

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**



No. O.A. 350/00930/2015

**Present: Hon'ble Mr. Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member**

1. Tapan Kumar Singha,
Son of Late Moti Lal Singha,
Vill. Desh Bandhu Para (57, Sidhu
Kanu Sarani), P.O. Siliguri Town,
P.S. Siliguri, District : Darjeeling,
Pin – 734 004, West Bengal.
2. Nripendra Nath Paul,
Son of Late Hemchandra Paul,
Bharat Nagar (N), Near Bharat Nagar
Kali Bari, P.O. Rabindra Sarani,
Siliguri, Pin – 734 006, District,
Darjeeling, West Bengal.
3. Samarendra Ghosh,
Son of Late Birendra Nath Ghosh,
Gournital Mistanna Bhandar,
P.O. Bagdogra, District : Darjeeling,
Pin – 734 014, West Bengal.
4. Madhab Chandra Karmakar,
Son of Late Ashutosh Karmakar,
Aurobindo Pally Main Road,
P.O. Rabindra Sarani, Siliguri,
District : Darjeeling, Pin – 734 006,
West Bengal.
5. Biru Pada Biswas,
Son of Late Dhananjoy Biswas,
Village – Choupukuria Bagdogra,
District : Darjeeling, Pin – 734 014,
West Bengal.
6. Nani Gopal Saha,
Son of Late Gopinath Saha,
Village – Bharat Nagar, P.O. Rabindra
Sarani, Siliguri,
District : Darjeeling, Pin – 734 006,
West Bengal.

All are retired from G.E. Bengdubi, MES, WB.

.. Applicants

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- V E R S U S -

1. Union of India,
Service through the Secretary to the
Government of India,
Ministry of Defence,
South Block,
New Delhi – 110 011.
2. The Engineer-in-Chief,
Army Headquarters,
Engineer-in-Chief's Branch, DHQ,
P.O. Kashmir House,
New Delhi – 110 011.
3. The Chief Engineer,
Eastern Command Headquarters,
Fort William, Kolkata – 700 021.
4. Garrison Engineer,
Military Engineer Service,
P.O. Bengdubi, District – Darjeeling,
West Bengal,
Pin – 734 424.
5. Garrison Engineer,
Military Engineer Service,
Sevak Road, P.O. Salugara,
District - Jalpaiguri,
West Bengal, Pin – 734 008.

.. Respondents

For the Applicants : Mr. A. Biswas, Counsel
Mr. A. Biswas, Counsel

For the Respondents : Mr. S. Banerjee, Counsel

Order dated: 20. 9. 2016

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ORDER

Per Ms. Jaya Das Gupta, Administrative Member:

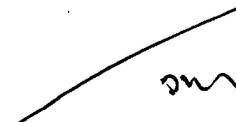
The applicants have approached the Central Administrative Tribunal under Section 19 of the AT Act, 1985 seeking the following reliefs:-

- a. An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987, to move this application jointly since they are similarly circumstanced employees and identical.
- b. Respondents be directed to grant the applicants the grade pay of Rs. 4200/- at the stage of 2nd ACP and grade pay of Rs. 4600/- at the stage of grant of 3rd Financial upgradation under MACP Scheme as granted to other similarly circumstanced and placed employees under the respondents as reflected in Annexure A-4 to the application.
- c. Respondents be directed to step up pay of Rs. 330/- - 480/- with effect from 16.10.1981 and also to the level of their juniors with effect from the date their juniors were drawing higher pay than their seniors i.e. applicants herein with all the consequential benefits.
- d. Any other order or direction as to this Hon'ble Tribunal may deem fit and proper."

2. Since the Ld. Counsel for the respondents was not present on the date of hearing, orders are being passed under Section 16(1) of CAT (Procedure) Rules, 1987.

3. It is the case of the applicants that they were initially engaged as Mazdoors and were placed in the post of Motor Pump Attendant, Fitter General Mechanic, Fitter General Mechanic (High Skilled-II) and Fitter General Mechanic (High Skilled-I) during their service period. They have all retired by now.

Their grievance is non-granting of benefits under Second ACP and 3rd MACP in the Grade Pay of Rs. 4200/- and Rs. 4600/- respectively after having completed 20 years and 30 years of service. They have alleged that



the movement from Mazdoor to Motor Pump Attendant has been wrongly classified as promotion instead of reclassification by the respondent authorities. This has resulted in not getting the Grade Pay which should be given as per the Schemes. They have also alleged that their juniors in the service are drawing higher pay than them in violation of the provisions of FR 22. They have also contended that reliefs sought have by them in this O.A. has already been extended to similarly situated and similarly circumstanced staffs of GE/Delhi Cantonment, GE/Bhatinda and GE/Barrackpore and they have been deprived of the same although all of them are functioning under Ministry of Defence, Govt. of India.

4. Per contra, it is the contention of the respondent authorities that the movement of the applicants from the post of Mazdoor to the post of Motor Pump Attendant is promotion as per the Recruitment Rules SRO 215 dated 24.6.1971. As they have got this promotional facility they will not get all the facilities of ACP and MACP Scheme brought into effect subsequently. Respondent authorities in their pleadings, therefore, have submitted that the O.A. should be dismissed.

ISSUE: The moot point to decide is whether the movement of the applicant from Mazdoor to Motor Pump Attendant (MPA in short) is be treated as promotion or reclassification.

5. The respondent authorities have submitted orders and judgment whether the findings are that this movement is promotion and not in the nature of reclassification. To support their contention the relevant portion of order passed in O.A. No. 3952/2010, M.A. 2983/2010 of the Central Administrative Tribunal, Principal Bench dated 11.10.2011 is quoted hereinbelow:-

(a) "12. Further, grant of ACP wrongly by lower formations to some similarly placed persons would not give any right to the applicants to

claim the same against the provisions of the ACP Scheme. Even if some of the cases have been given as a result of judgments of this Tribunal, the same would have to be considered as judgements in personam and cannot be treated as judgments in rem, as in ACP matters each case has to be decided on its own facts and circumstances and no straight jacket formula can be applied/adopted. Further, it has also been stated by the respondents that in the cases of S/Shri Jai Raj, Daya Ram and Kishan Lal, the respondents are going to file Writ Petitions. It is also noticed from letter dated 6.9.2011 issued by the Respondents that orders have been issued to lower formations to cancel all PTOs under which benefit of reclassification have been granted. The respondents are thus taking action to set right wrong benefits accorded. Be that as it may, the grant of benefits not admissible under the rules, on the ground that these have been given wrongly to some other similarly placed persons, would not give any right to the applicants to claim the same, as no negative equity can be claimed on this basis, and a wrong cannot be perpetuated [See: Ekta Shakti Foundation v. Govt. of NCT of Delhi, AIR 2006 SC 2609].

13. We find from the letter dated 22.7.2011 of the Respondent No. 2 that the following has been clearly clarified:

- (i) that the reclassification ordered (in the case of Mazdoor/Chowkidar who were promoted as MPA in 1976 and 1977 as per SRO 215 of 1971) was not as per recruitment rules and, therefore, not in order.
- (ii) that few similar type of cases (verified and audited by DAD in the area of Jalandhar Zone) cannot be a justification for following it at other places as well.

This was followed by letter dated 6.9.0211 in which it was directed that cases of people who got the benefit of such reclassification should be reviewed and all the PTOs under which benefit of reclassification has been granted be cancelled. It is also clarified that for future while initiating the case for ACP/MACP all the reclassification will be considered as promotion. These orders have been issued on the directions of the competent authority, viz., Respondent No. 2, and, therefore, the ground that the denial of ACP is by an authority not competent is also not tenable any longer.

14. Thus, as discussed above, the applicants promotion for the post of Chowkidar/Mazdoor to MPA is a promotion as per the Recruitment Rules and cannot be treated as direct recruitment due to reclassification. Further, as the applicants (as seen from the Table in Para 6 above) have already got financial benefits of higher scales on their promotions to the post of MPA, Refg. Mech and Refg. Mech (HS), the applicants are not entitled to claim grant of 2nd ACP, as the objective of the ACP Scheme is to grant benefits to remove stagnation and not to give benefits where there is already a channel of promotion.

15. In view of the above discussion, the O.A. is devoid of merit and is dismissed accordingly. No costs."

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(b) Against the above order of Central Administrative Tribunal, Principal Bench, New Delhi the applicants, namely, Sri Kaptan Singh and others approached the Delhi High Court by filing WP (C). 3588/2012 dated 10.9.2012 and relevant portions of the judgement of Delhi High Court is set out below:

“3. The only point for contention is whether the appointment of the petitioners to the post of MPAs was on promotion or by way of direct recruitment. If it was a case of promotion, then the petitioners would not be entitled to the second financial upgradation, inasmuch as, they would have had the benefit of two promotions. On the other hand, if it was a case of direct recruitment, then the petitioners would be entitled to the second financial upgradation under the said ACP scheme.

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11. The learned Counsel for the respondents also drew our attention to paragraph 11.3 of the impugned order wherein the relevant portion of the Recruitment Rules for filling up the post of Motor Pump Attendant were extracted. The said paragraph 11.3 of the impugned order is as under:-

“11.3. The relevant portions of the Recruitment Rules for filling up the post of Motor Pump Attendant (MPA) are extracted below:-

Name of the Post	Classification	Scale of Pay	Whether selection post of non-selection post	Age limit for direct recruits	Educational and other qualifications required for direct recruits
Motor	Military	Rs.	Non-selectio	25 years	Essential

Pump Attendant	Engineer Services Class Non-Gazetted Industrial	75-2-85-EB-2-95	n post		Middle Standard pass
Whether age and qualifications prescribed for direct recruits will apply in the case of promotees	Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or transfer and percentage of vacancies to be filled by various methods	In case of recruitment by promotion transfer grades from which promotion to be made	If a DPC exists what is its composition	Circumstances in which UPSC is to be consulted in making recruitment
Age-No. Qualification – Yes	Six months	100% by promotion failing which by transfer and failing both by direct recruitment	Mazdoors, Chowkidars, Sweepers who have passed recruitment trade test for the post prescribed By the Engineer-in-Chief, with three years service in the grade. Transfer: Persons working in similar, equivalent or higher grades in the lower formations of Defence Services	Class IV Departmental Promotion Committee	Not Applicable

12. It was, therefore, contended by the learned counsel for the respondents that the movement of the petitioners from Chowkidars/Mazdoors/Sweepers to MPAs was on account of promotion and not on account of direct recruitment.

13. The Tribunal examined the entire controversy and came to the

conclusion that the petitioners were appointed as MPAs on promotion and, therefore, they were not entitled to the second financial upgradation under the said ACP Scheme. Being aggrieved thereby the petitioners are before us.

14. After having heard the learned Counsel for the parties and having examined the matter at some length, we are of the view that the document dated 15.7.2005 which had been shown to us by the learned counsel for the petitioners and which indicates that the petitioners were not promoted but that they were simply reclassified, is contrary to the Recruitment Rules. The Recruitment Rules have been set out above and they clearly indicate that the post of Motor Pump Attendant is to be filled up 100% by promotion failing which by transfer and failing both by direct recruitment. It is also to be seen from the Recruitment Rules, that the promotion to the post of MPAs was to be from the feeder post of Chowkidar/Mazdoors/Sweepers and the criteria for promotion was that such Chowkidar/Mazdoors/Sweepers should have passed the recruitment trade test prescribed by the Engineer-in Chief and they were also required to have three years service in the said grade.

15. From this it is clear that direct recruitment to the post of Motor Pump Attendant could only be undertaken if there were no individuals available in the category of Chowkidars/Mazdoors/Sweepers who had served three years in that grade and had passed the recruitment trade test. But, the facts of the present case indicates that all the petitioners were qualified for promotion in the sense that they were Chowkidars/Mazdoors/Sweepers; they had passed the recruitment trade test for the post of MPA as prescribed by the Engineer-in-Chief; and, each of them had three years service in the grade of Chowkidars/Mazdoors/Sweepers. Therefore, their movement from the post of Chowkidars/Mazdoors/Sweepers to the post of Motor Pump Attendant cannot but be regarded as promotion. The contention of the learned counsel for the petitioners that they were appointed through the process of direct recruitment, runs counter to the Recruitment Rules. Consequently, we agree with the Tribunal in its findings that the so-called re-classification was contrary to the recruitment rules and, therefore, cannot be given effect to.

16. Another point which ought to have been noted by the Tribunal but has not been noticed is the fact that insofar as direct recruitment to the post of MPA is concerned, the age limit has been stipulated as 25 years. It is an admitted position that the petitioners were all above the age of 25 years on the date on which they were promoted to the post of Motor Pump Attendant. Thus, had it been a case of direct recruitment, the petitioners would not, in any event, have been eligible. This is another pointer in the direction that the petitioners were promoted as Motor Pump Attendants and had not been directly recruited as such.

17. The submission of the learned Counsel for the petitioners that there were others who were similarly situated and who have been given the benefit of second financial upgradation under the said ACP Scheme on the ground that the post of MPA was a re-classification of the post of Chowkidars/Mazdoors/Sweepers

had been rightly rejected by the Tribunal, inasmuch as the Rules permitted this, perhaps, the petitioners may have had a case but, in view of the fact that the Recruitment Rules do not permit a re-classification of Chowkidars/Mazdoors/Sweepers as MPAs, this argument of the learned counsel for the petitioners is also untenable.

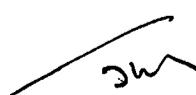
18. Therefore, in view of the fact that the petitioners had been promoted as MPAs, there is no question of them being entitled to the second financial upgradation under the said ACP Scheme inasmuch as, admittedly, they have also been promoted as Refrigeration Mechanics (Highly Skilled) during this period of 24 years. Hence, the petitioners, having had two promotions, would not be entitled to any financial upgradation. Consequently, the impugned order cannot be faulted.

19. The writ petition is dismissed. There shall be no order as to costs."

(c) The Central Administrative Tribunal, Chandigarh Bench has passed the following order dated 28.3.2013 in O.A. No. 936-HR of 2011:-

"11. So far as the stepping up of pay at par with the juniors to the applicants is concerned, to our mind that also cannot be accepted for the simple reason that the persons indicated in para 2 joined the respondent department as MPA though later than the applicants who were promoted as MPA (Skilled). Since, they were not granted any promotion, therefore under provisions of the ACP Scheme they have been granted financial upgradation on the post of MPA and rightly they have been granted 1st upgradation in the pay scale of Rs. 4000-6000/- and 2nd in the pay scale of Rs. 5000-8000/-. The applicants have already got one promotion from Mazdoor to MTA, therefore, they are not entitled for 1st ACP for the reason that their promotion has also to be considered as one financial upgradation. Since, both of categories of employees are from different channels and have got their financial upgradation as per their entitlement therefore the applicants are not entitled for stepping of their pay at par with their juniors. The decision rendered by this Tribunal in the case of Prakash Singh v. UOI (Supra) which is relied upon by the learned counsel for the applicant does not applicable to the facts of the present case."

6. On consideration of the judgment / orders of Co-ordinate Benches and the Hon'ble Delhi High Court it is amply clear that the movement from the post of Majdoor to the post of Motor Pump Attendant is promotion and not reclassification. Also similarly circumstanced persons were wrongly extended by the respondents which was being corrected. There was also no question of seniors getting lesser pay than juniors as the juniors were



direct appointees where as the seniors were promotees.

7. However, in the rejoinder there is a communication which should be taken note of. Annexure RJ-5 which is a communication from 28.3.2008 set out below:-

" Dte Gen of Personnel/CSCC
Military Engineer Services
Engineer-in-Chief's Branch
Integrated HQ of MoD (Army)
Kashmir House, Rajaji Marg,
New Delhi – 110 011

85610/47/ACP/IND/Scheme/CSCC

28 Mar 2008

Chief Engineer
Eastern Command
Fort William,
Kolkata – 21.

ACP SCHEME : INDUSTRIAL PERSONNEL

1. Refer your letter No. 131700/27/ACP/Policy/Engrs/180/E1C(3) dt. 21 Feb 07 (received on 07 Mar 08).
2. The erstwhile posts of MPA, SBA, Lineman, Carpenter, Mason, Plumber, Pipe Fitter, Painter etc. were enblock upgraded from semi-skilled grade pay scale to skilled grade pay scale w.e.f. 16 Oct 1981 as per Expert Classification Committee report. Since their upgradation were without requirement of new qualification, change in duties and responsibilities as such their upgradation of pay is not to be treated as promotion. In this context please refer to clarification serial No. 35 in the Annexure to DOP&T O.M. No. 35034/1/97-Estt.(D)(Vol.IV) dated 18 July 2001. Extract of the said clarification is enclosed for your ready reference.
3. In the light of the above mentioned clarification, persons who were directly recruited as erstwhile MPA, SBA, Lineman, Carpenter etc. are to be treated as recruited against skilled grade or the purpose of grant of ACP.

(K.B. Chettri)

SAO

Dy. Dir(Pers)/

JW

CSCC
For E-in-C"

From the above clarifications it appears that the movement from MPA to the Skilled grade of Fitter General Mechanic is not promotion.

As per Para 12 of the Reply, the movement from Fitter General Mechanic (Skilled) to Fitter General Mechanic (High Skilled II) and then to Fitter General Mechanic (High Skilled Gr. I) are promotions.

8. The applicants have alleged that some employees like Madhusudan Saha & ors. have been given both the 2nd ACP and 3rd MACP. However, from para 11 of the Reply it is clear that Shri Madhusudan Saha & ors. have been recruited directly in NPA Grade and they have been granted the 2nd ACP in the scale of Rs. 5000-8000/- during the 5th CPC w.e.f. 9.8.99 corresponding to Grade Pay of Rs. 4200/- in Pay Band 2 w.e.f. 1.1.2006. 3rd MACP has also been granted in Pay Band 2 Rs. 4600/- w.e.f. 1.9.2008 as per MACP Scheme 2008.

9. The MACP Scheme stipulates that no stepping up of pay in Pay Band or Grade Pay would be admissible with regard to juniors getting more pay than the seniors on account of pay fixation under MACP Scheme. So the applicants cannot take such pleas of juniors getting more pay than them because of financial upgradation. This has also been decided by CAT Chandigarh Bench (supra).

10. Taking all the above facts into account the following findings enumerate for the applicants:-

(A) Tapan Kumar Singha:

(a) Appointed as Mazdoor on 10.5.1976.

(b) Promoted to MPA on 28.4.1980.

(c) Redesignated as FGM (Skilled) on 6.7.94 – 4th CPC.

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(d) Promoted as FGM (HS II) on 1.4.2003 – 5th CPC.

(e) Promoted as FGM (HS I) on 31.5.2006 – 6th CPC.

(f) He retired on 31.7.2012.

As the applicant completed 24 years of service on 9.5.2000 and as he has got only one promotion during this period, he becomes entitled to 2nd ACP as his next promotion to HS II took place only on 1.4.2003.

As on 1.9.2008 he got three promotions on 28.4.1980, 1.4.2003 and 31.5.2006 and also second ACP on 9.5.2000 he will not get any MACP benefits.

(B) Nripendra Nath Paul:

(a) Appointed as Mazdoor on 21.9.1971.

(b) Promoted to MPA on 26.9.1979.

(c) Redesignated as FGM (Skilled) on 6.7.94 – 4th CPC.

(d) Promoted as FGM (HS II) on 1.7.2002 – 5th CPC.

(e) Promoted as FGM (HS I) on 1.1.2006 – 6th CPC.

(f) He retired on 31.5.2012.

As the applicant joined service on 21.9.1971 he completes 24 years of service on 20.9.1995. As the ACP Scheme came into force from 9.8.1999 he will not get the benefit of ACP. So his case may be considered under MACP Scheme. As he has got one promotion in the first 10 years from regular appointment he will not get the first MACP on 20.9.91. Counting 20 years of service from 21.9.1971 i.e. 20.9.91 he has got one promotion only and so becomes entitled to 2nd MACP on 20.9.91. He completes 30 years of service on 21.9.2001 by which date he has got the benefits of one promotion and one upgradation only. So he will get the 3rd MACP on

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21.9.2001.

(C) **Samarendra Ghosh:**

- (a) Appointed as Mazdoor on 3.11.1973.
- (b) Promoted to MPA on 22.4.1980.
- (c) Redesignated as FGM (Skilled) on 6.7.94 – 4th CPC.
- (d) Promoted as FGM (HS II) on 20.5.2003 – 5th CPC.
- (e) Promoted as FGM (HS I) on 1.1.2006 – 6th CPC.
- (f) He retired on 31.5.2013.

As he was appointed in service on 3.11.1973 he completes 24 years of service on 3.11.97. So he is not entitled to get benefits under ACP Scheme which came into existence on 9.8.1999. His case may be considered under MACP Scheme. Within the first 10 years of regular service he has got one promotion on 22.4.1980 as MPA so he is not eligible to 1st MACP. After 20 years of service i.e. on 2.11.93 he becomes entitled to 2nd MACP. As he has got three promotions and one upgradation of 2nd MACP he will not be entitled to any further MACP benefits.

(D) **Madhab Chandra Karmakar:**

- (a) Appointed as Mazdoor on 2.8.1976.
- (b) Promoted to MPA on 22.4.1980.
- (c) Redesignated as FGM (Skilled) on 6.7.94 – 4th CPC.
- (d) Promoted as FGM (HS II) on 20.5.2003 – 5th CPC.
- (e) Promoted as FGM (HS I) on 1.1.2006 – 6th CPC.
- (f) He retired on 31.8.2014.

He completed 24 years of service on 2.8.2000. As he has got only one promotion, he will get 2nd ACP on 6.7.1994. He will get no MACP benefits.

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(E) Birupada Biswas:

- (a) Appointed as Mazdoor on 3.11.1973.
- (b) Promoted to MPA on 16.3.1979.
- (c) Redesignated as FGM (Skilled) on 6.7.94 – 4th CPC.
- (d) Promoted as FGM (HS II) on 4.1.2001 – 5th CPC.
- (e) Promoted as FGM (HS I) on 1.1.2006 -6th CPC
- (f) He retired on 30.4.2014.

As the applicant was appointed on 3.11.1973 he completes 24 years of service on 2.11.97 by which time the ACP Scheme had not come into effect. The ACP Scheme came into force on 9.8.1999. Therefore, he will not get any ACP benefits. He may be considered under MACP Scheme. He completes 10 years of service on 2.11.1983 but since he has already got one promotion on 16.3.71 he will not get the first MACP. Since in the next 20 years i.e. on 2.11.1993 he has not got any promotion/upgradation he will get the second MACP on 3.11.1993. As on 1.9.2008 he has already got three promotions and one MACP benefit. He will not get any further MACP benefits.

(F) Nani Gopal Saha:

- (a) Appointed as Mazdoor on 21.9.1971.
- (b) Promoted to MPA on 26.3.1979.
- (c) Redesignated as FGM (Skilled) – 4th CPC.
- (d) Promoted as FGM (HS II) on 22.12.1995 – 5th CPC.
- (e) Promoted as FGM (HS I) on 8.12.2001 – 6th CPC.
- (f) He retired on 20.5.2003.

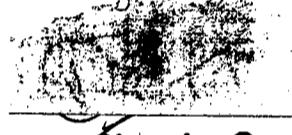
As he completes 24 years of service on 21.9.95 he is not

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eligible to get any benefits under ACP which came into force on 9.8.1999. He has completed 10 years of service 20.9.1981 so he will not get the first MACP as he has got one promotion. In the next 20 years i.e. on 20.9.1991 as he has got only one promotion. He will get the second MACP on 21.9.1991. As on 1.9.2008 he has got three promotions and one upgradation under MACP. He will not get any further MACP benefits.

11. Hence it is directed that after verifying the dates from service records of the applicants findings as given in para 10 above be considered within three months of getting a certified copy of the order.
12. The O.A. is accordingly disposed of. No costs.


(Jaya Das Gupta)
MEMBER(A)


(Vishnu Chandra Gupta)
MEMBER(J)

SP