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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2378/89
T.A. No. With
MP-152/90

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DATE OF DECISION 29.1.1990.

Shri P.T. Thomas

Applicant (s)

Shri B.B. Rawal

Advocate for the Applicant (s)

Union of India & Others

Versus
Respondent (s)

Shri P.H. Ramchandani

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, who was working in the Cabinet Secretariat (RAW) as Deputy Field Officer (GD), filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

(i) to quash the order dated 21st October, 1989 whereby the respondents have sought to dismiss him from service under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution;

(ii) to direct the respondents to pay to him pay and allowances from September, 1988 onwards till date with all the benefits accruing from time to time together with interest at the rate of 18% per annum;

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(iii) to direct the respondents to pay him all back wages with all increments and other dues together with interest at the rate of 18 per cent per annum;

(iv) to direct the respondents to pay to him damages to the tune of Rs.7,00,000/-;

(v) to afford protection to his life and to the lives of his family members who are in imminent danger of being liquidated by the respondents; and

(vi) to declare ~~memo.~~ dated 26.7.1980 issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms, regarding the procedure for dealing with Government servants engaged in, or associated with subversive activities, as violative of the principles of natural justice.

2. By way of interim relief, the applicant has prayed that the respondents be directed not to give effect to the dismissal order, not to evict him from the Government accommodation occupied by him and continue to provide him the benefit of C.G.H.S. Card, and that the respondents be directed to pay him subsistence/survival allowance equivalent to roughly three-fourths of his emoluments, i.e., around Rs.2,400 per month on the basis of a similar order passed by the Supreme Court in writ petition Nos.205-207/81 in similar cases of dismissal.

3. The application was listed for admission on 1.12.1989, when the Tribunal directed issue of notice to the respondents, returnable on 17.1.1990. Notice was also directed to be

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issued to the respondents on interim relief, returnable on 15th December, 1989. In the meanwhile, an interim order was passed to the effect that the respondents are restrained from dispossessing the applicant of the Government quarter, subject to the payment of rent, etc., as per the rules.

4. The case was listed for admission and interim relief on 17.1.1990 when we went through the records carefully and heard the learned counsel for both the parties. In the meanwhile, the applicant has also filed MP-152/90 on 12.1.1990. We have heard the learned counsel for both the parties on the said M.P. also. In our opinion, the application deserves to be disposed of at the admission stage itself. Shri B.B. Rawal, the learned counsel for the applicant, pressed for grant of interim relief, as prayed for in the application while Shri P.H. Ramchandani, the learned counsel for the respondents, opposed the same.

5. At the outset, a brief mention may be made about MP-152/90 in which the applicant has prayed that the respondents be directed "to keep their hands off the applicant and his family, pending disposal of this O.A. by this Hon'ble Tribunal, failing which a suo motu criminal contempt of court proceedings may be initiated against the respondents." It has been alleged

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in the M.P. that not content with the dismissal order which has been challenged in the main application, the respondents have let loose a terror and persecution against the applicant and his family by misusing the national resources earmarked for the country's security, i.e., man-power, vehicles, and Secret Service Funds. The applicant has been constantly followed by half-a-dozen officers of RAW. They have sent their officers to his residence who have told his neighbours that he has been dismissed for "some very big crime". This has caused a terrific mental setback and social embarrassment to him and his family members. The respondents have also utilised their Police fraternity with the Delhi Police, following which a Sub-Inspector of Lodi Road Police Station visited his house on 9.1.1990 in his absence and demanded to know from his wife as to what he was doing for his livelihood after his dismissal. It has been contended that when any judicial forum is seized with any particular case, any interference intended to cause a mental torture on the applicant so as to prevent him from concentrating effectively on the prosecution of his case, is a criminal interference with justice and is, therefore, a contempt of court.

6. During the arguments, Shri B.B. Rawal, the learned Counsel for the applicant, has also drawn our attention to a secret Circular issued by the Cabinet Secretariat on 23rd October, 1989 (Circular No.7/32/89-S) under the signature of R. Balakrishnan, Officer on Special Duty. The Circular refers to the dismissal of Q

the applicant and another officer for having indulged in activities affecting the security of the State.

It has further been stated that "Their activities had created an atmosphere conducive for foreign powers interested to penetrate the Security Organisations. Needless to say, we have not only to guard against such attempts and intentions of foreign powers but guard against subversive elements from within. As the above mentioned individuals have proved to be security hazards, the members of the Organisation are advised to keep away from the two individuals lest they attract adverse attention."

7. The contention of the learned counsel for the applicant is that the aforesaid Circular amounts to social ostracism of the applicant and shows the mala fide intent of the respondents.

8. In our opinion, the grievance mentioned in the M.P. and the prayer sought therein, are outside the purview of this Tribunal as not being "service matters" within the meaning of Section 3 (q) of the Administrative Tribunals Act, 1985. The applicant will have to seek his remedy in any appropriate forum in accordance with law, if so advised.

9. With regard to the reliefs sought in the main application, the basic stand of the applicant is that the impugned order of dismissal from service was issued by the respondents out of mala fides and ulterior motives. The contention of the respondents is that the persons against whom mala fides have been alleged, have not been impleaded as parties and they have not been given an

opportunity to file counter-affidavits in their defence.

10. The Union of India, through the Cabinet Secretary, is the first respondent. Shri A.K. Verma, Secretary, RAW, Cabinet Secretariat, is the second respondent, and Shri Mahesh Shanker, Additional Secretary (SR), Cabinet Secretariat, is the third respondent. The impugned order dated 21.10.1989 has been passed "By order and in the name of the President" and it has been signed by the third respondent.

11. The facts of the case, in brief, are the following. The applicant is a directly recruited Class III official in the rank of Deputy Field Officer (General Duty). He joined service on 1st December, 1972 in the Research & Analysis Wing, Cabinet Secretariat. He was made quasi-permanent from 1st December, 1975. He has not, however, been confirmed in the said post.

12. According to him, troubles started, one after the other, with his posting under S.B., Jodhpur, when he refused to carry out the "personal chore of some senior officers". He feels that this has led to a chain of harassments to him beginning from entry of adverse remarks in his confidential report for the year 1978-79 communicated to him after a lapse of 11 months; the decision of the respondents not to allow him to cross the Efficiency Bar in 1980; recording of adverse remarks in his subsequent CRs for 1980-81 and 1981-82; implicating him in a criminal case in 1984, while he was working at Bombay; his transfer to Delhi from Bombay in October, 1984; the suggestion of Shri Arun Bhagat, the then Deputy Director to him on 1st

December, 1984 to resign; the alleged threat by Shri V.K. Saraf, the then Joint Director on 16th December, 1984 that unless he withdraws the case filed by him in the High Court, dire consequences would follow; refusal by Shri R. Balakrishnan, the then Addl. Secretary and now Officer on Special Duty, on 9th October, 1986 to allow the applicant to compulsorily retire from service under Rule 135 of the R&AW (RC&S) Rules, 1975 though such a course had been suggested to him by Shri S.E. Joshi, the then Secretary (RAW) on 24th September, 1986; his transfer to Tezpur in August, 1988; his transfer to the Section under the Under Secretary (Personnel-V/S.O. (Personnel) vide office order dated 31.8.88 but not allowing him to join duty; issue of a charge-sheet to him on 28th July, 1989 under Rule 14 of the C.C.S. (CCA) Rules, 1965 for his alleged failure to carry out the transfer order to Tezpur; and finally, issue of the impugned order dated 21st October, 1989 whereby he has been sought to be dismissed from service.

13. The version of the applicant is that the impugned order has not been formally communicated to him. He has, however, received a telegram to the effect that he stands dismissed from service w.e.f. 21.10.1989. The version of the respondents is that it was sent to him by registered post, but the same came back undelivered. A copy of the impugned order was produced in the Tribunal on 3rd Nov., 89, when the miscellaneous petition No. 2413/89 in OA-1616/88 moved by the applicant, came up for hearing. A copy

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of the same has been annexed at Annexure A-14 which reads as follows:-

"Whereas the President is satisfied under sub-clause (c) of the proviso to clause (2) of article 311 of the Constitution that in the interest of the security of the State it is not expedient to hold an inquiry in the case of Shri P.T. Thomas.

And whereas the President is satisfied that, on the basis of the information available, the activities of Shri P.T. Thomas are such as to warrant his dismissal from service.

Accordingly, the President hereby dismisses Shri P.T. Thomas from service with effect from 21st October, 1989.

(By order and in the name of the President)

Sd/- Mahesh Shanker
Addl. Secy. to the Govt. of India"

(Vide Annexure A-14, p.101 of the paper-book).

14. To complete the narration of the factual position, it may be mentioned that apart from the present application filed by the applicant in the Tribunal, the following cases have been filed by him and the same are pending:-

(i) Writ Petition No. 1663/82 filed in the Bombay High Court challenging the validity of the impugned adverse remarks for the year 1978-79 conveyed to him vide memorandum dated 27.2.1980, seeking direction to the respondents to consider the question of his crossing the Efficiency Bar as on 1.12.1980 and also to direct them to consider his case for promotion to the rank of Field Officer and to restrain the respondents from transferring him from Bombay without the leave of the Court. The petition is still pending in the Bombay High Court.

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(ii) OA-1006/87 filed at the Principal Bench of the Tribunal on 20th July, 1987, praying for a direction to the respondents to confirm him in the rank of D.F.O. (GD) from December, 1975 or January, 1976, to promote him, to pay him the difference of pay and allowances, including arrears thereof, to circulate a finalised seniority list of DFOs (GD) as on 21.10.1975 and to give the benefit of N.B.R. as a number of his juniors had been promoted. This case is also pending.

(iii) OA-1616/88 which was admitted by the Principal Bench of the Tribunal on 30th August, 1988 challenging his impugned transfer to Tezpur. He has stated that the Judicial Member admitted the application and passed an interim order of stay. This was, however, vacated by the Administrative Member on 9th September, 1989 though there had been no change of circumstances. A review application filed by him against the vacation of the stay, is still pending.

(iv) OA-725/89 filed in the Principal Bench of the Tribunal praying that the respondents be directed to circulate a detailed charter of duties of Junior Executive Cadre, to post him only at the right place for which he was appointed, trained and oriented as per the charter of duties, and to quash the adverse remarks. This case was admitted on 6th July, 1989 and is still pending.

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15. Thus, the relationship of the applicant from 1978 onwards had become strained. In a sensitive Department like RAW, the continuance of the applicant had become somewhat untenable before the impugned order was passed by the respondents.

16. The learned counsel for the applicant argued that the chain of events dating from 1978 is clearly indicative of mala fides on the part of the respondents. To our mind, he has not been able to substantiate this charge against the respondents.

17. As to the claim for damages to the tune of Rs.7 lakhs, we are of the view that it cannot be adjudicated upon by the Tribunal as it is not a "service matter" within the meaning of Section 3(q) of the Administrative Tribunals Act. The applicant will be at liberty to move appropriate legal forum to seek his redress in accordance with law, if so advised.

18. With regard to the other reliefs sought by the applicant, the question arises whether the impugned order of dismissal from service dated 21.10.1989 suffers from any legal or constitutional infirmity.

19. The learned counsel for the applicant drew our attention to a similar order passed by the respondents on 26th December, 1980 against Shri A.K. Kaul, Deputy Central Intelligence Officer of the same department.

The said order reads as follows:-

"Whereas the President is satisfied under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State it is not expedient to hold an enquiry in the case of Shri A.K. Kaul.

And whereas the President is satisfied that, on the basis of the information available, the activities of Shri A.K. Kaul are such as to warrant his dismissal from service.

Accordingly, the President hereby dismisses Shri A.K. Kaul from service with immediate effect.

(By order and in the name of the President)

Under Secretary ^{Sd/- R. Mahadevan} to the Govt. of India
Ministry of Home Affairs"

(Vide Annexure A-17, p.119 of the paper-book).

20. The applicant and two others had filed writ petitions in the Supreme Court (Writ Petition Nos. 1117-1118/80 - Intelligence Bureau Employees Association Vs. Union of India & Others, and Writ Petition Nos. 205-207/81 - A.K. Kaul & Ors. etc. Vs. Union of India & Another). They had also filed CMP-1230-32/81 in the Supreme Court. After hearing the learned counsel for both the parties, the Supreme Court passed the following order on 13.2.1981:-

"During the pendency of these writ petitions, the Government shall pay to the Petitioners a monthly sum of Rs.1500/- each, which roughly comes to 3/4 of their emoluments. These sums shall be paid without prejudice to the rights and contentions of the Government, especially in regard to their contention that the Order of dismissal is valid. The amount so paid shall be liable to be adjusted from the amount which may be due to the Petitioner in the event of their dismissal being upheld. The Petitioners shall not be evicted from the premises occupied at present from Government accommodation and their health cards shall be restored. Liberty to mention for early hearing in July, 1981."

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21. The learned counsel for the applicant vehemently argued that the case of the present applicant is identical with that of the petitioners before the Supreme Court and that this Tribunal should pass a similar interim order during the pendency of the present application. He stressed that the applicant has not been receiving his salary from September, 1988 onwards.

22. The learned counsel for the respondents did not controvert the version of the learned counsel for the applicant about the existence of the afore-mentioned stay order passed by the Supreme Court. He also was not in a position to state whether the respondents took any steps to get the said interim order modified or vacated subsequently.

23. The learned counsel for the respondents vehemently opposed the admission of the present application on the ground that the impugned order cannot be called in question in view of the decision of the Supreme Court in *Union of India and Another Vs. Tulsi Ram Patel*, 1985 (2) SLR 145. In that case, the Constitution Bench of the Supreme Court declared as follows:-

"The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing of danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public."

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24. In Tulsi Ram Patel's case so far as dismissals covered by Article 311 (2) (c) are concerned, the Supreme Court categorically declared that the satisfaction reached by the President under Clause (c) is a subjective satisfaction and, therefore, would not be a fit matter for judicial review except as regards allegation of malafides. The Supreme Court observed:

"the power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached malafide or is based on wholly extraneous or irrelevant grounds because in such a case, in law there would be no satisfaction of the President or the Governor at all. It is necessary to decide this question because in the matters under clause (c) before us, all the materials, including the advice tendered by the Council of Ministers, have been produced and they clearly show that in those cases the satisfaction of the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground."

25. The learned counsel for the applicant, however, contended that the Andhra Pradesh High Court in B. Bhaskara Reddy Vs. the State of Andhra Pradesh, 1981 (1) SLR 249 had taken a contrary view. In that case, the judgement was delivered by Madhava Reddy J., as he then was. The relevance of the decision of the Andhra Pradesh High Court in Bhaskara Reddy's case, came up before the Division Bench of the Principal Bench of the Tribunal in OA-397/87 (Triloki Nath Kher Vs. Union of India) which was decided on 3.8.1987. Mr. Justice K. Madhava Reddy, the then Chairman of the Tribunal, delivering the judgement in that case, observed that the judgement in Bhaskara Reddy's case, was rendered prior to Tulsi Ram Patel's case and that if what is held in that case is

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at variance with the dicta laid down in Tulsi Ram Patel's case, it can no longer be relied upon.

26. The ratio in Tulsi Ram Patel's case has been followed by the Tribunal in several cases (e.g., Krishan Kishore Malhotra Vs. Union of India, 1988(8) ATC 595).

27. In view of the foregoing, the impugned order dated 21.10.1989 cannot be faulted on any ground.

28. The applicant has contended that the procedure for dealing with Government servants engaged in or associated with subversive activities contained in Office Memorandum dated 26.7.1980 (vide Annexure A-16) is violative of the principles of natural justice. In the light of the judgement of the Supreme Court in Tulsi Ram Patel's case we are unable to uphold his contention. It will, however, be noticed from the said Office Memorandum that the Government has laid down certain guidelines for taking decision in such cases, with a view to avoiding arbitrariness and to ensure that the matter is examined by senior officers of the Government with thoroughness and in a fair and impartial manner.

29. Para.4 of the said O.M. refers to Rule 41 of the Central Civil Services (Pension) Rules, 1972, according to which, a Government servant dismissed or removed from service is not entitled to any pension/gratuity, etc. It is, however, permissible to grant a compassionate allowance in deserving cases. In this context, the guidelines provide as under:-

(a) No compassionate allowance under Rule 41 of the Pension Rules should be granted in cases of Government servants dismissed/ removed from service under proviso (c) to

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Article 311 (2) of the Constitution for overt anti-national activities, such as sabotage/espionage.

(b) In the case of those whose removal or dismissal results from participation in other objectionable activities, affecting/and endangering the security of the State, such proportionate pension as may be recommended by the Committee of Advisers, shall be granted.

30. The learned counsel for the respondents stated that in the instant case, the Government accepted the recommendations of the Committee of Advisers not to give any pension or compassionate allowance to the applicant.

31. The Government have issued certain guidelines for the grant of compassionate allowance under Rule 41 of the C.C.S. (Pension) Rules, 1972. According to these guidelines, "Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interests of Government, unduly harsh on the individual. In considering this question it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a compassionate allowance. Poverty is not an essential condition precedent

to the grant of a compassionate allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance". (Vide G.I.F.D. Office Memo, No.3(2)-RII/40, dated the 22nd April, 1940, reproduced in R.N. Mishra's All India Services Manual, 3rd Edition, page 1663).

32. The learned counsel for the applicant submitted that the applicant and his family are in great financial difficulties and that the impugned order insofar as it deprives him of his right to proportionate pension, is unjust, inequitable and unduly harsh. He, therefore, submitted that this Tribunal should pass an interim order on the same lines as the one passed by the Supreme Court on 13.2.1981 in Kaul's case, mentioned above.

33. The interim order passed by the Supreme Court on 13.2.1981, is based on the peculiar facts and circumstances of the cases before it and cannot be treated as a binding precedent as such. It is not a law laid down by the Supreme Court within the meaning of Article 141 of the Constitution.

34. In Bakshi Sardari Lal (dead) through Legal Representatives and Others Vs. U.O.I. & Another, 1987 (4) A.T.C. 660 (SC), the Supreme Court while dismissing the appeals filed by the 18 Policemen of the Delhi Armed Police Force who had been dismissed from service in exercise of powers under Clause (c) of the second proviso to Article 311(2) of the Constitution, directed payment

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of lump sum amounts to them as indicated in the judgement, in lieu of compassionate allowance. In that case, Shri Nariman, the learned counsel for the appellants, had brought to the notice of the Hon'ble Supreme Court about the statement made by the Home Minister in the Lok Sabha on December 18, 1970 to the effect that those who had been dismissed by invoking Clause (c) to proviso 311(2), would be considered for grant of compassionate allowance. The Supreme Court observed that it had no sympathy for indiscipline. At the same time, their Lordships took note of the fact that the Government had made it known that they intended to treat the appellants liberally by giving them compassionate allowance. The matter had been sufficiently protracted and, therefore, it was observed that the situation would be met in a just way if, instead of paying a recurring allowance, a lump sum amount be paid to the Policemen who are alive, or their legal representatives in case of the Policemen who are dead.

35. The aforesaid decision of the Supreme Court is also based on the peculiar facts of the case before it.

36. Be that as it may, taking the totality of the facts and circumstances, including the twists and turns in the career of the applicant for over a decade and the gradual decline in mutual ~~and~~ confidence between the applicant and his superiors and keeping in view the spirit of the judgement of the Supreme Court in Bakshi Sardari Lal's case and of the order in Kaul's case, we are of the opinion that in the interest of justice, equity and fairplay, the applicant deserves to be paid

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compassionate allowance. This is a fit case in which the respondents could have exercised their discretion ~~as~~ ^{than} envisaged in Rule 41 of the C.C.S. (Pension) Rules, 1972 in favour of the applicant ~~rather~~ ^{than} against him.

37. In the conspectus of the facts and circumstances of the case, the application and MP-152/90 are disposed of at the admission stage itself with the following findings, orders and directions:-

- (1) The grievance mentioned in MP-152/90 and the reliefs sought therein, are outside the purview of this Tribunal, as not being "service matters" within the meaning of Section 3(q) of the Administrative Tribunals Act, 1985. The applicant will be at liberty to seek his remedy in any appropriate forum in accordance with law, if so advised.
- (2) The applicant's claim for damages to the tune of Rs.7 lakhs cannot be adjudicated upon by this Tribunal as it is not a "service matter" within the meaning of Section 3(q) of the Administrative Tribunals Act, 1985. He will be at liberty to move appropriate legal forum to seek his redress in accordance with law, if so advised.
- (3) We hold that the impugned order of dismissal from service dated 21.10.1989 passed in pursuance of Clause (c) of the Second proviso to Article 311 (2) of the Constitution, does not suffer from any legal or Constitutional infirmity. We also do not see any infirmity in the Memo. dated 26.7.1980 issued by the

Ministry of Home Affairs, Department of Personnel and Administrative Reforms. The subjective satisfaction of the President on the basis of which the impugned order has been passed, is not open to judicial review. The applicant has not substantiated the allegations of mala fides against the respondents or their officers.

(4) The respondents are directed to release the pay and allowances to the applicant for the period of service rendered by him, in accordance with the relevant rules, if this has not already been done.

(5) Having regard to the totality of the facts and circumstances, including the vicissitudes in the career of the applicant for the last decade and more the steady decline in mutual confidence between him and his official superiors, the spirit of the judgement of the Supreme Court in Bakshi Sardari Lal's case and of the order in Kaul's case, we hold that in the interest of justice, equity and fairplay, he deserves to be paid compassionate allowance. We direct the respondents to release to the applicant compensatory allowance the quantum of which should not be less than the proportionate pension which he would have been entitled to, had he been allowed to leave government service on voluntary retirement.

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(6) The respondents shall comply with the directions in (4) and (5) above within a period of three months from the date of communication of this order.

(7) The interim order passed on 15.12.1989 to the effect that the respondents are restrained from dispossessing the applicant of the government quarter in his occupation, subject to his liability to pay rent, etc., as per the rules, shall continue in operation till they comply with the directions in (4) and (5) above.

(8) The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

28/1/1990

P. K. Kartha
(P. K. Kartha)
Vice-Chairman (Judl.)

29/1/1990