990. The said letter does not contain a



provision of a similar nature and therefore, the requisite qualification of completion of 12 years of regular and continuous service in the grade of Assistant Engineers for promotion as Senior Assistant Engineers cannot be assailed and that is also in keeping with the rule laid down by the Supreme Court in the case of Prabhadevi and Others cited above.



6. In view of the foregoing, this application fails and it is dismissed accordingly. No order as to costs.

skr
T. V. RAMANAN
MEMBER (A)

10/6/44
(A. N. VUJJANARADHYA)
MEMBER (J)

MR.

TRUE COPY

S. Bhawar 2216
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

REVIEW APPLICATION NO.10/1995 IN
O.A. 934/93 & 183 & 184/1994

DATED THIS THE TWENTYNINETH DAY OF MARCH, 1995

Mr. A.N. VUJJANARADHYA, MEMBER(J)

Mr. T.V. RAMANAN, MEMBER(A)

1. Mr. A.N. Teragundi
Aged about 45 years
Ocn. Assistant Engineer
(TES Group 'B' cadre)
O/O Chief General Manager
Telecom Quality Assurance
61, Cockburn Road
Bangalore-560 001.
2. Mr. K.P. Narayana Rao
S/o. Late P. Krishna Rao
Aged about 46 years
Ocn. Assistant Engineer
(TES Group 'B' Cadre)
O/O Director (QA)
Department of Telecom
CACT Complex, Doorvaninagar
Bangalore-560 016.
3. Mr. N. Ramanathan
S/o. R. Natarajan
Aged about 43 years
Ocn. Assistant Engineer
(TES Group 'B' Cadre)
O/o General Manager
Component Approval Centre Telecom
(CACT), Dooravaninagar
Bangalore-560 016. Applicants

Vs.

1. Union of India to be represented by
its Secretary to Ministry of
Communications, New Delhi.
2. Department of Telecommunications to
be represented by its Head of the
Department, Sanchar Bhavan
New Delhi.
3. Chief General Manager Telecom
Quality Assurance (QA)
61, Cockburn Road, Bangalore-1. Respondents

O R D E R

Mr. T.V. Ramanan, Member(A):

O.A. 934/1993 & 183 & 184/1994 were disposed of by means of a considered order on 10.6.1994. The applicants feeling aggrieved by the said order have filed this R.A. along with M.A. 151/1995 seeking condonation of delay of 210 days on the ground that subsequently having come to know that there are some decisions which were not referred to when the O.A.s were heard and therefore it is necessary to condone the delay and review the order.

2. The Review applicants do not contend that there is any error apparent on the face of the record which is required to be rectified by means of this review. It is not even their case of having found any new material that was not available to them when the O.A.s were heard. The present contention is that Hyderabad Bench of this Tribunal in O.A. Nos. 1070/1990 and other connected cases, which came to be decided on 31.1.1995 held that seniority should be shown only at one place and that however the Tribunal had declined to grant any relief with regard to relaxation for a period of 12 years for promotion to the post of Senior Assistant Engineers. This decision is not of any assistance to the review applicants herein because we have also taken the same view even though the question of seniority was not a question which survived for our consideration. The question of correctness or otherwise of our reference to the decision in Smt. R. Prathadevi & Ors. Vs. Govt. of India & Ors. (1986(7) ATC 63) cannot be agitated in this review application. If the applicants are aggrieved on the basis of our decision

as erroneous, the remedy open to them is elsewhere and not before this Tribunal seeking to reargue the same matter again. It was not as if that the decision alleged to have been rendered by this Tribunal in O.A. No. 403/1992 in Smt. Leelamma Jacob and Ors. was not known to the applicants. We therefore, see no merit to consider this application and accordingly by way of circulation in terms of Rule 17(3) of the CAT (Procedure) Rules, 1987 we dismiss the same as also M.A. 151/1995 as no sufficient grounds are also made out to condone the delay.

Sd/-

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(T.V. RAMANAN)
MEMBER(A)

Sd/-

(A.N. VUJJANARADHYA)
MEMBER(J)

psp.

TRUE COPY


Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore