

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET.

Org. App./Misc. Petn/Cont. Petn/Rev. Appl. 11/2004

In O.A. 182/2003.

Name of the Applicant(s) Sri Manindra Chandra Nath

Name of the Respondent(s) Union of India & ors.

Advocate for the Applicant Mr. M. Chanda, G.N. Chakraborty
S. Nath.

Counsel for the Railway/C.G.S.C.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

12.8.2004

List on 16.8.2004.

mb

16.8.04

ICV Prithvi
Member (A)

This Review application has been filed by the applicant with a prayer under Section 22(3)(f) of the Adm. Tribunal Act, 1985 with the C.A.T (procedure) Rules, 1987.

To show cause as to why the order dated 26.4.04 passed in OA 182/03 be pleased to review the order dated 26/04/04 which was passed in O.A.

Laid before Hon'ble Court for orders.

W. S. S. S.
28/7/04.
Section Officer.

It appears that no sufficient ground for review of the application has been mentioned in the R.A. Therefore, the Review Application is dismissed. Detailed order will be passed separately.

K. P. S. S.
Member (A)

10.9.04
Copy of the order has been sent to the Dy Sec. for issuing the same to the applicant as well as to the Dy. C.S. Sec.
15/9/04

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Review Applications No.10 and 11 of 2004.
(In O.A. 183 and 182 respectively)

Date of Order : This the 16th Day of August, 2004.

The Hon'ble Shri K.V.Prahladan, Administrative Member.

Shri Niranjana Chandra Das (R.A.10/2004)
Son of Sri Sujit Ram Das,
Village Pathharkandi, P.O. Mahakal,
dist. Karimganj (Assam)

Shri Manindra Chandra Nath, (R.A.11/2004)
Village Kanaklash, P.O.Bhangabazar,
Dist. Karimganj (Assam)

By Advocate Shri M.Chanda

- Versus -

1. Union of India,
Through the Secretary to the Govt. of India,
Ministry of Communication,
Department of Telecommunication,
New Delhi.
2. Bharat Sanchar Nigam Limited,
represented by the General Manager,
Assam circle, Telecom,
Ulubari, Guwahati-7.
3. The General Manager,
telecom, Silchar SSA,
Deptt. of Telecommunication,
Silchar, Assam.
4. Sub Divisional Officer,
Telecom, Deptt. of Telecommunication,
Karimganj.
5. Divisional Engineer (P&A)
Office of the General Manager,
B.S.N.L. Silchar.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

K.V.PRAHLADAN, MEMBER(A)

By these Review Applications the petitioners seek to review the decision of this Tribunal given in O.A.Nos.183/2003 and 182/2003 under Section 22 (3) (f) of the Central Administrative Tribunals Act, 1985. The review is sought because of an apparent error on the face of record; "there was a categorical and specific statement

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in the petition regarding their engagement (of the applicant) with effect from 2.7.1998 to 26.9.2000." The Tribunal came to the conclusion that there was not enough material on record to back up the claims of the applicant that they were on engagement from 2.7.1995 to 26.9.2000. Therefore, no "specific statement" by the applicant is alone necessary evidence of his engagement for the above period.

2. Therefore, the applicant has sought a review. As per the Code of Civil Procedure, 1908, Section 114 read with Order XLVII, Rule 1 an applicant can seek a review :

"(i) from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or (ii) on account of some mistake or error apparent on the face of the record, or (iii) for any other sufficient reason, desires to obtain a review of the order made against him."

3. The Apex Court in Meera Bhanja vs. Smt. Nirmala Kumari Choudhury, (1995) 1 SCC 170, has held as under :

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"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p.390 para 3).

'It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave

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and palpable errors committed by it. But, there are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the records is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable and appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, a Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. We must usefully refer to the observations of this court in the case Satyanarayan Laxminarayan Hedge v. Mallikarjun Bhavanappa Tirumale wherein K.C.Das Gupta J., speaking for the court has made the following observations in connection with an error apparent on the face of the record :

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ." (emphasis supplied)

4. Thus the scope of review as laid down by the Apex Court completely apply to the facts of the present case. Therefore, there appears to be no error apparent on the face of the order dated 26.4.2004. However, the period of submitting representation granted to the applicant in O.A. 182/2003, is extended to two weeks from the date of receipt of this order. Subject to the above obseravation, the R.A. is dismissed. No order as to costs.

This order disposes of R.A.10/2004 (In O.A.183/2003)

also.

Sd/MEMBER(ADM)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

Review Application No. 11 /2004

Arising out of Original Application No. 182 of 2003

In the matter of:

Shri Manindra Chandra Nath

-Vs-

Union of India and Others.

- And -

In the matter of:

An application under Section 22(3) (f) of the
Administrative Tribunals Act, 1985 read
with CENTRAL ADMINISTRATIVE
TRIBUNAL (PROCEDURE) RULES, 1987
framed under the Administrative Tribunals
Act, 1985.

- And -

In the matter of:

Original Application No.182 of 2003
(Manindra Chandra Nath -Vs- Union of
India and Others.)

Shri Manindra Chandra Nath

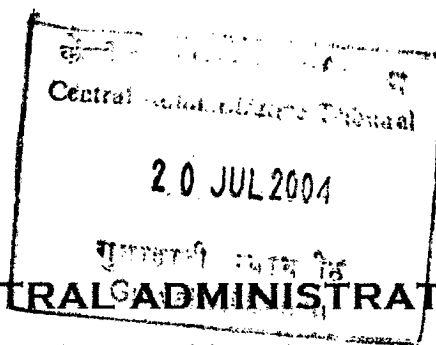
Village- Kanaklash, P.O.Bhangabazar ,

District- karimganj (Assam).

----Applicant/Review
Petitioner.

-Versus-

1. The Union of India,
Through the Secretary to the Government of
India,



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Filed by the applicant/
Review Petitioner
Through: Subrata Nath
Advocate
20.07.04

Ministry of Communication,
Department of Telecommunication
New Delhi.

2. Bharat Sanchar Nigam Limited, Represented by the Generalmanager, Assam Circle, Department of telecommunication, Ulubari, Guwahati.
3. The General Manager, Telecom, Silchar SSA, Department of Telecommunication, Silchar, Assam.
4. Sub divisional officer, Telecom, Department of Telecommunication, Karimganj.
5. Divisional Engineer (P&A) Office of the general manager, Bharat Sanchar Nigam Limited, Silchar.

...Respondents.

The humble applicant above named-

MOST RESPECTFULLY SHEWETH:

1. That the applicant/ review petitioner seeks review to the order dated 26.04.2004 passed in Original application no. 182/2003 disposing the said application filed by applicant/review petitioner under Section 19 of the administrative Tribunals Act, 1985.
2. That the applicant /review petitioner says that by the action of the respondents in not granting his temporary status as casual worker had approached this Hon'ble Tribunal through the above mentioned Original Application seeking appropriate relief.

3. That the applicant/review petitioner prayed for the following reliefs in the Original Application.
 1. That the respondents be directed to grant temporary status to the applicant in the light of the judgment and order dated 24.08.2001 and also in terms of the order dated 05.09.2001 in O.A.No.332/2000 with immediate effect.
 2. That the applicant be declared entitled to grant of temporary status and regularization and the respondents be accordingly directed to grant them the benefit of the scheme named as casual labourers (grant of temporary status and regularization) scheme of the Department of Tele communication, 1989 w.e.f the date as had been granted to him vide letter dated 15.12.1997, 16.12.1997 and 22.12.1997.
 3. That the Hon'ble Tribunal be pleased to set aside the impugned order bearing letter No. E-20/TSM/ Regularization/SC/04 dated 26.09.2000.
 4. That the respondents be directed to allow the applicant to continue in service in terms of the interim order passed by the Hon'ble Tribunal on 2.7.1998 and in terms of the Judgment and order dated 31.08.1999 and 30.03.2001 passed in O.A. No 141/98 and O.A. No 332/2000 respectively till the benefit of temporary status and regularization are granted to them in terms of the order dated 15.12.1997 and 22.12.1997 with retrospective effect.
 5. That the Hon'ble tribunal be pleased to declare that the applicant is entitled to full back wages with effect from 30.06.1998 till the date of actual reinstatement.
 6. Cost of the application.
 7. Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.
4. That the applicant/review petitioner says that respondents duly contested the original application by filing a written statement contending inter-alia that the applicant/review petitioner was not engaged in the department for 240 days or more in any year as per the records.

5. That the matter came up for hearing before this Hon'ble tribunal on 26.04.2004 and the Hon'ble Tribunal dispose of the said Original Application with the following observation and direction:

"3. It is not certain whether the applicants were in service from 2.7.1998, the date on which the Tribunal passed the interim order in O.A. No 141/1998, to 26.9.2000 when the representations of the applicants were disposed of by the respondents. From the materials furnished it is ^{not} clear whether the applicants were in service during the aforementioned period.

4. I have heard Mr. M. Chanda, learned counsel for the applicants and also Mr. A. Deb Roy, learned Sr. C.G.S.C appearing on behalf of the respondents.

5. On hearing the learned counsel for the parties and on perusal of the records I dispose of these two applicants with a direction to the applicants to submit a representation to the respondents stating all facts about their engagement upto 26.09.2000 within ten days from the date of receipt of this order. If such representation is filed within the period prescribed the respondents shall consider the same and pass a reasoned and speaking order within four months from the date of receipt of such representation.

The two O.A.s are accordingly disposed of. There shall. However, be no order as to costs."

6. It is quite clear from the observation by the Hon'ble Tribunal in paragraph 3 that it is not clear whether the applicants/ review petitioners was in service from 2.7.1998 to 26.9.2000 and therefore the Hon'ble Tribunal disposed of the said Original application with a direction to the applicants/review petitioners to submit a representation stating all facts about their engagement upto 26.09.2000 and in the event of filing of such representation the respondents shall pass a reasoned and speaking order within 4 months from the date of received of such representation.

A Copy of the Judgment and Order dated 26.04.2004 is enclosed herewith and marked as Annexure-I.

7. That it is stated that applicants/review petitioners have received the said judgment and order only on 21.06.2004 from the registry of this Hon'ble tribunal as such the review petition is well within the time limit prescribed by Administrative tribunals Act, 1985.
8. That it is stated that in the Original Application there was a specific and categorical statement made by the applicants/review petitioners particularly in paragraph 4.4 and 4.8 of the said Original Application. Wherein it is specifically stated that after the interim order passed by this Hon'ble Tribunal on 2.7.98 in Original Application 141/98, the applicants/review petitioners regularly attended to the office but no work was allotted to them pursuant to the order dated 2.7.98 but in terms of the order they have continued in service although no specific work was allotted to the applicants/review petitioners but they have continued in service from 2.7.98 to 26.09.2000 as per interim order of the court. Therefore on the face of the judgment and order dated 26.04.2004 there is an error apparent on the face of the record as because there was categorical and specific statement in the petition regarding their engagement w.e.f 2.7.98 till 26.9.2000 i.e. the date when the representation of the applicants were disposed of by the respondents. Therefore decision of the learned Tribunal on the basis of the materials furnished by the applicants/review petitioners is erroneous as because the applicants/review petitioner were in service during the period 2.7.98 to 26.9.2000 but the learned Tribunal took a decision to remand back back the matter before the respondents once again when the applicants/review petitioner had been forced in the litigation for protection of their valuable and legal right for survival on the question of earning of their bread and butter since 1998, therefore learned Tribunal was not justified for remanding the matter once again before the respondents that too when all materials regarding their engagements w.e.f 2.7.1998 to 26.9.2000 were very much available in the records of the Court's itself, therefore it is error apparent on the face of the order dated 26.04.2004 and also there are sufficient grounds to entertain this review application as because in the earlier litigation in the Original Application No.141/98, which was disposed of by this Hon'ble tribunal on 31.8.99 with a direction to the respondents to examine the case of the applicants on merits within a period of 6 months whereas the respondents had taken nearly 1 year time in disposing the representation i.e on 26.9.2000 that to by rejecting their claims on the alleged grounds that they were not engaged for a period of 240 days and the certificates furnished by the applicant were not genuine, therefore

remanding the matter once again before the respondents after lapse of about 6 years without considering the case of the applicants/review petitioners on merits. It will cause irreparable loss and injury to the applicants/review petitioners. More so, in view of the fact they are out of employment

9. That it stated that case of the applicant is squarely covered by the decision rendered by this Tribunal in Original Application No. 28/2001 and also in Original Application No.332/2000 vide Judgment dated 24.8.2001 and 5.9.2001. The relevant portion of the judgment of judgment dated 24.8.2001 in Original Application No. 28/2001 is quoted below.

“ Therefore at any rate the applicant rendered his service as a Casual Labourer on and from December 1997 to 26.9.2000. The findings of the authority that he was not in engagement on 1.8.98 therefore, cannot be sustained. The services rendered by the applicant at least from December, 1997 till the disposal of the representation could not have been ignored. The applicant was earlier granted temporary status on the basis of his past record, which was cancelled at the instance of the communication sent by the SDE Vigilance O/O TDM Silchar report vide letter dated 25.6.98. The said report was not produced before us. The applicant was granted temporary status by order-dated 9.12.97. The said order of granting temporary status was cancelled unilaterally on the basis of the report of the SDE Vigilance as reflected in the communication by the TDM, Silchar letter dated 27.6.98, which visited with civil consequences.

6. We have heard Mr. P. Roy, learned counsel for the applicant at length and also Mr. A. Deb Roy at length and also Mr. A. Deb Roy, learned Sr. C.G.S.C for the respondents.
7. The respondents have missed the direction of the Tribunal dated 31.8.99 by refusing to consider the case of the applicant in its full perspective. The action of the Scrutinizing Committee to confine its enquiry upto 1.8.98 also cannot be sustainable. Admittedly, the applicant was engaged as a casual labourer on and from 1.1.98 till he was sought to be disengaged by the order-dated 29.6.98.”

In view of the categorical findings and decision of this Hon'ble Tribunal on the same issue there is no justification on remanding the matter once again for further consideration when their stand is very clear which is evident from the written statement itself and the matter is no longer res integra, and more so in view of the fact when the entire material is available in the record of the Hon'ble tribunal itself. Hence there is an error apparent on the face of the order of the Hon'ble Tribunal remanding the matter once again before the respondents. The applicant belongs to a very poor family and has no sufficient means or wages to continue the litigation once again in the event of rejecting his case once again by the respondents in future in terms of the order passed by the learned Tribunal by Original Application No. 182/03, 183/03 on 26.4.2004 more so, when the matter is squarely covered by the series of decision of this bench of the Hon'ble Tribunal.

10. That it stated that the provision of the review made under Code of civil Procedure 1908 is quoted below for perusal of the Hon'ble Tribunal.

ORDER XLVII

REVIEW

1. **Application for review of Judgment-** (1) any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

- (2) A party who is not appealing from a decree or order may apply for a review of Judgment notwithstanding the pendency of an appeal by some other party

except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate Court the case on which he applies for the review.

On the perusal of the order of the Hon'ble Tribunal passed on 26.4.2004 where the Learned Tribunal held that it is not certain whether the applicants were in service from 2.7.98 to 26.9.2000 and as a result the matter was remanded back to the respondents for fresh consideration, but their engagement during the period from 2.7.98 to 26.9.2000 has been furnished in details in the Original Application. As such in terms of the Code of Civil Procedure as stated above there are sufficient reasons and also in view of the fact that the order has been passed by Learned Tribunal on account of some mistake, the cases of the applicants/review petitioners is liable to be reviewed and therefore Hon'ble Tribunal be pleased to review the order passed on 26.4.2004 in Original Application No. 182/03 and further be pleased to heard the matter afresh.

11. That this review application is made bonafide and for the ends of justice.

Upon the premises aforesaid, it is humbly prayed that the Hon'ble Tribunal be pleased to consider this petition, admit the same and issue notice to the opposite parties/respondents to show cause as to why the order dated 26.04.2004 passed in O.A. No. 182/2003 should not be reviewed as prayed for in this petition and cause or causes being shown and upon hearing the parties be pleased to review the order dated 26.04.2004 passed in O.A. No. 182/2003 and further be pleased to set aside the same and grant the relief as prayed for in the Original Application with regard to the grant of temporary status to the applicant/review petitioner and/or pass such other order (s) as this Hon'ble Tribunal may deem fit and proper.

And for this act of kindness the applicant/review petitioner shall ever pray.

AFFIDAVIT

I, Sri Manindra Chandra Nath, resident of Vill- Kankalash, P.O- Bhangabazar, Dt- Karimganj (Assam) aged about 34 years do hereby solemnly affirm and declare as follows:

1. That I am the petitioner in the instant review petition and as such conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made in paragraphs 1, 2, 4, 7 and 10 in the accompanying petition are true to my knowledge and those made in paragraphs 3, 5, 6, 8 and 9 are being matter of records are true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on 20th day of July, 2004.

Identified by me
Subrata Nath.
Advocate.

Manindra Ch. Nath
Deponent -

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.182 of 2003

And

Original Application No.183 of 2003

Date of decision: This the 26th day of April 2004

The Hon'ble Mr K.V. Prahladan, Administrative Member

O.A.NO.182/2003

Shri Manindra Chandra Nath
Village- Kankalash, P.O. Bhangabazar,
District- Karimganj (Assam):

.....Applicant

By Advocates Mr. M. Chanda,
Mr G.N. Chakraborty and Mr S. Nath.

- versus -

1. The Union of India, through the
Secretar, Ministry of Communication,
Department of Telecommunication,
New Delhi.

2. Bharat Sanchar Nigam Limited
Represented by the General Manager,
Assam Circle, Department of Telecommunication,
Government of India,
Ulubari, Guwahati.

3. The General Manager, Telecom,
Silchar SSA, Department of Telecommunication,
Silchar, Assam.

4. Sub Divisional Officer, Telecom,
Department of Telecommunication,
Karimganj.

5. Divisional Engineer (P & A)
Office of the General Manager,
Bharat Sanchar Nigam Limited,
Silchar.

.....Respondents

By Advocate Mr. A. Deb Roy, Sr. C.G.S.C.

O.A.No.183/2003

Shri Niranjana Chandra Das
S/o of Shri Sujit Ram Das
Village- Patharkandi, P.O. Mahakal,
District- Karimganj (Assam).

.....Applicant

- versus -

1. The Union of India, through the
Secretary, Ministry of Communication,
Department of Telecommunication,
New Delhi.

2. Bharat Sanchar Nigam Limited
Represented by the General Manager,
Assam Circle, Department of Telecommunication,
Government of India,
Ulubari, Guwahati.

*Certified to be true copy,
Advocate
20.07.04*

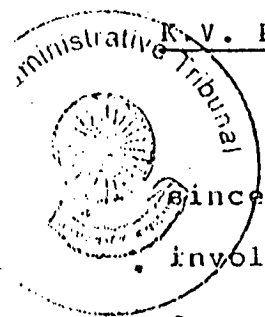
- 16
3. The General Manager
Telecom, Silchar SSA,
Department of Telecommunication,
Silchar, Assam.
4. Sub Divisional Officer, Telecom
Department of Telecommunication,
Karimganj.
5. Divisional Engineer (P & A)
Office of the General Manager,
Bharat Sanchar Nigam Limited,
Silchar.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

O R D E R (ORAL)

K. V. PRAHLADAN, ADMINISTRATIVE MEMBER



Both the O.A.s are taken up for hearing together since similar facts and common questions of law are involved.

2. The applicants were provisionally approved for grant of temporary status by letter dated 23.12.1997 (Annexure-III). By order dated 29.6.1998 (Annexure-IV) the respondents cancelled the temporary status conferred on the applicants. Thereafter the applicants through the All India Telecom Employees Union Line Staff Group 'D' moved this Tribunal by way of O.A.No.141 of 1998. The Tribunal vide interim order dated 2.7.1998 directed the respondents not to disengage the applicants and allow them to continue in service. The respondents by order dated 26.9.2000 informed the applicants that the applicants did not fulfil the eligibility criteria having not completed 240 days of work preceding 1.8.1998 and also they were not in engagement as on 1.8.1998 and therefore they could not be considered for grant of temporary status. Hence the two applications.

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3. It is not certain whether the applicants were in service from 2.7.1998, the date on which the Tribunal passed the interim order in O.A.No.141/1998, to 26.9.2000 when the representations of the applicants were disposed of by the respondents. From the materials furnished it is not clear whether the applicants were in service during the aforementioned period.

4. I have heard Mr M. Chanda, learned counsel for the applicants and also Mr A. Deb Roy, learned Sr. C.G.S.C. appearing on behalf of the respondents.

5. On hearing the learned counsel for the parties and on perusal of the records I dispose of these two applications with a direction to the applicants to submit a representation to the respondents stating all facts about their engagement upto 26.9.2000 within ten days from the date of receipt of this order. If such representation is filed within the period prescribed the respondents shall consider the same and pass a reasoned and speaking order within four months from the date of receipt of such representation.

The two O.A.s are accordingly disposed of. There shall, however, be no order as to costs.

Sd/MEMBER(ADM)

TRUE COPY
[Signature]

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[Signature]
Section Officer
C.A.T. GUWAHATI Bench
Guwahati 781 004

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Certified to be true copy
[Signature]
Adm. Secy
20.07.04