

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

9/10/92
O.A. 490/92.

Dt. of Decision : 2.11.94.

Mr. Dandasi Basavayya

.. Applicant.

Vs

1. Sr. Divl. Mechanical Engineer,
S.E.Rly, O/o Divl. Railway Manager,
Waltair, Visakhapatnam.
2. Sri. D.B. Chatterjee,
Enquiry Officer, SE Rly,
Garden Reach, Calcutta-43.
3. Asst. Mechanical Engineer,
SE Rly, Waltair.
4. Divl. Regional Manager,
SE Rly, Vizag.

.. Respondents.

Counsel for the Applicant : Mr. K.R. Srinivas

Counsel for the Respondents :: Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

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O.A.940/92

Dt. of Judgement: 2.11.1994

JUDGEMENT

(As per Hon'ble Shri AV Haridasan, Member(J))

The challenge in this application is against the order dated 7.11.88 of the third respondent removing the applicant from service and the order dated 3.10.91 of the first respondent dismissing his appeal against the order of removal.

2. The applicant, Sri D.Basavaiah was appointed on compassionate grounds, on the death of his father, as Khalasi Helper by the order of the 4th respondent dated 26.7.79 with T.No.1310, under the Loco Foreman in Loco Shed, S.E.Railway, Waltair. In the service records of the applicant, the date of birth of the applicant was recorded as 1.6.1960. While the applicant was working as Khalasi Helper, he was served with a charge memo dated 9/19.11.87 by the first respondent. The article of charge reads as follows:

"Article-1

That the said Sri D.Basavaiah, Khalasi Helper, Ticket No.1310, Steam Loco Shield/Waltair has given false date of birth to the Railway Administration by manipulating his date of birth in the School Certificate for getting appointment on compassionate grounds on 9.7.1979 in Railway, refused to produced his original school certificate to the Vigilance Department and also refused to attend Vigilance office for interrogation and also in that connection and thereby committed an act of misconduct in contravention to the provisions of Rule 3.1(i) and (iii) of the Railway Services (Conduct) Rules, 1966."

The statement of imputation of mis-conduct annexed to the above charge memo reads as follows:

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" Shri D.Basaviah is employed as Khalasi Helper at Loco/Waltair. He was appointed at Loco/WAT on 9.7.79 on compassionate grounds. At the time of his said appointment, he had shown his date of birth in railway records as 1.6.1960, whereas in the actual school record, his date of birth is 1.6.1964. Shri Basavaiah was only 15 years old on the date of his appointment i.e. on 7.9.79. As per school records and was unable to get a railway job. Hence, he manipulated his date of birth from 1.6.1964 to 1.6.1960 in the school certificate and became eligible for railway service. Accordingly, he gained employment in railway service on 9.6.79.

Eventhough Sri Basavayya received a copy of SVI (S)/GRC's letter dated 19.6.87, through Loco Foreman/Waltair for his attendance with original school certificate at Vigilance Officer/GRC, he did not attend the vigilance office/GRC. He also disregarded the directive given by Sr.DME/WAT, his controlling officer, to attend the vigilance office/GRC vide Sr.DME/WAT's letter No.WMZ/Misc/86 dt.7.8.87.

By the above, the said Sri D.Basavayya has rendered himself liable for disciplinary action against him under R.S(D&A)Rules,1968 and therey committed an act of misconduct in contravention to the provisions of Rule 3.1 (i) and (iii) of the Railway ~~Safety~~ Service(Conduct) Rule,1966, which lays down that every railway servant shall at all times maintain absolute integrity and do nothing which is unbecoming of a railway or Government servant."

3. The applicant denied the charges. While submitting his explanation to the memorandum of charges, denying the charge, he had mentioned that one Sri Ch Mohan Rao who was working as Office Superintendent/Stores in the Loco Foreman's office, Waltair, was involved in a case of theft of 45 kgs of brass, that the applicant was the principal witness against him in the said criminal case and that the accusations against the applicant has been engineered by the aforesaid Ch Mohan Rao and other officers who were in collusion with him. However, an enquiry was ordered.

4. The applicant was represented by a defence counsel. On the date/s fixed for recording evidence at the enquiry i.e. on 8.8.88, the applicant did not appear before the "inquiry Officer as he

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had reported sick on 6.8.88 under private medical certificate. Though this information was given to the Inquiry authority, the Inquiry authority was not pleased to adjourn the inquiry, but held the Inquiry ex-parte, On the very same day after examining Sri Ch. Mohan Rao the witness produced in support of the charge and submitted report of his enquiry holding that the charges against the applicant were proved. The disciplinary authority accepted the report of the ~~xxx~~ Inquiry and holding the applicant guilty of the ~~xxxxx~~ charge imposed on him the punishment of removal from service by his order dated 7.11.88. The appeal submitted by the applicant to the first respondent was dismissed by the first respondent vide his order dated 28.6.89. Challenging the above order, the applicant ~~xxx~~ filed OA 727/89. The OA 727/89 was disposed of by the Tribunal vide Judgement dated 22.9.89 with a direction to the first respondent to dispose of the appeal of the applicant dated 16.12.88 with a speaking order. As the direction contained in the order of the Tribunal 727/89 was not complied with, within the ~~xxxxxx~~ time stipulated in the order, the applicant moved to this Tribunal by CP 67/91. This CP was disposed of by an order dated 18.8.91 directing the first respondent to implement the order dated 22.9.89 in OA 727/91 within a period of six months. Pursuant to the above direction, the first respondent has considered the appeal and has passed the order dated 30.3.10.91 confirming the penalty of removal imposed by the third respondent vide his order dated 7.11.88. It is under these circumstances that the applicant has filed the present application. It is the case of the applicant that he was born in the year 1960, that he did not produce any school leaving certificate at all at the time when he was appointed on compassionate grounds, that he was medically examined and the date of birth was recorded in the railway records by the railway authorities, that his signature

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was taken in the paper and that the allegation that he manipulated his date of birth in school leaving certificate from 1.6.64 to 1.6.60 is false, that the inquiry was held in total disregard of the principles of natural justice, that the inquiry officer was completely biased against him, that the bias of the inquiry officer would manifest from the record of the inquiry in as much as while he had on 8.8.88, received a communication from the loco foreman that the applicant could not be directed to appear for the enquiry as he had reported sick at about 10.45, in the enquiry report he had falsely stated that the fact that the applicant was reported sick was reported to the inquiry authority only at 12.30 hrs., that the procedure followed by the enquiry authority in completing the inquiry on the very same day without giving the applicant an opportunity to put forth his proper defence is arbitrary and unreasonable, that there is absolutely no evidence to show that either the applicant produced a falsified school leaving certificate, or that his real date of birth ^{was} 1.6.64 as alleged in the charge sheet, that the finding of the inquiry authority as accepted by the disciplinary authority, ~~xxx~~ as well as the appellate authority is perverse, that the reliance placed on a photostat copy and a letter alleged to have been signed by the Headmistress of a school without examining the Headmistress is against law and principles of natural justice, that the reliance placed on the testimony of Ch. Mohan Rao who is inimically disposed of against the applicant as he happened to be a witness against the said Mohan Rao in a criminal case is unsustainable and that the impugned orders of the disciplinary authority and appellate authority are liable to be quashed as they were based on absolutely no legal evidence

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As the above proceedings being vitiated for the reasons mentioned above, the applicant claims that he is entitled to have the impugned orders set aside with consequential benefits of reinstatement into service with continuity of service and full backwages. The applicant has also stated that he, did not wantonly refrain from appearing before the Vigilance officer, but was prevented from doing so as he was not given pass for such appearance.

5. The first respondent has filed a reply statement, on behalf of all the respondents. The respondents contend that the inquiry was held properly in accordance with the rules, that it was because, the applicant failed to appear before the inquiry authority on the day fixed for the inquiry, that the inquiry happened to be held ex-parte, that as the applicant did not produce the original school leaving certificate to disprove the charge against him, he has no right to contend that the charge has not been established, that the testimony of Ch. Mohan Rao and xerox copy of the school leaving certificate and letter sent by the Headmistress of the school from which the applicant studied has clearly established the fact that the applicant had manipulated his date of birth as 1.6.1960 in the school leaving certificate and secured employment at the age of 15, which he would not have been otherwise entitled to, the charge has been fully established against the applicant. They have further contended that the orders of the disciplinary authority and appellate authority are sustainable as they disclose application of mind. In support of their contentions, the respondents have produced annexures R1 to R12.

6. Though we directed the respondents to produce for our perusal the entire file relating to the disciplinary proceedings, the respondents failed to do so. Therefore, we

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have perused the entire material on record and have also heard learned counsel for both the parties.

7. The two points pressed by the learned counsel for the applicant are i) the enquiry had been held in violation of principles of natural justice and ii) this being a case of ~~xxxx~~ nil evidence, finding of the inquiry authority, which was accepted by the disciplinary authority and confirmed by the appellate authority that the applicant is guilty of the charges ~~is~~ perverse and unsustainable.

8. It is a fact which is not disputed that the inquiry was held ex-parte. The justification for holding the Inquiry ex-parte on 8.8.1988 is as follows:

"Shri D.Basavayya did not attend the enquiry. His defence counsel Sri P.Ganeswar Rao & Smith VSKP informally attended the enquiry and refusal to take part in the enquiry on the plea that Sri Basavayya made several complaints to SE Railway Administration/VSKP and EO/GRC stating that before his own case is enquired, the EO must enquire into the complaints made by him to the EO against one Ch.Mohan Rao, OS/Loco Stores and K.Narayana Rao Gr.I Tin Coper Smtih, produce all the documents and action taken before him (Sri Basavayya).Otherwise, he would not attend the enquiry. The undersigned tried to convince him so that the CO and the DC do understand the case and help the EO in finalising the case. But the DC did not agree and did not participate in the enquiry. The DC at first informed the enquiry that Sri Basavayya has already for the enquiry and would attend the enquiry if his demand is conceded. Then one letter from Loco foreman, steamshed VSKP was received stating that Sri Basavayya has reported sick by producing PMC w.e.f. 6.8.88. This was reported to EO on 8.8.88 at about 12.30 hrs when the enquiry waited about two hours and the DC was informally present in the enquiry. No MC was submitted to the EO or the DC/defendant did not submit any application to EO stating the ~~xxxxxx~~ cause of non-attendance of the enquiry. Moreover, it has been found from the documents that the defendant did not

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the defendant did not attend the fact finding enquiry conducted by the SE Rly, Vig.Branch on the same plea as putforwarded to EO and did not cooperate with the fact finding enquiry also. As such, the enquiry decided to proceed with the enquiry ex-parte as the P/Witness in this case was present. The P/Witness was examined as per rule and the case was formally closed after conducting ex-parte enquiry as per rules."

9. The learned counsel for the applicant drew photostat copy of a letter of the Locoforeman, Visakhapatnam addressed to the Enquiry officer, SERly, VSKP, dated 8.8.88 which reads as follows:

"South Eastern Railway
No. xx xx xx Dtd.8.8.1988
From Loco Foreman VSKP To Enquiry Officer, SERly

Sub: Departmental enquiry
Ref.: xx xx xx xx xx xx
xx xx xx xx xx xx

".....Sri P.Ganeswara Rao, L/Smith is hereby directed to report at your office D&A for the above enquiry on date.

Sri D.Basavayya Kh T.No.1319 has reported sick with PMC's from 6.8.88 for about 5 days from Dr.P.N.Potro VSKP3 ~~for~~ Hence, he could not attend the enquiry.

Sd/- LF"

and ~~exhibited~~ also the letter of the Enquiry officer dated 8.8.88 which at annexure 9 to the OA and which reads as follows:

"South Eastern Railway
I/O. GRC at VSKP
No.EQ1/D&A/xx/xx/88/350 Dt.8.8.88
To ..
The Loco Foreman/Steamshed
SERly, VSKP
Sub:D&A enquiry against Shri D.Basavayya
Khalasi T.No.1310

(12)

With reference to your letter No.LF/1 dated 8.8.88, it is to inform you that Sri P.Ganeshwara Rao/T/Smith of your shed attended Sr DME's office/ VSKP at about 10.45 hrs and handed over you above cited letter. He did not attend the enquiry and left the enquiry at about 11.35 hrs.

This is for information and necessary action please

Encl:Nil

Sd/- Enquiry officer/GRC at VSKP

and argued that these documents will expose the falsity of the statement in the enquiry report that the letter of the Locoforeman stating that Shri Basavayya had reported sick on 6.8.88 and therefore could not be directed to report for enquiry was received at 12.30 hrs when the enquiry had waited about 2 and 1/2 hrs and while the DC was informally present at the enquiry. A scrutiny of the ~~inquiry~~ report at Annexure 10 leaves us with argument no doubt that this ~~document~~ of the learned counsel for the applicant that the ~~inquiry~~ authority has ~~misstated~~ the facts in the ~~inquiry~~ report is corr ct. Further, while the enquiry authority has received a communication from the Locoforeman at 10.45 hrs itself informing him that the applicant could not be directed to appear for the ~~inquiry~~ as he had reported sick, we are of the view in fairness, the ~~inquiry~~ authority should have adjourned the case to ^{an} other day enabling the applicant to take part in the ~~inquiry~~. Further, even if the ~~inquiry~~ authority thought it necessary to examine the witnesses, who ~~were~~ present on that date, after doing that, a notice should have been given to the applicant asking him to appear which to make a statement on the evidence ~~appeared~~ against him and also give him an opportunity to ~~adduce~~ ~~adduce~~ ~~adduce~~ evidence on his side if he so desired. This, having not been done, we are of the considered view that the ~~inquiry~~ authority has committed a grave error in the conduct of the proceeding which had resulted in violation of principles of natural justice and denial of reasonable opportunity to the applicant to defend his case.

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9. Now, let us examine whether even in the ex parte enquiry held against the applicant, ~~whether~~ there was any acceptable evidence, which would enable a prudent person to reach the conclusion that the applicant was guilty of ~~the~~ charge.

10. The charge against the applicant as extracted ~~supra~~ is that he had given false date of birth to the railway administration by manipulating his date of birth in the school certificate for getting appointment on compassionate grounds, on 9.7.79 that he refused to produce his original certificate to the Vigilance Department and to attend the Vigilance office for interrogation as directed by his superiors ~~and~~ ^{that} he has thereby committed a grave mis-conduct contravening the ~~proximities~~ ~~and~~ provisions of Rule 3(i) and (iii) of the Railway Services (Conduct) Rules, 1966.

11. The only witness examined in support of the charge is one Sri Ch. Mohan Rao. The testimony of the said Sri Ch. Mohan Rao is available at Annexure R-V which is produced by the respondents along with their reply statement. It will be worthwhile to extract the statement of this witness ~~in~~ its entirety.

"E.O. to P/W-1

P/W-1 is required to speak truth only.

Q.No.1. Kindly state your name, designation and your duration of working in the Loco Steamshed/VSKP

Ans. I am Shri Ch. Mohan Rao, A/P O.S.Gr.I working in the Locoforeman's office/VSKP, My duration of working from 1974.

Q.No.2 Kindly go through Article-I of articles of charges framed against Shri D. Basavaiah Khalasi Helper T.No.1310 of Steam Locoshed/WAT wherefrom you will find that there were two specific charges incorporated in one charge, namely (i) Shri D. Basavayya has given false date of birth to the railway administration by manipulating his date of birth in the school certificate for getting appointment on compassionate grounds on 9.7.79 (ii) he refused to produce original

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school certificate to the vigilance department and also refused to attend vigilance office for giving clarification and etc. You are in the steam loco shed from 1974. Kindly enlighten the enquiry about the two charges.

Ans.

When the report was made against Shri Basavayya in connection with manipulation of his date of birth in school certificate for taking appointment on compassionate ground on 9.7.79, I was working as O.S.II in the steam loco shed VSKP. On enquiry I came to know that the complaint is correct. Shri D.Basavayya manipulated his date of birth in the school certificate. I got it confirmed when I enquired from the DPO's office/VSKP. In Rly records his date of birth is 1.6.1960. as per his certificate produced by him whether it was actual school records his date of birth is 1.6.1964 which was certified by school authority.

For the second charge he straightaway refused the vigilance to give clarificatory statement etc. and refused to assist the vigilance in finalising the fact finding enquiry. Sr.DME himself informed this to CVO(T) on 7.8.87.

I know there was one reference from the DPO VSKP vide his number DPO/WAT/BU-I/9 dt.Ni. The Headmistress, Municipal High School, RP Peta Visakhapatnam-8 (Smt GV Pramila Devi) on 22.10.86 categorically stated that as per school records, the date of birth of Shri D.Basavaiah S/o Late Simhachalam is 1.6.1964. The original certificate is available with DPO/WAT As there cannot be any dispute on the point of date of birth of Shri D.Basavaiah which is actually 1.6.64.

The examination of P/W-1 by the EO is over.
The hearing formally declared closed.

Sd/-
Enquiry officer
Dt.8.8.88

As could be seen, this witness Shri Ch.Mohan Rao has not stated that the applicant had produced any certificate at the time of joining the service. He had no direct knowledge as to how the date of birth of the applicant happened to be recorded in the service records.

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He had not written to the Headmistress of Municipal High School, R.P.Peta, Visakhapatnam. Though he has stated that on enquiry he came to know that the complaint that, Shri D. Basavayya manipulated his date of birth in the school certificate is correct, his information is not based on any direct knowledge but he arrived at the conclusion on enquiry. No reliance can at all be placed on this statement, of the P/Witness that he came to know that the applicant has manipulated his date of birth in the service register or school records. The subjective satisfaction of a person who is unconnected with the appointment of the applicant, cannot form the basis of a conclusion by any prudent person that the allegations made in the charge sheet is correct. Further, this Ch. Mohan Rao is a person who admittedly was charge-sheeted by the police in connection with theft case and against whom the applicant had been a witness in the said criminal case. The argument of the learned counsel for the applicant that the testimony of such a person can be viewed with utmost care and cannot be accepted without any corroborative evidence cannot be brushed aside as meritless. Apart from the testimony of Shri D. Basavayya, the evidence available on record to bring home the allegation that the applicant has manipulated his date of birth in the school certificate and service register are a letter alleged to have been written by the Headmistress, a photostat copy of the TC issued in the name of the applicant and alleged to have been produced by the applicant when he joined service and a photostat copy of the relevant page of the SB service book of the applicant. It is fundamental that the contents of a letter cannot be proved by anybody other than the author of the letter. Without examining the Headmistress, what is stated in the

letter at R-17 cannot be taken as evidence at all.

The photostat copy of the Transfer Certificate No. 4249 said to have been sent by the Headmistress also cannot be accepted in evidence unless the same is verified with reference to the original record kept in the school. If the Disciplinary authority wanted to establish that the real date of birth of the applicant was 1.6.64 and not 1.6.60 as ~~xxxxxx~~ entered in his service records, it should have examined the Headmistress and asked her to produce the book which contains the details of the TC issued to the applicant. ~~which~~ would This having not been done, no reliance ~~can~~ be placed by any prudent person on the Ex.R-7 or the letter and photostat copy of the Transfer certificate.

12. P/W-1 Ch.Mohan Rao has ~~said~~ ^{stated} that the original certificate of the applicant is available with the DPO/WAT. If that is so, the original certificate ~~xxxxxx~~ should have been produced at the enquiry which would clinch the issue whether the same has been tampered with by the applicant or not. This has not been done. We are of the view that this ~~is~~ is a case where there is practically no evidence, which would enable a reasonable and prudent person to reach a conclusion that the applicant is guilty of the charges. Sri Ch.Mohan Rao has stated that, ~~xxxxxx~~ when report was made against Shri D.Basavayya in connection with the manipulation of his date of birth in school certificate, he was working as office superintendent Gr.II in the steam loco shed, Visakhapatnam. It is not known as to who made the complaint and how the question of date of birth of the applicant was taken up, ~~long~~ long years after he was appointed on compassionate grounds. The applicant's case is that he has witnessed Shri Ch.Mohan Rao, committing the theft of railway property that he had

Copy to:

1. The Senior Divisional Mechanical Engineer,
South Eastern Railway, O/O Divisional Railway Manager,
Waltair, Visakhapatnam.
2. Sri D.B.Chaterji, Enquiry Officer,
South Eastern Railway, Garden Reach,
Calcutta-43.
3. Asst. Mechanical -Engineer,
South Eastern Railway, Waltair.
4. Divisional Regional Manager,
South Eastern Railway, Vizag.
5. One copy to Mr.K.R.Srinivas, Advocate, 6-1-118/17,
Madhuranagar Colony, Padmarao Nagar, Secunderabad-25.
6. One copy to Mr.N.R.Devraj,Sr.CGSC,CAT,Hyderabad.
7. One copy to Library,CAT,Hyderabad.
8. One spare copy.

YLKM

15th page
on 10/11/1945.

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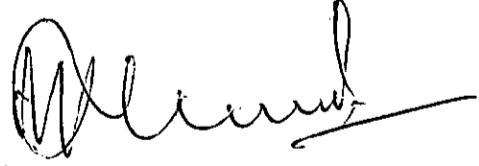
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complaints against him and had also acted as a witness against the said Ch. Mohan Rao in the criminal court and that, it was because of this enmity that Ch. Mohan Rao, along with his supporters have foisted a false charge against him to see that he is driven out of service.

On A careful scrutiny of the entire record available on file we find there is considerable force in this case of the applicant. However, it is sufficient to state that this is a case of absolute lack of evidence and that the finding of the enquiry authority, disciplinary authority and appellate authority that the applicant has been established is, in most modest terms, perverse.

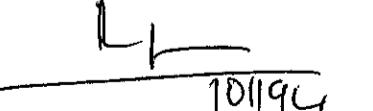
13. In the result, in the light of what is stated in the fore-going paragraphs, we find that the applicant is bound to succeed. Therefore, the application is allowed. The impugned orders dated 3.10.91 and 7.11.88 of the 1st respondent and the third respondent respectively, are set aside and the respondents are directed to reinstate the applicant forthwith and to pay him full backwages for the period for which, he was kept out of service within a period of two months from the date of communication of this order. There is no order as to costs.


(A.B. GIRTHI)
Member (Admn)

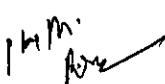

(A.V. HARIDASAN)
Member (J)

Dated: 2. 11. 94.

mvl


10/11/94
DEPUTY REGISTRAR (J)

contd...


M.M.
Rao

Typed by

Composed by

Checked by

Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

~~RECEIVED
2-11-94~~

THE HON'BLE MR. A. M. HEDGES : MEMBER

AND

THE HON'BLE MR. A. D. GORTHI : MEMBER

Dated: 2-11-94

ORDER/JUDGMENT

M.R. / R.P.C.P. No.

D.A. No.

490/92 940792

T.A. No.

(W.P. No.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with Directions.

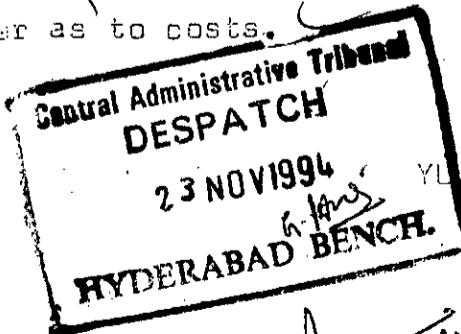
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.



10/11/94