

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD

O.A.NO: 923/94

Between:

N.Sri Rama Murthy

... Applicant

AND

Accountant General, Andhra Pradesh
Hyderabad & Others

... Respondents

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS 1 & 2

I, J.KRISHNA RAO, S/O. Sri Subbaiah, aged about 57 years,
do hereby solemnly affirm and state as follows:

1. I am the Deputy Accountant General (Admn) in the Office
of the Accountant General (Audit-II), Andhra Pradesh and
respondent No:1 herein and as such I am fully acquainted with
all the facts of the case. I have read the application and I
am filing this reply statement on behalf of the respondents
1 & 2 herein, as I have been authorised to do so. The averments
made by the applicant in the application are neither true nor
correct save those that have been expressly admitted hereunder.
The applicant is, therefore, put to strict proof of such aver-
ments that have not been traversed hereunder.

2. For a proper appreciation of the issue involved in the
case, brief facts thereof are presented hereunder:

The applicant was appointed as Auditor w.e.f. 7-5-66 in
the erstwhile office of the Accountant General and was
confirmed in the cadre w.e.f. 12-9-70. He passed the

Ist PAGE CORRECTION

ATTESTOR

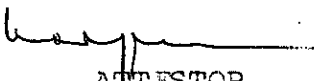
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & E)
AP, HYDERABAD.

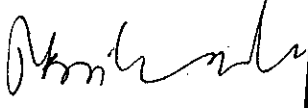
DEPONENT

उप महा लेखाकार (प्रशासन)
Deputy Accountant General (Admn)
कार्यालय, महा लेखाकार (लेखापरिक्षा)
Office of the Accountant General (Aud)
आंध्र प्रदेश, हैदराबाद-500 463
Andhra Pradesh, Hyderabad-500 463

SAS examination held in Nov'73 and was promoted as Section Officer w.e.f. 20-11-78. His junior, Sri T.Nageswara Rao, Resp. No.3, passed the examination along with the applicant in Nov'73 and was promoted as Section Officer on 4.12.78. Consequent on restructuring of the Office into Accounts and Entitlement and Audit offices w.e.f. 1-3-84, options were called for from the staff members for allotment to either of the offices. The applicant opted for retention in the A&E office whereas his junior, resp. No. 3, had opted for audit office. As per the option exercised by the applicant he was retained in the A&E office while resp. No.3 was allotted to the audit w.e.f. 1.3.84. Later, on the personal representation of the staff to the C & AG of India made on 18.7.84, seeking permission to change their preferences by some of the employees it was agreed that individual representations received, if any, from employees would be considered and that any change of cadre so permitted after review would, however, be subject to such conditions which may be imposed to protect the interests of those who have already been allotted on restructuring of the organisation. Accordingly, instructions were issued vide Lr.No. 833 N2/83-84 and circular No.NGE/75/1984 dated 16.8.84 (Copies at Annexure I) allowing change of allotment from Accounts to Audit and

2nd PAGE CORRECTIONS



 ATTESTOR
 K. CHANDURA MOHA.
 SENIOR ACCOUNTS OFFICER
 O/O ACCOUNTANT GENERAL (A & E)
 A.P., HYDERABAD.



 DEPONENT
 उप महा लेखाकार (प्रधान)
 Deputy Accountant General
 कार्यालय, महा लेखाकार (अख)
 Office of the Accountant General
 आंध्र प्रदेश हैदराबाद-50
 Andhra Pradesh Hyderabad

vice versa. At this juncture, the applicant submitted a representation on 5.9.84 seeking allotment to Audit office. on his accepting the terms and conditions stipulated for such allotment from the Accounts to Audit on 2.1.85, he was transferred as S.O. in the Audit office, vide Admn.I/8-325/84-85/O.O.154, dated 11.1.1985, (Copy at Annexure II). He joined the Audit office on 11.1.85 F.N. The terms and conditions stipulated for transfer from Accounts to Audit were as follows:

1. Transfer will be according to the original seniority in the composite office.
2. Promotions and non-functional selection grade granted on or after 1.3.84 to the representationist will not be automatically protected or taken into consideration.
3. Transfer will be to the corresponding posts for which the first junior in the composite office had been transferred except that placement in higher grades of Rs.425 - 810 and 650 - 1040 will be governed by clause-7 below.
4. Transfer will be subject to availability of regular vacancies in Audit office.
5. If non-functional selection grade had been given from a date prior to 1-3-84, the transferees will be allowed to retain his scale as personal in audit office till placed in the higher grade or ceases to hold the post otherwise.

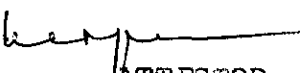
3rd PAGE CORRECTIONS


ATTESTOR
SENIOR ACCOUNTS OFFICER
U.O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.


DEPONENT
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Andhra Pradesh Hyderabad-500 4

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6. After transfer, the seniority of the employee will be integrated with the existing incumbents in the grade according to inter-se-seniority in the erstwhile composite cadres of the Accountant General as if the employee had been transferred initially to Audit along with his immediate juniors.
 7. Promotions to higher grades. (Eg. A.O., A.A.O., Sr. Auditor) will be only against future vacancies subject to:
 - i. All conditions for promotions, including fitness, eligibility criteria, reservation, service conditions, recruitment rules, if any, as on date of promotion.
 - ii. Seniority in the higher grade only from the date of promotion with no weightage or claim to seniority over employees already placed in higher grades.
 - iii. Pay in higher grades will be fixed under FRs on date of promotion without any notional retrospective effect, and no stepping up will be allowed vis-a-vis erstwhile juniors in the composite office.
 - iv. Exemptions for appearance in various examinations in audit stream by employees who passed in the examination in accounts office will be according to such instructions as issued/may be issued by C & A.G.
 8. All the employees in audit office would be liable to perform all the duties and functions connected with the audit, including assignment to resident and peripatetic audit parties.

4th PAGE CORRECTIONS


ATTESTOR
K CHANDRA MOHA
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A & S)
AP, HYDERABAD.


DEPONENT

उप महा लेखाकार (प्रशासन)
Deputy Accountant General (Adm)
कार्यालय, महा लेखाकार (लेखापरिष्कार)
Office of the Accountant General (A)
आंध्र प्रदेश, हैदराबाद-500 463
Andhra Pradesh Hyderabad-500

9. The transfer will be final and no further representations for a second transfer will be considered.

It may be pertinent to point out here that at the time the applicant was transferred to Audit office on 11.1.85 his junior, resp. No.3, was already promoted and working as Asstt. Audit officer from 1.3.84 onwards. The applicant, after a lapse of more than 8 years, had in his representation dated, 6.7.93 (Annexure III) claimed seniority over resp.3 based on the seniority in the composite office. As the applicants transfer was on the corresponding post of Section Officer on which his first junior in the composite office Sri T.Nageswara Rao, had been transferred and that as the representationists had no claim over seniority over the employees already placed in the higher grades (as per the Commission's order of the transfer to Audit office), he was informed vide lr.No. Prl.AG(Au)I/Prom/8-18/93-94/123, dated 16.9.93, (copy at Annexure IV) that his seniority in the cadre of AAO was correctly fixed and that it required no revision. Aggrieved by the said reply the applicant filed the present application.

The applicant's seniority was correctly fixed in the cadre of Section Officers taking the date of his transfer to the Audit office i.e. 11.1.85, duly integrating his seniority with the then existing incumbents in the cadre of Section officers in accordance with the terms and conditions of his transfer to audit as contained in Lr. dated 16.8.84 of the

5th PAGE CORRECTIONS


ATTESTOR

JOINT ACCOUNTANT GENERAL, A.P.,
A.P., HYDERABAD.


DEPONENT

उप महा लेखाकार (प्रकाशन)
Deputy Accountant General (Ac-
कायालय, महा लेखाकार (लेखापरि
Office of the Accountant General (

आंध्र प्रदेश, हैदराबाद-500 46
Andhra Pradesh, Hyderabad-500

C & AG to which he consented. The applicant got his promotion as A.A.O w.e.f.18.11.85 based on his seniority in the audit office. As per clauses 7 (ii) and 7 (iii) of the terms and conditions of transfer the applicant cannot claim seniority over the resp. No.3 who was already promoted as A.A.O. w.e.f.1.3.84. Further, the applicant till 6.7.93 had not claimed seniority after his transfer to Audit Office. The fixation of seniority is strictly in accordance with the terms and conditions of transfer to Audit office and as such he is not entitled to the relief prayed for.

The various averments/contentions raised in the application are traversed hereunder in seriatum.

The averments in paras 1, 2 and 4 of the application are only formal and as such they do not call for any remarks.

4. Regarding the averments in para 3 of the application, I submit that the remarks offered under para 6 hereunder would hold good.

5. In regard to the averments in para 5 of the application, I submit that the cause of action in the instant case arose in 1985 when he was transferred to Audit and by which time his junior was already working in the higher cadre of A.A.O and for almost eight years he did not raise the issue. The Supreme Court has held in Bhoop Singh Vs Union of India (1992(21)ATC675) that it is expected of a Govt. Servant to approach the Court

6th PAGE CORRECTIONS

K CHANDRA MOH.
SENIOR ACCOUNTS OFFICER
O/O ACCOUNTANT GENERAL (A.A.O.)
A.P., HYDERABAD.

ATTESTOR

DEPONENT

उप महा लेखाकार (प्रशासन)
Deputy Accountant General (Admin.)
कार्यालय, महा लेखाकार (लेखापरिक्षा) I
Office of the Accountant General (Audit)
अंध्र प्रदेश 500 463
Andhra Pradesh Hyderabad-500 463.

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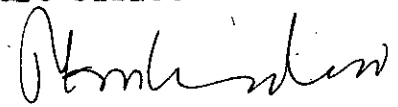
for the relief he seeks within a reasonable period. This is necessary to avoid dislocating administrative set up after it has been functioning on a certain basis for years. Further inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. As such the present application suffers from laches and is liable to be dismissed as barred by limitation U/sec 21 of the Administrative Tribunals Act, 1985.

6. Regarding the averments in paras 3 and 6 of the application, I submit that the applicant was appointed as Auditor w.e.f. 7-5-66 in the erstwhile office of the Accountant General and was confirmed in the cadre w.e.f. 12-9-70 and not w.e.f. 2-9-70 as stated in the O.A. He passed the S.A.S. examination held in Nov'73 and was promoted as Section Officer w.e.f. 20-11-78. His immediate junior Sri T.Nageswara Rao who also qualified in the said examination along with the applicant was promoted as S.O. w.e.f. 4-12-78. Consequent on restructuring of the office into Accounts and Entitlements and Audit offices w.e.f. 1-3-84, options were called for from the staff for allotment to Audit or for retention in the A&E office. The applicant had opted for retention in the A&E office while his junior, Sri T.Nageswara Rao sought allotment to Audit office, the applicant had knowingly and willingly opted to be retained in A&E office. As per the option exercised by the individuals, the applicant was retained in the A&E office whereas Sri T.Nageswara Rao was allotted to the Audit office w.e.f. 1-3-84. On allotment to the Audit office

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ATTESTOR

SENIOR ACCOUNTANT
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DEPONENT

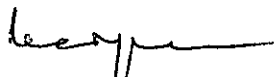
उप महा लेखाकार (प्रशासन)
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Andhra Pradesh, Hyderabad-500 463.

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Sri T.Nageswara Rao severed all his connections with the A&E office. As per his turn in the order of seniority in Audit Sri T.Nageswara Rao was appointed as Asstt. Audit Officer w.e.f. 1-3-84 which carried the scale of pay of Rs.650 - 1040. Later, on a representation made to the C & AG, on 18.7.84, seeking permission to change their options already exercised earlier, it was agreed to consider individual representations received, if any, from the employees and it was made clear that any change would, however, be subject to such conditions that may be imposed to protect the interests of those who were already benefitted on allotment on restructuring of the organisation. Accordingly instructions were issued vide C & AG's Lr.No.833-N2/83-84/ Circular No.NGE/75/1984, dt 16.8.84 (Copy at Annexure I) specifying the terms and conditions regulating transfers from Accounts to Audit and vice versa. Copies of the said circular were placed on Notice Board for information of the staff of both the offices. The terms and conditions of transfer have already been discussed earlier under para 2 above.

7. The applicant submitted his representation on 5.9.84 seeking transfer from Accounts to Audit accepting specifically the terms and conditions set out in that regard. His acceptance letter was placed in his service book. He joined the Audit office as Section Officer on 11.1.85(F.N.). The applicant accepted the terms and conditions of transfer set out in the C&AG letter dt.16.8.84. He is, therefore, estopped from going back on his acceptance.

8th PAGE CORRECTIONS


ATTESTOR

SENIOR ACCOUNTS OFFICER
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A.P., HYDERABAD.


DEPONENT


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Andhra Pradesh, Hyderabad-500 463

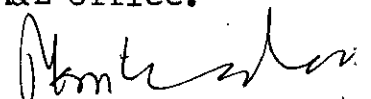
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8. On his transfer to the Audit office as S.O. his seniority in the cadre was integrated with that of the existing incumbents in that cadre according to their inter-se-seniority in the erstwhile office of the Accountant General as if he was transferred to Audit alongwith his immediate juniors in terms of condition No.6. He got his turn for promotion as A.A.O. on 18-11-85 and as such his seniority in the cadre of A.A.O. is to be reckoned only from the date of his appointment as A.A.O. i.e. 18-11-85. He cannot claim seniority over Sri T.Nageswara Rao who was already promoted as A.A.O w.e.f. 1-3-84, especially so, in terms of condition No.7(ii) read with condition No.3. Thus, his seniority at Sl.No.398 was correctly reflected in the gradation list of A.A.O as on 1-3-1987 while that of Sri T.Nageswara Rao, who was senior to him in the cadre of A.A.O., was shown at Sl.No.338. It is vehemently denied that there was any violation of the Principles of Natural Justice in fixing his seniority as A.A.O. as contended by the applicant. Further, Sri T. Nageswara Rao was working in the higher post of A.A.O in the Audit office while the applicant as S.O. till 18-11-85.

9. The contention of the applicant that he was discriminated in promotion as A.A.O is denied. The cases of S/Sri G.Janardhan and C.V.S.Prasada Rao, referred to by the applicant, are not relevant to this case as their cases were on a different footing. As for instance, Sri G.Janardhan was senior to Sri C.V.S.Prasada Rao in the erstwhile composite office and both the officials had in the first instance opted for retention in A&E office.

9th PAGE CORRECTIONS


 ATTESTOR
 K CHANDRA MOHAN
 SENIOR ACCOUNTS OFFICER
 O/O ACCOUNTANT GENERAL (A & E)
 A.P., HYDERABAD.


 DEPONENT
 उप महा लेखाकार (प्रशासन)
 Deputy Accountant General (Adm)
 कार्यालय, महा लेखाकार (लेखापरिक्षा)
 Office of the Accountant General (Au-
 मांध्र प्रदेश, हैदराबाद-500 463
 Andhra Pradesh, Hyderabad-500 463

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Subsequently, they represented for transfer to Audit with reference to the circular dt-16.8.84. Based on their representations, Sri G.Janardhan was transferred to the Audit office w.e.f.11.1.85 while Sri C.V.S.Prasada Rao w.e.f. 2.3.85 (A.N.). Sri G.Janardhan being senior to Sri C.V.S.Prasada Rao, both in the erstwhile office and in the Audit office, he was appointed as A.A.O w.e.f. 26.3.86 while Sri C.V.S. Prasada Rao w.e.f.23.3.87.

10. In regard to the averments in para 7 of the application, I submit that the applicant has never represented his case after his transfer to Audit till 5.7.93. His first representation dated 6.7.93 was considered and as there was no merit in the case he was informed vide Lr.No. Admn.I/Prom/8-18/93-94/T.R.No.123, dt.16.9.93 that his placement in the seniority list as A.A.O. had been correctly fixed and warranted no revision. The applicant hasnot exhausted the alternative departmental remedies.

In view of the foregoing submissions, it is clear that the applicant has failed to make out a case for grant of the relief prayed for. There are no merits either on facts or in law warranting any interference by this Hon'ble Tribunal. It is therefore, prayed that the Hon'ble Tribunal may be pleased to dismiss the application with costs.

Sworn and signed before me

on this the 30th day of

January, 1995


ATTESTOR

K CHANDRA MOHAN
SENIOR ACCOUNTS OFFICER
J.O ACCOUNTANT GENERAL (A & E)
A.P., HYDERABAD.


DEPONENT

उप महा लेखाकार (प्रशासन)
Deputy Accountant General (Adm)
कार्यालय, महा लेखाकार (लेखापरिक्षा)
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आंध्र प्रदेश, हैदराबाद-500 463
Andhra Pradesh Hyderabad-500 4

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3. Transfer will be to corresponding posts for which the first junior in the composite office had been transferred except that placement in higher grades of Rs.425-800 and Rs.650-1040 will be governed by clause.7 below.
4. Transfer will be subject to availability of regular vacancy in Audit Office.
5. If non-functional Selection Grade has been given from a date prior to 1.3.84, the transferees will be allowed to retain this scale as personal in Audit Office till placed in the higher grade or ceases to hold the post otherwise.
6. After transfer, the seniority of the employee will be integrated with the existing incumbents in the grade according to interse seniority in the erstwhile composite cadres of the Accountant General as if the employees had been transferred initially to Audit along with his immediate juniors.
7. Promotions to higher grades (e.g. A.O., A.A.O., Sr. Auditors) will be only against future vacancies subject to:
 - i) all conditions for promotions, including eligibility criteria, reservation, service conditions/recruitment rules, if any as on date of promotion.
 - ii) retention of seniority in the higher grade according to erstwhile composite seniority in the A.G. Office. (This is for those who have preferred in time for Audit but allocated for Accounts by AG.), or
iii) seniority in the higher grade only from date of promotion with no weightage or claim to seniority over employees already placed in higher grades. (This alternative is for staff who change the preference now or who did not exercise preference in time earlier.)
 - iii) Pay in higher grades will be fixed under FRs on date of promotion without any notional retrospective effect and no stepping up will be allowed vis-a-vis erstwhile juniors in the composite office.
 - iv) Exemptions for appearance in various examinations in Audit stream by employees who passed in the Examinations in Accounts Office will be according to such instructions as issued/may be issued by CAG.
8. The transfer will be final and no further representations for a second transfer will be considered.

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which became effective from 1.3.84 continued to remain operative even when the applicant had represented for transfer to Audit Office. There can therefore be no discrimination between those who opted initially to join the Audit Office and those who joined later on. The promotion to the post of Asst. Audit Officer is on the basis of granting higher scale of pay to 80% of Section Officers. The basic cadre being that of Section Officer only, the fact that Sri T. Nageswar Rao was A.A.O. and was given the higher scale earlier than the applicant, should not by itself alter the seniority position held in the grade of Section Officer. The applicant's counsel thus asserts that by means of administrative instructions, the settled position of seniority cannot be upset.

8. There can be no dispute that where rules governing seniority exist, the seniority must be determined in terms of the relevant rules only. In the instant case, there is nothing on record to indicate that any statutory rules have been promulgated governing the seniority of staff joining the Audit Office after the reorganisation. The administrative instructions issued in this regard cannot therefore be termed as either unilateral or irregular. The C.A.G. having examined the problem arising on account of several representations for transfer from Accounts to Audit and vice versa decided to allow transfer on certain conditions. These conditions were communicated to all concerned as can be seen from the letter dt. 16.8.84 issued by the C.A.G. of India addressed to all Accountants General (Accounts)

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and (Audit). In fact, it was as a result of these administrative instructions that the applicant's case for transfer to Audit Office was considered and accepted. The applicant having accepted to join the Audit Office in the grade of Section Officer cannot therefore claim retrospective promotion to the post of A.A.O. so as to secure seniority over his erstwhile junior.

9. We find that the condition specified in Clause.7 (ii) of the instructions dt. 16.8.84 with regard to the seniority in the higher grade only from the date of promotion with no retrospective advantage or weightage, was intended to protect the seniority of those who had opted for/ joined the Audit Office and secured promotion. The said instructions cannot be termed as unjust or unfair to the later transferees to the Audit Office, particularly when they joined Audit Office on their own volition.

10. It was stated in the O.A. that the Indian Audit and Accounts Department was a single entity and as such transfer of an employee from Accounts to Audit should not result in his loss of seniority under any circumstances. In this context, reference was made to the judgement of the Supreme Court in the ACCOUNTANT GENERAL AND ANOTHER V/s S. DORAI SWAMY AND OTHERS AIR 1981 SC 783. In that case, in altogether a different context, the Supreme Court observed that the Indian Audit and Accounts Department is a single Department. In any case, that judgement referred to the situation obtaining prior to 1.3.84 i.e. before the reorganisation of the combined Audit and Accounts Offices.

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11. Another case to which a reference was made in the O.A. is that of JAGDISH PRASAD SINHA v. BHAGWAT PRASAD AIR 1989 SC 1794. It was held therein that the notification of the State Government effecting a separate cadre for Higher Secondary teachers and Secondary teachers of the upper division and Subordinate Education Service and separate gradation list which was called the Secondary Education Service is violative of Arts. 14 and 16 of the Constitution. The facts of that case have no relevance to the case of the applicant, but nevertheless we find that the reason why the Supreme Court came to that conclusion may best be reproduced below:-

"The State Government could not dislodge the conclusion that bifurcation was the outcome of an attempt to provide quick promotional avenues to those who were lower down in the joint cadre and would not have come within the range of consideration for promotional benefits but by bifurcation became entitled to such benefits-

Contrary to the situation in the above case, the Combined Audit and Accounts Office was reorganised "with a view to ~~effect economy~~ ^{There is a} ~~that~~ ^{view of work and} also to effect economy". ~~That~~ cannot, therefore, be any valid challenge to the CAG's Policy decision dt.24.12.83.

12. In the O.A. quite a few other issues have been raised with reference to several decided cases of the Supreme Court. In our considered view, it will serve no purpose to enter into a discussion of all the said issues, and the Case Law cited in support thereof because none of them is of any assistance to the case of the applicant.

13. The transfer of the applicant to the Audit Office and his consequential fixation of seniority was done in accordance with the extant instructions which were known to the applicant at the time of his joining the Audit Office. The relevant instructions make it clear that he cannot

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claim seniority over employees already placed in higher grades. We do not therefore find that the official respondents acted either irregularly or unfairly in the matter of fixation of the seniority of the applicant.

14. In the result, we find no merit in the O.A. and the same is dismissed. No order as to costs./

A.D. Golda
A.D. Golda,
Member (A)

K. S. Rao
Vice Chairman

Dt. 07-4-1995.

Avibh
Deputy Registrar(J)CC

To kmv

1. The Accountant general,
A.P.Hyderabad.

2. New Delhi: ~~Comptroller and Auditor General of India~~

3. One copy to Mr.K.Radhakrishna Murthy, Advocate, CAT.Hyd.

4. One copy to Mr.G.Parameswar Rao, SC for A.G.CAT.Hyd.

5. One copy to Library, CAT.Hyd.

6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE- CHAIRMAN

AND

THE HON'BLE MR. ^{A. B. Gorthi} ~~R. RANGARAJAN~~ M (ADMN)

DATED - 7 - 5 1995.

ORDER/JUDGMENT:

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

O. A. No.

in 923/94

T. A. No.

(W. P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No. order as to costs.

