



CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

O.A. 197 of 2003, 484 & 485 of 2007.

Present : Hon'ble Justice Shri Vishnu Ch. Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

O.A. 197 of 2003 1. Sri Jayanta Kr. Kundu,
Son of Late Shiba Pada Kundu,
Aged about 36 years,
Residing at 94, Gour Babu Road,
P.O. – Kanchrapara,
Dist. – 24-Parganas (North),
Working as Khalasi Helper.

And 637 others.
All the petitioners are holding
The Artisan Cadre Posts in the
Eastern Railway, Howrah Division,
They are being affected by the
Common cause of action. Applicants.

Versus

O.A. 197 of 2003 1. Union of India,
Service through the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Calcutta – 700 001.

2. The Division Railway Manager,
Eastern Railway,
Howrah Division,
P.O. & Dist. – Howrah,
Howrah.

3. The Sr. Divisional Electrical Engineer(G),
Eastern Railway,
Howrah Divison,
P.O. & Dist. – Howrah,
Howrah.

A handwritten signature in black ink, appearing to read "S. (S) 107".

4. The Sr. Divisional Personnel Officer,
Eastern Railway,
Howrah Division,
P.O. & Dist. – Howrah,
Howrah. Respondents

O.A. 484 of 2007 1. Pashupati Sardar,
Son of Late Ludhu Sardar,
Aged about 50 years,
Residing at Vill. & P.O. - Dhadanga,
P.S. – Ranibandh,
Dist. – Bankura (W.B.),
Pin – 722 140,
Working as Sr. Technician.

And 58 others.

Sl. No. 1 to 59, all the applicants working
As Wireless Maintainer in the Asansol Division
Under the controlling authority of Senior Divisional
Signal & Telecom Engineer, Eastern Railway, Asansol
Division, Asansol, Burdwan. Applicants.

Versus

1. Union of India,
Service through the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 1.
2. The Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.
3. The Chief Signal & Telecom Engineer,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.
4. The Senior Divisional Signal &
Telecom Engineer,



Eastern Railway,
Asansol Division,
P.O. – Asansol,
Burdwan.

5. The Senior Divisional Personnel Officer,
Eastern Railway,
Asansol Division,
P.O. – Asansol,
Burdwan. Respondents

O.A. 485 of 2007 1. Md. Jamil Alam & Ors. Applicants.

Versus

1, Union of India,
Service through the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 1.

2. The Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.

3. The Chief Signal & Telecom Engineer,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.

4. The Senior Divisional Signal &
Telecom Engineer,
Eastern Railway,
Asansol Division,
P.O. – Asansol,
Burdwan.

5. The Senior Divisional Personnel Officer,
Eastern Railway,
Asansol Division,

 /

P.O. - Asansol,

Burdwan.

..... Respondents

For the Applicant : Mr. S.K. Datta, Counsel
Mr. B.C. Deb, Counsel

For the Respondents : Mr. P. Mukherjee, Counsel

Date of hearing: 22.09.2016

Date of order: 06.12.2016

ORDER

JUSTICE V.C. GUPTA, JM

The applicants in all these 3 applications are claiming Over Time Allowance (OTA) on account of performing duties beyond normal hours. As in all these applications common questions of law and facts are involved, they are being decided by this common order.

2. In O.A.197/2003, the applicants belong to the *running staff* of the Railways. This application has been filed by 638 employees who are working in different posts. The posts in which they are working has been mentioned in paragraph 4.4. of the O.A, which is extracted herein below :

"4.4 Their Post/Category are as follows:

(a) Junior Engineer (Electrical/Air Conditioner Coaches).

(In short J.E/Electrical/A.C.C).

(b) Haster Craftaman (Electrical)/Now known as Senior Technician, Electrical/ACC.

(c) Technician Grade - III/Electrical/ACC.

(d) Technician/Electrical? A.C.C./Gr. II/A.C.C.-I.

(e) Technician Gr I / Electrical ? A.C.C.

(f) Khalasi Helper Electrical A.C.C.

(g) Khalasi - Electrical A.C.C. Cum CoACH Attendant/B.P.A

(h) Air Conditioner Attendants in short A.C.C.A."

The applicants performed duties in the running trains, the details of which have been given in the application. The applicants are claiming that when they performed duties in a running train the entire period spent by them



during running of the train and thereafter at halt station and coming back to the station from where the train depart with concern employee should be included in his duty hours and he shall be given OTA beyond their normal duty hours.

3. In O.A.484/2007 the applicants were working as **Wireless Maintainers** in Asansol Division under Sr. Divisional Electrical Engineer and in O.A. 485/2007 the applicants are **Khalasis** and they are also claiming OTA beyond their normal 8 hours duty per day and 48 hours per week.

4. Reply has been filed by the respondents alleging the applicants of O.A. 197/2003 as continuous employees of railways. However, so far as the applicants in O.A.484/2007 & 485/2007 are concerned they are essentially intermittent and their roster duty is 12 hours per day and 60 hours per week. Hence they are required to work 12 hours per day and for that period they are not entitled to get any OTA. So far as applicants in O.A.197/2003 are concerned the stand of the Railways is that they are provided OTA as per their roster duty. Their entire hours / period in train is not actually the duty hours and the same could not be included in duty hours to grant OTA. It has been further contended that more than required railway employees were sent in the trains with a view to provide adequate rest as per roster to other railway employees by rotation, and this was done only with an objective that persons should not be compelled to work continuously and should be given rest for getting better performance. The claim of the applicants for the period spent on rest cannot be considered as duty hours and on this count the applications are liable to be rejected.

5. Earlier the Tribunal while deciding these applications along with some other analogous applications held that the Tribunal has no jurisdiction to entertain the claim of OTA of Railway employees. This order of the Tribunal was challenged by the some of the applicants of O.A.484/2007 and 485/2007 before the Hon'ble High Court of Calcutta by filing Writ Petitions No.345/2012 and 346/2012 respectively. The Hon'ble High Court by its order

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dated 11.4.2013 disposed of both the W.P.C.Ts by setting aside the order of the Tribunal and direction was issued to the Tribunal to hear the matters afresh and decide on merit. Though the order earlier passed on 23.3.2012 by this Tribunal holding that this Tribunal has no jurisdiction was not challenged by the applicants of O.A.197/2003 but later on they had filed a Review Application in the light of the order passed by the Hon'ble High Court and the Tribunal allowed the R.A and set aside the order passed on 23.3.2012 against the applicants in the light of the judgment passed by Hon'ble High Court and listed the matter for hearing consequently, all these 3 applications having O.A.No.197/2003, O.A.No.484/ 2007 and O.A.No.485/2007 were heard together.

6. As the matter for consideration before this Tribunal is with regard to OTA, hence we are of the view that provisions governing grant of OTA to the Railway employees should be looked into.

7. To regulate the hours of work of the Railway employees rules were framed in terms of Section 136 of the Indian Railways Act. These Rules were earlier framed in 1961 and thereafter they were changed time and again but in 2005 new rules came into existence which is known as **Railway Servants (Hours of Work and Period of Rest) Rules, 2005**. While enforcing the rules it has been included therein that earlier rules regulating the hours of work and rest in respect of the Railway servants of year 1961 and any orders issued there under in so far as they were inconsistent with the revised rules have been repealed and revised rules of 2005 would hold the field with regard to the subject to regulate the hours of work and period of rest and payment of OTA. The validity of these rules is not under challenge. Therefore, these applications are being decided in the light of rule 2005. A quick look of the rules is necessary. The definition of word "full night", "long on" "road side station" and "roster", "running staff", "split duty" etc. have been given are relevant for deciding the present controversy. These rules will applicable only to the Railway servants falling under Chapter XIV of the Indian Railways Act



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1961. Chapter XIV contains Section 130 to Section 136. Chapter XIV is also necessary to be looked into for deciding this issue. Under Section 130, it has been held that employment of the Railway servant is said to be **continuous** except when it is excluded or has been declared to be **essentially intermittent or intensive**. Section 130(c) **excludes** certain categories of the employees from operation of these rules. In Section 131 it has been mentioned that Chapter XIV will not be applicable to **Railway Servants with whom Factories Act 1948 or Mines Act 1952, the Railway Protection Force Act 1957 or the Merchant Shipping Act 1958 applies**. It shows that unless any Railway employee has been declared under the rules as **essentially intermittent or under intensive category**, will continue to be in **continuous** and will fall under the category of **continuous employee**. Those continuous employees who are excluded in view of Section 130(c) and those who are governed by Section 131 of the Railway Act shall be beyond the purview of the rules of 2005. In Section 132 working hours has been provided. Section 133 provides grant of periodical rest. Rule 136 is rule making power under Chapter XIV which the Central Government exercises. As such aforesaid rules of 2005 were framed accordingly. To understand in a better way and for ready reference we are extracting the relevant provisions of Chapter XIV of the Indian Railway Act 1924 and relevant portion of the rules of 2005 herein below:

"CHAPTER XIV
REGULATION OF HOURS OF WORK AND PERIOD OF REST

130. Definitions – *In this Chapter, unless the context otherwise requires, –*

- (a) *the employment of a railway servant is said to be "continuous" except when it is excluded or has been declared to be essentially intermittent or intensive;*
- (b) *the employment of a railway servant is said to be "essentially intermittent" when it has been declared to be so by the prescribed authority on the ground that the daily hours of duty of the railway servant normally include periods of inaction aggregating to fifty per cent or more (including at least one such period of not less than one hour or two such periods of not less than half an hour each) in a tour of*

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twelve hours' duty (on the average over seventy-two consecutive hours), during which the railway servant may be on duty, but is not called upon to display either physical activity or sustained attention;

(c) the employment of a railway servant is said to be "excluded", if he belongs to any one of the following categories, namely:-

- (i) railway servants employed in a managerial or confidential capacity;
- (ii) armed guard or other personnel subject to discipline similar to that of any of the armed police forces;
- (iii) staff of the railway schools imparting technical training or academic education;
- (iv) such staff as may be specified as supervisory under the rules;
- (v) such other categories of staff as may be prescribed;

(d) the employment of a railway servant is said to be "intensive" when it has been declared to be so by the prescribed authority on the ground that it is of a strenuous nature involving continued concentration or hard manual labour with little or no period of relaxation.

131. Chapter not to apply to certain railway servants.- Nothing in this Chapter shall apply to any railway servant to whom the Factories Act, 1948 (63 of 1948) or the Mines Act, 1952 (35 of 1952) of the Railway Protection Force Act, 1957 (23 of 1957) or the Merchant Shipping Act, 1958 (44 of 1958), applies.

132. Limitation of hours of work.- (1) A railway servant whose employment is essentially intermittent shall not be employed for more than seventy-five hours in any week.

(2) A Railway servant whose employment is continuous shall not be employed for more than fifty-four hours a week on an average in a two-weekly period of fourteen days.

(3) A Railway servant whose employment is intensive shall not be employed for more than forty-five hours a week on an average in a two-weekly period of fourteen days.

(4) Subject to such rules as may be prescribed, temporary exemptions of railway servants from the provisions of sub-section(1) or sub-section (2) or sub-section (3) may be made by the prescribed authority if it is of opinion that such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway or in cases of accident, actual or threatened, or when urgent work is required to be done to the railway or to rolling stock or in any emergency which could not have been foreseen or prevented, or in other cases of exceptional pressure of work.:

Provided that where such exemption results in the increase of hours of employment of a railway servant referred to in any of the sub-

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sections, he shall be paid overtime at not less than two times his ordinary rate of pay for the excess hours of work.

133. **Grant of periodical rest** - (1) Subject to the provisions of this section, a railway servant-

(a) Whose employment is intensive or continuous shall, for every week commencing on a Sunday, be granted a rest of not less than thirty consecutive hours;

(b) Whose employment is essentially intermittent shall, for every week commencing on a Sunday, be granted a rest of not less than twenty-four consecutive hours including a full night.

(2) Notwithstanding anything contained in sub-section (1), -

(i) any locomotive or traffic running staff shall be granted, each month, a rest of at least four periods of not less than thirty consecutive hours each or at least five periods of not less than twenty-two consecutive hours each, including a full night;

(ii) the Central Government may, by rules, specify the railway servants to whom period of rest on scales less than those laid down under sub-section (1) may be granted and the periods thereof.

(3) Subject to such rules as may be made in this behalf, if the prescribed authority is of the opinion that such circumstances as are referred to in sub-section (4) of Section 132 are present, it may exempt any railway servant from the provisions of sub-section (1) or clause (i) of sub-section (2):

Provided that a railway servant so exempted shall, in such circumstances as may be prescribed, be granted compensatory periods of rest for the periods he has foregone."

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136. **Power to make rules in respect of matters in this Chapter**
- (1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the authorities who may declare the employment of any railway servant essentially intermittent or intensive;

(b) the appeals against any such declaration and the manner in which, and the conditions subject to which any such appeal may be filed and heard;

(c) the categories of staff that may be specified under sub-clauses (iv) and (v) and clause (c) of Section 130;

(d) the authorities by whom exemptions under sub-section (4) of Section 132 of sub-section (3) of Section 133 may be made;

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- (e) the delegation of power by the authorities referred to in clause (d);
- (f) the railway servants to whom clause (ii) of sub-section (2) of Section 133 apply and the periods of rest to be granted to them;
- (g) the appointment of supervisors of railway labour and their functions."

Railway Servants (Hours of Work & Period of Rest) Rules, 2005

(The earlier rules regulating the hours of work and rest of the Railway servants called "Railway Servants (Hours of Employment) Rule, 1961 and any orders issued there under in so far as they were inconsistent with revised rules have been repealed and revised rules called "The Railway Servants (Hours of Work and Period of Rest) Rules, 2005 have been made, which are printed hereunder).

MINISTRY OF RAILWAYS

(Railway Board)

New Delhi, the 28th February, 2005

RBE No : 131/2005, No. E(LL) 2001/HER/9, New Delhi - 9.8.2005

G.S.R 75, 28the February, 2005- In exercise of the powers conferred by section 136 of the Railways Act, 1989 (24 of 1989) the Central Government hereby makes the following rules, namely:-

PART - I

1. Short title, commencement and application-

- 1. These rules maybe called the Railway Servants (Hours of Work and Period of Rest) Rules,2005.
- 2. They shall come into force on the date of their publication in the Official Gazette.
- 3. They shall apply only to those Railway servants to whom Chapter XIV of the Act. Applies.

2. Definitions:-

In these rules, unless the context otherwise requires,-

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(b) 'full-night' means the period between 10.00 p.m. and 6.00 a.m.;



(c) 'long-on' means a period of duty over eight hours in the case of 'intensive' workers, over ten hours in the case of 'continuous' workers and over twelve hours in the case of 'essentially intermittent' workers;

(d) 'Roadside station' means a station other than-

- i. an important junction station;
- ii. a station with marshalling yard;
- iii. an important terminal station;
- iv. a station from which rains are ordered as a regular measure, and
- v. a station where a separate goods office under a supervisory Goods Clerk, in the grade of Chief Goods clerk or of higher rank sanctioned on the basis of workload in that Goods Office has been provided:

Provided that the Head of the Railway Administration or the authority to whom he may delegate this power, may draw up a list of road-side stations keeping in view the above definition.

g. 'roster' means a document which shows the hours that a railway servant is expected to be on duty every day, the daily as well as weekly rest and break between spells of duty in a day besides other necessary particulars;

h. 'running staff' means the staff who are defined to be so in Rule 1507 of Indian Railway Establishment Code, Volume - II (1990 Edition);

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k. 'short off' means a period of rest which is-

(i) in the case of intensive workers:-

(A) less than 12 hours in a roster of six hours duty; and

(B) less than 14 hours in a mixed roster of 6 and 8 hours duty,

(ii) in the case of continuous worker-less than 10 hours,

(iii) in the case of essentially intermittent workers - less than 8 hours,

(l) 'split duty' means duty in two or more spells with intervening breaks each of half or more hour necessitated by exigencies of work and when the employee is free to leave his

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place of duty. Intervals for rest and meals shall not be breaks for the purpose of split-duty;

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PART-II

CLASSIFICATION OF EMPLOYMENT AND HOURS OF WORK

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6. Excluded staff.-

The following categories of staff of the Health and Medical department shall be treated as 'excluded' under sub-clause (v) of Clause (c) of section 130, namely:-

- a. Matrons;
- b. Sisters-in-charge;
- c. Midwives who are not posted on regular shift duty in Railway Hospitals;
- d. Health Educators and District Extension Educators (Male and Female);
- e. Family Planning field Workers (Male and Female);
- f. Lady Health visitors;
- g. Auxiliary Nurses-cum-Midwives;
- h. Projectionists;

In addition to the above, the Ministry of Railways may, by order in writing specify any other category of railway staff in any of the Departments of the Indian Railways who shall be treated as 'Excluded' on the consideration that such staff are available on call.

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8. Fixation of hours of work -

The hours of work of a Railway Servant as per roster (hereinafter referred to as the rostered hours of work) may be continuous or may have short interval for rest, or breaks due to exigencies of service or deployment.

(1) Subject to the limit specified in section 132 and having regard to the requirements of the service and the nature of work, the Railway Administration shall fix the normal rostered hours of work for the various categories of railway servants in the manner indicated in these rules.



(2) The rostered hours of work of Railway servant shall consist of

- i. Standard hours of duty;
- ii. Additional hours as may be prescribed in the case of certain categories classified as essentially intermittent; and
- iii. Time required to do preparatory or complementary work or both for those who are required to do such work.

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11. Register of extra hours of work-

The particulars of all extra hours of work done by a Railway servant beyond the prescribed rostered hours of duty should be recorded in a register to be maintained in Form 'A' appended to these rules by the officer authorized in this behalf by the Head of the Railway administration."

8. After perusal of provisions of Section 132 of Indian Railway Act, it is clear that Railway servants who belongs to essential intermittent category shall not be employed for more than 75 hours in any week and those falling under the category of continuous shall not be employed for more than 54 hours in a week, on an average of two weekly period of 14 days. Employees that fall in the intensive category shall not be employed for more than 45 hours in a week or on an average in a two weekly period of 14 days. However, this period would be subject to sub-section 4 of Section 132, where the competent authority, if it is so desires, may grant any temporary exemption, which is necessary to avoid serious interference with the ordinary working hours of the Railway employees or in the case of accident, actual or threatened or when the urgent work is required by the Railways or to rolling stock or any emergency which could not have been foreseen or prevented. It is also provided that when such exemption requires in the increase of the hours of employment of a Railway servant on account of the provisions contained in Sub-section 1, 2 & 3 of Section 132 shall be paid OTA at not less than 2 times of an ordinary rate of pay for the excess hours of



work. This provision makes it abundantly clear that when Railway servant is required to perform his duty beyond his roster hours he would be entitled to OTA. So far as the period of rest is concerned it has been provided in Section 133. The Railway Servant who is in the category of intensive or continuous will be grant rest of not less than 30 consecutive hours commencing on a Sunday of the week and those falling in the category of essential intermittent will be granted rest of not less than 24 hours continuous rest including a full night, commencing on Sunday. So far as the locomotive or traffic running staff is concerned they shall be granted each month, a rest of at least 4 periods of not less than 30 consecutive hours each or at least five periods of not less than 22 consecutive hours each including a full night. This period of rest would subject to provisions sub-section 4 of Section 132, and a railway servant who has been exempted shall in such case, as may be prescribed be granted compensatory period of rest for the period he has foregone. Therefore, the total scheme reveals that every category of employees to perform the duties according to their roster. The document which shows the hours that a Railway servant is expected to be on duty every day is called roster. This document of roster will provide daily as well as weekly rest and break between spells of duty in a day. A very important definition of 'long on' is necessary to be looked into. "Long on" means a period of duty over 8 hours in the case of intensive workers, over 10 hours in the case of continuous workers and over 12 hours in the case of essentially intermittent workers. 'Full night' means the period between 10.00 Pm to 6.00 Am. This period would subject to limitation of hours of work provided in Section 132.

9. Now the question arises under which category each of the applicant falls? What is his roster duty which includes long on period also? As such if a particular Railway employee who is not excluded under Section 130(c) or under Section 131 of the Indian Railway Act would be entitled to OTA in terms of Chapter XIV read with 2005 Rules. Rule 8 is very important which gives power to the Railway authorities to fix the hours of work. Rule 8(2) is

also equally important which provides roster hours of Railway servant consisting of the standard hours of duty and additional hours as may be prescribed in the case of categories classified as essentially intermittent or intensive including time required to do preparatory or complementary work or both for those who are required to do such work. Rule 11 prescribe that roster register shall be maintained to record the extra hours of work done by the Railway servant beyond the prescribed roster hours of duty.

10. A combined reading of these rules and Chapter XIV of the Indian Railway Act makes it clear that if a Railway servant works beyond standard hours of duty including the additional hours as may be prescribed would be entitled to OTA. Categorisation of the applicants (Railway employees) under the rules has not been brought on record by either of the parties. In O.A. No.484/2007 & 485/2007 the applicants are claiming to be the continuous employees and in the alternative also pleading as essentially intermittent. So far as the applicants of O.A.197/2003 are concerned they do not disclosed their category under the rules and simply stated as running staff with different posts. However, in the reply some of the employees were categorised as continuous by the respondents. The roster of the employees and extra work register are maintained by the Railways which are the basis for grant of OTA, are not placed on record. The record of roster of duty, extra hours of duty are with the respondents and are not admitted. These questions of fact have to be ascertained by the respondents hence, we are of the view that these applications may be disposed of with following directions to the respondent:

A) That the competent authority shall decide the claim of OTA of the applicants in terms of Chapter XIV of the Indian Railway Act read with 2005 Rules after specifying individually the category in which he is working and the period for which the employee worked and then decide the amount of allowance as per provisions contained in 2005 Rules.



- B) The OTA should be with the same rates which are given in Rule 2005 read with provisions contained in Chapter XIV of Indian Railway Act.
- C) The claim of the applicants who are running staff in locomotive or traffic wing, their claim of staying with the train should be decided in accordance with law after giving them an opportunity of being heard.
- D) The above exercise shall be completed in respect of individual employee within a period of 6 months from the date of communication of this order
- E) The competent authority shall ensure that each and every applicant shall be intimated with the decision in writing.
- F) That if any amount found payable to the applicants the same may be paid positively within the aforesaid period. In case the admissible OTA found to be due the applicants would be entitled the amount of OTA with simple interest at the rate of 9% per annum from the date of the presentation of the applications by them.

With these observations all the three O.As are disposed of finally.

There shall be no order as to costs.

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 (Jaya Das Gupta)
 Administrative Member

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 (Justice V.C. Gupta)
 Judicial Member

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