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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

CA.No.1604/94.

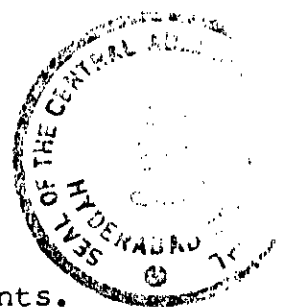
Date of order: 21-1-1996.

Between:-

1. G.S.N.Sarma
2. G.Apparao
3. T.Ramunaidu
4. Sk.Md.Hussain
5. P.Ramesh
6. B.Apparao
7. P.S.Naidu
8. P.Ch.S.Reddy
9. A.K.C.Kenedy
10. K.Baburao
11. P.Srinivasa Rao
12. N.Atchuta Rao

....

Applicants.



And

1. General Manager, South Eastern Rlys,
Garden Reach, Calcutta-43.
2. Divisional Railway Manager, South Eastern
Rlys, Visakhapatnam.
3. Senior Divisional Operating Manager,
South Eastern Rlys, Visakhapatnam.

...

Respondents.

Counsel for the Applicant: Mr.Y.Subrahmanyam

Counsel for the Respondents, Mr.V.Bhimanna, SC for Rlys.

CORAM:

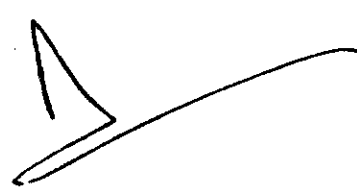
HON'BLE MR.JUSTICE V.NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R.RANGARAJAN, MEMBER ADMINISTRATIVE.

4
44
: 4 :

Signallers in Waltair division as 44 for the purpose of restructuring as on 1.1.1984 instead of taking cadre strength as 33. No reply is reported to have been given to the said representation.

5. In the meantime, Railway Board issued instructions for further restructuring of certain Group-C and D cadres of Railway with effect from 1.3.1993, by their letter dt. 27.1.1993 bearing No.PC III/91/CRC/1(page-31). As per this letter percentage of Junior Signallers, Senior Signallers and Head Signallers should be in the ratio of 30 : 40 : 25 and remaining 5% will be in the higher grades of Rs.1600-2660 and Rs.2000-3200 which are headquarters controlled posts. To effect the upgradation as on 1.3.1993 as per Railway Board letter dt. 27.1.1993, the division had taken the cadre strength as 35 posts of Signallers in various categories and made the distribution of higher grade posts on the basis of the revised percentage of cadre. It is also stated for the applicants that 8 posts of Signallers had been transferred to Waltair Division by the C.P.O. in terms of his memorandum dt. 19.7.1990 bearing No.80/90-91 (page-30). As per this memorandum 8 more posts of Signallers in the grade of Rs.975-1540(RPS) have been added to the cadre strength of Signallers. Thus, it is a case of the applicants that there should be 44 posts of Signallers existing at Waltair division at the time of restructuring as on 1.3.1993 and the restructuring has to be given as per the said total strength.

...5/-



Junior Signaller, Senior Signaller and Head Signaller were fixed in the ratio of 35:45:25. On the basis of the instructions issued by the Railway Board for restructuring as on 1.1.1984, the revised pin-pointing of various posts of Waltair Division was issued by R-2 vide proceedings dt. 5.2.1987 bearing O.O.No./P.Cadre/Optg/Review (page-16). As per this memo, the total number of posts in Signallers' category was fixed as 52 (49 + 3 temporary posts of Teleprinter Operators) (page-17). But, the revision of cadre strength intimated on 5.2.1987 was superseded by the revised orders issued by R-2 with effect from 1.5.1985. The revised cadre shows 34 permanent posts of Signallers in various categories and 3 Temporary posts of Teleprinter Operators (page-18). There was a reduction from the earlier cadre strength due to shrinking of the cadre as a consequence of introduction of better communication facilities. In view of the fixation of Signallers cadre as 37 with effect from 1.5.1985 permissible percentage of Signallers' categories including the headquarters posts is indicated at page-21 of the material papers filed with the O.A. However, COPS who is the cadre controlling authority for the zonal Railway has issued a letter dt. 3.2.1989 for all the divisions. As per this letter, the total cadre strength of Waltair Division of Signallers is shown as 44 comprising of 37 posts physically available at the time of issue of the letter and 7 vacancies. In view of the instructions issued by COPS fixing the cadre strength of Signallers at Waltair Division as 44, the Signallers of the division submitted a representation to R-2 to take the total cadre strength of

/indicating the total strength of the Signallers' category

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In view of the urgency expressed by the applicant, with the available material on file and we thought it fit to dispose of this On after hearing the oral arguments of the learned Standing Counsel.

9. The learned Standing Counsel submitted that the Railways have introduced sophisticated communication facilities through their microwave system such as FAX, Teleprinter Circuits etc. Because of the advent of the modern communication facilities, the wireless telegraphy is becoming extinct and hence there is need to reduce the Signallers category. Railway Board also had issued instructions from time to time to stop recruitment of Signallers and to absorb surplus Signallers in other categories so as to reduce the strength considerably. With this policy in view, the cadre strength of Signallers has been reduced from time to time as can be seen from the various amended cadre strength as indicated by various letters quoted above. The letter of COPS dt. 3.2.1989 bearing No. P/L/11/4/1022/Signaller/Pt. (page-22) is only a communication of cadre strength both physically available and the vacancies. Even as per the said letter dt. 3.2.89 there are only 37 posts physically available and 7 vacancies left unfilled as there ^{was} not enough work even for the 37 Signallers. The letter of Chief Personnel Officer dt. 19.7.1990 bearing No. 80/90-91 (page-30) cannot be taken as addition to strength, but the reasons for issuing that letter are not clearly understood as instructions are awaited in this connection. The restructuring as on 1.3.1993 as per Board's letter dt. 27.1.93 has been done taking into account the cadre strength as required at that time. But, it is submitted

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6. This OA is filed for a direction to the respondents to take the cadre strength as fixed by COPS conveyed under COPS letter dt. 3.2.1989 bearing No. P/L/11/4/1022/Signallers/Pt. (page-22) and Memorandum dt. 19.7.1990 bearing No.80/90-91 (page-3) as the basis for implementation of restructuring of cadre with effect from 1.3.1993 and distribution of posts of various grades on that basis and for a further direction to promote the staff/applicants from the date they are due for promotion for higher grades of Signallers in various grades and payment of consequential differences of pay and allowances.

7. An additional affidavit dt. 4.12.1995 has been filed to show that the Signalling cadre is not a shrinking cadre and the posts of Junior Signallers are filled from time to time as can be seen from the posting orders issued during the period 1990 and 1991 enclosed to the additional affidavit.

8. This OA was filed on 6.12.1994. Though, more than any year ~~is~~ elapsed, no counter has been filed by the respondents. Though the respondents were directed number of times to file a reply so as to dispose of this case quickly, till today no reply is filed. A direction petition dt. 22.8.1995 was filed by the applicants for an interim order to fill the vacancies of higher grades arising due to retirement, death, restructuring etc. by senior staff so as to avoid monetary loss to the Signallers working in the Waltair Division. Eventhough we issued notices to the respondents for filing a reply, no reply was forthcoming.

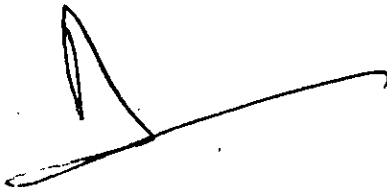
..6/-



is over 7 years old. The OA was filed in Dec., 1994 after a lapse of 6 years from the cadre strength as announced by COPS. Hence, how far the applicants are right in insisting the cadre strength issued about 7 years back to be adhered to now? The cadre strength as intimated by COPS has undergone number of changes due to advent of better and effective communication systems. Hence, we do not see any reason for the insistence of the applicants to adhere to the cadre strength as given by COPS in his memo dt. 3.2.1989. A realistic cadre strength on the basis of the work-load has to be assessed under the present day conditions.

12. As stated earlier, the cadre strength has to be in accordance with work-load. No Government department can boost up the cadre strength just to give benefits to the staff. The realistic cadre strength in accordance with the work-load has to be calculated and to that cadre strength the restructuring as per the accepted percentages has to be implemented. If the department feels that the vacancies need not be filled up, nobody can force the department to fill up those vacancies just to create job opportunities. Even, the

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that even restructuring as per the admitted cadre strength has not been done as the necessity for abolition of Signallers posts is keenly felt due to reduction in workload. The learned Standing Counsel was not in a position to certify the exact cadre strength in the absence of any instructions.

10. There is no doubt that the cadre restructuring is essential to provide career opportunities to the staff. Whenever any restructuring orders are issued, it has to be implemented expeditiously. The zonal Railway cannot stand in the way of cadre restructuring thereby nullifying the beneficial orders given by the Railway Board to improve the career prospects of the staff. There can be no two opinions in regard to adherence of Railway Board's instructions in regard to cadre restructuring. Order of cadre restructuring has to be implemented quickly so that the benefits reach the staff in time.

11. However, it cannot be said that the cadre restructuring should be done on the basis of some assumed cadre strength as in this case given by the COPS in his letter dt. 3.2.1989 (page-22). The cadre strength as indicated by COPS in his memo dt. 3.2.1989



will show that the Government has full right to abolish the posts and it is not open to the court/ to go beyond the wisdom of the decision and substitute for its opinion/that of the Government as to whether the posts should or should not be abolished. In the present case, we do not see any retrospective operation of the order for abolition of posts. Every time the posts required has been assessed and restructuring orders are issued as per the assessed cadre strength. The order of C'PS dt. 3.2.1989 (page-22) also shows that there are seven vacancies ~~xxxx~~ which are not filled and hence, the effective working strength ^{cannot be taken as 44.} Hence, reduction in the strength of 44 at a later date cannot be held as abolition with retrospective effect. The present citation, in our opinion is not applicable in this case.

15. The next question arises as to what date the existing actual staff strength of Signallers have to be taken for determination of cadre restructuring as per Railway Board's letter dt. 27.1.1993. This OA as stated earlier was filed on 6.12.1994. As we are not sure of actual cadre strength of Signallers as on 1-3-1993, we feel that the actual staff strength as on 1.12.1994 can be ~~xxxx~~ taken as the basis for the purpose of implementing the cadre restructuring as per Railway Board's circular dt. 27.1.1993.

/ which is the rational earliest date before filing of this O.A.

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appointments
made as Junior Signaller in the year 1981 which are annexed as annexures to the additional affidavit dt. 14.9.95, ~~as~~^{on} for the purpose of accommodating the staff on compassionate grounds. Such welfare measures taken to help the families in need cannot go to the extent to come to a conclusion that the Signallers cadre is not a perishing one. R-2 after taking into consideration of all these points had fixed cadre strength as 35 for the purpose of restructuring the cadre as on 1.3.93. Even this cadre strength is not susceptible for verification by us as no approved cadre strength position has been given by the respondents. In the absence of any such reliable document we are not in a position to give a direction to restructure the cadre even to the assessed cadre strength as indicated by R-2 as above.

13. As the staff are complaining consistently for non promotion to higher grades and they are stagnated in the lower grade, we feel it necessary to give a direction to the respondents to effect the cadre restructuring orders as per available ^{actual} staff strength. Even if this is done, some of the staff who are stagnating will get relief and this will go a long way to improve the career prospects of Signallers.

14. The learned counsel for the applicants rely on the judgment of Orissa High Court X 1976 SLJ 635 - Bimal Kumar Mohanty Vs. Secretary to Govt. of Orissa and anor. X to state that the order abolishing the posts with retrospective effect is invalid. A reading of the said judgment

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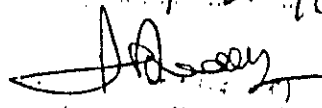
Copy to:-

1. General Manager, South Eastern Rlys,
Garden Reach, Calcutta-43.
2. Divisional Railway Manager, South Eastern
Rlys, Visakhapatnam.
3. Senior Divisional Operating Manager,
South Eastern Rlys, Visakhapatnam.
4. One copy to Mr. Y. Subrahmanyam, Advocate, CAT. Hyd,
45-58-7, Narasimha Nagar, Visakhapatnam-530 024.
5. One copy to Mr. V. Bhimanna, SC for Rlys, CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

kku.

ATTESTED

Y. SUBRAHMANYAM
ADVOCATE

Received	02/16/94
On behalf of	21.1.96
For the purpose of	7.2.96
	

16. In view of what is stated above, a direction has to be given to the respondents to arrange to issue necessary restructuring orders for the actual number of Signallers on role as on 1.12.1994 and promote the staff as per the revised percentage fixed. As we have taken a later date for determining the actual number instead of 1.3.1993, it is fair to give arrears also to the staff from that date, instead of prospective date.

17. In the result, the following direction is given:-

The respondents are directed to restructure the Signallers' category as per ratios indicated in Railway Board's letter dt. 27.1.1993 bearing No.PC III/91/CRC/1 on the basis of actual strength of Signallers on role as on 1.12.1994. The pay of these promoted to higher grade on the above basis has to be fixed as on 1.12.1994 and the arrears thereof also have to be paid with effect from 1.12.1994.

18. The above should be implemented within a period of four months from the date of receipt of a copy of this order.

19. The OA is ordered accordingly. No costs.//

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

सहायक न्यायाधीश
COURT OFFICER
राजस्थान न्यायालय
जयपुर
BENCH

5/2/96

Copy.

Government of India (Bharat Sarkar)
Ministry of Railway (Rail Mantralaya)
(Railway Board)

D.E.(NG) III-75 III/3/Pt.

New Delhi, dtd. 30.9.75.

THE GENERAL MANAGERS
All Indian Railways.

Sub:- Absorption of Wireless operators/IWTS/
CIWTS on changeover of Wireless
Telegraphy to Teleprinters over
microwave.

- - -

Reference Board's letter No.E(NG) III R&I/33-Vol.3 dt.
3.3.75 on the above subject.

The formation of an integrated cadre of Teleprinter Operators/Wireless Operators/Singallers is under Board's consideration. Mean while with a view to utilise Wireless Operators IWTS/CIWTS likely to be rendered surplus as a result of changeover of wireless telegraphy to teleprinter circuits over microwave, the Board have decided that the Wireless Operators/IWTS/CIWTS likely to be rendered surplus should be utilised for working of such of the additional teleprinter links as are introduced for:-

1. Replacement of existing wireless telegraphy links and
2. New teleprinter links introduced along with introduction of microwave.

For this purpose they may be given the necessary training. The existing cadre structure of W.O.Ps/IWT/CIWTS shall for the present be retained intact although each person may work the Teleprinter Links. The staff concerned will continue to get the same emoluments and have the same avenue of promotion.

The existing ban on further recruitment of Wireless Operator shall continue.

The utilisation of Singallers as Teleprinter Operators on the Teleprinter links now working on land lines or over those microwave links provided in replacement of existing land line should continue unaffected.

Sd/- Swarna Dass
Asstt. Director of Establishment,
Railway Board.

Copy to No.3 branch for their File No.74/W3/WS/P III F(1) Spl.
Branch of Board's Office.

ATTESTED
Y. SURESH CHANDRAN
ADVOCATE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

RA.22/96 in OA.1604/94

dt.1-11-96

Between

1. GSM Sarma
2. G. Appa Rao
3. T. Rama Naidu
4. Sk. Md. Hussain
5. P. Ramesh
6. B. Appa Rao
7. P.S. Naidu
8. P.Ch. Reddy
9. AKC Kennedy
10. K. Babu Rao
11. P. Srinivasa Rao
12. N. Atchuta Rao

: Petitioners

and

Union of India rep.by
1. General Manager
SE Rly., Garden Reach
Calcutta-43

2. Divnl. Rly. Manager
SE Rly., Visakhapatnam

3. Sr. Divnl. Supdtg. Manager
SE Rly., Visakhapatnam

: Respondents

Counsel for the applicants

: Y. Subrahmanyam
Advocate

Counsel for the respondents

: V. Bhimanna
Addl. SC for Railways

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)

Judgement

Oral order (per Hon. Mr. Justice M.G. Chaudhari, VC)

The applicants seek review of the order dated 22-1-96 passed in the OA by one of us (Sri R. Rangarajan, Member (Admn) sitting in the Bench with the then VC Mr. Justice V. Veeladri Rao).

1. The relief sought by the applicants in the OA was interalia for a direction to the respondents :

- i) to take the cadre as fixed by the CPO vide memorandum dated 19-7-1990 as the basis for implementation of restructuring of cadre with effect from 1-3-1993 and distribution of posts of various grades on percentage basis.
- ii) to promote the staff/applicants from the date they are due for promotion to higher grades of Signallers in various grades with consequential differences to pay and allowances.
- iii) to grant such relief as are incidental or consequential.

2. The learned Bench after examining the question in detail and considering submissions advanced by the counsel on both sides dealt with both the reliefs claimed by the applicants viz. the question of implementation of restructuring of cadres with effect from 1-3-1993 and distribution of posts and promotional prospects. The Bench was inclined to take the view that restructuring orders were necessary to be issued for the actual number of signallers on roll as on 1-12-1994 and promote staff as per the revised percentage fixed. It was also held in that connection as follows :

"As we have taken a later date for determining the actual number instead of 1-3-1993 it is fair to give arrears also to the staff from that date instead of prospective date."

In the context of ^{the order} ~~the order~~ the word prospective has obviously to be read as retrospective. ..2.

Null

The Bench had therefore taken a definite view that restructuring could not be ordered from 1-3-1993 but as on 1-12-1994 for the reasons stated in the judgement. These reasons are contained in para-12 and 13 of the judgement. Thus it was a view taken by the Bench on merits of the case. Similarly on the next point, consistently, with the above finding the respondents were directed to restructure signallers category as per ratio indicated in Railway Board's letter dated 27-1-1993 on the basis of actual strength of Signallers as on rolls from 1-7-1994 and it was further directed that the pay of those promoted to the higher grade on the above basis be fixed as on 1-12-1994 and the arrears paid with effect from 1-12-1994. The grounds urged in the review are relating to the merits and revolve around the self-same contentions of the applicants that the date for restructuring should be adopted as 1-3-1993 which contention, however, had not been accepted by the Bench.

3. Only two contentions raised need to be mentioned. First contention is that since the orders of restructuring are as a result of agreement with JCM, the correct implementation of the orders is binding on both the parties and it is only Parliament that can change the decision. Hence, changing the basis of implementation of restructuring orders of the sanctioned cadre strength to the actual men on rolls ignoring the vacancy position and to give effect to restructuring with effect from 1-12-1994 instead of 1-3-93 is an error apparent in the judgement. In advancing their contention the applicants overlook that that the judgement has not disturbed the restructuring scheme as envisaged but ~~on~~ facts relating to its implementation in respect of the applicants interalia on their grievance, the date was indicated as 1-12-1994. Even if any different view was



possible on that aspect that would be a matter to be canvassed before the Appellate Forum and cannot afford a ground for review. The second contention urged is that since the learned Member of the Bench who delivered the order while being DRM/VSKP in 1986 had issued a clarification by letter dated 28-4-1986 justifying revision of cadre from 54 posts to 36 posts - ordering surrendering 18 posts his acting as a judge in the case was against legal norms that one cannot act as judge on his own orders.

4. Obviously this contention is raised to give added weight to the Review application although it has no substance whatsoever in it. The applicants have forgotten that the judgement was rendered by a Division Bench and the said letter was of no material consequence and could not have influenced the mind of the Bench to take the view which it had taken. In that connection in the very letter dated 28-4-86 it was stated :

"From the above position, it may please be seen that the promotion, due consequent on the ^{restoring have been} cadre strength as on 1-1-1984. Incidentally, it may be stated here that the cadre of Signallers in WAT Division has been reduced from ⁵⁴ 54 to 36 with effect from 1-5-1985 and as ^{the} workload has dwindled considerably due to the various reasons.....As a result of reduction of cadre, following is the revised distribution of posts as per the prescribed percentages and the number of staff available in each category...."

5. Learned Member was not the DRM in 1984 nor on 1-5-1985. Not only that the applicants have not rested with making the aforestated contention, they have also introduced an insinuation against the learned Member by stating that "The ^{Hon'ble member -} as a result of his close association with the subject

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appears to have made observations like sinking cadre, workload does not justify even for men on rolls etc. keeping his outdated information in mind.," We strongly disapprove the manner in which this statement has been made. Indeed, it borders on contempt of this Tribunal. It tends to make comments on the view expressed in the letter on the administrative position as was existing then which was not open to be debated by the applicants by alleging that the view expressed in the letter was itself wrong. The applicants have clearly crossed the legitimate limits of raising a pleading and as already discussed above, the findings recorded in the judgement cannot be sought to be reviewed by making such allegations which have no bearing on the merits of the case.

6. The reliefs claimed in the review petition are none other than reiterating the original prayers. The applicants in substance seek a direction to the respondents :

- a) to implement the restructuring orders with effect from 1-3-1993,
- b) fill up higher grade vacancies that have arisen from 2-3-1993,
- c) arrange consequential payment of arrears within the date which may be fixed, and
- d) pay costs of suit with interest on arrears due etc.

7. In so far as adjudication sought in terms of prayers (a) and (b) we have already pointed out that this question cannot be reopened. In so far as prayer (c) is concerned, the original order contains a direction to the respondents to implement the order within a period of four months from the date of receipt of copy of the order. The prayer made therefore is misconceived in so far as (c) is concerned.

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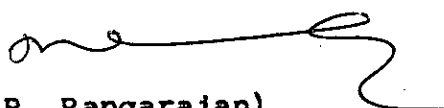
It has already directed to pay arrears. Lastly, in so far as prayer (d) is concerned, since the applicants now seek to claim interest on arrears that amounts to asking an additional relief which cannot be claimed under the guise of Review Application.


8. Thus none of the contentions raised in the RA carry any substance nor the prayers made are capable of being entertained.

9. For the foregoing discussion, we hold that there is no merit in the RA and it is liable to be dismissed.

10. Mr. V. Bhimanna, the learned Standing counsel for the respondents opposed the review application and the ^{above} discussion covers the submissions made by him. Since the counsel for the applicants is not present, we have passed this order acting under Rule 15(1) of the CAT (Procedure) Rules, 1987.

11. In the result, the RA is dismissed. No order as to costs.


(R. Rangarajan)
Member (Admn.)


(M.G. Chaudhari)
Vice Chairman

Dated : November 1, 96
Dictated in Open Court


Deputy Registrar 21/11/96
55 cc

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(54)

-6-

R.A.22/96

OA.1604/94.

To

Union of India, Garden Reach,
Calcutta-43.

2. The Divisional Railway Manager,
SE Rly, Visakhapatnam.
3. The Senior Divisional Supdtg. Manager,
SE Rly, Visakhapatnam.
4. One copy to Mr.Y.Subrahmanyam, Advocate, CAT.Hyd.
5. One copy to Mr.V.Bhimanna, SC for Rlys, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

pvm.

9/11/96

(2)

I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

N. Rangappa
THE HON'BLE MR. H. RAJENDRA PRASAD M(A)

Dated: (- 11 - 1996

~~ORDER~~ / JUDGMENT

~~M.A./R.A./C.A.~~ No. 22/96

in

O.A.No. 1604/94

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.

pvm

