

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.133/2002

Friday, this the 31st day of October, 2003.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Justice M.M.Pareed Pillay(Retired),
Chairman(Retired),
Appellate Authority for Industrial &
Financial Reconstruction,
Residing at: A19, Jawahar Nagar,
Thiruvananthapuram-695 041. - Applicant

By Advocate Mr Thottathil B Radhakrishnan

Vs

Union of India represented by
its Secretary,
Ministry of Finance(Banking Division),
Parliament Street,
New Delhi-110 001. - Respondent

By Advocate Mr C.Rajendran, SCGSC

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant, a retired Chief Justice of the Hon'ble High Court of Kerala and formerly Chairman, Appellate Authority for Industrial & Financial Reconstruction(AAIFR for short), finds himself the third round of litigation before this Tribunal seeking the same relief: a declaration of his entitlement to enhanced Sumptuary Allowance at par with what was admissible to a Judge of the Supreme Court during his tenure in office as Chairman, AAIFR between 6.5.96 and 17.9.98 and a direction to be issued to the respondent, the Union of India, to grant the same.

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2. The brief back ground of the case is that the applicant who after his retirement as Chief Justice of Kerala High Court was functioning as Justice Pareed Pillay Commission of Enquiry, Sivagiri (Varkala) Police Lathi-Charge, was appointed as Chairman of the AAIFR, an authority constituted as per Section 5 of the Sick Industrial Companies (Special Provisions) Act, 1985, and held that post between 6.5.96 to 17.9.98. The pay of the Chairman, AAIFR is regulated by Rule 3 of the Appellate Authority for Industrial and Financial Reconstruction (Salaries and Allowances and Conditions of Service of Chairman and other Members) Rules, 1987 (the Rules for short) which states that the Chairman shall receive pay as admissible to a judge of the Supreme Court. As per Rule 4 of the same Rules, Dearness Allowance and City Compensatory Allowance are admissible to the Chairman at the rates applicable to a judge of the Supreme Court. Travelling Allowances are also admissible to the Chairman at the same rates as are prescribed in the Supreme Court Judges (Travelling Allowances) Rules, 1959. In the matter of Leave Travel Concession also the Chairman is treated on a par with a Judge of the Supreme Court. There is, however, no specific provision in the rules regarding admissibility of Sumptuary Allowance to the Chairman. As per Rule 13, which is a residuary provision:

9. "matters relating to the conditions of service of the Chairman or other Members with respect to which no express provision has been made in these rules shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be binding on the Chairman or the other Members."

Though there is no specific provision for grant of Sumptuary Allowance to the Chairman, such allowances at the same rate, i.e. Rs.750/per month, admissible to a judge of the Supreme Court under Section 238 of the Supreme Court Judges(Conditions of Service) Act, 1958 was determined as Sumptuary Allowance payable to the Chairman of the AAIFR in respect of the applicant's predecessor in office, Justice Mr Dalip K Kapur. The applicant was also allowed Sumptuary Allowance at the same rate when he took over though in the meanwhile the Sumptuary Allowance admissible to the Judge of the Supreme Court was enhanced from Rs.750/- to Rs.3000/- per month with effect from 31.1.96. Since as a matter of fact, the Chairman AAIFR was allowed Sumptuary Allowance of Rs.750/- per month, i.e. at the rate applicable to the Supreme Court Judge and since the same was raised to Rs.3000/- in the case of Supreme Court Judges, the applicant made several representations for grant of enhanced Sumptuary Allowance and eventually filed O.A.179/98 before the Ernakulam Bench of the Tribunal. That O.A. was disposed of directing the respondents to consider the representation which the applicant was permitted to file by A-10 order dated 23.4.1999. The respondents rejected the applicant's request for enhanced rate of Sumptuary Allowance on the ground that there was no specific provision for grant of any Sumptuary Allowance for the Chairman, AAIFR as per the relevant rules and that the Sumptuary Allowance of Rs.750/allowed to the Chairman was only in the nature of ex-gratia payment. Thereupon, the applicant filed O.A.648/99 seeking the following reliefs:

"i) Declare that the Appellate Authority for Industrial and Financial Reconstruction (Salaries and Conditions of Service of Chairman and other Members) Rules, 1987, in so far as they do not expressly provide for payment of Sumptuary Allowance to the Chairman of AAIFR on par with that which is payable to

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a Judge of the Supreme Court are arbitrary discriminatory and therefore void being ultra vires the Constitution of India.

ii) To quash or otherwise set aside the decision contained in Annexure A10 letter No.7/11/96.80.1 dated 23rd April, 1999 issued by the Under Secretary to the Government of India in the Ministry of Finance, Banking Division to the applicant.

iii) To declare that the applicant is entitled to Sumptuary Allowance at the rate of Rs.3000/- per month during his tenure of employment as the Chairman of Appellate Authority for Industrial and Financial Reconstruction.

iv) To direct the respondent to pay to the applicant an amount at the rate of Rs.3000/- per month as Sumptuary Allowance during his tenure of employment as the Chairman of Appellate Authority for Industrial and Financial Reconstruction, less the amount already paid under that head, with interest thereon at 18% per annum from the date on which each of such amounts fell due."

For detailed reasons set out in para 4 of the order in O.A.648/99 dated 16.8.2000, the Ernakulam Bench of the C.A.T. held that merely because the Chairman of the AAIFR should be a person who is or has been a Judge of the Supreme Court or a Judge of the High Court for not less than five years, it cannot be held that for all purposes or even for the purpose of service conditions of Chairman is required to be equated with a Judge of the Hon'ble Supreme Court. Similarly, grant of pay and allowance as Chairman, C.A.T., Chairman, CEGAT and Members of the Human Rights Commission are governed by respective service conditions and rules as applicable to each of them. With regard to the prayer at sub para(i) of para 8 of the O.A.648/99, the Tribunal held as under:

"...Since we have found that the rules are not ultra vires or irrational, we are of the considered view that the prayer for declaration made in sub paragraph 1 of paragraph 8 of the application cannot be granted."

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Taking note of the fact that several benefits and perquisites including Sumptuary Allowance granted to the Judges of the Supreme Court and the Chairman, AAI FR were similar in nature and quantum, the Tribunal considered it fit to remit the matter to the Government of India for taking a decision in regard to the conditions of service of the Chairman, AAI FR for which no express provision is made in the Rules. The Tribunal held:

"6. In the result, in the light of what is stated above, the application is disposed of setting aside the impugned order (Annexure-A10) and directing the respondent that a decision on the claim of the applicant for sumptuary allowance at the rate of Rs.3000/- per month during his term as the Chairman of the AAI FR by the Central Government as required under Rule 13 keeping in view the observations made in the foregoing paragraph shall be taken and communicated to the applicant within a period of three months from the date of receipt of this order. We also direct that if on such consideration and decision, it is found that as the Chairman of the AAI FR the applicant was entitled to the enhanced sumptuary allowance at the rate of Rs.3000/-, during his tenure, the monetary benefit flowing from such a decision shall also be made available to the applicant immediately thereafter. There is no order as to costs."

3. It was in apparent compliance with the above directions that the respondents have issued the impugned A-12 order dated 3.7.2001. The claim of the applicant for enhancement of the Sumptuary Allowance from Rs.750/- to Rs.3000/- as done in the case of the Judges of the Supreme Court has been turned down stating thus:

"2. The matter has been considered by Ministry of Finance, Banking Division in consultation with Ministry of Home Affairs, Department of Justice and Ministry of Law, Department of Legal Affairs. The above departments are of the view that since facility for payment of sumptuary allowance is not specifically available under the existing Rules of AAI FR, it is for

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the administrative Ministry i.e. Ministry of Finance to take decision in this matter at their discretion.

3. The matter was taken up with Department of Expenditure who are not in favour of grant of sumptuary allowance as Department of Personnel & Training's order dated 19.1.1998 does not allow for payment of sumptuary allowance to the chairperson and members of Regulatory Authorities etc. as this facility is only admissible to the serving Judges of the Supreme Court and High Court. Prior to the above order of DOPT, Department of Expenditure have also issued guidelines dated 8.10.1987 which did not provide for payment of sumptuary allowance to retired Judges of Supreme Court/High Court on their appointment as Chairman and Member of the Tribunals sumptuary allowance.

4. Keeping in mind the views of Ministry of Home Affairs, Ministry of Law and Department of Expenditure and the above orders of the Department of Personnel and Training and also the fact that there is no specific provision for payment of sumptuary allowance in the AAIFR (Salaries, Allowances and Conditions of Service of Chairman and Members) Rule, 1987, it has not been possible to favourably consider your request for payment of sumptuary allowance during your tenure as Chairman, AAIFR at the enhanced rate of Rs.3000 per month."

In the O.A. the applicant emphatically repeats the same contentions and grounds put forward before the Tribunal in the earlier O.A.648/99 considered in A-11 and submits that the decision contained in A-12 order is illegal, arbitrary, unjust, unreasonable and amounts to hostile discrimination and hence violative of fundamental rights. The applicant prays for the following reliefs:

"i) To quash or otherwise set aside the decision contained in Annexure-A12 letter F.No.7/11/96-B.O.I dated 3.7.2001 issued by the Under Secretary to the Government of India, Ministry of Finance.

ii) To declare that the Appellate Authority for Industrial and Financial Reconstruction (Salaries and Conditions of Service of Chairman and Members) Rules, 1987, in so far as they do not expressly provide for payment of Sumptuary Allowance to the Chairman of AAIFR at par with that which is payable to a Judge of the Supreme Court are arbitrary, discriminatory and therefore void being ultra-vires the Constitution of India.

iii) To declare that the applicant is entitled to Sumptuary Allowance at the rate of Rs.3000/- per month during his tenure of employment as the Chairman of Appellate Authority for Industrial and Financial Reconstruction.

iv) To direct the respondent to pay to the applicant an amount at the rate of Rs.3000/- per month as Sumptuary Allowance during his tenure of employment as the Chairman of Appellate Authority for Industrial and Financial Reconstruction, less the amount already paid under that head, with interest thereon at 18% per annum from the date on which each of such amounts fell due."

In the reply statement the respondent states that the AAIFR (Service Conditions of Chairman and other Members) Rules, 1987 do not have any express provision regarding payment of Sumptuary Allowance to Chairman, AAIFR at par with a Judge of the Supreme Court although the rules provides for grant of pay CCA and DA as admissible to the Chairman, AAIFR on a par with the Judges of the Supreme Court. The order of the Department of Expenditure dated 8.10.87(R-1) and the DOPT's order dated 29.1.98(R-2) would make it clear that Sumptuary Allowance was payable only to serving Judge of the Supreme Court/High Court. It is also pointed out that the status accorded to the previous incumbent should not be treated as a precedent for determining the status to be accorded to the succeeding incumbent. It is stated that in the absence of any clear rule or order regarding admissibility of Sumptuary Allowance to the Chairman AAIFR, what was drawn by the applicant by way of Sumptuary Allowance could only be taken as an ex-gratia payment.

4. I have heard Shri Thottathil B Radhakrishnan, learned counsel appearing for the applicant and Shri C.Rajendran, learned SCGSC for respondent. It was contended by the learned

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counsel for the applicant that as per the provisions of the SIC Act, Chairman of the AAIFR should be either a sitting Judge of the Supreme Court or a former Judge of the Supreme Court or a sitting or former Judge of the High Court with 5 years experience as a Judge of the High Court. Thus, there was a definite field of choice since functions expected of such an exalted post were commensurate with those of a senior Judge. Counsel would, therefore, maintain that the compensation for the Chairman for the service rendered by him also should therefore be on par with those admissible in the case of a sitting Judge of the Supreme Court. It is pointed out by learned counsel for the applicant that as per the service conditions applicable to Chairman, AAIFR, the Chairman would be entitled to pay, DA and CCA at the rates admissible to a Judge of the Supreme Court. TA and other incidentals are also admissible to the Chairman at the same scales and at the same rates as are prescribed in the Supreme Court Judges(TA) Rules. Similarly, perquisites like LTC and grant for furnishing residential accommodation were also allowed to the Chairman, AAIFR on a par with those admissible in the case of a Judge of the Supreme Court, the learned counsel would state. According to him, the respondents had accepted the eligibility of Chairman, AAIFR for Sumptuary Allowance when, among other perquisites, Sumptuary Allowance at the rate of Rs.750/- was allowed in the case of Justice Dalip K Kapur, the applicant's predecessor at par with the amount of Sumptuary Allowance to which a Judge of the Supreme Court was entitled at the relevant point of time. When the applicant took up his assignment as Chairman, AAIFR, Sumptuary Allowance at

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Rs.750/per month which was equivalent to Sumptuary Allowance in the case of the Judge of the Supreme Court continued to be allowed to him also. Thus, the admissibility of Sumptuary Allowance having been accepted by the respondents, there was no logical reason for not allowing the Sumptuary Allowance at the rate of Rs.3000/- per month when the rates of Sumptuary Allowance admissible in the case of Supreme Court Judges was increased from Rs.750/- to Rs.3000/- in order to maintain parity between the two, accepted and maintained by the respondents so far. It is vehemently contended by the learned counsel for the applicant that the respondents are not correct in holding that since no specific provision for payment of Sumptuary Allowance was available under the existing rules of AAIFR, it is for the administrative Ministry, i.e. the Ministry of Finance to take a decision in this matter at their discretion. Learned counsel urges that this stand is in violation of the specific direction by the Tribunal while remitting the question of deciding upon grant of Sumptuary Allowance to the applicant. Further, the counsel would argue that R-1 O.M. dated 8.10.87 and R-2 O.M. dated 29.1.98 are not of relevance as far as the applicant is concerned. AAIFR is not a Commission/Committee of Enquiry referred to in R-1 O.M. or a Regulatory Authority as visualised in R-2 O.M. Besides, the instructions contained in R-1 O.M. pertain to posts for which appointments had not been announced so far. The post of Chairman, AAIFR was an existing one. Therefore, the restrictive provisions contained in R-1 and R-2 O.M.s would not be of any assistance in deciding the matter, according to the learned counsel for the applicant.

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5. Shri C.Rajendran, learned counsel for the respondent relied on the pleadings in the reply statement and has contended that there was no provision in the AAIFR rules for grant of Sumptuary Allowance. The Sumptuary Allowance of Rs.750/- which was granted to the applicant's predecessor or to the applicant himself could not have any linkage with the Sumptuary Allowance admissible for the Judge of the Supreme Court. The perquisites drawn by way of Sumptuary Allowance should therefore be treated as an ex-gratia payment as far as the applicant is concerned, in the absence of any specific rule for such grant of Sumptuary Allowance. Since there is no nexus between Sumptuary Allowance granted to the applicant and Sumptuary Allowance admissible in the case of Supreme Court Judge, periodical upward revisions of the allowance in the case of Supreme Court Judges would be of no application to the applicant as Chairman, AAIFR. The directions given by the Tribunal in O.A.648/99 were carried out in accordance with the provisions of Rule 13 of the AAIFR and the decision taken by the Government was therefore, binding on the applicant, learned SCGSC would maintain.

6. I have examined the pleadings on record and the contentions of the learned counsel for both sides. I find that the sole question to be decided is whether the applicant was entitled to grant of enhanced Sumptuary Allowance on par with the increased Sumptuary Allowance admissible to Judges of the Supreme Court. It cannot be disputed that the applicant who retired as Chief Justice of the Kerala High Court was well within the identified field of choice for the post of Chairman AAIFR. It is also an undisputed fact that the Chairman, AAIFR

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is entitled to the same pay, Dearness Allowance, City Compensatory Allowance, Travelling Allowance, Leave Travel Concession etc. as admissible to a Judge of the Supreme Court vide A-1 Rules. No doubt there is no express provision concerning grant of Sumptuary Allowance to the Chairman, AAIFR. When the AAIFR was constituted, a Judge of the Supreme Court was entitled to Rs.750/- per month as Sumptuary Allowance as per the relevant rules governing the Supreme Court Judges(Conditions of Service) Act, 1958. A proposal for the revision of terms and conditions of appointment of Justice Dalip K Kapur, the applicant's predecessor in office, had been considered by the Department of Economic Affairs, Ministry of Finance in 1990. A-3 communication dated 4.6.90 reveals that:

"...it has now been decided that Shri Dalip K Kapur, the then Chairman, AAIFR may be allowed reimbursement of electricity and water charges to the extent of Rs.12000/- per annum of actual consumption, whichever is less, as also grant of sumptuary allowance @ Rs.750/- per month."

At the relevant point of time, the entitlement of a Judge of the Supreme Court for Sumptuary Allowance was also Rs.750/per month. Records would show that the concept of grant of Sumptuary Allowance as part of revision of service conditions etc. of Chairman, AAIFR was accepted and ever since followed. Even during the tenure of the applicant, Justice Mr Pareed Pillay as Chairman between 6.5.96 and 17.9.98 Rs.750/- per month as Sumptuary Allowance was given. This position is not denied. The allowance is unmistakably described as Sumptuary Allowance. There is nothing to show that it was the intention of the executive Government at that time to make an ex-gratia

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allowance of Rs.750/- per month. So, what the applicant drew was Sumptuary Allowance of Rs.750/- and not ex-gratia payment as now contended by the respondent. The contention to that effect has therefore to be rejected. In my opinion, the absence of a specific provision for grant of Sumptuary Allowance to the Chairman, AAIFR was thus sufficiently made up by a beneficent order or positive action on the part of the executive Government. By necessary implication, therefore, the Central Government had exercised the residuary powers under Rule 13 of the AAIFR (Salaries, Allowances and Conditions of Service of Chairman and Members) Rule 1987.

7. The matter was, however, remitted for reconsideration by the Central Government as per this Tribunal's order in O.A.648/99 dated 16.8.2000 making it clear that it required reconsideration of the Central Government in consultation with the various Ministries involved in the process of such decision making. Now, it is pertinent to point out briefly those circumstances to be considered in understanding the rank and status of the Chairman, AAIFR and the package of pay and perquisites to which the incumbent was entitled as per the perceptions and actions of the Government itself. These circumstances have been enumerated and discussed by the Division Bench of this Tribunal at para 5 of the order cited above:

- i) As per Rule 3(1) of the AAIFR Chairman shall receive pay as admissible to a Judge of the Supreme Court.

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ii) DA and CCA admissible to the Chairman are at the same rates as admissible to a Judge of the Supreme Court as per Rule 4(1).

iii) Travelling Allowance in connection with tour and transfer admissible in the case of the Chairman would be at the same rates and scales as are applicable to a Judge of the Supreme Court.

iv) The Chairman AAI FR would be entitled to Leave Travel Concession at the same rates and scales applicable to the judge of the Supreme Court.

v) An amount of Rs. one lakh towards expenses on account of furnishing residential accommodation admissible in the case of the Judge of the Supreme Court was also granted to the Chairman, AAI FR. The said grant was later enhanced from one lakh to two lakh for the Judge of the Supreme Court and in accordance therewith the grant of such account was enhanced to Rs. 2 lakh in the case of the Chairman, AAI FR also.

vi) When a Judge of the Supreme Court was entitled to free petrol of 150 litres per month free of cost, the same quantity free consumption of petrol was allowed in the case of Chairman etc. When the same was raised to 200 litres in the case of Judges of the Supreme Court, the enhanced benefit was allowed to the Chairman, AAI FR.

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vii) Sumptuary Allowance of Rs.750/- admissible to the Judge of the Supreme Court also came to be allowed to the Chairman AAIFR. However, when it was enhanced to Rs.3000/the benefit apparently was denied unlike all the other benefits enumerated above.

8. It is thus seen that in respect of status and pay and all perquisites other than Sumptuary Allowance, parity between a Judge of the Supreme Court and the Chairman, AAIFR is admitted. It is not denied that parity with Judge of the Supreme Court has been recognised and brought in as regards Members of National Human Rights Commission, Chairman, C.A.T., Chairman, SEGAT etc. In other words, the latter authorities are allowed enhanced Sumptuary Allowance at Rs.3000/- on par with Judge of the Supreme Court while the Chairman AAIFR is singled out. No circumstance that on account of distinguishable functions and responsibilities, there is a reasonable classification justifying denial of enhanced Sumptuary Allowance to the Chairman, AAIFR has been made out. In my considered view, since appointment of Chairman, AAIFR, like the Members of the NHRC, SEGAT and C.A.T. is made from an identical field of choice, no further classification in the matter of remuneration and perquisites is desirable or even permissible. The concept of Sumptuary Allowance having been accepted and implemented and the quantum of allowance having been determined at the outset on par with what was allowed to a Judge of the Supreme Court albeit without any express declaration of such parity, it would be arbitrary to exclude the Chairman, AAIFR in the matter of grant of enhanced Sumptuary Allowance. What was allowed to the applicant's

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predecessor in office and the applicant himself was Sumptuary Allowance and not ex-gratia payment and therefore, when such allowance is claimed at the enhanced rate on par with Judges of the Supreme Court, the nomenclature cannot be changed just for denying the benefit already allowed. It is pertinent to note that there is no express rule or order with regard to grant of any exgratia payment. Rs.750/- per month used to be paid to the applicant's predecessor-in-office and the applicant as Sumptuary Allowance as such. Therefore, the just and harmonious view should be that the Chairman, AAIFR should also be entitled to Sumptuary Allowance at the revised rate so as to have reasonable nexus with the norms of pay and other perquisites, rank and status of the post of Chairman, AAIFR already adopted by the respondent. It is to be stated at the risk of repetition that there is a compelling circumstance under which the increased Sumptuary Allowance should be given to the Chairman, AAIFR inasmuch as increased allowance is given to other dignitaries like Members of the NHRC, Chairman, SEGAT and Chairman, C.A.T. who are not higher in rank/status than the Chairman, AAIFR with reference to the field of choice for the said posts. The Tribunal by A-11 order dated 16.8.2000 remitted the matter for appropriate decision by the Central Government. However, from the impugned order, it is borne out that the various Ministries have virtually abdicated their involvement and left the matter to the sole discretion of the Administrative Ministry, viz, the Ministry of Finance. This was not what the Tribunal had directed the respondent to do.

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9. The respondent's contention that as per R-1 and R-2 O.M.s the applicant's claim would be unsustainable has no substance as those O.M.s are inapplicable to the case on hand. R-1 O.M. relates to Commission or Committee of Enquiry. R-2 O.M. pertains to certain Regulatory authorities for which appointments are not announced so far. AAIFR is neither a Commission nor a Committee of Enquiry nor a Regulatory Authority. It is an appellate authority above a high powered board called the Board of Industrial and Financial Reconstruction(BIFR), constituted under Section 5(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and has been functioning since 1985.

10. At this stage, I do not consider it necessary to remit the matter again to the respondent. The applicant, as already stated, a retired Chief Justice of the Kerala High Court, demitted office of the Chairman, AAIFR long back. The claim does not have any far reaching financial implication. Accordingly, in the interest of justice, I proceed to decide the matter in the light of the factual position discussed above.

11. On the facts and in the circumstances of the case, I dispose of the O.A. in the following manner:

- i) With regard to the relief sought for in para 8(ii) of the O.A., I notice that this aspect has already been considered and the prayer was rejected as mentioned in para 2 above. Accordingly, the prayer at para 8(ii) cannot be granted.

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ii) The impugned A-12 order dated 3.7.2001 is set aside.

iii) The applicant is entitled to the enhanced rate of Sumptuary Allowance at Rs.3000/- per month on par with a Judge of the Supreme Court during his tenure on employment as Chairman, AAIFR as reduced by the amount already paid under that Head.

iv) Having regard to the facts of the case, I refrain from ordering payment of interest.

v) The respondent shall issue consequential orders and make available to the applicant the monetary benefits flowing therefrom within a period of three months from the date of receipt of copy of this order.

12. There is no order as to costs.

Dated, the 31st October, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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