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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1339 of 1996

DATE OF JUDGMENT: 19th AUGUST, 1999

BETWEEN

1. M.Srinivasa Prasad,
2. Y.Srinivas,
3. S.B.Ramana,
4. V.V.Leeladhar,
5. B.V.Pulla Rao,
6. Jitendra Nath Sharma,
7. N.N.Subramanian.

.. APPLICANTS

AND

1. The Comptroller & Auditor General of India,
No.10, Bahadurshah Zafar Marg,
New Delhi,
2. The Assistant Comptroller & Auditor
General (Commercial),
No.10, Bahadurshah Zafar Marg,
New Delhi,
3. The Principal Director of Commercial Audit
and Ex.Officio Member, Audit Board,
Saifabad, Hyderabad,
4. The Principal Accountant General (Audit),
Andhra Pradesh, Saifabad,
Hyderabad,
5. The Principal Director of Commercial
Audit & Ex.Officio Member, Audit Board-IV,
West Block-8, R.K.Puram,
New Delhi,
6. Utpal Banik,
7. Alok Kumar Bhattacharya,
8. Rajendra Kothari,
9. C.S.Ramachandra Rao,
10. A.Shyamala Rao,
11. Revathilal Verma,
12. Mahendra P.Srivastava,
13. Ahmed Mohi-Ud-Din Ali,
14. I.Soundara Pandian,
15. Trilok Chand Sharma,
16. C.P.Ravindran,
17. S.Raghunathan,
18. R.B.K.Pillai,
19. R.P.Goyal,
20. H.D.Yadav,
21. Ashok Kumar Manan,
22. Sadaram Chouhan,

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23. Mahendra Swaroop Saxena,
 24. Shyam Sunder Kapoor,
 25. Arun Kumar,
 26. A.Dinakaran,
 27. A.Manohar Rao,
 28. Chandra Mohan Sharma,
 29. Bhupen Bandopadhyaya,
 30. P.R.Swaminathan,
 31. A.K.Dayal,
 32. S.K.Ghosh,
 33. K.Arunachalam,
 34. S.Kodandaraman,
 35. Kuldip chand Shanek,
 36. Upendra Datt,
 37. Samir Kumar Das-II,
 38. SBL.Srivastava,
 39. D.A.Korade,
 40. Gorakhnath Singh,
 41. K.Madhukar Shetty,
 42. Parameswara Patnaik,
 43. H.K.Battacharjee,
 44. K.Sudhakaran,
 45. M.P.Agarwal,
 46. M.Rajeswar Anand,
 47. Somanath Varma,
 48. Balvanth Singh,
 49. K.V.Narendran,
 50. BSR Chandramurthy,
 51. Manohar Minz,
 52. Raghbir Prasad,
 53. Smt.C.Vilasini,
 54. Shiv Nath Singh,
 55. P.N.Lal,
 56. Gour Mohan Bhattacharya,
 57. Jaganath Prasad,
 58. Samir Kumar Ganguly,
 59. K.Narayanan-II,
 60. Tarasem Singh,
 61. R.P.Ponnalagen,
 62. M.Prabhakaran,
 63. S.Sivakumar-IV,
 64. N.Rajan,
 65. Pranab Kumar Roy,
 66. Suryakantha Maiti,
 67. Purushottamlal,
 68. N.Balakrishnan,
 69. K.Ratnakar,
 70. N.N.Sirkar,
 71. P.N.Patanjali,
 72. Satish Kumar,
 73. Zingade Umesh Gangadhar,
 74. Subrata Mukherji,
 75. Samir Kumar Sen,
 76. R.Venkata Krishnan,
 77. R.Chandra Mouli.

.. RESPONDENTS

Contd....3

COUNSEL FOR THE APPLICANTS: Mr. P.B.Vijaya Kumar

COUNSEL FOR THE RESPONDENTS: Mr.B.Narasimha Sarma, Sr.CGSC
for R-1 to R-5

Mr. N.Rama Mohan Rao for R-34

Mr.M.Panduranga Rao for R-50

Mr.K.Ramesh for R-76 & R-77

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.P.B.Vijaya Kumar, learned counsel for the applicants, Mr.M.C.Jacob for Mr.B.Narasimha Sarma, learned standing counsel for the official respondents and Mr.N.Rama Mohan Rao, learned counsel for the private respondent NO.34. None for the private respondents 76, 77 and 50.

Private respondents 9, 10, 12 & 30 has ^{vc} already retired.

Notice served on Respondents 6 to 8, 11, 13 to 22, 24 to 29, 31 to 33, 35 to 49, 51 to 71 and 73 to 75, called absent. Proof of service of notice not filed for Respondents 23 and 72, called absent.

2. There are 6 applicants in this OA. They are all direct recruit Section Officers (Commercial) in the Indian Audit and Accounts Department (IA&AD for short). They joined in October, 1987 in the scale of pay of Rs.1640-2900 as Section Officers. They were kept on probation (emphasis added) for two years and training was imparted for a period of four months within the said period of 2 years. On completion of such training they were all placed as independent Section Officers.

3. The probation of the applicants was declared after completion of the probation period and they were

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confirmed. It is stated that all of them have passed confirmatory examination also within the time prescribed.

4. The seniority of the applicants herein was fixed only with effect from the date of confirmation instead of initial appointment on probation and released the increment on completion of two years with effect from the 3rd year. They filed O.A.No.607/91 on the file of this Bench which was disposed of on 25.9.95. The relevant portion of the direction given is reproduced below:-

"23. In the result, the OA is ordered as under:-

1. The applicants are entitled to the first increment on completion of one year from the date of their appointment on probation. Ofcourse, if any period has to be excluded as per FR, the same has to be excluded for fixing the date of first or later increments. The applicants are entitled to monetary benefit on fixation of pay after granting of increments as above.

2. C&AG (R1) has to dispose the representation dated 6.8.90 of the applicants and any additional representation with reference to the claim for fixing of seniority. The same has to be disposed of

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expeditiously and preferably by 31.3.1996. The additional representation if not sent by RPAD by 31.10.1995, need not be considered.

3. If the applicants are aggrieved by the decision of C&AG, they are free to challenge it by filing an application under Sec.19 of the AT Act, and then they are also free to challenge the recruitment rules for promotion as Assistant Audit Officer to the extent it prescribes that the period of probation has to be excluded for eligibility period.

24. We make it clear that our finding in regard to the increment in this order, need not be taken as basis for determining the question as to whether the period of service from the date of appointment on probation has to be reckoned for fixing inter-se seniority."

In pursuance of the direction given in regard to fixing seniority of the applicants, the applicants filed representations on 26.10.95 (Annexure A-III at page 29 to the OA). They were informed by the impugned order dated 8.3.96 enclosed to the Memo No.CC/CC I/8-22/607/91/166, dated 19.3.96 (Annexure A-1 at page 12 to the OA) rejecting their claim for fixing seniority with effect from the date

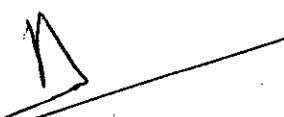
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of their initial appointment on probation. The applicants contend that their representations were disposed of perfunctorily without considering the impact of the Indian Audit and Accounts Department (Subordinate Accounts Services & Subordinate Railway Audit Service) Rules, 1974 and without considering the spirit and purport of the judgment in OA 607/91 and the impugned order was passed without application of mind on the part of the Comptroller and Auditor General. They also relied on the following judgements to state that they are eligible to get seniority from the date of initial appointment on probation as Section Officer:-

1. 1997 SCC (L&S) 969 (Mohan Lal v. State of H.P)
2. 1994 (1) LLJ 1026 (G.Gangarasniah v. A.Narayanaswamy)
3. W.A.No.67/93 dt.18.6.93 - Judgement of High Court of Gujarat p.1028
4. 1994 (1) SLR 739 (Ch.V.Subba Rao v. Union of India) Judgment in OA 381/92 of CAT, Hyderabad.
5. O.M.NO.20011/5/90-Est.(D), dated 4.11.1992 of G.I., Dept. of Per. & Trg., public in Swamy's News-December, 1992 at page 631
5. This OA is filed praying for direction to the official respondents to count the seniority of the applicants in the category of Section Officer (Commercial) with effect from the date of their initial appointment with



all consequential and attendant benefits.

6. The applicants request for fixing their seniority above that of the promotee Section Officers who were impleaded in this OA as private respondents reckoning their seniority with effect from the date of appointment on probation instead of with effect from the date of their confirmation. From the above details of the case, it is evident that it is a seniority dispute between the direct recruits and promotees to the post of Section Officer.

7. A reply has been filed in this OA. The respondents submit that the reply given to them by the Assistant Comptroller & Auditor General (Commercial) is in order and the applicants have no reason to state that this was issued by an inappropriate authority and not by the Comptroller & Auditor General. They further submit that the Assistant Comptroller & Auditor General (Commercial) in his capacity as the appointing authority to the cadre of Section Officers (Commercial) had rightly passed the speaking order dated 8.3.96 relying on the various points discussed.

8. The essential portion of the impugned reply is necessary to be reproduced:-

" The various averments/contentions raised in the O.A. are answered in the following paragraphs.

4. The averments made in paras 1 to 3 of the application are only formal and

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as such they do not call for any remarks.

5. Regarding the averments in para 4 of the application, I submit that Direct Recruitment to the cadre of Section Officers (Commercial) was made during the year 1987. Those who qualified in the entrance examination were appointed as Section Officers (Commercial) on probation, subject to among others, the following terms and conditions:

i) The period of probation will be two years. This may, however, be increased or decreased at the discretion of the appointing authority.

ii) The appointment is purely temporary and liable to be terminated at one month's notice on either side.

iii) He/She will have four chances in all to qualify in the departmental examination. Those who fail to qualify within the prescribed number of chances are liable to be discharged from service. Candidates who qualify in the examination will be posted as regular Section Officers (Commercial).

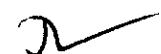
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iv) The first increment in the scale of pay will accrue after one year from the date of regular appointment as Section Officer (Commercial) on qualifying in the said examination.

(It has now been decided to release the first increment on completion of one year's service, the second increment will be released on completion of two years of service and the third increment will be released on completion of third year and subject to satisfactory completion of the specified period of probation i.e, on passing SOGE Part-I & II both).

v) On satisfactory completion of probationary period he/she will be eligible for confirmation, however, subject to being found fit in all respects for permanent retention in the service. The confirmation in the Section Officers cadre will not however, give any special claim to the seniority. The inter-se-seniority of direct recruits and the departmental candidates passing the Section Officer (Commercial) Part-II examination, will be in accordance with the seniority rules in existence viz., that the directly recruited Section Officers



(Commercial) shall rank immediately below the last Section Officer who have qualified in the grade (Commercial) Examination and officiating in the Grade of Section Officers (Commercial) on the date on which he takes over charge as Section Officer (Commercial).

vi) Further, according to para 5.6.6(iii), Chapter V of the Comptroller and Auditor General's Manual of Standing Orders (Administrative) Volume-I (Third Edition), the seniority of direct recruit Section Officers (Commercial) on probation is effective on his actual taking over charge of the post or on termination of the probation after passing the Section Officers Grade (Commercial) Examination, whichever is later. Applicant's appointment was on probation and they were not appointed as probationers. After joining the post, Applicants were required to undergo training and pass Departmental Exam. prescribed under the Rules. It is only after the fulfilment of these conditions and satisfactory completion of period of probation that these applicants become eligible for appointment as regular Section Officer

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(Commercial). Before undergoing requisite training, passing of written test and satisfactory completion of probation, the recruitee has no right to regular appointment in the post of Section Officer (Commercial). Hence the direct recruitee Section Officer (Commercial) has a right for seniority in that post only from the date of his appointment as regular Section Officer (Commercial) and not from the date of his initial appointment on probation to the post.

The aforesaid terms and conditions were incorporated in the appointment letters issued to all those directly recruited and which were only accepted by them before they joined the service. After completion of the training they were assigned the duties of Section Officers to evaluate their performance and adjudge their suitability for permanent retention in the service."

8. The learned standing counsel for the official respondents Mr.B.Narasimha Sarma relied on the judgement of this Tribunal in O.A.No.957/89 decided on 9.9.93 to state that fixation of seniority of the applicants is in order. In OA.No.957/89 a direct recruit Accountant in the Subordinate (Railway) Accounts Service in the Indian Audit

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and Accounts Department was assigned seniority below the last officiating senior Auditor who passed SRAS examination and not on the basis of her initial appointment. That application was dismissed by the said order dated 9.9.93. The learned standing counsel for the respondents submits that this OA is similar one and has to be dismissed.

9. The private respondent No.34 also filed a reply. It is more or less in consonance with the reply filed by the official respondents. Mr.N.Rama Mohan Rao relied on the following judgments to state that this case is squarely covered by these judgements:-

1. 1993 Supp (3) SCC 181 (Prafulla Kumar Swain v. Prakash Chandra Misra)

2. AIR 1996 SC 2397 (M.P.Chandoria v. State of M.P).

10. It is an admitted fact that the applicants joined on probation as Section Officers (Commercial) in October, 1987. They have not joined as probationers. Hence the meaning of the word 'on probation' and 'probationer' has to be clarified first.

11. The 'probationer' is one who is appointed in or against a post substantively vacant with conditions of probation whereas a person 'on probation' is one who is appointed to a post for determining his/her fitness for eventual substantive appointment to that post. From the above definition it has to be held that those who were appointed on probation have to be adjudged for their

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fitness for eventual absorption in a substantive capacity in that post. Hence any one appointed on probation in the first instance cannot be treated to be having been appointed in a substantive post from the date of his joining. The applicants in this OA, as stated above, have joined on probation. Hence treating them as substantial holders of the post of Section Officer (Commercial) in the Indian Audit and Accounts Department from the date of their joining in October, 1987 may not be an appropriate view. Hence the demand of the applicants to give them seniority from the date of their initial appointment on probation in October, 1987 may not be a reasonable demand.

12. It is seen from the submission made by the official respondents which has been extracted above that according to para 5.6.6(iii), Chapter V of the Comptroller and Auditor General's Manual of Standing Orders (Administrative) Volume-I (Third Edition), the seniority of direct recruit Section Officers (Commercial) on probation is effective on his actual taking over charge of the post or on termination of the probation after passing the Section Officer's Grade (Commercial) Examination, whichever is later. When a rule/^{is} existing in regard to fixation of seniority of the applicants and the applicants having joined accepting the terms and conditions as enumerated in the appointment orders, cannot now go back and demand for fixation of seniority which is not in accordance with the rule position and also challenging the appointment order which they had accepted and joined.

13. In the reported case in 1990 (2) SCALE 949 (A.K.Bhatnagar v. Union of India) it is observed that,

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"Seniority is an incident of service and where the service rules prescribed the method of its computation, it is squarely governed by such rules". The relevant portion of the judgement reads as follows:-

"Reliance on the ratio of cases where disputes of inter-se seniority between direct recruits and promotees on the basis of officers of one category manning the posts meant for the other category should not have been relied upon for determining a dispute of the nature and that arose in these cases. xxxx xxxx xxxx Since the rules are clear and the Govt. action was within the purview of the rules, judicial interference was not called for."

In that view of the matter, the question of reversing the seniority which has been accepted by the applicants at the time of their joining as incorporated in their appointment orders, is not tenable.

14. We have examined the various citations of all the parties. The analysis of the various citations quoted are discussed as below:-

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In the reported case in 1993 Supp (3) SCC 181 (Prafulla Kumar Swain v. Prakash Chandra Misra) relied upon by Mr.N.Rama Mohana Rao for R-34, the 3 judge Bench of the Apex Court/ held that, seniority should be counted only from the date of appointment to the service and after successful completion of the course of training. That has been incorporated in Regulation 12(c) of Orissa Forest Service Class II Recruitment Rules, 1959. The learned counsel relying on the above judgement submits that the applicants cannot demand seniority before completion of the probation/course of training i.e, with effect from the date of their initial appointment.

15. The learned counsel for the applicants relying on a decision of the two judge bench of the Supreme Court reported in 1997 SCC (L&S) 969 (Mohan Lal v. State of H.P) submits that "the candidates who passed the examination within two years and were confirmed after passing the test would get seniority from the respective dates of joining the post and the date of passing the departmental test relates back to the date of appointment." The above judgment was passed in the H.P.Excise and Taxation Department (Inspectorate Staff, Class III) Service.

16. The views expressed in these two judgements are different. But which one of those judgements has to be relied upon, which is more appropriate in this case is to be seen. The judgment of the Supreme Court in Prafulla Kumar Swain's case was decided by a 3 judge Bench of the Supreme Court whereas the judgment in Mohan Lal's case was decided by a Division Bench of the Apex Court. Hence the

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larger Bench observation is to be treated as observation applicable ^{to} ~~in~~ this OA. Further, it may be possible that the observation made by the 3 judge Bench of the Supreme Court in Prafulla Kumar Swain's case ~~may~~ ^{not} have been brought to the notice of the Apex Court in Mohan Lal's case passed later. There is no mention in regard to Prafulla Kumar Swain's case in Mohan Lal's case.

17. As stated earlier, in the present case, the seniority of the applicants herein was given following the extant rules. In Prafulla Kumar Swain's case also relevant regulation of the Recruitment Rules was relied upon to observe so. In Mohan Lal's case there was no observation in regard to any rule position which has been kept in view while passing the judgment. In that view also, Prafulla Kumar Swain's case may be treated as an appropriate citation in this case.

18. In Mohan Lal's case, the seniority dispute is not with regard to the seniority between direct recruits and promotees. It is a case of deciding inter-se seniority of direct recruits only. Hence relying on the observations of the Apex Court in Mohan Lal's case, in our opinion, may not be very appropriate.

19. In the reported case in 1994 (1) LLJ 1026 (G.Gangarasniah v. A.Narayanaswamy) which was relied on by the applicants to state that the seniority will have to be counted from the date of their regular initial appointment. At the outset, it has to be stated that this judgment was passed by a Division Bench of the Apex Court. Even in that case, we do not find any reference of the Apex Court

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judgment of the 3 judge Bench reported in Prafulla Kumar Swain's case. Further, it appears that the appointment of the appellant therein was not according to the rules and that he was regularised for the first time pursuant to the Award of the Industrial Tribunal and hence it was held that his regular service against substantive vacanacy began for the first time from the date he was so absorbed or regularised. In that context, it appears ~~ever~~ a direction was given to give seniority to the direct recruits from the date of their initial appointment. No rule has been quoted in that judgment in regard to the recruitment rules or other relevant rules which decides the seniority. In the absence of any rule quoted, whether it can be treated as an appropriate citation to give the relief in this connection, is a point to be discussed. As stated earlier, when the rules are available, the seniority was governed by such rules as held in Bhatnagar's case. ~~xxxxxxxxxx~~ In the present case there are rules in this connection and hence the observation in Prafulla Kumar Swain's case is more relevant than the observations in the Mohan Lal's case and Gangarasniah's case.

20. When similar case has been dealt with by the highest forum of the judiciary i.e., Apex Court, ~~reliance~~ on the lower court ie., High Court of Gujarat in W.A.No.67/93 dated 18.6.93, ~~xxxxxxxxxxxxxxxxxxxx~~ may not be very necessary for consideration of this Bench.

21. Reliance by the applicant on the judgement of this Tribunal in OA 381/92, decided on 28.7.93 (reported in 1994 (1) SLR 739; Ch.V.Subba Rao v. Union of India), may not also be very appropriate in the present context as the

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observations in that case were made when the seniority was decided on the sole context of confirmation. In this OA, this is not a question of deciding seniority on the basis of the date of confirmation. Hence we feel that no positive view can be taken on the basis of this citation. The DoPT O.M.No.20011/5/90-Est.(D), dated 4.11.92 has no relevance to this case. It has been stated in that OM that seniority of a person regularly appointed to a post according to the rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation. The present case is seniority dispute between directly recruited employees and promotees. Hence this rule, in our opinion, is of no consequence.

22. The learned counsel for the private respondents relied on the decision of a two judge Bench of the Supreme Court reported in AIR 1996 SC 2397 (M.P.Chandoria v. State of M.P) to substantiate his case. In our opinion, this also is not very relevant one as that judgment has been passed in regard to the seniority of the candidate passing confirmation examination during the extended period of probation.

23. The learned counsel for the official respondents relied on the judgment of this Tribunal in OA 957/89 decided on 9.3.93 (Smt.P.Saroja Aravamadhu v. Comptroller & Auditor General of India and another). In that case also the seniority of an Accountant in the Subordinate (Railway) Accounts Service in the Indian Audit and Accounts Department, was considered from the date of her initial

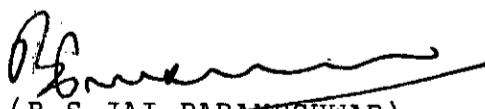
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appointment wherein it was held that where a directly recruited Accountant qualifies in the SRAS examination at a subsequent date, he/she will have to reckon his/her seniority below that of the last officiating Auditor who passed the examination immediately prior to the date when the direct recruit passed the examination. The applicants in this OA are also more or less in the same category to that of the Accountant in the Subordinate (Railway) Accounts Service in the Indian Audit & Accounts Department. Hence the decision in that OA is more appropriate to be applied in this OA also.

24. Considering all the points as discussed above, it is to be held that the applicants having joined accepting a certain service condition, cannot demand their seniority from the date of their initial appointment contrary to the rules and contrary to their acceptance of that rule by them at the time of their appointment. In that view, we feel that there is no need to interfere with the seniority fixed by the Comptroller and Auditor General in the impugned letter dated 8.3.96 conveyed by the Memo No. CC/CC I/8-22/607/91/166, dated 19.3.96 (Annexure A-1 at page 12 to the OA). Hence the OA is liable only to be dismissed and accordingly it is dismissed. No order as to costs.


(B.S.JAI PARAMESHWAR)

MEMBER (JUDL)

19.8.99


(R.RANGARAJAN)

MEMBER (ADMN.)

DATED: 19th AUGUST, 1999

vsn

COPY TO:-

1st AND II nd COURT

1. HODNJ
2. HRRN M (A)
3. HBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD:

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN
THE HON'BLE MR.R. RANGARAJAN,
MEMBER (ADMN)

THE HON'BLE MR.B.S. JAI PARAMESHWAR
MEMBER (JUDL)

ORDER DATE: 19/8/99

MA/RA/CP.NO

IN
DA.NO. 1339/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

5-9 SEP 1999

हैदराबाद न्यायालय
HYDERABAD BENCH