

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.272 of-1995.

Date of Order: 09-7-1998

BETWEEN :

M. Raju, s/o Sri M.Guravaiah,
aged a 46 years, now working as
Senior Divisional Operations
Manager(J.A.Grade),
South Central Railway,
Residing At HNO.26-86/1(Plot No.58),
Chanakyapuri, Behind Safilguda
Railway Station, Ranga Reddy District. APPLICANT

A N D

1. Union of India, represented by
Secretary (Establishment),
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi- 110 001.

2. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad- 500 005.

... RESPONDENTS

Counsel for Applicant

: Mr.G.Ramachandra Rao

Counsel for Respondents

: Mr. V.Rajeswara Rao,
Addl.C.G.S.C.

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Honourable Mr. R. Rangarajan, Member(Administrative)

Honourable Mr. B.S. Jai Parameshwar, Member(Judicial)

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O R D E R.

(Per Hon. Mr.B.S.Jai Parameshwar, Member(Judicial))

Heard Mr.G.Ramachandra Rao, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned Standing Counsel for the respondents.

2. This is an application under Section 19 of the
23.2.1995.

3. The applicant herein was recruited to Indian Railway Traffic Service (in short 'IRTS') during the year 1979. He was allotted to South Central Railway, Secunderabad. He joined the service on 7.12.1979. He was promoted to the senior scale as Area Officer on 13.10.1983 and was subsequently posted as Operating Superintendent. He submits that he was detailed to look after the Junior Administrative Grade(in short 'JAG') post of Senior Divisional Safety Officer with effect from 30.7.1990. He was promoted to JAG post vide order No.E(O)III-91-PM/98 dated 17.10.1991 issued by the Railway Board.. The scale of pay of JAG is Rs.3700-5000(RSRP). The promotion was with effect from 3.10.1991. The applicant is presently working as Senior Divisional Operations Manager in the said scale of pay.

4. He submits that he became qualified and eligible for placement in the Selection Grade in the scale of pay of Rs.4500-5700 (RSRP).

5. His grievance is that the respondent No.1 failed to consider his case for his placement in the Selection Grade without any valid and justifiable reasons. He submits that as many as 12 officers of IRTS 1979 batch who were juniors to him were placed in the Selection Grade with effect from 1.2.1992 vide proceedings No.E(O)III-93-PM/30 dated 17.3.1993. He made a representation dated 22.3.1993 followed by reminders, but there was no response. He submits that he made another representation

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dated 25.3.1994 and that the respondent No.2 had written D.O. letters to the Advisor(Traffic) and Member(Traffic) of the Railway Board, but his representations remained without consideration.

6. He submits that one Smt.Vijaya Sinha is his pending, the respondent No.1 issued proceedings No.E(0)III-94-PM/70 dated 10.8.1994 placing 9 of his juniors in the Selection Grade without considering his case. He submits that one Sri K. Raghuramaiah who was placed in the Selection Grade had joined the IRTS batch in 1979. Thus he submits that many of his juniors were placed in the Selection Grade. Hence he has filed this O.A. for a direction to the respondent No.1 to place him in the Selection Grade in the scale of pay of Rs.4500-5700(RSRP) with effect from 1.2.1992 on par with his immediate junior Smt. Vijaya Sinha with all consequential benefits including the arrears of pay etc.

7. The applicant in this O.A. clearly admits to have suffered a penalty of imposition of reduction of his pay by one stage from Rs.3400 to Rs.3300 for a period of one year without the effect of postponing his future increments vide order dated 18.6.1989 and that the said period of penalty had expired on 18.5.1990.

8. He submits that after expiry of the period of penalty as stated above, he was directed to look after the post of JAG. He submits that placement in the Selection Grade pay cannot be withheld except in accordance with the rules. He also submits that even if his services were not outstanding or good, he was entitled to the Selection Grade as he belonged to Scheduled Caste and unless he was

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declined for holding the Selection Grade post as per the instructions of the Railway Board. He has relied upon the O.M.No.1/9/69-Estt(SCT) dated 26th March, 1970 issued by the Ministry of Home Affairs.

9. The respondents filed their reply stating that in accordance with para-203 of the IREC Volume-I posts in the Administrative Grade are selection posts; that the selection is made by a high level Selection Committee consisting of Chairman and members of the Railway Board; that the applicant was involved in a Vigilance case and was served with a major penalty charge memo. on 19.3.1986; that his claim for empanelment to JAG was considered as due in JAG/IRTS panel approved on 2.6.1988, but he was not promoted to the said grade as the vigilance and disciplinary proceedings were pending and it was done so in accordance with the instructions contained in the Railway Board's letter No.E(D&A)77 RG 6-1 dated 3.11.1977 and 18.5.1978 (Annexure R-I and R-II). They submit that at that time the sealed cover procedure was not in vogue. They submit that the punishment of reduction of pay of the applicant was over on 18.6.1990; that during the formation of subsequent panels of 3.11.1988 and 17.10.1989, the disciplinary proceedings/ punishment were in force. In the subsequent DPC held on 30.8.1990 the applicant was not considered. He was placed in the JAG panel approved on 3.10.1991 and was promoted to that grade with effect from 3.10.1991. They submit that in accordance with the instructions contained in the letter dated 21.9.1988 (Annexure R-III) the question of opening the sealed cover does not arise when the disciplinary proceedings ended in imposing the

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punishment on the railway employee. They submit that after the period of punishment was over, his case for promotion to JAG was considered for inclusion in the panel approved on 15.9.1990. This approval was made on the basis of the DPC which was held on 30.8.1990 i.e. subsequent to the expiry of the period of penalty. Subsequently on being included the applicant's promotion to JAG has been antedated^e to 15.9.1990. Thus the respondents submit that the claim of the applicant for his placement in the Selection Grade was considered on the basis of his revised seniority in the JAG/IRTS and he was placed in the Selection Grade with effect from 1.7.1994 the panel for which was approved on 7.6.1995. They submit that the applicant lost seniority in the JAG because he was not promoted to JA Grade due to vigilance case and imposition of penalty. They further submit that the case of the applicant was considered during the year 1988 even though Vigilance case/disciplinary proceedings were pending; but he was not placed in the JAG because of the pendency of the disciplinary proceedings. They submit that the applicant was promoted to the JAG with effect from 15.9.1990 and having regard to this seniority, his case was considered for placement in the Selection Grade and he was placed in the Selection Grade panel approved on 7.6.1995 and was ^{however} given Selection Grade with effect from 1.7.1994.

10. On 6.5.1998 we heard learned counsels for the parties and reserved orders in the C.A. Then on going through the material papers and the records, we felt that certain clarifications were necessary on the following points :

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- (a) How the seniority of the applicant was depressed in the JAG and under what rule ?
- (b) The applicant has quoted a judgment of the Supreme Court wherein it is ruled that unless it is specifically indicated in the punishment order, the seniority cannot be affected. What is the reply of the respondents ?

11. The respondents have filed in addition to the reply an amended reply and supplementary reply.

The applicant has filed rejoinders to all the replies furnished by the respondents.

12. The main contention of the respondents to the questions posed by this Bench by its order dated 6.5.1998 is that the imposition of penalty of reduction of pay of the applicant by one stage i.e. from Rs.3400 to Rs.3300 for a period of one year with cumulative effect from the date of service of the order vide Railway Board's order dated 25.5.1989. It comes under Rule 6(v) of the Railway Servants Discipline & Appeal Rules, 1968 (in short, "the Rules 1968") that while imposing penalty under Rule 6(v) it is not necessary to indicate the question of loss of seniority; that the punishment imposed under Rule 6(v) it is not necessary to indicate the question of loss of seniority; that the punishment imposed under Rule 6(v) does not and cannot cause loss of seniority to the delinquent employee; that even though the disciplinary proceedings were pending, they considered the case of the applicant for empanelment on 2.6.1988 but he could not be promoted to JAG because of pendency of the disciplinary/vigilance proceedings. They rely upon the decision of the Hon'ble Supreme Court in the case of Union of India v. K.V.Jankiraman, reported in AIR 1991 SC 2010.

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13. They further submitted that only when the disciplinary authority imposes punishment under Rule 6(vi) of the Rules, the seniority of the delinquent employee will be affected; otherwise not. They submit that the punishment imposed on the applicant vide order dated 25.5.1989 is one under Rule 6(v) of the Rules and hence there was no loss os seniority of the applicant in the Group A Senior scale.

14. In reply the applicant has analysed the nature and consequences of punishment imposed under Rule 6(v) and 6(vi) of the Rules, 1968. The real difference between these two kinds of punishment is as under :

RULE 6(v)

- i) Reduction to a lower stage in the time scale of pay.
- ii) Specifying the period of reduction.
- iii) With further directions as to whether on expiry of such period this reduction of pay will or will not have the effect of postponing future increments of his pay but not seniority.

RULE 6(vi)

Reduction to a lower time scale of pay, Grade, post or service.

Specified or may not be specified.

With or without further directions regarding conditions of restoration to the Grade/Post/Service from which the Railway Servant was reduced, his Seniority and pay on such restoration to the Grade/Post or Service.

15. From the above analysis, it is clear that there can be no loss of seniority in case of punishment of reduction of pay in the time scale of pay as indicated in para 6(v) of the Rules 1968. There will necessarily be a loss of seniority when the punishment is imposed under Rule 6(v) of the Rules, 1968. If the disciplinary authority imposes penalty under Rule 6(vi) of the Rules, 1968, then he should specifically state the duration of reduction in lower time scale of pay, post or grade.

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16. In pages 1 and 2 of the reply, the respondents have detailed the organised group A services in the Railway Administration and the corresponding scales of pay. The four scales of pay which are necessary for our consideration are reproduced below :

Group-A Junior Scale	- Rs.2200-4000
Group-A Senior Scale	- Rs.3000-4500
Jr.Administrative Grade	- Rs.3700-5000
Selection Grade	- Rs.4500-5700

17. While the applicant was working in Group A Senior scale in the scale of pay of Rs.3000-4500, a major penalty Charge Memo. dated 19.3.1986 was served. This Charge Memo. was enquired into and the disciplinary proceedings culminated in the imposition of penalty described above.

18. The disciplinary proceedings continued from 19.3.1986 to 18.5.1990, that means to say, the Railway Board imposed the penalty described above by order dated 25.5.1989. The order was implemented effective from 18.6.1990. The punishment period expired on 18.5.1990.

19. Between 19.3.1986 and 18.5.1990 the applicant could not have expected to consider his case for promotion to the JAG. The respondents submit that they had not followed the sealed cover procedure. The explanation is that it was ^{not} in vogue. However, the applicant disputed the same and contended that the sealed cover procedure was in vogue in the Railway Administration since 1988. Be that as it may, since the disciplinary proceedings ended in imposition of penalty on the applicant, the question of

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non-following the sealed cover procedure becomes insignificant, for, when the delinquent employee is imposed punishment, then the question of opening the sealed cover does not arise. It is only when the delinquent employee is exonerated, then the question of opening the sealed cover arises. Therefore, whether the sealed cover procedure is in vogue or not is not relevant for our purpose.

20. After the period of punishment was over, the applicant was detailed to look into the JAG post of Senior Divisional Safety Officer, South Central Railway, Secunderabad with effect from 30.7.1990. Subsequently, by order dated 17.10.1991 of the Railway Board, the applicant was promoted to JAG with effect from 3.10.1991. Subsequently thereafter the applicant was placed in the Selection Grade with effect from 1.7.1995.

21. On perusal of Annexures- A.XV and A.XVI filed by the applicant annexing to his rejoinder, it is evident that the Railway Board through its message No. E(0)III-96 PM/21 dated 19.8.1996 intimated that the promotions of the applicant to the JAG and to the Selection Grade were antedated to 15.9.1990 and 1.7.1994 respectively.

22. The applicant claims that one Smt. Vijaya Sinha is his immediate junior. He prays for his placement in the Selection Grade on par with his immediate junior Smt. Vijaya Sinha with effect from 1.2.1992.

23. In para-6 of the reply filed on 20th February, 1997 it is stated that Smt. Vijaya Sinha was empanelled in JAG during 1988; that means to say, long before the applicant was promoted to the JAG Smt. Vijaya Sinha was already promoted to JAG from 1988 and was placed in the Selection Grade from 1.2.1992.

23.A. It is now to be seen whether there was any loss of seniority of the applicant in the JAG.

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24. As already stated above, the disciplinary proceedings were initiated against the applicant while he was working in the Group A Senior scale. The disciplinary proceedings were pending from 19.3.1986 to 18.5.1990. Therefore, during this period, the applicant could not have expected any promotion to the JAG. Besides, there is every possibility of many of his juniors in the cadre of Group A Senior scale being promoted to JAG. Thus the applicant lost his seniority in the JAG. The seniority of the applicant in the cadre of JAG will be determined from the date of entry into the cadre. According to the records available, 15.9.1990 is the date of entry of the applicant into the JAG. Even though the applicant was promoted to JAG from 3.10.1991, the Railway Board antedated his promotion to JAG effective from 15.9.1990. Having worked just for a period of few months, can the applicant claim placement in the Selection Grade on par with his immediate junior Smt. Vijaya Sinha. As already observed, Smt. Vijaya Sinha was empanelled to the JAG in the year 1988 and was placed in the Selection Grade from 1.2.1992. That means to say, Smt. Vijaya Sinha worked in the JAG for a period of 3 years and odd. When that is so, the applicant cannot expect that he could be placed in the Selection Grade on par with his junior Smt. Vijaya Sinha from 1.2.1992.

25. The applicant vehemently contended that in view of the decision of the Hon'ble Supreme Court in Civil Appeal No.3997 of 1983 decided on 17.8.1994, there could not be any loss of seniority. He has produced the copy of the judgment of the Hon'ble ^{Supreme} Court at Annexure-III to his

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reply. We have perused the said judgment.

26. In the case relied upon by the applicant, the appellant while working as Preventive Officer Grade II was dismissed from service. However, the Hon'ble High Court of Calcutta set aside the order of dismissal and remanded the authority after considering all the facts and circumstances of the case and as the directions of Hon'ble High Court, by his order dated 9.8.1974 imposed the penalty of reducing the pay for one year with cumulative effect. While the appellant was out of service then, there was a proposal and recommendation by the Customs Study Team to abolish the posts of Preventive Inspectors Gr.II and to create equal number of posts, namely, 245 permanent and 15 temporary posts in Grade I. The appellant was fitted into the newly created post with effect from August 9, 1974. That means to say, the seniority of the appellant was fixed in the upgraded post of Preventive Officer Grade I from 9.8.1974. The appellant challenged the fixation of his seniority in the upgraded post of Preventive Officer Gr.I. The Hon'ble Supreme Court considered that on account of creation of 245 permanent posts and 15 temporary posts of Preventive Officers Grade I and abolishing the equal number of posts of Preventive Officers Grade II, the appellant on reinstatement had to be considered in his original seniority in the grade of Preventive Officer Grade II i.e. below one Sarup Kumar Ghosh. In this background the Hon'ble Supreme Court observed that imposition of penalty of reduction in the same scale of pay does not have the effect of loss of seniority unless specifically indicated in the order of punishment.

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27. Applying the said principle to the facts of this case, we can say that the seniority of the applicant in Group A Senior scale remained in tact. It is only in the JAG his seniority was lowered. This is obvious because the applicant could not have expected for consideration of his case for promotion to the JAG. Here we are not considering the seniority position of the applicant in Group A Senior scale. The imposition of penalty of reduction of pay does not affect his seniority in Group A Senior scale. But however, when his case was not considered for promotion to the JAG between 19.3.1986 and 18.5.1990, naturally during the said period, some of his juniors were elevated to the JAG and they became seniors to the applicant in JAG. This is evident as Smt. Vijaya Sinha - his immediate junior, was empanelled to the JAG during the year 1988. Therefore, there is loss of seniority of the applicant in the cadre of JAG; it is because of his later promotion to the JAG. However, his seniority position in the Group A Senior scale was not at all affected by the imposition of penalty.

28. The respondents relied upon the order of this Tribunal in OA No.1118 of 1995 dated 2.6.1998. This Tribunal while dealing with the question whether the case of the applicant therein should be kept in a sealed cover and she should be promoted on par with her juniors after the expiry of her punishment, if she is found fit for promotion by the DPC, the respondents opposing the claim of the applicant had quoted the following citations :

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"13. In the reported case 1995(29) ATC 555 (State of Tamil Nadu v. Thiru K.S.Murugesan), the Apex Court held in para 7 as follows :

"When promotion is under consideration, the previous record forms the basis and when the promotion is on merit and on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, the doctrine of double jeopardy has no application and non-non consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution."

14. In the reported case 1998 SCC(L&S) 416 (Union of India v. B.Radhakrishna), it was held that the promotion granted during the currency of the penalty is not valid. Improper promotion rectified by the subsequent order was held proper and promotion was made effective from the date on which punishment ceases to be operative. However, the excess amount received towards pay for the post of Senior Accountant during the period the respondent therein worked as Senior Accountant was restrained from the recovery.

15. In the reported case 1993(2) SLR 509 (Delhi Development Authority v. H.C.Khurana), guidelines to follow the sealed cover procedure were given. Para 8 of that case is worth repeating. It reads as below :

" The sealed cover procedure was applicable, in cases where the 'disciplinary proceedings are pending' in respect of the government servant; or 'a decision has been taken to initiate disciplinary proceedings'. Thus, on a

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decision being taken to initiate disciplinary proceedings, the guidelines attract the sealed cover procedure. The reason is obvious. Where a decision has been taken to initiate the disciplinary proceedings against a government servant, his promotion, even if he is found otherwise suitable, would be incongruous, because a government servant under such a cloud should not be promoted till he is cleared of the allegations against him, into which an inquiry has to be made according to the decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, it would not be fair to exclude him from consideration for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests of the government servant and public administration, the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings; and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitable by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against public policy and principles of good administration. This is the rationale behind the guideline to follow the sealed cover procedure in such cases, to prevent the possibility of any injustice or arbitrariness."

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29. The principles enunciated in the above mentioned cases aptly apply to the case on hand.

30. The applicant claims promotion to JAG immediately after the period of punishment was over i.e. on and from 10.5.1990.

31. However, the respondents delayed him to join in the JAG post from 30.7.1990 and was promoted to JAG by order dated 17.10.1991. His promotion to JAG was even antedated to 15.9.1990. Likewise, the applicant was placed in SAG effective from 1.7.1995, but the same was antedated to 1.7.1994. We feel that the respondents were more reasonable towards the applicant. They have not delayed or denied his promotions due; once the period of punishment was over, he was given necessary promotion. Hence the applicant cannot have any ground ^{be} against the respondents.

32. We feel it proper to reproduce herein the observations of the Hon'ble Supreme Court in the case of K.W. Jankiraman v. Union of India (reported in AIR 1991 SC 2010) :

"It cannot be said that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. The officer cannot be rewarded by promotion as a matter of course even if penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently."

33. The respondents denied him promotion only during the


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pendency of Vigilance/disciplinary proceedings, which action, in our humble view, was in accordance with the Railway Board's letters dated 3.11.1977 and 18.5.1998.

34. In this view of the matter, we are of the considered view that the applicant cannot claim placement in the Selection Grade on par with his immediate junior Smt. Vijaya Sinha.

35. For the reasons stated above, we find no merits in this O.A. The only order that can be passed in this O.A. is to dismiss the same.

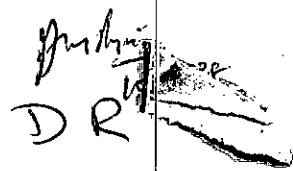
36. Accordingly the O.A. is dismissed, leaving the parties to bear their own costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDICIAL)


(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)

9.7.98
DATED THE 9TH JULY, 1998.

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Copy to:

1. The Secretary(Establishment), Min.of Railways,
Railway Board, Rail Bhavan, New Delhi.
2. General Manager, South Central Railway,
Railnilayam, Secunderabad.
3. One copy to Mr.G.Ramachandra Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr.V.Rajeswara Rao, Addl.CGSC, CAT, Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One copy to HBSJP, M(J), CAT, Hyderabad.
7. One duplicate copy.

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15/7/88

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II COURT

TYPED BY
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI S. S. JAI PRAKASH :
M(J)

DATED: 9/7/88

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

C.A.NO. 272/85

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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केन्द्रीय प्रशासनिक अपील Central Administrative Tribunal दिल्ली / DESPATCH 13 JUL 1988 हैदराबाद बेंच HYDERABAD BENCH
