

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.1075/95
DATED THE 31st DAY OF OCT, 2001

Coram: Hon'ble Shri S.L.Jain, Member(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Kumar
Yatendera ~~ti, ar~~ Bansal,
General Manager (Safety & Training),
Heavy Water Board,
Vikram Sarabhai Bhavan,
Anushaktinagar, Bombay - 400 094. ... Applicant

By Advocate Shri R.C.Kotiankar

V/s.

1. Union of India
(Through: Secretary to Government of India),
Department of Atomic Energy,
Anushaktibhavan, C.S.M.Marg,
Bombay - 400 039.
2. Chief Executive,
Heavy Water Projects Board,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushaktinagar, Bombay - 400 094.
3. Shri N.Srinivasan,
Chief Executive (Retd) HWB.,
67/A-7, 2nd Main Road,
Gandhinagar, Adayar,
Madras - 600 020.
4. Shri K.S.Bimhat,
Executive Director (Retd),
Heavy Water Board,
Department of Atomic Energy &
Chief Executive,
Kesar Petro Products Ltd,
7, Nagin Mahal, 2nd Floor,
82, Veer Nariman Road,
Churchgate, Bombay - 400 020.
5. Shri R.K.Bhargava,
Executive Director (Operations),
Heavy Water Board,
Department of Atomic Energy,
V.S.Bhavan, Anushaktinagar,
Bombay - 400 094.

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6. Shri B.S.R.Shetty,
Sr. General Manager (Retd),
Heavy Water Board,
Department of Atomic Energy &
Chief Engineer (Electrical)
Development Consultants Ltd,
Appeejay Commercial Complex,
Plot No.87, Sector-17, Vashi,
New Bombay - 705 705.
 7. Shri T.Gopalkrishna,
Director (Safety & Trg), (Retd),
Heavy Water Board,
Department of Atomic Energy,
A7, NPC Nagar,
P.O.Ghatkesar,
Ranga Reddy District (A.P.)
 8. Shri N.N.Khurana,
Director (Operations),
Heavy Water Board,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushaktinagar, Bombay - 400 094.
 9. Shri M.P.Khosla,
General Manager (Coord)(Retd),
Heavy Water Board,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushaktinagar, Bombay - 400 094.
 10. Shri S.P.Mukerjee,
Director (Operations),
Heavy Water Board,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushaktinagar, Bombay - 400 094.
 11. Shri P.K.Periakaruppan,
Director(Operations), (Retd),
Heavy Water Board,
Department of Atomic Energy,
No.3, IVth Floor, A Block,
Silver Park Apartments,
24, Thaniokachalam Road,
T.Nagar, PO Madras 600 017.
 12. Shri H.S.Kamath,
Sr.General Manager,
Heavy Water Board,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushaktinagar, Bombay - 400 094.
 13. Shri D.Behl,
Sr.General Manager,
Heavy Water Plant, Baroda,
P.O.Fertilizer Nagar,
Baroda 391 750.
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14. Shri S.C.Hiremath,
Sr.General Manager,
Heavy Water Board,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushaktinagar, Bombay - 400 094.
15. Shri D.Pulla Reddy,
General Manager,
Heavy Water Plant, Manuguru,
P.O.HWP Aswapuram Colony,
Dist.Khammam,
A.P. 507 116
16. Shri D.S.Lamba,
General Manager,
Heavy Water Plant, Tuticorin,
P.O.HWP Colony,
Muthiapuram,
Tuticorin 628 007.
17. Shri A.K.Wechlekar,
Chief Engineer(Electrical);
Heavy Water Board,
Department of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushaktinagar, Bombay - 400 094.
18. Shri S.P.Srivastava,
Chief Engineer(I),
Heavy Water Board,
Department of Atomic Engery,
Vikram Sarabhai Bhavan,
Anushaktinagar,
Bombay - 400 094.

... Respondents

By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna

(ORDER)

Per Shri S.L.Jain, Member(J)

The applicant was initially appointed as Scientific Officer/Engineer (SC 2 grade) in the pay scale of Rs.700-1300 in Chemical Engineer Division of the Atomic Energy Establishment, Trombay (now BARC) a constituent unit of the Department of Atomic Energy with effect from 1/2/1961 and posted to work at Heavy Water Plant of Fertilizer Corporation of India at Nangal on various service promotion basis. He was promoted as

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Scientific Officer/Engineer (Grade SD 2) with effect from 1/2/1964 and as Scientific Officer/Engineer (Grade SE) with effect from 1/2/1968 and Scientific Officer (Grade SF) in the scale of 1800-2250 with effect from 1/2/1973. He was deputed abroad in 1973 for training with M/s.UHDE, West Germany in connection with the installation and operation of Heavy Water Plant being set up at Talchar, Orissa. On 19/9/1975, he was appointed and posted as Construction Manager of Heavy Water Plant, Talchar and in November 1980 was appointed as Works Manager of the said plant. While employed in that capacity he was further promoted as Scientific Officer/Engineer Grade SG in the pay of Rs.2000-2500 (PR) with effect from 1/2/1981. He was later on transferred and posted to Central Office at Heavy Water Board at Bombay vide order dated 30/9/1985. On 6/1/87, he served notice of voluntary retirement but by order dated 7/1/87, the respondents prematurely retired the applicant under FR-56(J). The applicant preferred a petition to the President of India for review and since it had not been disposed of he filed OA No.550/1987 in the Mumbai Bench of the Tribunal for setting aside the order of premature retirement. The Tribunal vide its judgement and order dated 3/7/1990 held that premature retirement of the applicant was bad in law and struck down the same with directions to the respondents to consider the notice of voluntary retirement given by the applicant on 6/1/1987 and to dispose of the same in accordance with law. The applicant further sought promotion to withdraw his notice of voluntary retirement by his letter dated 11/7/90. The same was permitted and he was reinstated in service treating the intervening period between the date of his premature

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retirement and the date of his reinstatement in service as continuous service but without pay and allowances during the said period vide order dated 1/10/1990 and 30/10/1990.

2. The next promotional grade for the applicant is Scientific Officer (SG). The applicant was hoping to be promoted as he had completed more than 14 years service in the lower grade, however, he was consistently denied promotion. According to the applicant, many Officers who were junior to the applicant and who had worked under him for years were now in the higher grade of SG or SH. Respondent Nos.5 to 18 were juniors to applicant. The applicant therefore submitted a representation to the respondent no.1 on 8/1/1991 to which he received a one line reply after a year stating that the promotion case of officials working in various units are initiated by head of concerned units at appropriate time according to the procedures prescribed. This was issued to him on 9/1/1992. In pursuance of this reply he submitted an application to respondent no.2 who is the Head of Heavy Water Plant, on 2/4/1992, with a copy to respondent no.1 to grant him personal interview. But despite several reminders and repeated assurances that the matter would be looked into, he did not receive any reply. He therefore submitted another representation on 22/10/1995 to which also no reply had been received.

3. It is the contention of the applicant that the actual reason for denial of promotion to him during the previous 10years was solely on account of personal prejudice and as a revenge on the part of Respondent Nos.1,2,3 & 4 in view of his consistent perception about non-viability of the process adopted for the Talcher Heavy Water Plant and therefore his record has been

spoilt. His confidential reports for the year 1981-82 have shown a fall in the standard of assesment which amounts to adverse entries but these have not been communicated to the applicant at any time. However, in 1985, the reporting officer had recorded that the applicant had a negative approach and there was lack of leadership. The adverse entries have been recorded by Respondent Nos.3 and 4 in colourable exercise of power with malafide intentions so as to initiate proposal for premature retirement of the applicant and to deprive him of the promotion.

4. The learned counsel for the applicant submits that in OA-550/87, this Tribunal after going through the records of the recommendations of the review committee as well as assessment of the applicant held that the respondents inference of ineffectiveness on the part of the applicant cannot be arrived at and therefore the Tribunal struck down the recommendations of the review committee as well as the decision of prematurely retiring the applicant. The DPCs from 1985 to 1995 have obviously taken into account the uncommunicated adverse entries and have withheld the promotion to the applicant. According to the applicant promotions to the Grades SG and SH are made on merit with due regard to seniority. The applicant submits that it was incumbent on the part of the DPCs to have stated reasons in a manner which would disclose how the record of each officer superceded stood in relation to the records of the others who were preferred. The ACRs of the applicant for the period from 86-87 till 89-90 were not written as this happened to be the period between his premature retirement and reinstatement in service. Under the

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Rules DPC should have considered the ACRs by ignoring the uncommunicated adverse entry recorded therein and/or all ACRs and other service records be taken into account. Though the applicant had preferred a Review Petition to the President against his premature retirement, the same was not deliberately placed before the appropriate committee constituted to review such petition but instead a rejection letter was issued. In short, the applicant feels that but for the adverse entries during 1981-82 to 85-86, there is nothing in the record of the applicant to prevent him from being promoted to the higher grade.

5. The respondents state that the promotions to higher grades of G/H is on the basis of merit. It is determined on the basis of selection requiring minimum grading in the feeder cadre as the minimum requisite qualification. Gradings obtained in the preceding three years are considered for this purpose. The last selection was held in 1995. The Department of Atomic Energy has a scheme called 'Merit Promotion Scheme' for its Scientists and Engineers. Seniority is not a criterion for promotion under this scheme. The Promotion is also not dependent on the availability of vacant posts at higher levels to accommodate the promotions. Once a Scientist/Engineer is found fit for promotion under the Merit Promotion Scheme, the higher post required for accommodating the promotion is created and the lower post currently held by him is automatically abolished. It is a scheme to reward Scientists and Engineers on their individual achievements without the constraints of vacancies. For promotion to the higher post, only the most capable among the Scientists/Engineers who have demonstrated a high degree of

excellence in their performance, and known for their achievements and contributions alone can aspire. In addition to excellence in achievement in the scientific and technological fields, the candidate's managerial abilities, organisational and administrative capabilities, leadership qualities as well as his overall contributions to the programmes of the Department are also considered while recommending the Scientists and Engineers for promotion to the grades G/H. The Selection Committee consists of highest authorities in the department as well as eminent scientists holding equivalent higher posts in other departments like Space or DRDO and the applicant was not recommended by the DPC for promotion to Grade G. The applicants non promotion or non selection has nothing to do with the promotion of his juniors. Each candidate is weighed on the basis of his own merit and not on comparative merit amongst the candidates.

6. In the case of the applicant, though the adverse entries as in the CR were not communicated but he had been apprised of his shortcomings vide communication dated 14/11/84 and 17/5/85 from the third respondent and as it was felt that it would be of no use to keep protracted correspondence on the subject for inspite of these communications, the applicant has not shown any perceptible improvement in his approach or performance. The respondents have denied that there was any personal prejudice or revenge on the part of respondent nos.1 to 4 on account of the applicant's consistent perception about the non-viability of the process adopted for the Talcher Heavy Water Plant as alleged by the applicant. There has been absence of improvement even after the applicant's reinstatement in 1990. The applicant was not

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promoted because he did not have the various attributes required for promotion to senior grades of G and above. The respondents have also denied that the overall gradings recorded in his ACRs during the period 1981 to 1986 are inconsistent with the gradings under various parameters and attributes are denied. According to the respondents therefore the applicant's claim for promotion to the higher grade-G has been duly considered by DPC and he was not found fit for promotion to the higher grade. In this connection, the respondents have cited the case of R.K.Balani V/s. Union of India in OA 922/92. In this OA, this Tribunal upheld the procedure for Merit Promotion for Scientists/Engineers in the Department of Atomic Energy Establishment and the guidelines laid down in this regard. Another case cited is that of H.K.Rastogi in OA 697/1988 and decided by Ahmedabad Bench of this CAT on 17/2/1995.

7. MP-386/96

1. The applicant has filed an MP-386/96 for production of certain relevant documents. The respondents have replied to the same, The applicant has asked for inspection of the following documents/records:-

- i) Promotion rules/guidelines adopted in DAE for selection and promotion to grades G & H.
- ii) Seniority list of Officer in Grade SG considered for promotion to next higher grade viz. Grade G during DPCs held during the year 1985-95.

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- iii) Seniority list of officers in Grade G considered for promotion to next higher grade viz. Grade H during DPCs held during the years 1989-1995.
- iv) Proceedings of Screening Committee Meetings held during the years 1985-1995 to recommend departmental officers in Grade SG for promotion to Grade G and in Grade G to Grade H.
- v) Proceedings of DPCs held for selection and promotion to Grades G & H during the years 1985-1995.
- vi) ACRs of officers, considered and selected for promotion to Grades G & H during DPCs held during the years 1985-1995.
- vii) ACRs of the applicant for the years 1961 to 1995.
- viii) Reports submitted to Government on expected dates for commencement of production of heavy water at Talcher Heavy Water Plant and also records containing the actual reasons for failure to achieve the production and absolving UHDE the foreign contractor, their contractual obligation to commission and achieve productions as guaranteed under the contract.
- ix) Records leading to premature retirement of the applicant and also proceedings of the duly constituted representation committee leading to rejection of the Review Petition submitted by the applicant against the order of premature retirement.

2. We find that the respondents have already produced the rules relating to premature retirement, guidelines for selection and promotion to Grades G/H. As regards the seniority list, it is already pointed out by the respondents, seniority is not at

all only the criterion for consideration for promotion, inter-se seniority does not matter, what matters is the individual merit. It is not even comparative merit and therefore in our considered view, it is not necessary to produce the seniority list. The ACR dossier of the applicant has already been submitted by the respondents for perusal of the Tribunal. As regards, the report on the commencement of production of Heavy Water Plant at Talcher, we feel it is not at all relevant especially when this matter had already been considered by the Tribunal in regard to the premature retirement of the applicant. The matter was already decided and his premature retirement had been quashed. Therefore, the documents pertaining to Talcher Heavy Water Plant and the Premature Retirement of the applicant are no longer relevant. The only documents that remain to be seen are the proceedings of the screening committee meetings regarding the promotions to Grade G/H during the period 1985-95. These have been produced.

3. The applicant has cited the judgements of the Supreme Court in support of his demand for making available the DPC Proceedings, ACRs of the applicant, the proceedings relating to his premature retirement, etc for inspection. According to him the respondents have not claimed any privilege except to say that they are confidential record. According to the applicant denial of inspection of these documents will amount to denial of reasonable opportunity to defend applicant's case. He has relied on the following case law:-

(a) SC's Judgement:

S.C.Gupta V/s. President of India & Ors

AIR 1982-SC-149

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- (b) CAT, Principal Bench:
P.Banerji V/s. Union of India & Ors.
ATR 1986 - CAT-PB-16
- (c) CAT, Lucknow Bench:
H.N.Srivastava V/s. Union of India & Ors.
1990 (13) ATC 804
- (d) CAT, Hyderabad Bench:
Vasant W Pradhan V/s. State of
Maharashtra
1991 (16) ATC 805
- (e) CAT, Mumbai Bench:
K.P.Desai V/s. Union of India & Ors.
(in OA 628/92 judgement dt.20/6/1993)
- (f) SC's judgement:
Committee of Management Kisan Degree
College V/s. Shambu Saran Pandey
(1995) 1 SCC (L&S) 324

4. It was held in the case of Shri P.Banerji V/s Union of India & Ors ATR 1986 (CAT) (P.B.) 16 that "while the assessment and recommendation may be confidential at the time when it is made after the appointment is made and the same is questioned before the judicial Tribunal, that record cannot be stated as confidential. When the validity of such a recommendation cannot be judged without perusing the record, such record cannot be treated as one of confidential nature which should be preserved. The Tribunal cannot withhold such a record from the parties likely to be affected by its decision. In disclosing such material to the parties of the litigation no prejudice would be caused to the State or any of the officers' concerned. The

members of the DPC and the UPSC are highly placed authorities who will not be in any way embarrassed by such disclosure nor is their freedom or candour of expression of opinion affected by such disclosure. When their assessment or recommendations are challenged in appropriate judicial forum, any disclosure of that record will not cause any injury, it would advance public interest and lend assurance to the public servants in particular that they are being treated justly and fairly." It has been held similarly in the case of H.N.Srivastava V/s. Union of India, in OA No.74 of 1989 by the Lucknow Bench of the Tribunal, that privilege cannot be allowed for proceedings of the DPC. Applicants are also entitled to see those proceedings including the gradings to the officers placed in the select list but not of all officers within the zone of consideration. The applicants are entitled to inspect their own CR dossiers but not of others considered alongwith the applicants. The applicant has therefore demanded inspection of these documents.

5. In view of the above discussion, in our considered view, the applicant is entitled to inspection of following documents:-

1. ACRs of the applicant for the years 1961 to 1995.
2. Proceedings of the DPC held for selection and promotion to Grade G and H during the years 1985-1995.

6. As regards the other documents listed in the MP, in view of the reasons recorded earlier we do not consider it necessary that those documents be made available to the applicant. The applicant is allowed inspection of his own ACRs and the proceedings of the DPCs. The MP is thus partly allowed.

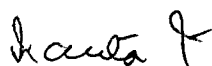
8. We have heard the learned counsel for the applicant as well as the respondents. We find that after the direction by the Tribunal, the applicant was reinstated in service and was granted

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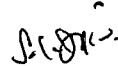
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continuity of service from the date of his premature retirement till the date of reinstatement with all the benefits. The applicant was also considered by the DPC for promotion to the higher grade but he was not found fit after following the due procedure. We have gone through the record i.e. proceedings of the DPC as well as the ACR dossier of the applicant for the relevant period. We find that no doubt the adverse entries in the ACRs of 81-82 to 85-86 were not communicated literally, all the same through independent DO letters from the superior officer, the applicant was certainly made aware of his shortcomings through the letters given in 1984 and 1985. The applicant does not seem to have improved even thereafter. Therefore it cannot be said that the applicant had not knowledge at all about the adverse entries because the letter dated 17/5/85 clearly states that "In your Confident Report for the year ending 31/11/85, I have been constrained to record my view regarding your negative approach and lack of leadership.' Thus, it cannot be said that the adverse remarks were not communicated to the applicant.

9. We however do not find any merit in the pleadings of the applicant. According to us, the respondents have been quite fair in their approach and have followed the proper procedure before denying promotion to the applicant. Had there been any malafide or bias, the applicant would not have been taken back in service and also granted continuity in service. That is not so. We therefore in the facts and circumstances of the case find the OA devoid of merit and accordingly dismiss the same without any cost.



(SMT. SHANTA SHASTRY)
MEMBER(A)



(S.L. JAIN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.78/2001 in OA.No.1075/95

Dated this the 27th day of May 2002.

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

Hon'ble Smt.Shanta Shastry, Member (A)

1. Union of India
through The Secretary,
Deptt. of Atomic Energy,
Anushakti Bhavan,
CSM Marg, Mumbai.

2. The Chief Executive,
Heavy Water Board,
Deptt. of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushaktinagar, Mumbai.

...Petitioners

vs.

Shri Y.K.Bansal

...Respondent

TRIBUNAL'S ORDER

{Per : Shri S.L.Jain, Member (J)}

The Respondents in OA.NO.1075/95 have filed this Review Petition on 18.12.2001 in respect of an order passed by this Bench on 31.10.2001, the copy of the which was received by them on 20.11.2001 within the time prescribed under Rule 17 of CAT (Procedure) Rules, 1987.

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2. The ground for review of the order is that the Tribunal has dismissed the OA. on merits but in para 5 of the said order it is held that the applicant is entitled to inspection of his ACRs for the year 1961-65 and proceedings of the DPC held for selection on promotion to Grade 'G' & 'H' during the year 1985 - 1995.

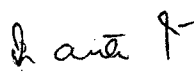
3. The cause for review is that after the order passed by the Tribunal on 31.10.2001, the counsel for the applicant claimed inspection.

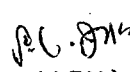
The ground on which the review is sought is when OA. is filed the applicant was entitled to for inspection of the said documents during the pendency of the OA. and not thereafter.

4. Order 47 Rule 1 CPC provides the circumstances under which orders can be reviewed : (i) Discovery of new or important matters or evidence or, (ii) Mistake or error apparent on the face of record or, (iii) Any other sufficient reason. None of the grounds stated by the respondents is covered by any of the said three categories referred above.

5. The law declared by this Tribunal in respect of inspection of the documents is not confined during the pendency and till decision of the OA. only. As such, if applicant's counsel has sought the inspection, he is within his rights.

6. In the result, Review Petition deserves to be dismissed and is dismissed accordingly with no order as to costs.


(SMT. SHANTA SHASTRI)
MEMBER (A)


(S.L. JAIN)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. NO.: 88/2002 IN O.A.NO.: 1075/95.

Dated this Friday, the 18th day of October, 2002.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

Y. K. Bansal

...

Applicant

(By Advocate Shri R.C. Kotiankar)

VERSUS

1. Anil Kakodkar,
Secretary to the Govt.
Of India, Department of
Atomic Energy,
Anushakti Bhavan,
C.S.M. Marg,
Mumbai - 400 039.

2. S. C. Hireenath,
Chief Executive,
Heavy Water Board,
Dept. of Atomic Energy,
Vikram Sarabhai Bhavan,
Anushakti Nagar,
Mumbai - 400 094.

...

Contemnor-
Respondents.

TRIBUNAL'S ORDER :

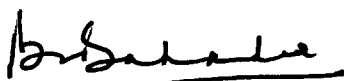
The grievance of the Applicant is that despite order in Judgement of O.A. No. 1075/95 decided on 31.10.2001 in para 5, he is not being allowed inspection of documents mentioned therein. It is averred in para 3 of the application that Respondents informed the Advocate for Applicant by letter dated 10.12.2001 that the matter is under examination in consultation with the Senior Central Government Standing Counsel. According to Applicant, the inspection is not being allowed for last ten months despite a reminder letter sent on 12.07.2002.

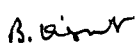
B. N. Bahadur

2. At this stage, we are not taking any action for contempt but we would prefer to issue notice to Shri S. C. Hireenath, Chief Executive, Heavy Water Board, Department of Atomic Energy, Vikram Sarabhai Bhavan, Anushakti Nagar, Mumbai 400 094 (Contemnor Respondent No. 2) to show cause why action under Section 11 read with Section 12 of Contempt of Courts Act be not initiated against him for wilful disobedience of the order of this Tribunal dated 31.10.2001 passed in O.A.No. 1075/95 (Yatendera Kumar Bansal V/s. Union of India & Ors.).

3. As we are issuing Show Cause Notice to Shri S.C. Hireenath, we are not considering the case against Contemnor Respondent No. 1 at this stage, which will be considered after receipt of reply of Respondent No. 2. Respondent No. 2 may not appear in person in case the reply is filed and he is represented by a lawyer on the date fixed.

4. Let the case be listed on 22.11.2002.


(B. N. BAHADUR)
MEMBER (A).


(BIRENDRA DIKSHIT)
VICE-CHAIRMAN.

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