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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1871
~~F.A. No.~~

1987.

DATE OF DECISION 18-7-1988

Shri R.D. Sharma, Petitioner

In person. Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri H.K. Saxena with Shri Advocate for the Respondent(s)
P.K. Chug,

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairma (Judicial)

The Hon'ble Mr. Birbal Nath, 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*

18/7/88
(Birbal Nath)
Administrative Member

Birbal Nath
(P.K. Kartha)
Vice Chairman (Judl.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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Regn.No.OA-1871/87

Date of Decision 18-7-1988

Shri R.D.Sharma

.. Applicant.

Versus

Union of India & Others

.. Respondents.

For Applicant.

.. In person.

For Respondents.

.. Shri H.K.Saxena with
Shri P.K.Chug, Advocate.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman(Judl.)
Hon'ble Mr.Birbal Nath, Administrative Member.

JUDGEMENT

(Judgement of the Bench delivered by
Shri P.K.Kartha, Vice Chairman(Judl.)

The applicant who retired from the post of Secretary, Election Commission of India, New Delhi^{has} filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the Union of India represented by the Secretary, Ministry of Urban Development, New Delhi (Respondent No.1), the Secretary, Department of Pension & Pension Welfare, (Respondent No.2), the Director, Directorate of Estates, (Respondent No.3), the Pay and Accounts Officer(Respondent No.4) and the Manager, Syndicate Bank, R.K.Puram, New Delhi (Respondent No.5). The relief claimed in this application is that against recovery of a sum of Rs.12,819.65 from the relief in pension of the applicant in respect of Government premises, Sector IV, 309, R.K.Puram, New Delhi which was allotted to the applicant while he was in Government service.

2. There is no dispute between the parties as regards the facts of the case. The dispute relates to the legality of the recovery of the amount mentioned above from the relief in pension of the applicant.

3. The applicant retired as Secretary, Election Commission of India, New Delhi on 30.9.1981. He was allotted Government accommodation by the respondent No.3(Directorate of Estates)

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and after his retirement with effect from 1.10.1981, he retained the same till 28.11.1984. The recovery is for his over-stay in the Government premises beyond the period admissible under the relevant rules.

4. According to the applicant, special circumstances existed for him to continue in the Government premises. He had requested for ad hoc allotment of the said premises to his son-in-law which was not agreed to by the respondents. This led to protracted litigation before the District Judge, the Delhi High Court and even the Supreme Court. He continued to occupy the said premises pursuant to the stay orders issued by the Court from time to time.

5. According to the respondents, the applicant was allotted Government accommodation under the Allotment of Government Residences (General Pool in Delhi) Rules, 1963. As the applicant retired on 30.9.1981 in accordance with sub Rule 2 of Supplementary Rule 317-B-11, he could retain the premises for a maximum period of two months. Accordingly, he was required to vacate the premises by 30.11.1981. He applied for permission of retention of the quarter on medical grounds as a special case. In accordance with SR-317-B-22, he was granted permission for a total period of six months on the condition of payment of twice the standard licence fee under FR-45A or twice the pooled licence fee under FR-45A or twice the fee he was paying whichever was the highest. The applicant was informed by letters dated 2.3.82 and 22.4.82 that he was liable to pay market licence fee after 31.5.1982. He, however, did not vacate the quarter. On 1.6.1983, the respondent No.3 wrote to the applicant stating that without prejudice to any other action, his liability will continue to increase at the rate of Rs.285/- per month and three times of this rate from the date of expiry of 15 days from the date of orders of eviction under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 till he vacated and restored the premises to the CPWD.

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He, however, did not vacate the premises. Therefore, eviction order under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 was passed against him on 11.2.1983. The appeal filed by the applicant before the Additional District Judge was eventually dismissed on 30.11.1983. Thereafter, he filed a writ petition in the Delhi High Court which was also dismissed. He filed a SLP in the Supreme Court which was also dismissed. According to the respondents, a sum of Rs.12,383.20 is recoverable from the applicant as arrears of damage charges.

6. According to Sub-Rule (6) of Rule 72 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules'), the recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of 2 months after the date of retirement of the allottee shall be the responsibility of the Directorate of Estates.

7. According to the U.O. No 728-E-V(A) dated 7th February, 1978 of the Ministry of Finance, "the pensioner's relief is not covered by Pension Act and there may be no objection to the recovery of Government dues from the Pensioner's Relief with the consent of the pensioner." In view of this the Pay and Accounts Officer was approached to recover the arrears from the relief in pension of the applicant.

8. The applicant is drawing his pension from the Syndicate Bank, R.K. Puram, New Delhi. The Pay and Accounts Officer vide his letter dated 21.4.1986 instructed the Syndicate Bank to recover from the applicant's total monthly pension an amount of Rs.500/- per month with effect from September, 1986 to October, 1988 so as to recover the sum of Rs.12,719.65 which was stated to be

outstanding in respect of Government accommodation which had been allotted to the applicant. Accordingly, the Bank has recovered a sum of Rs.7000/- from the relief in pension payable to the applicant. This has been challenged in the present application before us.

9. Further, recovery from the relief in pension had been stayed by the order of this Tribunal dated 29.12.1987.

10. The applicant, who appeared in person, relied on the decision of this Tribunal dated 24.12.1986 in OA-46/86 (Beni Prasad Vs. Union of India & Others) ^{AT 1987 (2) CAT 205}. He has also sought support from the decision of the Delhi High Court in Smt. Indrawati Kapoor, etc. Vs. Union of India, 1984 RLR 241, and of the Supreme Court in Union of India & Ors. Vs. Wing Commander R.R. Hingorani, J.T.1987(1) S.C. 290. According to the applicant, the recovery of the amounts from the relief in pension payable to him has been made pursuant to the instructions contained in the DGP&T's letter No.4-4/78-TA dated 28th March, 1978 which has been set out in Appendix-15 (para. 2(c)) at page 366 of Swamy's Pension Compilation, 10th Edition, issued on 1.6.85. The letter of the DGP&T refers to the U.O.No.728-E.V(A) dated 7th February, 1978, according to which, the Pensioner's ^{Relief} is not covered by Pension Act and there may be no objection

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to the recovery of Government dues from the pensioner's relief without the consent of the pensioner.

11. The applicant contended that the instructions contained in the DGP&T's letter mentioned above, cannot over-ride the provisions contained in the C.C.S.(Pension) Rules, 1972. Rule 3(1)(ii) of the C.C.S.(Pension) Rules, defines the expression 'Government dues' to mean dues as defined in Sub-rule(3) of Rule 71. Rule 71 deals with recovery and adjustment of Government dues. Sub-rule(3) of Rule 71 provides that the expression 'Government dues' includes (a) dues pertaining to Government accommodation, including arrears of licence fee, if any; and (b) dues other than those pertaining to Government accommodation, namely, balance of House Building or Conveyance or any other Advance, over-payment of pay and allowances or leave salary and arrears of Income Tax deductible at source under Income Tax Act, 1961. The applicant contended that only licence fee could be deducted under Sub-rule(3) of Rule 71 and that the respondents had no right to recover any outstanding Government dues from the relief in pension payable to the pensioners.

12. In the counter-affidavit filed by respondents 1 and 3, reliance has been placed on the DGP&T's letter dated 28th March, 1978 in support of their action to recover the Government dues from the relief in pension payable to the applicant. The respondents have contended that relief in pension is equivalent to dearness allowance and that it is not part of pension. In this context, they have referred to the definition of 'allowance' in Aiyar's Judicial Dictionary, according to which, it is a "voluntary act and implies a discretion in "doing something which a

person is to perform or withhold at pleasure. To allow implies the right to determine and is the act of a superior towards a dependant granting a privilege which he has authority to confer or deny." (vide 10th Edition, p.78).

13. The learned counsel for the respondents ~~has~~ referred to the reports of the Third and the Fourth Pay Commissions to substantiate his contention. Para.92 of the Report of the Third Central Pay Commission, 1973, refers to relief to pensioners. It has been stated that the relief to pensioners has been recommended in view of the numerous representations received by the Pay Commission suggesting that it should recommend some measures for protecting the pensions of the existing Government employees from erosion on account of possible increases in the cost of living in future. Reference was also made to the report of the Fourth Central Pay Commission which ~~refers~~ refers to the problems faced by pensioners due to erosion in their standard of living through inflation. The Fourth Pay Commission recommended that the pension structure may be rationalised and consolidated in the manner recommended by them and that relief for price rise beyond Index average 608 may be given at the rates recommended on the consolidated amount of pension.

14. Referring to the C.C.S.(Pension) Rules, the learned counsel for the respondents argued that there is no reference to relief in pension in the Rules. Rule 3(1)(o) defines pension to include gratuity except when the term 'pension' is used in contradiction ^{distinction} to gratuity. Rule 3(1)(r) defines the expression 'retirement benefits' to include pension or service gratuity and death retirement gratuity where admissible.

15. In view of the above, the learned counsel for the respondents contended that recovery of Government dues from the relief in pension payable to the applicant, cannot be called in question. As regards the decision of this Tribuna.

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in Beni Prasad's case, the learned counsel for the respondents submitted that the matter should be placed before a larger Bench of the Tribunal for reconsideration. He also contended that the decision of the Supreme Court in Wing Commander Hingorani's case and of the Delhi High Court in Smt. Indrawati Kapoor's case, do not support the contention of the applicant to the effect that relief in pension forms part of pension.

16. We have carefully gone through the records and heard the applicant and the learned counsel for the respondents. The crucial point to be decided in the present application is whether relief in pension partakes of the nature of pension and forms part of pension and whether recovery of Government dues could be made from relief in pension unilaterally by the Government. In this context, the decision of this Tribunal in Beni Prasad's case is relevant. In Beni Prasad's case, this Tribunal considered the question whether Dearness Relief on pension could be withheld on the ground that there are certain outstanding Government dues to be cleared by the pensioner. In that case, the withholding of the Dearness Relief on pension was not pursuant to any departmental proceedings envisaged under Rule 9 of the Pension Rules.

17. The provision of the Pension Rules and the Pensions Act, 1871 was examined. It was observed that the definition of 'pension' under Rule 3(o) of the Pension Rules does not throw much light on whether relief in pension could be treated as pension. However, the Tribunal came to the conclusion that relief in pension is, in fact, part of the pension. In this context, the following observations contained in the judgement of the Tribunal are pertinent:-

"Dearness allowance relief granted to pensioners is primarily intended to offset high rise in prices

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and cost of living. What was considered to be reasonable pension payable to a pensioner on the date of his retirement is rendered illusory by the steep rise in prices of commodities. That is sought to be offset by sanctioning dearness allowance to serving employees and relief on pension to the pensioners. It is, in fact, the depreciated value of the rupee that is sought to be compensated by granting relief to a pensioner by way of R.I.P. It is, thus, in fact part of the pension. It is an amount paid for services already rendered. If a person is entitled to receive pension, he will also be entitled to receive R.I.P. Without pension, there could not be any payment by way of R.I.P. Relief in pension in all respects, in our view, is part of pension."

18. In Beni Prasad's case, the learned Counsel for the respondents relied on the U.O. No.718-EV(a) dated 7th February 1978 issued by the Ministry of Finance. The Tribunal observed that if R.I.P, as held by the Tribunal, constitutes ^{a pension} in the eye of law, then the prohibition contained in Rule 9 of the Pension Rules would be automatically attracted and any amount due to the Government can be recovered only on the conditions mentioned therein being satisfied. The Tribunal also observed that periodically when the pension is revised, the relief in pension is sought to be absorbed in the pension itself and the pension fixed accordingly. R.I.P also cannot be withheld for adjustment towards any Government dues in contravention of Rule 9 of the Pension Rules.

19. In Beni Prasad's case, the applicant had contended that under Section 11 of the Pensions Act, 1871, pension is exempt from attachment and, as such, the Government dues, if any, cannot be recovered by deducting any part of the pension. Section 11 of the Act, in so far as is relevant for our present purposes, reads as under:

11. Exemption of pension from attachment - No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for, any demand against the pensioner, or in satisfaction of a decree or order of any such court."

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Referring to the above provision, the Tribunal observed that what is prohibited under Section 11 is seizure. The exemption covers seizure, attachment or sequestration by process of any court and at the instance of a creditor and limited to a demand against the pensioner, or satisfaction of a decree or order of the court. It does not deal with any amount due to the Government. It does not also relate to withholding of the payment of pension by the Government. Withholding of payment by the Government of any amount which is due to the pensioner does not amount to seizure, attachment or sequestration, by process of any court. The Government is not seeking to attach any amount, nor is it seeking the process of any court for withholding the same. What the respondents were seeking to do in Beni Prasad's case was to withhold full payment of pension for adjustment towards the amount due from the petitioner to the Government. The Tribunal observed that the reliance upon Section 11 has been misplaced. However, the principle under-lying Section 11 appears to have been incorporated in Rule 9 of the Pension Rules to the limited extent that it could be withheld only by way of disciplinary action initiated within the period specified therein and not otherwise.

21. In Beni Prasad's case, the Tribunal held that the claim of the applicant must succeed on the ground that no part of the pension or relief on pension can be withheld unless the conditions laid down by Rule 9 of the Pension Rules are fulfilled. In the result, the application was allowed to the extent that the amount of Rs. 5,537/- or any other amount which was claimed to be due from the applicant shall not be recovered from his pension or relief in pension.

22. In the instant case, we have to consider whether there is any legal provision under which the outstanding Government dues as alleged by the respondents could be

unilaterally recovered. The respondents have relied on the U.O. dated 7th February, 1978 issued by the Ministry of Finance. To our mind, any such recovery should be based on any Rule contained in the Pension Rules or any administrative instructions made to supplement the said rules, as the subject matter has been comprehensively regulated by the said rules. Rule 3(1)(h)(ii) of the Pension Rules defines the expression 'Government dues' to mean dues as defined in Sub Rule (3) of Rule 1971. Rule 3(1)(o) defines the expression 'Pension' to include gratuity except when the term pension is used in contradistinction to gratuity. There is no specific rule relating to relief in pension. Rule 71 which deals with the recovery and adjustment of Government dues reads as follows: -

- "1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.
- 2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the death-cum-retirement gratuity becoming payable.
- 3) The expression 'Government dues' includes -
 - a) dues pertaining to Government accommodation including arrears of licence fee, if any;
 - b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961)."

23. Rule 72, deals with adjustment and recovery of the dues pertaining to Government accommodation. Sub Rule (6) of Rule 72 only provides for recovery of licence fee for the occupation of Govt accommodation beyond the permissible period of two months after the date of retirement of the allottee. Rule 73 deals with adjustment and recovery of dues other than dues pertaining to Government accommodation. Sub Rule (3) of Rule 73

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provides that the dues as assessed under Sub Rule(2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant shall be adjusted against the amount of death-cum-retirement gratuity becoming payable to the Government servant on his retirement.

24. Rule 8 of the Pension Rules provides that payment of pension is subject to the ~~future~~ good conduct of the pensioner which is an implied condition of the grant of pension and ^{its} continuance. The appointing authority may by order in writing, withhold or withdraw the pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. Ministry of Finance letter No.F7(28)EV/53 dated 28th August, 1958, sets out the following procedure to be followed when a pensioner refuses to pay Government dues:-

"The failure or refusal of a pensioner to pay any amount owed by him to Government cannot be said to be 'misconduct' with the meaning of Article 351 of the C.S.R.(Rule 8, CCS (Pension) Rules, 1972). The possible way of recovering/demanding Government dues from a retiring officer who refuses to agree in writing, to such dues being recovered from his pension is either to delay the final sanction of his pension for some time which will have the desired effect for persuading him to agree to recovery being made therefrom or take recourse to Court of law."

25. From the foregoing discussion, it will be clear that if relief in pension partakes of the nature of pension, the Pension Rules do not empower the Government to withhold relief in pension, in whole or in part, except in the circumstances envisaged in Rule 9. In the instant case, the recovery of outstanding Government dues through the Syndicate Bank was not as a result of any decision after conducting an enquiry under Rule 9 of the Pension Rules.

26. The U.O. note of the Ministry of Finance dated 7th February, 1978 to the effect that the pensioner's relief is not covered by the Pensions Act and there may be no objection to the recovery of the Government dues from the pensioner's relief without the consent of the pensioner, is in the nature of an administrative instruction. As the question of pension has been comprehensively regulated by the Pension Rules and the rules do not leave any discretion in the matter to the executive to make recovery from the pensioner's relief, to our mind, these instructions cannot be treated as supplementing the Pension Rules. It is well settled that an administrative instruction can be issued to supplement statutory rules but not to supplant them. Administrative Instructions could also be issued in matters on which the statutory rules are silent. In the instant case, the Pension Rules which are statutory in nature comprehensively deal with all matters regulating payment of pension. The Pension Rules specifically provide for withholding or recovery of pension in specified situations and circumstances, leaving no gap to be filled by administrative instructions. In view of this, we are of the view that ^{the} administrative instruction contained in the U.O. note of the Ministry of Finance dated 7th February, 1978 will have no legal binding force. The Administrative instructions issued in 1978 by the Ministry of Finance do not also go into the question as to whether relief in pension is to be considered as part of pension.

27. The applicant has relied upon the meaning given to 'Pension' in the 4th Pay Commission Report and has contended that the 'content' of pension is variable according to the conditions of service and has undergone changes from time to time. The 4th Pay Commission has devoted the whole of Chapter 2 to deal with this aspect of the matter. Para 2.4 of the 4th Pay Commission's report deals with the pension payable

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to the Judges of the Federal Court, Supreme Court, High Courts, Comptroller and Auditor General, Officers and servants of the Supreme Court and the High Courts.

Item (17) of the Article 366 of the Constitution states that unless the context otherwise required, the expression 'pension' has the following meaning for the purpose of Constitution: -

"(17) "Pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a Provident fund; (Emphasis supplied)

28. The 4th Pay Commission has observed that the above definition of pension includes retired pay, gratuity and any sum or sums payable by way of the return with or without interest thereon or any other addition thereto.

29. After examining the provisions of Pension Act, 1871 and the Pension Rules, the 4th Pay Commission has observed in para 2.11 of its report that they do not contain a definition of the term 'pension' which could be said to explain its meaning, concept or content and be of general application. The 4th Pay Commission has concluded in para 2.15 of its report that the notion and meaning of 'pension' has not been static and has changed considerably. According to the 4th Pay Commission, "the concept of 'pension' therefore, carries within it the germ of certainty, periodicity and adequacy", vide para 2.17 of the report.

30. Chapter 10 of the 4th Pay Commission's report deals with pension structure for pensioners and Chapter 11 deals with pensions and inflation. The 4th Pay Commission has made clear that the object of relief in pension is to provide neutralisation for price rise from time to time. They have viewed relief in pension as a separate element of pension.

31. It is clear from the report of the 4th Pay Commission that the expression 'pension' has a wide connotation. The Pay Commission has treated the relief in pension as an essential component of the pension packet payable to a pensioner.

32. Reference may also be made to the decision of the Supreme Court in D.S. Nakara Vs. Union of India, 1983(1)SCC 305 at 322 and 323 wherein the Supreme Court has discussed at length the philosophy underlying payment of pension to a Government servant on superannuation. According to the Supreme Court "viewed in the light of the present day notions, pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient....."

"Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered."

33. The periodic money payments referred to in the above observations made by the Supreme Court include not only the pension proper but also the component of relief in pension. Payment of pension being a social welfare measure, the definition of pension ought to receive liberal interpretation.

34. In the above view of the matter, we are of the view that relief in pension is an essential element of pension. We are also of the view that in the absence of any specific rule in the Pension Rules empowering the Government to effect recovery from relief in pension on account of outstanding Government dues, it will not be legally permissible to effect such recovery. We therefore, respectfully follow the decision of the Tribunal in Beni Prasad's case.

35. The decision of the Delhi High Court in Smt. Indrawati Kapoor's case and of the Supreme Court in Wing Commander R.R. Hingorani's case are not strictly relevant in the present

context. The Delhi High Court had considered the reasonableness of the damages payable for use and occupation of the Government premises after the termination of the lease or upon the retirement of a Government servant. The Supreme Court considered the question whether commuted pension payable to a pensioner would be exempted from attachment, etc. as in the case of pension, under the Pensions Act, 1871.

36. As we have come to the conclusion that relief in pension is a separate element of pension, we do not consider it necessary to accede to the submission made by the learned counsel for the respondents that the decision of this Tribunal in Beni Prasad's case should be referred to a larger Bench for reconsideration.

37. We may now come to the question as to what relief the applicant is entitled to. The relief claimed by him is only against the recovery of Rs.12,819/- from relief in pension. We have found that such a recovery is not legally tenable. This only gives partial relief to the applicant inasmuch as the liability to pay licence fee or damages for his occupation of the Government premises still survives.

38. The applicant continued to occupy the Government premises beyond the period permissible under the rules on the strength of stay orders issued by the Courts from time to time restraining the respondents from dispossessing him from the said premises. The Courts have not gone into the question as to whether damages for use and occupation are payable by the applicant and if so at what rates. He has contended in the present application that he has paid the licence fee for the entire period in accordance

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with the rules and that nothing is outstanding against him on that account. This is, however, disputed by the respondents. The applicant has not claimed any relief in the present application except to the extent of praying that the respondents should be directed to refund to him the amounts paid in excess as market rent of Rs.285/- per month instead of Rs.150/-per month from 1.6.82 to 30.11.84. We refrain from going into the question of the licence fee or damages payable by the applicant for the period from 1.6.82 to 30.11.1984, and leave that question open for adjudication by the appropriate forum. It is for the respondents to proceed in the matter in accordance with law, if they are so advised.

39. In the facts and circumstances of the case, we order and direct as follows:-

- (i) The impugned orders dated 17.4.86, 15.9.86 and 19.1.87 issued by the respondents for recovery of Rs.12,819.65 from the relief in pension of the applicant are quashed. No recovery should be effected from the relief in pension and the amount of Rs.7000/- which have been recovered should be refunded to the applicant together with interest at the rate of 10 per cent per annum from the date of recovery to the date of refund to the applicant.
- (ii) The respondents will be at liberty to take appropriate steps in accordance with law for recovery of Government dues, if any, payable by the applicant.
- (iii) There will be no order as to costs.

18/7/88
(Birbal Nath)
Administrative Member

18/7/88
(P.K. Kartha)
Vice Chairman(Judl.)