

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

Date of filing of OA :21.04.2014

Pronounced on: 4.4.2016
Reserved on : 29.03.2016

OA No. 060/00341/2014

Coram: Hon'ble Mr. Justice L.N. Mittal, Member(J).
Hon'ble Mrs. Rajwant Sandhu, Member(A).

1. Sh. Anil Kumar S/o Sh. Roshan Lal, working as Loco Pilot Passenger
2. Sh. Satpal Sharma S/o Sh. Ram Asra
3. Sh. Baljit Kumar S/o Sh. Maharaj Din
4. Sh. Mohinder Pal S/o Sh. Sukh Ram
5. Sh. Daya Pal Singh S/o Sh. Piara Singh

(Applicants No. 1 to 4 are working as Loco Pilot Mail/Passenger in the office of Headquarter, Northern Railway, Ambala Cantt.)

.....Applicants

By Advocate : Sh. Rohit Seth

Versus

1. Union of India through General Manager, Northern Railways, Baroda House, New Delhi.
2. General Manager (Vigilance), Headquarter Office, Baroda House, New Delhi.
3. Chairman, Railway Board, Rail Bhawan, New Delhi.
4. Divisional Railway Manager, Northern Railway, Ambala Cantt.
5. Senior Divisional Personnel Officer, DRM Office, Northern Railway, Ambala Cantt.
6. Sh. Ram Karan S/o Sh. Amar Singh
7. Sh. Mukesh Chand S/o Sh. B. Dass
8. Sh. Faquir Chand S/o Sh. Ram Diya
9. Sh. Harnam Singh S/o Sh. Singh Ram
10. Sh. Sanjay Kumar S/o Sh. Roop Chand
11. Sh. Deepak Mishra S/o Sh. A.K. Mishra
12. Sh. Dilip Kumar S/o Sh. Singraoo Ram

(Respondents No. 6 to 12 are working as Loco Inspector under respondent No. 4 i.e. DRM, Northern Railway, Ambala Cantt.)

.....Respondents

By Advocate : Sh. Sanjiv Dahiya for respondents No. 1-5.

Sh. T.S. Chauhan for respondents No. 6-10 & 12

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ORDER

By Hon'ble Mrs. Rajwant Sandhu, Member(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- (i) Quash order dated 06.02.2014 (Annexure A-1) vide which official respondents stated that the issue of selection of Loco Inspector had been dealt with in OA No. 459/HR/2010 which stood dismissed vide order dated 13.07.2011 (Annexure A-11) which is wrong on facts as applicants No. 2 to 5 had challenged the panel of promotion solely on the ground that same should have been based upon seniority-cum-suitability which plea was not agreed to by this Tribunal while upholding the selection not based upon seniority, at that point of time applicants No. 2 to 5 were not even aware of the fact that ineligible persons like private respondents have been selected/promoted despite not meeting the requisite criteria of having driving experience of 75000 Kms Footplate, further it wrongly states that the said selection is under investigation by the vigilance department although the Vigilance department had already given their findings in the matter vide order dated 07.10.2013 (Annexure A-10) and declared respondents No. 7, 9, 10 and 12 as ineligible for the promotion as Loco Inspector, lastly the aforesaid order states that the issue of selection in question has been referred to Head Quarter Office vide letter dated 29.01.2013 followed by letter dated 04.07.2013 for seeking instructions in the matter but the fact remains that the persons like applicants who are next in merit among the eligible candidates cannot be made to wait for their consideration and promotion to the post of Loco Inspector from due date indefinitely moreover when the illegality is apparent on record.
- (ii) Quash order dated 27.04.2010 (Annexure A-2) vide which panel of promotion to the post of Loco Inspector of 25 persons was declared and quashing thereof to the extent it relates to the selection and promotion of respondents No. 6 to 12 who did not fulfill the eligibility criteria of having driving experience of actual 75000 Kms Footplate as required in the advertisement dated 05.09.2009 (Annexure A-3) as well as Railway Board letter dated 30.09.2009 in view of the findings given by the Vigilance Department in their order dated 07.10.2013 coupled with the information supplied under RTI letter dated 09.11.2012 (Annexure A-7) and 16.12.2012 (Annexure A-6) as the applicants have been deprived of their valuable rights of fair consideration in the selection process for further promotion to the post of Loco Inspector, which is violative of Articles 14 and 16 of the Constitution of India.
- (iii) Direct the official respondents to reconsider the claim of the applicants for consideration and promotion as per their merit in the selection process from due dates against the post of Loco Inspectors and if they are found suitable, empanel and promote them from the due dates, with all consequential benefits of pay and allowances, seniority, arrears thereof alongwith interest @ 18% per annum till the payment made. "

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2. Averment has been made in the OA that the applicants joined the respondent department in the years 1973 to 1990 and were promoted from time to time. The respondent No. 4 invited applications for the post of Loco Inspector Grade PB-II Rs. 9300-34800 with Grade Pay of Rs. 4600 from the eligible serving staff working as Loco Pilot Mail/Passenger/Goods in pay scale of Rs. 9300-34800 + Grade Pay of Rs. 4200 vide Notice No. 755-E/1/L1/Sel/Pt.IV/P-2A/09/UMB dated 05.09.2009 (Annexure A-3) with a condition that candidates must have completed actual 75000 Kms Footplate experience as on 30.09.2009, this criteria/condition was also notified by the Railway Board vide letter Nc. E(P&A) II-2007/RS-14 dated 26.03.2009 (Annexure A-4). The applicants submitted their application with declaration that they have experience of 75000 Kms Footplate experience. The candidature of the applicants was accepted by the respondents and they were all called for written examination which was conducted on 09.01.2010, 16.01.2010, 23.01.2010 & 31.01.2010. The results of qualified candidates who were to be further considered for empanelment to the post of Loco Inspector was declared by the respondents vide letter No. 755/1/Loco Inspector/Set./Pt.III/0-2A dated 09.04.2010 (Annexure A-5) in which names of the applicants were shown at Serial No. 45, 7, 48, 1 and 46 and they were declared pass in the written examination. Names of respondents No. 6 to 12 were shown at Sr. No. 3, 5, 20, 34, 36, 47 and 51. The applicants were shocked to see that respondent No. 5 issued order dated 27.04.2010 (Annexure A-2) vide which panel of promotion as well as place of posting order of 25 persons was declared. The ineligible candidates consist of the private respondents herein namely Sh. Ram Karan S/o Sh. Amar Singh, Sh. Mukesh Chand S/o Sh. B. Dass, Sh. Faquir Chand S/c Sh. Ram Diya, Sh. Harnam Singh S/o Sh. Singh Ram, Sh. Sanjay Kumar S/o Sh. Roop Chand, Sh. Deepak Mishra S/o Sh. A.K. Mishra and Dilip Kumar S/o Sh. Singraoo Ram. Their names were shown at Sr. No. 13, 24, 19, 16, 1, 5 and 17 of the said

order. The applicants' candidatures were ignored by the respondent No. 5 and ineligible candidates were selected in the panel of promotion.

3. It is further stated that the applicants No. 2 to 5 had earlier filed OA No. 459/HR/2010 titled as Baljeet Kumar and Ors. Vs. UOI & Ors. in which they had challenged the panel of promotion on the ground that same should have been based upon seniority-cum-suitability and for consideration of the cases of applicants based upon their seniority position provided they scored 60% in the written test and 60% in the service record. This Tribunal dismissed the OA upholding the selection not based upon seniority vide order dated 13.07.2011 (Annexure A-6). At that point of time, applicants No. 2 to 5 had no knowledge that they were liable to be selected based upon their merit as ineligible persons not having 75000 kms actual footplate experience had been selected nor was it a ground of challenge in the earlier OA. One Sh. Vikas Sahu, Advocate, sought information under RTI Act, 2005 regarding actual kilometers experience of persons who were selected in the panel of promotion dated 27.04.2010. Respondents supplied the information vide letter dated 16.11.2012 (Annexure A-7) and 09.11.2012 (Annexure A-8). In the information it has been disclosed that many persons namely Sh. Ram Karan s/o Sh. Amar Singh, Sh. Mukesh Chand s/o Sh. B. Dass, Sh. Harnam Singh s/o Sh. Singh Ram, Sh. Sanjay Kumar s/o Sh. Roop Chand, Sh. Deepak Mishra s/o Sh. A.K. Mishra, Dilip Kumar s/o Sh. Singraoo Ram and Sh. Faquir Chand s/o Sh. Ram Diya did not fulfill the eligibility criteria given in the notice dated 05.09.2009 to compete i.e. actual footplate experience of 75000 kms.

4. It is also stated that the respondents had failed to calculate the actual kilometers footplates experience of the individuals who did not in fact meet the requisite criteria mentioned in the RBE letter dated 26.03.2009. Rules how to calculate the kilometers are hereunder:

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“(2). Kilometreage shall be calculated according to the distance shown in the working time table (s) in vogue in the Railways from time to time on the basis of the actual or computed kilometreage performed”.

It was further clarified vide letter dated 27.11.2012 (Annexure A-10) by the respondents that all the driving duties performed by a loco pilot in the locomotive cab are footplate duties. The experience gained by loco pilot by performing actual footplate duties in his driving experience. Further, it is clarified that minimum guaranteed kilometers, incentive/ghat sections kilometers and shunting kilometers may not be taken into consideration for eligibility of running staff for the selection.

Aggrieved by the action of the respondents, the applicants submitted complaint to the General Manager (Vigilance), Northern Railway, Baroda House, New Delhi about violation of Railway Board letter dated 26.03.2009 and for taking appropriate action against ineligible candidates. Vigilance investigation was initiated by the General Manager. The applicants submitted legal notice dated 20.12.2013 (Annexure A-12) through their counsel calling upon the respondents to cancel the selection of ineligible persons who did not have the actual 75000 kms footplate experience and to consider the applicants against those posts. The applicants received reply to the legal notice vide letter dated 06.02.2014 (Annexure A-1) from the office of respondent No. 4 in which respondents stated that the issue of selection of Loco Inspector had been dealt with in OA No. 459/HR/2010 which stood dismissed vide order dated 13.07.2011 and it is further stated that the issue of selection in question has been referred to Headquarter office vide letter dated 29.01.2013 followed by letter dated 04.07.2013 for seeking instructions in the matter and the said selection is under investigation by the vigilance department. Since the respondents have not favourably considered the claim of the applicants for promotion as Loco Inspectors, hence this OA.

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5. In the written statement filed on behalf of the official respondents, it has been stated that in connection with the filling of the vacancies of the Loco Inspector (Last date 31.10.2009), 165 applications were received as under:-

i)	SSE/L/UMB	98
ii)	SSE/L/SRE	37
iii)	SSE/L/BTI	24
iv)	SSE/DSL/KLK	06
	Total	<u>165</u>

The contention of the applicants that private respondents No. 6 to 12 did not fulfill the eligibility criteria of having driving experience of actual 75000 kms footplate, yet were selected and promoted, is wrong and hence denied. In fact, Sr. DME/O&F was requested to verify the 75000 kms footplate experience of the concerned staff, as per the extant rules so that further action may be taken on the subject. Later, it was conveyed that Sh. Faqir Chand had more than 75000 kms experience and hence he was considered for empanelment and promotion. It was further informed that 18 Loco Pilot working as drafted – PRC (Power Controller)/CC (Crew Controller)/TLC (Traction Loco Controller), had also not completed 75000 kms. In this, the name of private respondent No. 11 Sh. Deepak Mishra figured at Sr. No. 7. However, in accordance with the instructions contained in Annexure A-3 of the O.A. PS No. 13568/2009, the concerned employee was empanelled subject to fulfillment of required 75000 kms, prior to his being actually posted to work as Loco Inspector. The concerned employee Sh. Deepak Mishra, alongwith two others though placed on provisional panel yet could not be promoted due to non-completion of pre-requisite 75000 kms actual footplate driving experience. Now, the currency of the panel has expired on 27.04.2012. Against their non-promotion and for quashing Railway Board's instructions dated 27.11.2012, the employees Sh. Akhilesh Kumar S/o Ram Garib, Sohan Pal Singh S/o Gurbux Singh & Sh. Deepak Mishra s/o Sh. A.K. Mishra have filed an OA No.

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3495/2013 titled Akhilesh Kumar & Ors. Vs. UOI & Ors. before the Principal Bench of CAT and the same is pending.

6. It is further stated that vide letter dated 31.07.2012 & 27.11.2012, it was clarified that all the driving duties performed by a Loco Pilot in the locomotive cab are footplate duties. Reference is also made to para 2 of Annexure A-11 dated 07.10.2013 wherein office of General Manager/Vigilance has informed that respondents No. 7, 9, 10 and 12 alongwith some other candidates had also not completed 75000 kms actual driving experience on the cut-off date and hence were not eligible for promotion as LI. However, they had completed 75000 earned kilometers. The decision regarding their repatriation to running cadre may be taken by administration as the clarification from Railway Board was issued on 27.11.2012. In view of the clarification provided by Sr. DME (o&f)/UMB, the vigilance recommendation conveyed vide letter No. Vig/CT/2012/12/0281 dated 07.10.2013 was withdrawn. This was conveyed vide General Manager/Vigilance office letter No. Vig/CT/2012/12/0281 dated 07.03.2014 (Annexure R-4).

7. Besides, applicants are estopped to seek quashing of the impugned orders dated 27.04.2010 (Annexure A-2) having challenged the same order in the earlier OA No. 459/HR/2010 dismissed by this Tribunal on merits by order at Annexure A-6 and without any leave to challenge the same order as per prayers made in the said OA. It is settled law that relief once claimed but not granted is deemed to have been rejected. The relied upon judgement in the case of SBI Vs. Ram Chandra Dubey: 2001(1) SLR 154 is at Annexure R-5. This position was further clarified through affidavit filed by Sh. Gian Mehta, DPO, Northern Railway, Ambala Cantt, in response to interim order dated 08.04.2015. It was also mentioned in the affidavit that the private respondents No. 6 to 12 were working as Chief Loco Inspectors (Respondents No. 1, 2, 5 & 7) while Sh. Deepak Mishra was working as Loco Pilot (Goods), Ambala.

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8. In the written statement filed on behalf of private respondents No. 6 to 10 & 12, several preliminary objections had been taken as follows:-

(i) The applicants had earlier filed OA No. 459/HR/2010 on 31.05.2010 wherein the challenge was to the same order dated 27.04.2010 and one of the grounds of challenge in that OA was as follows:-

“v) That one of the conditions of eligibilities is completion of 75000 kilometers by a candidate. A candidate with less than 75000 kms can be considered only if candidates with 75000 kms are not available. But in the present case, there are so many candidates who have completed more than 75000 kms and their number is more than 27 numbers of vacancies, but ignoring that aspect, candidates with even less than 75000 kms have been empanelled.”

In the present OA, the main ground of challenge to the order dated 27.04.2010 (Annexure A-2) is also the same that the answering respondents did not fulfil the condition of driving experience of 75000 kms. Therefore, the cause of action is the same in between the same parties. OA No. 459/HR/2010 was dismissed by this Tribunal vide a detailed order dated 13.07.2011 (Annexure A-6) after giving full opportunity to the applicants therein to prove their case. Therefore, the present OA is barred by the principle of res-judicata and as such is liable to be dismissed by this Tribunal forthwith.

(ii) The present OA is hopelessly time-barred as the applicants are seeking quashing of the order dated 27.04.2010 while the OA has been filed in April, 2014.

(iii) The applicants are trying to mislead this Tribunal by taking the plea that it was not in their knowledge that the respondents No. 6 to 12 were not fulfilling the condition of driving experience of 75000 kms whereas it was very much in their knowledge as is clear from ground V reproduced in para 1 above taken in OA No. 459/HR/2010. The law is well settled that if there is concealment of material facts by the litigant and he has not approached the court with clean hands, he is not entitled to be heard on merits. AIR 1982 (P & H) 169 (F.B), 1994(5) SLR 73 and 1999(3) RSJ 206 are relied upon.

(iv) The cadres of Loco Inspector and Senior Loco Inspector have been merged in one cadre which has been named as Chief Loco Inspector. The answering respondents have been working since long as Chief Loco Inspector even from the date prior to the filing of present OA, but their designation as Chief Loco Inspector has not been challenged by the applicants. Law is well settled that settled things cannot be unsettled after a long time. Reliance is placed on 1999(1) SCT 296 (SC) – Union of India Vs. Kishori Lal Bablani.

(v) Sh. Anil Kumar (Applicant No. 1) was declared ineligible by the competent authority and he is still ineligible to sit in the written test for selection to the post of Loco Inspector. Therefore, he has no locus standi and cause of action to file the present OA and as such the present OA is liable to be dismissed qua the applicant No. 1 at the very outset.

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9. It is further stated that the basis of the challenge in the present OA is letter dated 7.10.2013 (Annexure A-11) written by Deuty C.V.O. (M) wherein it was stated that the private respondents did not complete the condition of 75000 kms and as such, they were not eligible. Vide letter No. Vig/CT/2012/12/0281 dated 07.03.2014, the letter dated 7.10.2013 was withdrawn in view of the clarification provided by Sr. DME (O + F)/UMB. Besides, the in-charge officer who scrutinized the applications of the answering respondents before forwarding the same to the competent authority in response to notice dated 05.09.2009, gave certificates on the applications itself as under:-

“Certified that I have scrutinized the application of Sh.....S/o..... personally and found that he fulfils all the conditions as detailed in notice No. 755-E/1/L1/Sel/Pt OV/P-2A/09/UMB dated 05.09.2009.”

Copies of these certificates have been annexed as Annexure R-6/3 to Annexure R-6/8.

10. Rejoinder was filed on behalf of the applicants in respect of written statement filed on behalf of the official respondents reiterating the content of the OA.

11. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant reiterated the content of the OA and the rejoinder. He asserted that the private respondents did not have the requisite experience of 75000 kms and if their selection as Loco Inspectors was set aside, the applicant who had the necessary experience would be eligible for appointment as Loco Inspectors in 2010 itself. Learned counsel stated that while it was true that the applicants had earlier filed an OA impugning the selection order dated 27.4.2010, but the same was filed on different grounds and at that time, the applicants did not have the knowledge that the selected persons did not even fulfil the eligibility criteria regarding 75000 kms experience. Learned counsel referred

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to judgments in **Purushottam Vs. Chairman, M.S.E.B., 2000(1) SCT 1121 and Jammu and Kashmir Public Service Commission Vs. FarhatRasool, 1996(2)**

SCT to press that since the respondents had been illegally appointed as Loco Inspectors, the right of the applicants for appointment against these posts could not be taken away.

12. Learned counsel for the respondents No. 1-5 reiterated the content of the written statement. He stated that the very basis of the claim of the applicants i.e. letter dated 07.10.2013 (Annexure A-11) had since been withdrawn and hence, the eligibility of the private respondents for promotion as Loco Inspectors could not be questioned. In this regard, learned counsel also referred to affidavit filed by Sh. Gian Mehta clarifying the position.

13. Learned counsel for respondents No. 6-10 and 12 adopted the arguments put forth by learned counsel for the respondents No. 1-5. He reiterated the preliminary objections taken in the written statement filed by him and also drew attention to the Annexures R-6/3 to R-6/8 whereby the Senior Subordinate I/C had certified that the concerned employee in each case fulfills the conditions as detailed in Notice No. 755-E/1/LI/Sel/Pt.IV/P-2A/09/UMB dated 05.09.2009.

14. We have carefully considered the matter. At the outset, it has to be noticed that the instant O.A. is hopelessly barred by limitation. Basic challenge in the instant O.A. is to select panel dated 27.04.2010 (Annexure A-2). The instant O.A. was filed on 21.04.2014 i.e. almost 4 years after the impugned select panel order (Annexure A-2) was issued. However, limitation period for challenging the same was only one year only. Thus the instant O.A. to challenge the said select panel is hopelessly barred by limitation. Even no application for condoning the

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long delay of almost three years in filing the O.A. has been filed. Even otherwise, there is no ground much less sufficient ground to condone the said long and inordinate delay in filing the instant O.A.

15. In the aforesaid context, it is significant to notice that the present applicants no. 2 to 5 had in fact challenged the same select panel by filing O.A. No. 459/HR/2010 on 30.05.2010 i.e. within limitation period. But the said O.A. was dismissed vide order dated 13.07.2011 (Annexure A-6). It is almost three years thereafter that the instant second O.A. has been filed.

16. The instant O.A. is also barred by resjudicata. Earlier O.A. No. 459/HR/2010 filed by the applicants no. 2 to 5 to challenge the same select panel (Annexure A-2) was dismissed vide order dated 13.07.2011 (Annexure A-6). Counsel for the applicants contended that in the earlier O.A., the selection was challenged on the ground that the same should have been based upon seniority-cum-suitability. This plea was not agreed to by the Tribunal and the question of ineligibility of private respondents no. 6 to 12 was not raised in the said O.A. This plea is factually incorrect because in the previous O.A. also, the applicants had pleaded in ground no. (V) that ineligible candidates with even less than 75000 kilometers experience have been empanelled, as reproduced in written statement of respondent no. 6 to 10 and 12, which has not been rebutted by filing any rejoinder. Same plea has been raised in the instant O.A. regarding ineligibility of private respondents no. 6 to 12 who were also party to the previous O.A. NO. 459/HR/2010. Moreover, even assuming for the sake of argument only that plea of ineligibility of certain selected candidates for want of 75000 kilometers experience was not taken in the previous O.A., even then the instant O.A. would be barred by

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constructive resjudicata because the applicants could have and should have taken this plea in the previous O.A.

17. Counsel for the applicants also contended that applicant no.1 was not party to the previous O.A. and, therefore, the instant O.A. is not barred by resjudicata on his behalf. This plea, although attractive, also cannot be accepted. Respondents no. 6 to 10 and 12 in their written statement have pleaded in the preliminary objection No. 7 that applicant no. 1 Anil Kumar was declared ineligible by the Competent Authority and he is still ineligible to appear in the written test for selection to the post of Loco Inspector and, therefore, he has no locus standi or cause of action to file the O.A. This plea of the private respondents has also not been rebutted by the applicants because no rejoinder thereto was filed. Thus applicant no. 1 does not even have locus standi or cause of action to file the instant O.A. whereas this O.A. on behalf of applicants no. 2 to 5 is barred by resjudicata.

18. The applicants are also liable to be non suited on the ground that they have not come to the Tribunal with clean hands. They have falsely pleaded that in the previous O.A., they had not taken the ground of ineligibility of the private respondents for want of experience of 75000 kilometers. However, in fact, this ground has been specifically pleaded in the previous O.A. Thus the applicants have not come with clean hands to the Tribunal by filing this O.A. with false averments.

19. As regards ineligibility of private respondents no. 6 to 12 or other selected candidates, the matter is still under investigation of the Vigilance Department and the matter has also been referred to Headquarters vide letters dated 29.01.2013 and 04.07.2013 for seeking clarification/guidelines in the matter,

as mentioned in the impugned order/letter dated 06.02.2014 (Annexure A-1). Consequently, notwithstanding the dismissal of the instant O.A. , the official respondents shall be at liberty to take appropriate action in accordance with law if on completion of investigation/inquiry, some selected candidates are found to be ineligible. This order shall be no bar in taking any such consequential action in accordance with law.

20. Plea of counsel for applicants based on letter dated 07.10.2013 (Annexure A-11) written by Vigilance Department to Divisional Railway Manager regarding ineligibility of the private respondents due to non-completion of 75000 kilometers actual driving experience cannot be accepted at this stage because the said letter (Annexure A-11) was withdrawn vide letter dated 07.03.2014 (Annexure R-5) written by Vigilance Department to the Divisional Railway Manager.

21. In view of the discussion aforesaid, the O.A. is dismissed with no order as to costs.

As such
(RAJWANT SANDHU)
MEMBER(A)

[Signature]
(JUSTICE L.N. MITTAL)
MEMBER(J)

Dated: 4.4.2016
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