

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

(8)

O.A. No. 367/88

DATE OF DECISION: 8<sup>15</sup> May, 92

GURU DUTT

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APPL E ANT

VERSUS

1. Union of India through  
its Secretary, Ministry  
of Information and Broadcasting

2. State of Punjab, through  
its Special Secretary,  
Directorate of Foods and  
Supplies

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RESPONDENTS

CORAM:

THE HON'BLE SHRI K.J. RAMAN, MEMBER(A)

The HON'BLE SHRI T.S. OBEROI, MEMBER(J)

FOR THE APPLICANT: SHRI S.S. TIWARI, COUNSEL

FOR THE RESPONDENTS: MRS. AWINISH AHLAWAT,  
Counsel for Respondent-2

1. Whether Reporters of the local papers  
may be allowed to see the Judgement?

Yes

2. To be referred to the Reporter or not?

(JUDGEMENT OF THE BENCH DELIVERED BY THE  
HON'BLE SHRI K.J. RAMAN, MEMBER(A))

JUDGEMENT

The applicant joined the services of the then Government of East Punjab with effect from 29-10-1948 as Sub-Inspector, Directorate of Food & Civil Supplies. He continued to work as such till 1-8-1952. He then joined the Central Tractor Organisation of the Central Government with effect from 6-8-1952. The break in service from 2-8-1952 to 5-8-1952 had been condoned and the period treated as dies non, as per entry in the Service

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Book of the applicant, by the Department of Agriculture, New Delhi. On 28-12-1956, he joined the Publications Ministry of Division of the/Information and Broadcasting, Govt. of India, as Sub-Editor (Hindi). He retired on 30-9-1979 from the post of Copy Writer, Directorate of Advertising and Visual Publicity in that Ministry. The applicant found that his service from 29-10-1948 to 1-8-1952 with the Punjab Government had not been taken into account as qualifying service in computing his retiral benefits including pension. The applicant submitted a representation to the Respondent No. 1, who entered into correspondence in regard to the treatment of the said period. The Pay and Accounts Officer concerned wrote a letter to the Government of Punjab on 19-3-1980, indicating the service particulars of the applicant as above, and sought concurrence of the Government of Punjab for accepting the liability to bear the State's share of proportionate pension/DCRG. The applicant also represented to the Department of Pension of the Government of India in the matter. He received a reply from the Department as follows:-

"No. 4618/86/P&PW  
Government of India  
Department of Pension & Pensioners' Welfare

New Delhi, dated the 27th March, 1986

To:

Shri Guru Dutt  
N 72 Kirti Nagar  
New Delhi

Dear Sir,

I am directed to refer to your representation dated 14th March, 1986 on the subject cited above and to say that it appears you had retired from Central Government service on 30th September, 1979. It also appears that the State Government of Punjab has not agreed to bear the pensionary liabilities for the services rendered by you under that Government for the purpose of counting your State Government service towards civil pension. Unless the State Government agrees to bear the pensionary liabilities, the question of granting benefit of State Government Service towards civil pension does not arise in your case as reciprocal arrangements with

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Government of Punjab were made as wef 31-3-1982.

Yours faithfully,

Sd/-  
Desk Officer

2. Thereafter, the applicant is stated to have made further representations, the last of which was dated 16-12-1986 and that was to the Government of Punjab requesting them to bear their share of proportionate pension. He also suggested that, if that was not possible, he might be allowed to deposit the ~~same~~ amount in question with the Treasury of the State Government, so that the problem could be solved and he <sup>could</sup> get the period counted as qualifying service. The Punjab Government, however, rejected his representation as above, by the issue of the impugned order dated 3-6-1987. It is thereafter that the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for counting of his period of service from 29-10-1948 to 1-8-1952 with the State Government for ~~the purpose of~~ computing his qualifying service for pensionary purposes.

3. The applicant has submitted that the respondents had never informed the applicant of his obligation, if any, regarding his contribution of proportionate pensionary amount and they never asked the applicant to make the contribution if the State Government was not willing to do so. The major ground urged by the applicant is that there cannot be a valid classifica-

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tion of pensioners, who worked with the State Government as well as in the Government of India, into two classes, merely on the basis of date of retirement. This ground is based on the contention of the respondents in some of their replies that reciprocal arrangements with the State Government were made only with effect from 31-3-1982 and these arrangements did not apply to the applicant who retired before that date.

4. Respondent-1 have filed a reply resisting the claim of the applicant. Firstly, it is stated that the application is barred by limitation as the applicant retired on 30-9-1979. The main contention, however, is that the said <sup>period</sup> was not taken as qualifying service as the State Government concerned did not agree to bear the proportionate share of pensionary liabilities for the service rendered by the applicant under the State Government. It is averred that respondent-1 would <sup>had</sup> have/no objection for counting the said period for pensionary benefits of the applicant, had the State Government agreed to bear the proportionate share as aforesaid.

5. Respondent-2 have also filed a reply, mainly stating that they were not willing to share the liability since there were no reciprocal arrangements between the State and the Central Governments during the relevant period. They have also submitted that the reciprocal arrangements have come into effect <sup>only</sup> from 31-3-1982. From the annexures to the reply of these respondents, it is seen that the applicant was serving under the East Punjab

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Government, Department of Civil Supplies, from 29-10-1948 to 1-8-1952 and he was relieved of his duties on his appointment in the Central Tractor Organisation. Thus, it is clear that the applicant did not resign and he was relieved by the State Government to join the Central Govt. The applicant has averred that he had applied for the post under the Central Government through proper channel in the State Government and he was permitted to join Central Government. The discharge certificate enclosed with the reply of the respondent-2 confirms this statement of the applicant.

6. The case has been heard when the learned counsel for the applicant, <sup>and</sup> the learned counsel for ~~respondent-1 and the learned counsel~~ for respondent-2 submitted their arguments.

7. The learned counsel for the applicant reiterated the facts and contentions briefly indicated above. He in particular relied on the order of the Government of India, Department of Personnel and A.R. O.M. No. 3(20)/Pen.(A)/79 dated 31-3-1982 reproduced as Item (6) page 38 of Swamy's Pension Compilation, 12th Edition. This order provided for the counting <sup>as qualifying service for pension</sup> of temporary service under the State Government when an

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employee moved over from the State Government to the Central Government. He, however, submitted that para 4 of this order, which stated that the said order would come into force with effect from the date of issue and cases of all such Government servants retiring on this date and thereafter would be regulated accordingly, was unconstitutional as it made an illegal distinction between pensioners retiring before 31-3-1982 and those retiring thereafter. In this connection he relied on the judgement of the Supreme Court in R.L. Marwaha v. Union of India, (1987) 4 ATC 584.

8. The learned counsel for the respondents-2 reiterated the ~~XXXXXX~~ contentions briefly summarised above.

9. In this case, the relief claimed is for correctly computing the qualifying service of the applicant for the purposes of arriving at <sup>the</sup> proper pensionary benefits <sup>of the applicant</sup> in Pension as such <sup>in</sup> a recurring cause of action. Further, in this case, respondent-1 <sup>had</sup> in the Department of Pension <sup>had</sup> issued the rejection order dated 27-3-1986 referred to above. This gave a cause of action to the applicant. Respondent-2 also <sup>had</sup> issued the impugned order dated 3-6-1987, the result of which was the failure of the applicant to get his pensionary benefits revised. On the basis of these

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impugned orders, the present application has to be treated as ~~not~~ barred by limitation. Even if the order dated 27-3-1986 is taken as the relevant order, the applicant could still be considered as not barred by limitation after condonation of the delay, since the application has been filed on 1-3-1988. In these circumstances, we reject the contention of the respondents that the present (already admitted) application is barred by limitation.

10. The facts in this case are not in dispute. The applicant had admittedly served the State Government for the period from 29-10-1948 to 1-8-1952 in a temporary capacity. It is also not in dispute that the applicant applied for the Central Government post through the proper channel and was relieved by the State Government in order to enable him to join the Central Government. This is not a case of resignation and termination of service with the State Government. Further, the Central Government authorities in service had condoned the break for the period from 2-8-52 to 5-8-1952 and treated the period as dies non. The Department of Agriculture of the Government of India had passed this order which was recorded in the Service Book. Such a condonation of break in service implies continuity of service from the period the applicant was serving the

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State Government. In other words, there was an implied recognition <sup>by respondent-1</sup> that the applicant's service was continuous from 29-10-1948. The applicant retired on 30-9-1979. He had been representing to the appropriate authorities as indicated above, for counting the said period as qualifying service.

11. From the order dated 27-3-1986 as well as the replies filed by <sup>the</sup> respondents, it is obvious that the only objection to the counting of the said period of service of the applicant as qualifying service for pension was that he had retired <sup>before</sup> 31-3-1982 when reciprocal arrangements with the State Government came into existence for sharing the pensionary liabilities for the period of State Government service. The applicant has rightly pointed out that, if it was the only objection, and if the State Government did not want to share the liability, the respondents ought to have asked the applicant to contribute the amount in question, and if he did so, there should have been no objection to reckon the said period as qualifying service. There is no clear reply from the respondents to this allegation except for saying that such payments have to be made by employees when they are on foreign service.

12. Be that as it may, the main reliance on behalf of the applicant is on the order dated 31-3-1982 alluded to above. This order is reproduced below:-

*RSR*



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"(6) Counting of temporary service under the State/Central Governments - 1. The Government of India have been considering in consultation with the State Governments, the question of sharing on a reciprocal basis the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the Central Government/State Governments prior to securing posts under the various State Governments/Central Government on their own volition in response to advertisements or circulars, including those by the State/Union Public Service Commissions and who are eventually confirmed in their new posts. It has since been decided in consultation with the State Governments that proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the Governments concerned, on a service share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Governments for grant of pension by the Government from where they eventually retire. The gratuity, if any, received by the Government employee for temporary service under the Central or State Governments will, however, have to be refunded by him to the Government concerned.

2. The Government servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories:-

- (1) Those who having been retrenched from the the service of Central/State Governments secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and date of new appointment;
- (2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the administrative authority concerned;

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- (3) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Central Governments.

The benefit may be allowed to the Government servants in categories (1) and (2) above. Where an employee in category (2) is required for administrative reasons, for satisfying a technical requirement to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement. Government servant in Category (3) will obviously, not be entitled to count their previous service for pension.

3. The above arrangement will not apply to the employees of the Governments of Jammu and Kashmir and Nagaland.

4. These orders come into force with effect from the date of issue and cases of all such Government servants retiring on this date and thereafter will be regulated accordingly.

(G.I. Dept. of Personnel & A.R. letter No. 3(20)/Pen.(A)/79 dated the 31st March, 1992, addressed to all State Governments except Jammu & Kashmir and Nagaland.)

NOTE - Sharing of pension liability between Central and State Governments has since been dispensed with from 1-4-1987. See Decision (5) above. "

(Emphasis added)

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13. The learned counsel for the respondents-2 pointed out to para 4, of the above order and stated that sharing arrangements indicated in para 1 of this order came into effect only from 31-3-1982, and therefore, it could possibly apply only to those Government servants retiring on or after 31-3-1982. The learned counsel for the applicant, on the other hand, contended that this division of pensioners into two classes based on the date of retirement was unconstitutional, and for this purpose he relied on the judgement of the Supreme Court in the case of R.L. Marwaha v. U.O.I. supra.

14. There is some force in the contention of the learned counsel for the respondents-2 that the sharing arrangements provided for in para 1 of the order came into existence only on or after 31-3-1982 and, therefore as a consequence, the benefit of this order could also be given effect to only in respect of those retiring on or after that date. If this were not so, the Central Government would be burdened with the payment of additional pensionary liabilities <sup>without</sup> ~~w/~~ the State Government bearing their share, in such cases as that of the applicant. In the case of R.L. Marwaha Vs. Union of India it does not appear that such a difficulty arose as it was a matter entirely within the control of the Central Government.

15. What the respondents have <sup>apparently</sup> overlooked in this <sup>order</sup> case was another/issued by the Government of India on 9-10-1986, dispensing with the sharing of pension liability between the Central and State Governments with effect from 1-4-1987. Since this order is vital to this case, it is reproduced below, together with a

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clarification issued by the Government in respect of this order on 5-12-1989 (vide pages 36-38 ibid):-

"(5) Allocation of leave salary and pension contribution between Central and State Governments and between two State Governments dispensed with -

1. The Government of India appointed a Committee to review the existing General Financial Rules and Treasury Rules and Account Code, Volume I and to make conceptual suggestions for their revision so as to simplify and rationalise these rules. The Committee in Chapter 5 of its Second Report has examined the existing system of allocating the liability on account of leave salary and pensionary charges of the Government servants who have served under the Central Government and State Governments as contained in Appendix 3-B-II and IV of Account Code, Volume I and made the following recommendations:-

- (a) The practice of realising leave salary contributions may be dispensed with altogether as this is a very small fraction of amounts payable to State Governments on account of deputation of their officers to the Central Government.
- (b) Recovery of leave/pension contributions in respect of inter-State transactions, which must be few and far between and could be given up,
- (c) In regard to pensionary liability the Central Government may forgo any contribution recoverable from State Governments and to whom Central Government Officers are deputed.

- (d) In lieu of Central Government liability towards pension of State Government Officers (mainly All India Service Officers), who are deputed to Centre for varying spells an ad hoc grant payable to each State Government may be worked out at the beginning of the financial year and disbursed to them in one lump sum as Grant-in-aid (Non-Plan) on the basis of a simple formula which takes into account cadre strength, and average length of deputation on All India Service Officers to Central Government.

2. Pursuant to the above, it has been decided in consultation with the State Governments to dispense with the system of allocation of leave salary and pension between Central and State Governments as specified above:-

- (a) Leave Salary - The existing system of allocation or sharing of the liability on account of leave salary contributions by Central Government to State Governments or vice versa will be dispensed with. The liability of leave salary will be borne in full by the Department from which the Government servant proceeds on leave, whether it be his parent Department or a borrowing Department with whom he is on deputation.
- (b) Pension - The liability for pension including gratuity will be borne in full by the Central/State Department to which the Government servant permanently belongs at the time of retirement. No recovery of proportionate pension will be made from Central/State Government under whom he had served.

- (c) Contributory Provident Fund - The liability for Government contributions will be borne by the Parent Department of the Central or State Government and no share of contributions will be recovered from any borrowing Department.

3. It has been proposed to extend the above provisions to exchange of officers between two State Governments. Accordingly, there will be no allocation of leave salary/pension contribution among the Departments of the various State Governments.

4. These orders will take effect from 1-4-1987 and will apply to all cases of leave salaries and pensions sanctioned on or after that date.

5. This issues with the concurrence of the Comptroller and Auditor General of India vide his U.O.No.114-AC. I/163-86 Vol.II, dated 3-10-1986.

(G.I., M.F. O.M. No. 14(5)/86/TA/1029, dated the 9th October, 1986).

Clarification - References are being received from Union Ministries/Departments as also the State Governments in regard to the applicability of the above O.M. to Government employees (temporary/permanent), moved from Central Government to State Governments and vice versa in terms of the Department of P. & A.R., O.M. No. 3(20)/Pen. (A)/79 dated 31-3-1982 (Decision(6) below). The matter was taken up with the Ministry of Personnel, Public Grievances and Pension (Department of Pension and Pensioners' Welfare), who have since clarified this point as under:-

"The Controller-General of Accounts, O.M. No. 14(5)/86/TA/1929, dated 9-10-1986, seeks to dispense with the system of sharing pension liability between Centre and State Governments, as contemplated in Appendix 3-B-IV of Account Code, Volume I. It would, therefore, be naturally applicable to all cases where the system of apportionment of pension liability was in vogue prior to its issue, i.e. in respect of both permanent and temporary

employees of the Central/State Government,  
as the case may be."

("G.I. M.F. O.M. No. 14(5)/86/TA/1112,  
dated the 5th December, 1989")

(Emphasis added)

16. A combined reading of the three orders reproduced above, cumulatively give rise to the following propositions in respect of a case like the applicant's:-

- (i) A Central Government servant like the applicant who had been holding a temporary post under the State Government and who applied for the post under the Central Government through proper channel and with proper permission, and had moved over to the Central Government, was entitled to count his temporary service rendered under the State Government as qualifying service for pensionary purposes, independently of any sharing arrangement.
- (ii) The sharing arrangements between the State and Central Government prescribed under the 31-3-1982 letter had been scrapped with effect from 1-4-1987.
- (iii) The order dated 9-10-1986 dispensing with such sharing, would be applicable to all cases where the system of <sup>apportionment</sup> ~~proportion~~ ~~ment~~ of pension liability was in vogue prior to the issue of that letter.

17. It is clear from the above ~~orders~~ <sup>the</sup> that the Central Government ~~had forgone~~ / contribution recoverable from the State Governments, in respect of <sup>prior</sup> ~~period~~ of service rendered by its employees with the State Government, mainly

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on the ground of such contribution being negligible at the level of the Governments. In respect of even temporary Government servants under the State Government, who have moved over to the Central Government, <sup>the</sup> period of such service in the State Government shall be taken as qualifying service with the Central Government where the Government servant retires.

18. The ~~possible~~ <sup>(as above)</sup> objection for applying the cumulative effect of these orders <sup>to the case of the applicant</sup> could be that these orders are stipulated to apply to Government servants retiring on or after 31-3-1982 or whose pensions are sanctioned on or after 1-4-1987. If we <sup>it would be clear that</sup> analyse the cumulative effect of the above orders, <sup>the</sup> date of retirement or sanction of pension cannot be a relevant factor in extending the benefit of these orders to such persons as the present applicant. If the pensionary contribution of the State Government is <sup>and ignorable</sup> considered as trivial in 1986 or later, it must have indeed been trivial or negligible even before ~~that date~~, and even in 1979 when the applicant retired. The net result of these orders is that persons like the present applicant who had put in temporary service with the State Government, would count their service in that Government for their pensionary benefits when they retired from the Central Government on or after 31-3-1982. If that were so, there could be no legal basis for denying the benefit to the applicant only on the ground that he retired before that date. There

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is no other factor involved in this issue, like sharing of the pensionary liabilities between the State and Central Governments, especially after the issue of the clarification dated 5-12-1989; there is no justification at all for denying the benefit of the counting of the said period as qualifying service of the applicant for computing his pensionary benefits, at least with effect from 3-4-1987.

19. The above view which we are taking in this case is supported by <sup>the ratio of</sup> the decision of the Supreme Court in the case of R.L. Marwaha vs. Union of India and Others supra. In that case, the benefit of the order of 29-8-1984 providing for counting of the previous service with the Central Government for the purpose of pensionary benefits in the autonomous body, was denied to those employees who had retired before the issue of the said order. Holding the said denial as discriminatory, the Supreme Court explained the rationale of the decision as follows:-

"8. There is no dispute that the ICAR though it is a body registered under the Societies Registration Act, 1960, is a body which is sponsored financed and controlled by the Central Government. There has been a continuous mobility of personnel between Central Government departments and autonomous bodies, like the ICAR both ways and the government thought, and rightly so, that it would not be just to deprive an employee who is later on absorbed in the service of the autonomous body, like the ICAR the benefit of the service rendered by him earlier in the Central Government for purposes of computation of pension and similarly the benefit of service rendered by an employee who is later on absorbed in the Central Government service, the benefit of the service rendered by him earlier in the autonomous body for purposes of computation of pension. If that was the object

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of issuing the notification then the benefit of such notification should be extended to all pensioners who had rendered service earlier in the Central Government or in the autonomous body as the case may be with effect from the date of the said government order. Now let us take the case of a person who had rendered service under the Central Government between January 1, 1953 and July 1, 1955 but who has retired from service of the ICARR in 1985. There is no dispute that such a person gets the benefit of the service put in by him under the Central Government for purposes of his pension. But another pensioner who has put in service under the Central Government during the same period will not get similar concessions if he has retired prior to the date of the government order if paragraph 7 of that order is applied to him. The result will be that whereas in the first case there is pensionary liability of the Central Government, in the second case it does not exist although the period of service under the Central Government is the same. This discrimination arises on account of the government order. There is no justification for denying the benefit of the government order to those who had retired prior to the date on which the government order was issued. The respondents have not furnished any acceptable reason in support of their case, except saying that the petitioner was not entitled to the benefit of the government order because the order says that it would not be applicable to those who had retired prior to the date on which it was issued. In the absence of any explanation which is worthy of consideration, it has to be held that the classification of the pensioners who were working in the government/autonomous bodies into two classes merely on the basis of the date of retirement as unconstitutional as it bears the nexus to the object to be achieved by the order.

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9. We do not also find much substance in the plea that the concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after August 29, 1984 that is the date of issue of the government order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the government order. By doing so, the government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on August 29, 1984 under the government order but with effect from August 29, 1984.

10. In the result we hold that paragraph 7 of the government order cannot be used against persons in the position of the petitioner to deny them the benefit of the past service for purposes of computing the pension."

(Emphasis added)

20. We have no doubt that the above ratio applies to the present case also and the applicant cannot be denied the benefit of the orders cited above merely on the ground that he retired before 31-3-1982.

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21. The applicant retired on 30-9-1979. It is on record that he, no doubt, represented in the matter in 1980 or thereabouts. Thereafter, there is a gap of several years and the applicant seems to have taken the matter again in 1986. The <sup>basic</sup> orders on which we have placed reliance were issued in 1986, extending the benefit to persons like the applicant having temporary service under the State Government (vide clarification of 1989). These factors will have to be taken into account while awarding the apt relief to the applicant in this case.

22. In the result, the application is allowed, and the following orders are passed:-

- (i) The impugned order dated 27-3-1986 issued by the Government of India, Department of Pension and Pensioners' Welfare is set aside.
- (ii) The respondent-1 are directed to revise the pension of the applicant after taking into account the period from 29-10-1948 to 1-8-1952 as qualifying service of the applicant.
- (iii) The revised pension shall be payable to the applicant with effect from 1-3-1988 (the date of filing this application).
- (iv) The arrears of pension together with relief due <sup>as above</sup> shall be paid to the applicant, ~~xxxxxx~~ within a period of three months from the date of receipt of a copy of

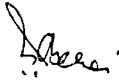


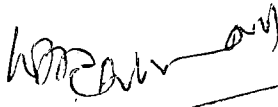
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this order by Respondent-1.

(v) The monthly pension of the applicant as so revised shall be payable to the applicant from time to time according to the existing regulations.

(vi) There will be no order as to costs.

  
(T.S. OBEROI)  
Member (J)

  
(K.J. RAMAN)  
Member (A)