

46

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO. 342 of 1992

DATE OF JUDGMENT: 16<sup>th</sup> NOVEMBER, 1992

BETWEEN:

Mr. K. Dakshina Murthy

..

Applicant

AND

1. Union of India represented by  
the General Manager,  
South Central Railway,  
Secunderabad.
2. The Chief Personnel Officer,  
S.C. Railway,  
Secunderabad.
3. The Railway Board, represented by  
its Secretary (Establishment), *Rail Bhavan,*  
New Delhi-1.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. G. Ramachandra Rao

COUNSEL FOR THE RESPONDENTS: Mr. V. Bhimanna, SC for Rlys.

CORAM:

Hon'ble Shri C.J. Roy, Member (Judl.)

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JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE  
SHRI C.J.ROY, MEMBER(JUDL.)

This application was filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 claiming a relief to set-aside the impugned order No.E(NG)I/92/BR/1, dated 27.2.1992 and No.P/EST/212/KD, dated 16.3.1992 passed by the 2nd and 3rd respondents respectively with a direction to the respondents to enter the date of birth of the applicant in the service records as 25.11.1936 instead of 25.11.34 for all purposes including the superannuation and retirement benefits.

2. The facts of the case are briefly as follows:-

The applicant is now ~~working~~ as Head Clerk in the office of the 2nd respondent. When he was initially appointed as Khalasi (Class IV service) on 4.11.1954, the applicant was not asked to produce any educational certificates or other documents showing his age and educational qualifications. But his age was assessed by the departmental authorities as 20 years at the time of entering service. The service record was open<sup>-ed</sup> by the South Eastern Railway on 1.8.1962 after the applicant was promoted to Class III service as Junior Clerk and the age of the applicant was entered in the service records as 25.11.1934. There is absolutely no legal and valid basis for recording the aforesaid date of birth in the service record of the applicant and it is not borne out by any documentary evidence.

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3. The applicant on coming to know that his date of birth was wrongly entered in the service record, made a representation on 26.7.1990 to the 2nd respondent requesting to correct his date of birth as 25.11.1936 in the service records on the basis of the Matriculation Certificate and the Transfer certificate, duplicates of which were obtained from the Andhra University, Waltair and from the school where he studied Matriculation respectively. He enclosed with his representation the copies of the certificates.

4. The applicant states that he reliably understands that the respondents through the Welfare Inspector got the two educational certificates verified and found them to be genuine and authentic and on that basis, the 2nd respondent forwarded the representation to the 3rd respondent on 9.12.1991 duly recommending for correction of date of birth in service record as 25.11.1936. But the said representation was not considered on merits by the 3rd respondent who by his impugned order dated 27.2.1992 arbitrarily and without assigning any reasons rejected the representations made by the applicant ~~by~~ which was communicated by the 2nd respondent in his proceedings dated 16.3.1992. The applicant states that the 2nd respondent is empowered to correct the date of birth of the applicant in his service records but he had unnecessarily referred the case to the 3rd respondent.

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5. The applicant states that the date of birth entered in the Matriculation or Secondary School Leaving Certificate or the Birth Certificate is the authentic document for purpose of establishing the correct date of birth of a Railway Servant, under Rule 145 of the Indian Railway Establishment Code. Hence, this application.

6. The respondents filed a counter affidavit stating that the service register in respect of the applicant was opened by the South Eastern Railway on 1.8.1962 and his date of birth was recorded as 25.11.1934 and the applicant had signed the service register in token of having seen and accepted the entries made in the service register. After a lapse of 28 years, for the first time, the applicant made a representation dated 26.7.1990 for change of his date of birth stating that, "after deriving knowledge that his date of birth was recorded as 25.11.1934 as against the actual date of birth of 25.11.1936, he could not submit a representation as he was not in possession of school certificates. Hence, he could not ~~utilise the opportunity to~~ utilise the opportunity to claim for alteration of date of birth during 1973 when the Railway Board invited representations from staff having grievance in regard to their date of birth recorded in the records of the Railways". He further stated that, "the original transfer certificate and the Matriculation certificates were destroyed in a fire and that he has been making efforts to obtain certificates and it was only on 28.8.1980 that he could get the same."

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7. The representation made by the applicant was rejected after careful examination in the light of the extant rules and instructions ~~xxx~~ on the subject. If the date of birth of the applicant as 25.11.1936 is true, he had not completed 18 years of age on his date of appointment and it was not permissible. The applicant after keeping silent for about 28 years, raised the issue at the fag end of his service. No relief can be granted to the applicant for his latches in getting his grievance redressed. No reason has been shown by the applicant to what prevented him to get his date of birth altered even after he obtained the duplicates of his certificates on 29.7.1980 and 28.8.1980. It is only at the fag end of his service, he got an idea to get his date of birth altered so that he will gain two more years of service. Hence, the application is devoid of merits and is liable to be dismissed.

8. Heard the learned counsel for the applicant, Mr.G. Ramachandra Rao and the learned Standing Counsel for the Respondents, Mr. V.Bhimanna. CI have also perused the records produced by the learned Standing Counsel for the Respondents.

9. The precise point is whether the date of birth of the applicant is 25.11.1934 or 25.11.1936. After perusing the records, I find that the applicant was first appointed as Khalasi in 1954 and at that time, there was no service

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record opened. But after earning ~~px~~ some promotions, his service record was opened on 1.8.1962 wherein the date of birth of the applicant was entered as 25.11.1934 in which the applicant had also signed.

10. The learned counsel for the respondents, Mr. V. Bhimanna strenuously argued that, having signed the service record and at the fag end of the service, the claim of the applicant for alteration of his date of birth cannot be accepted. He further urged that when the date of birth was <sup>-ed</sup> entered in the service record, he should have produced the Matriculation certificate on 1.8.1962 itself.

11. I find from the form for fixation of pay, the entries with regard to the date of birth as well as other particulars were made in pencil on a Page other than Service Record.

12. The learned counsel for the respondents states that in terms of Rule 225 of the Indian Railways Establishment Code Volume I, the applicant should have claimed change of his date of birth in the service register within five years from the date of entry in the service. He further argued that the applicant should have made his claim after signing the service register because according to him he passed his Matriculation examination in 1954 and his service register was opened in 1962.

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13. One important aspect the learned Standing Counsel for the respondents has missed is that the applicant has joined in service in 1954 and that his service record was opened only in 1962 and in the counter it is stated that the date of birth of the applicant was entered as 25.11.1934 on the basis of his age which must have been assessed at the time of his appointment in case he did not produce any school certificate or his date of birth was as per the entry in his school certificate if he produced such a certificate at that time. When it was assessed, it is not stated anywhere that it was recorded by seeing any Matriculation certificate. Whenever, a date of birth is assessed, there cannot be any accurate precise precision like fixation of date of birth when it is done by way of assessment even if it is done by a Doctor. In this case, there was no mention whether the age of the applicant was assessed by a Doctor and hence the date of birth of the applicant must have been assessed by other than a Doctor. Fixation of the date of birth on the basis of assessment, do not confer any sacrosanct inviolable right to the respondents <sup>that the</sup> to say / fixation of date of birth by way of assessment having once been done is absolutely correct. If there is no other evidence, we need not go into that aspect but in the presence of other evidence, the assessment of the age and fixation of date of birth will lose its importance. That means, when the respon-

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dents say categorically in the counter that the age of the applicant must have been assessed, it is absolutely clear now that no documentary evidence was seen at the time when the service register was opened in 1962.

14. I have also perused the original documents submitted by the applicant viz., Migration Certificate from Andhra University dated 23.8.1954, Transfer Certificate from Silver Jubilee High School, Kharagpur dated 28.8.1980 and the Matriculation certificate from Andhra University dated 29.7.1980. In both the Transfer Certificate and the Matriculation certificate, the date of birth of the applicant was shown as 25.11.1936. The xerox copies of all the above certificates were filed by the applicant along with his representation for change of his date of birth to the Department stating that these certificates were destroyed in a fire accident and subsequently they were acquired and produced.

15. Therefore, it is evident that the certificates obtained were though stated to be duplicate, the transfer certificate was issued with a heading "Original".

16. It is nobody's case that these certificates are fabricated for the simple reason that in Annexure 10 dated 19.12.1991, a letter from the office of the General Manager, Personnel Branch, South Central Railway, Secunderabad addressed to the Secretary, Railway Board, New Delhi, wherein it is amply made clear that, "copies of certificates produced by him have been got verified by deputing a Welfare Inspector to the above

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mentioned two educational institutions and they have certified that the date of birth of Shri K.D.Murthy (applicant herein) is 25.11.1936. The Board are, therefore, requested to accord their approval for the change in the recorded date of birth."

17. From the above, it is abundantly proved that the applicant has made out strenuous efforts to obtain the certificates only when his date of superannuation was made known to him.

18. The right for change of date of birth based on facts on which tenure of service is depending, is a valuable right. 11-11-36

19. The learned Standing Counsel for the Respondents, Mr. Bhimanna vehemently contended that the action taken by the respondents in rejecting the claim of the applicant was in any manner illegal or against any principles of natural justice. In support of his contention, he cited a Judgment of the Hon'ble Supreme Court of India reported in AISLJ 1992(3) SC 75 (Executive Engineer, Bhadrak (R&B) Division, Orissa and others Vs. Rangadhar Mallik). That was the case where the date of birth of the respondent therein was recorded in the service book as 27.11.1928 on the basis of horoscope and it was signed by the respondent therein in token of acceptance. The Administrative Tribunal directed fresh enquiry as no personal hearing was given to the respondent therein before rejecting representation. It was held by lordships that "there is no required of law to give a personal hearing before rejecting a representation". The facts of present case are different from the case cited above.

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20. The learned counsel for the applicant, in support of his plea that the <sup>change of</sup> date of birth of the applicant cannot be rejected merely on the ground of latches, relied on the following decisions:-

a) <sup>SLR</sup> (SLR) 1990(7), Calcutta High Court p.69 (Nihar Ranjan Bhowmick Vs. State of West Bengal and others) wherein their lordships held that "mere self-serving declaration of a recruit in public employment can never be the proof of the age of the date of birth as recorded in the Matriculation certificate constitute a good proof of the age-Date of birth as recorded in <sup>in and then in</sup> ~~the matriculation certificate~~ must be taken to be correct. Retirement before attaining the age of superannuation on the basis of date of birth as recorded in the matriculation certificate illegal."

b) <sup>SLR</sup> (SLR) 1976(1), Himachal Pradesh High Court p.402 (Shri Manak Chand Vaidya Vs. State of Himachal Pradesh and others), wherein their lordships held that "right to get erroneous entry as to date of birth corrected cannot be curtailed by executive instructions. If on application made by the Government servant, the Government finds that there is substance in the claim, it is bound to give effect to the claim and alter the relevant entry in the service record. If the entry if found to be erroneous it must, in all fairness to the Government servant, be corrected. When such application should be entertained is a matter relating to procedure. A provision determining when the application should be entertained has the effect of limiting the exercise of the right of

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the Government to show that the recorded entry is erroneous. Such limit can be imposed only by a provision having the force of law. If it does not have the force of law and is merely an executive direction without sanction of ~~that~~ law, it cannot affect the exercise of the Government servant's right to show that the recorded entry is erroneous. Now, the Government of India decision, on which the respondents rely, does not have the status of a statutory rule and, therefore, cannot defeat the legal right of the Government servant mentioned above. So far as it affects the determination of the true date of birth it must be considered ultra vires for the reasons set out above." It is further held at para 9 that, "The matriculation certificate is only a piece of evidence and the Government although it normally accepts it, may for good reasons decline to consider it as setting out the true date of birth. It is for the Government to consider whether the date of birth shown in the matriculation certificate should be accepted or not. But it cannot decline to consider the certificate merely because it was not a party to the proceedings taken by the University for correcting the matriculation certificate."

c) <sup>SLR</sup> (SLR) 1981 (1) Calcutta High Court p.570 (Pranatha Nath Choudhury Vs. The State of West Bengal and others) wherein their lordships held that, "the date of birth entered in the Matriculation certificate to be accepted as correct and

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the appellant can be superannuated only on the basis of date of birth entered in the matriculation certificate."

d) <sup>SLR</sup> (SLR) 1990(1) <sub>h</sub> Delhi High court p.31 (Shaukat Ali Vs. Indian Airlines) wherein his lordship held that, "School leaving certificates cannot be rejected on the mere ground of delay and the date of birth to be changed on the basis of school leaving certificate".

e) <sup>SLR</sup> (SLR) 1991(7) <sub>h</sub> CAT (Madras) p.180 (C.Narayanan Vs. General Manager, Ordnance Clothing Factory) wherein their lordships held that, "Date of birth in the service book recorded on the basis of assessment made by the Medical Officer at the time of joining service in the year 1963-Representation for correction of date of birth in the year 1989-Correction sought on the basis of an extract from the school register signed by the Headmaster of the school-order rejecting representation quashed".

f) <sup>SLR</sup> (SLR) 1991(7) <sub>h</sub> CAT (Calcutta) p.352 (Ramjanam Singh Vs. Union of India and others) wherein the Hon'ble Members held that, "rejection of claim without considering matriculation certificate is not valid and a direction was issued to change the date of birth in the service as per the date given in the matriculation certificate".

g) <sup>SLR</sup> (SLR) 1990(1) <sub>h</sub> CAT (Calcutta) p.440 (Anandi Maharaj Vs. Union of India and others), wherein the Hon'ble Member (Admn.) Mr. R.Balasubramanian, held that "Date of birth

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column left blank in the service book at the time of entry into service and the applicant therein passed matriculation examination after joining the railway service. Date of birth as entered in the matriculation certificate shall be treated to be correct in the absence of any other unassailable document to the contrary".

21. Besides, the Full Bench of the Central Administrative Tribunal in "Mallela Sreeramamurthy and another Vs. Union of India and others (1990 LIC 547)", considered the provisions of Rule 225 of the Indian Railway Establishment Code Volume-I. For the sake of

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convenience, it is reproduced below:-

"Apart from the interpretation of the rule, another ground for holding that the right of employees in service on 3.12.1971 cannot be taken away is the ground of discrimination. It has been held by the Principal Bench in (Heeralal Vs. Union of India (supra)) that Note 5 to FR 56 does not take away the right of a Government employee who is appointed prior to coming into force of the said Note to have their date of birth corrected. The provisions of Note 5 to FR 56 and Rule 145(3)(iii) are similar as can be seen from a summary of these provisions placed in juxtaposition below:-

Note 5 to FR 56

Rule 225(4) (Old) 145(3)

- |                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                    |
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| <p>1. The date of birth recorded in accordance with these rules shall be held to be binding and no alteration shall ordinarily be permitted.</p> <p>2. It is open to the President in the case of Gr. A &amp; B and General Manager in the case of Gr. C and D to cause the date of birth to be altered.</p> | <p>1. The date of birth declared by the Govt. servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note.</p> <p>2. An alteration of the date of birth of a Government servant can be made with the sanction of a Ministry or Deptt. of the Central Government.</p> |
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3. For correction a satisfactory explanation of the circumstances in which the wrong date came to be entered is to be furnished by the Railway servant.
3. If it is clearly established that a genuine and bonafide mistake has occurred, the date of birth can be corrected.
4. The explanation (application) for correction should not be entertained after completion of the probation period of 3 years whichever is earlier.
4. The request for alteration is to be made within five years of entry into Government service.

Thus the provisions relating to Government servants and Railway employees are almost similar in regard to the right to get their date of birth altered except that the time limit prescribed for Government servants is larger than that is available to Railway servants. The relevant portion of the Judgment in Heeralal's case reads as follows:-

"In issuing the said S.O. it could never have been the intention of the Government that there should be two classes of Government employees, those employees who had entered Government service prior to 15.12.1974 whose date of birth could not be corrected, however erroneous that entry may be and other who entered the service within five years of the said S.O. are thereafter entitled to get the entry as to date of birth in the service record corrected. That would be an invidious discrimination unsustainable in law. It is, therefore, Reasonable to infer that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."

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Applying the dicta laid down in Heeralal's case and on an interpretation of rule 145(3) (iii) i.e., reading the rule as a whole, it would follow that all Railway servants have a right to get their date of birth altered. In regard to employees who joined service after 3.12.1971 the rule making authority has prescribed a time limit for making applications to get their date of birth altered. Because the rule is silent regarding those who joined service before 3.12.1971 it cannot be inferred that their right is taken away. Since the rule does not prescribe any limitation in regard to such employees making applications, any representation or application made by such an employee for correction of his date of birth cannot be rejected in limine on the ground that it is time barred."

22. Besides, in "Jagannath Sharma Vs. Union of India (SLR 1987(1) CAT 410)", the Hon'ble Members of the Central Administrative Tribunal, Chandigarh Bench, held that, "correction of date of birth is an important legal right and it cannot be denied merely on the basis of administrative instructions. As such, every such request has to be decided in the peculiar circumstances and the facts of the case."

23. In "Hiralal Vs. Union of India (ATR 1987(1) CAT 414)", their lordships of the Central Administrative Tribunal, Principal Bench, held that-

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"The age of a Government servant as of any one else has to be counted with reference to the date on which the person was born. any error in the service record as regard the date of birth in the service record cannot alter the date of birth. Of course there has to be some record or proof as to what the correct date of birth is. If there is any error in the service record in that entry, that has to be corrected, unless some service rule prohibits correction or ordains that irrespective of what the date of birth of a Government servant may be he shall be deemed to attain the age of superannuation based on the date of birth as entered in the service record and once entered that entry cannot be altered. In the absence of any such rule, a Government servant cannot be precluded from showing that the entry in the service record is not correct. Whenever a question arises whether the entry of the date of birth in the service record is correct or not, that has to be enquired into and that had been done in this case in accordance with law. Note 5 to Fundamental Rule 56 governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No.19017/79-Estt.-A, dated the 30th November, 1979, published as S.O.3997 in the Gazette of India dated the 15th December, 1979, takes effect from that date. It lays down that a request for the correction of

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the date of birth in the service record shall be made within five years of entry into Government service. But obviously the five years period of limitation prescribed for the first time under the said S.O.3997 cannot apply to these Government servants who were in service by that day for more than 5 years. In issuing the said S.O., it could never have been the intention of the Government that there should be two classes of Government employees - those employees who had entered Govt. service prior to 15.12.79 whose date of birth could not be corrected, however erroneous that entry may be and others who entered the service within five years of the said S.O. are thereafter entitled to get the entry as to date of birth in the service record corrected. That would be an invidious discrimination unsustainable in law. It is, therefore, reasonable to infer that, that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."

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24. One of the grounds attacked by the learned counsel for the applicant is that the impugned order dated 16.3.1992 rejecting the claim of the applicant for change of his date of birth is not a speaking order nor shows the application of mind. The order passed on 16.3.1992 is quoted below:-

"Your request for alteration of recorded date of birth was referred to Board vide this Office letter of even number dated 9.12.1991.

The Board have advised vide their letter No.E(NG)1/92/BR/1, of 27.2.1992 that after careful consideration of the matter disagreed to alter the recorded date of birth".

From the above, it ~~xx~~ is clear that the claim has been rejected in arbitrary manner without assigning any reason.

25. In this connection, it is pertinent to cite a decision of the High Court of Allahabad reported in "I(1991) CSJ (HC) 318, Nanki Devi and another Vs. Food Corporation of India and others", wherein his lordship observed-

"In my opinion, the petitioner by means of the affidavit filed by them and other documents fully established their claims and the authorities made a favourable recommendation for giving appointment under

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Class III or Class IV as found suitable by the authorities. However, the claim has been rejected in arbitrary manner without assigning any reason."

26. Considering the view expressed by his lordship in the above case, I am of the opinion, that the claim of the applicant cannot be rejected in a cryptic manner as has been done by means of the impugned order.

27. Whenever an executive passes an order which is likely to be contested in the court of law, it is to be treated and contain the objective satisfaction in the nature and it should contain reasons so that Courts or Tribunals can find out whether proper application of mind of the executive is made available to the case pertaining to the aggrieved persons. Here, I find that there is no reason given in the impugned order dated 16.3.1992 which was rejected in a cryptic manner.

28. Therefore, applying the principles in the Judgments cited supra, it can be seen that the valuable right of date of birth can be questioned at any stage.

29. In view of the above discussions, I hold that the applicant has made out a case for change of his date of birth. The respondents are directed to alter the date of birth of the applicant in his service records as 25.11.1936 forthwith.

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30. The application is accordingly allowed with no order as to costs.

(C.J.ROY)  
Member(Judl.)

Dated: 16th November, 1992.

Deputy Registrar(J)

To

1. The General Manager, Union of India,  
S.C.Railway, Secunderabad.
2. The Chief Personnel Officer,  
S.C.Railway, Secunderabad.
3. The Secretary(Establishment)  
Railway Board, New Delhi.
4. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
5. One copy to Mr.V.Bhimanna, SC for Rlys. CAT.Hyd.
6. One spare copy.

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:  
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 16-11-1992

~~ORDER~~/JUDGMENT:

R.A. /C.A. /M.A.No

in

O.A.No. 342/92

T.A.No.

(wp.No )

Admitted and interim directions  
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.

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Central Administrative Tribunal  
DESPATCH  
18 NOV 1992  
HYDERABAD BENCH.