

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

ANNEXURE

04567/87 INDEX SHEET

CAUSE TITLE OF

NAME OF THE PARTIES..... S.K. Lall VS. OOF Roy

Applicant

Versus

Respondent

Part A, B & C

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CERTIFICATE

Certified that no further action is required to taken and that the case is fit for consignment to the record room (decided)

Dated... 02/12/12...

Counter Signed.....

Section Officer / In charge

Signature of the
Dealing Assistant

Annexure -- A
CAT - 82

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

* Lucknow Bench

INDEX-SHEET

CAUSE TITLE D.A. 567 OF 1987 (L).

Name of the Parties S.K. Lal

Versus

Union of India

Part A, B & C

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A4	{ Petition along with annexure { dated 30-6-87	26
A5	{ Counter affidavit along with { Cardanation of delay - -	7
A6	Rejainder affidavit - -	7
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B1	Vakalatnama - (Power)	1
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आदेश पत्रक
ORDER SHEET

A2
1

अपील
निर्देश आवेदन रजिस्टर में सं०

No. in Reference Application Register
Appeal

567/87

अपील अनिकरण
Appellate Tribunal

अपीलार्थी
आवेदक

Appellant
Applicant

अपीलार्थी
आवेदक द्वारा

Appellant
Applicant

बनाम

प्रत्यर्थी

Vs.

Respondent

प्रत्यर्थी द्वारा
Respondent

आदेश की क्रम संख्या
और तारीख
Serial number of
order and date

संक्षिप्त आदेश, निर्देश देते हुए, यदि आवश्यक हो
Brief order, mentioning reference, if necessary

पालन कैसे हुआ और पालन
करने की तारीख
How complied with and
date of compliance

21/7/87

Hon. D.S. Mishra-AM
Hon. G.S. Sharma-Jm

This is an application
received by post. Issue shall
cause notice to the respondents
to file objection if any within a month
to why the application
be not admitted within a month.

Put up on 10-8-87

AM
Jm

Issued
A

In compliance of Hon. Tribunal's
order dt 10-8-87 orders for the
Cause have been issued by
RPAD to Respondents fix
1000)

Vakalatnama
on behalf of Applicant
filed by Sri K-12-Sgt.

247

4/8/87

undisputed

CA. 567-87

14.12.87

Hon. S. Zohar Hasan, VC.
Hon. Ajay John, JSC

Ar
2

No one appears for
applicant - Sw M.B. Singh for
respondents.
Order for adjournment

21.1.88.

VC.

Ar

VC.

Ar.

21-1-88

Hon. S. Zohar Hasan, VC.
Hon. Ajay John, JSC

Sw M.B. Singh for respondents.

No one is present on behalf of
the applicant. It appears that
Shri R.A. Sharma had appeared
in this case on behalf of the applicant.
He should be informed that
this case will be heard on
17-2-88 and in the meantime
Sw M.B. Singh, counsel for
respondents can file reply.

Ar.

VC.

Ar

17/2/88

Hon. D.S. Mishra - Ar.
Hon. G.S. Sharma - Jm

On the application
of the learned counsel for
the applicant, the case is
adjourned to 13/4/88 for
hearing.

Ar.

Jm.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

Misc Interim application NO 135-87

O.A./P.A. No. 567 1987

Applicant(s)

Versus

Respondent(s)

Sr. No.	Date	Orders
	26/11/87	DR As this application has been received by post. List this application along with previous papers before court for orders on 17/12/87 as prayed by the applicant.
	17/12/87	Hon. S. Zaher Hasan-ke. Hon. Ajay Johari-Am DR(J) In this case 21/1/88 is already fixed. Issue notice to the respondents regarding presence for interim order fixing 21/1/88. The applicant be informed by the post about the date. cc. cc. Amr. OR appin att. 4.1.88 is placed before court for order

21/1/88

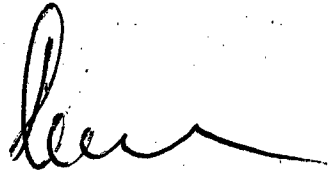
CA 567 of 87 1/2

12/4

22.8.88 DR J

Reply has been filed today.
Rejoinder if any may be filed by
20.9.88

Am
2/10

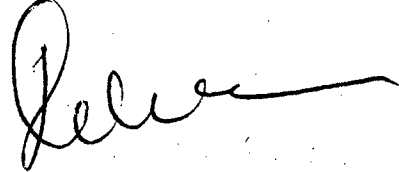

DR J

209.00

DR

Applicant Dr S.K. Lall
appeared in person. He
made rejoinder today
of service on Respondent's
Cause.

A project of law
has listed for hearing
before the Bench for
6.10.88



CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 567 of 1987

APPLICANT (s) S. K. Lall.

RESPONDENT(s) U.O.I through the Additional Secretary, to Govt of India in the Ministry of Personnel, Public Grievances and Pensions, Deptt. of Pension & Pensioner's Welfare New Delhi

Note: - Recd by post on 30.6.87

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent?

Yes

2. (a) Is the application in the prescribed form?

yes except for the reasons that facts of the case have been given separately 4/10/87/16

(b) Is the application in paper book form?

Yes

(c) Have six complete sets of the application been filed?

Yes, 3 sets filed.

3. (a) Is the appeal in time?

Yes

(b) If not, by how many days it is beyond time?

-

(c) Has sufficient case for not making the application in time, been filed?

-

4. Has the document of authorisation/Vakalat-nama been filed?

Yes

5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-

Yes

6. Has the certified copy/copies of the order (s) against which the application is made been filed?

Yes

(a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed?

Yes

(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly?

Yes

Particulars to be ExaminedEndorsement as to result of Examination

(c) Are the documents referred to in (a) above neatly typed in double space ?

Ys

A✓

8. Has the index of documents been filed and paging done properly ?

Ys

9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?

Ys

10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?

No

11. Are the application/duplicate copy/spare copies signed ?

Ys

12. Are extra copies of the application with Annexures filed ?

Ys

(a) Identical with the original ?

Ys

(b) Defective ?

—

(c) Wanting in Annexures

—

Nos...../Pages Nos..... ?

13. Have file size envelopes bearing full addresses, of the respondents been filed ?

Ys [One Envelope without Stamps]

14. Are the given addresses, the registered addresses ?

Ys

15. Do the names of the parties stated in the copies tally with those indicated in the application ?

Ys

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?

N.A.

17. Are the facts of the case mentioned in item No. 6 of the application ?

Ys

(a) Concise ?

Ys

(b) Under distinct heads ?

Ys

(c) Numbered consecutively ?

Ys

(d) Typed in double space on one side of the paper ?

No

18. Have the particulars for interim order prayed for indicated with reasons ?

Ys

Submitted by
Chandru
1/7/07

19. Whether all the remedies have been exhausted.

If approved the case may be listed on 8.7.07. The applicant states that oral hearing for admission not considered necessary [Item 11 of 07] D.R. (J) [Signature] 11/7/07

A3
1

DEPUTY REGISTRAR (J).

We have approved the case (O.A. No. 567/1987 (L),
S.K. Lall v. Union of India) for Reporting. You are
hereby directed to do the needful accordingly.

अजय जोहरी
(Ajay Johri)
Member (A).

K.S. Puttaswamy
(K.S. Puttaswamy)
Vice-Chairman. 12/10

Dated: October 12, 1988.

*Recd today
Bhupendra
Gargule*

URGENT
*S.O Copying
for immediate
compliance regarding
issue re reporting return
the judgment to SOI; Refer
MOT,
14/10/88.*

17-10-88. *Sir* Action Taken.

Qin
SOI

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH AT LUCKNOW

Dated the 7th day of October, 1988

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY VICE CHAIRMAN
THE HON'BLE MR. AJAY JOHRI .. MEMBER (A)

O.A. NO. 567 OF 1987(L)

S.K. LALL .. Applicant

-vs.-

UNION OF INDIA .. Respondent.

Application coming on for hearing to-day,
Hon'ble Vice Chairman made the following:

ORDER

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 (Act).

2. Shri S.K. Lall, the applicant before us, who commenced his career on 15-12-1948 in the Income Tax Department as an Income Tax Officer, secured all promotions legitimately due to him and has retired from service on 31-7-1979 as Commissioner of Income Tax.

3. When

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- 2 -

3. When the applicant retired from service, he was drawing a substantive pay of Rs.2,750/- in the then time scale of Rs.2,500 - 2,750/- in addition to other emoluments admissible under the Rules and Orders regulating them. On his retirement from service, his basic pension had been fixed at Rs.1,210/- per month, with which he has no grievance. His grievance is confined only to the fixation of Graded Dearness Relief (Pension Relief) (DAR) sanctioned to the pensioners by Government in its Office Memorandum No.19(4)-EV/79, dated 25-5-1979(Annexure-B). In terms of this Memorandum, the applicant was sanctioned Rs.100/- p.m. as DAR. Since this fixation was disadvantageous, the applicant and several others similarly affected moved the Government to modify the same and make it applicable even to those that had retired in between 30-4-1979 and 30-1-1982 and thus extend him a higher DAR of Rs.200/- p.m. On their representations, Government by its Order No.38/9/86-P & PW, dated 8-8-1986 (Annexure-D) accepted the same, however with a rider that financial benefits shall be extended from 1-4-1986, which has been further modified to be effective from 1-1-1986.

4. The applicant's grievance is limited to the rider attached in this order, namely, that the financial benefits of the enhanced Pension Relief of Rs.200/-per month, as against Rs.100/-, he was earlier allowed, should be paid only from 1-4-1986, later modified as from 1-1-1986.

In

In other words, the applicant claims that on the very terms of the orders made by Government on 25-5-1979 and 8-8-1986, which should be read as really one order, the enhanced Pension Relief of Re.200/- p.m. should be made available to him from 1-8-1979 to 31-12-1985. The repeated representations made in that behalf by the applicant before Government, was rejected by Government on 21-5-1987 (Annexure-G). Hence, this application.

5. In their reply, the respondents have asserted that financial benefits are conventionally extended prospectively and not retrospectively and on that principle, the rider attached was legal and valid.

6. Shri S.K.Lall, applicant in person, contends that the rider attached by Government in its Order dated 8-8-1986 really defeating the very principle accepted by it, is arbitrary, irrational and is violative of Articles 14 and 16 of the Constitution. In support of his contention, Shri Lall strongly relies on the ruling of the Supreme Court, in D.S. NAKARA & ORS. -vs.- UNION OF INDIA [1983(1) S.L.J., 131].

7. Shri V.K.Chaudhari, learned Counsel for the respondents, refuting the contention of Shri Lall, sought to support the order of Government. In support of his contention, Shri Chaudhari strongly relies on the ruling of the Supreme Court, in ALL INDIA PENSIONERS ASSOCIATION vs. UNION OF INDIA [1986(3) SLJ, 466].

8. In

8. In its order dated 25-5-1979, Government evolved and laid down guidelines for treatment of a portion of the Dearness Allowance as pay, for purposes of retirement benefits. Clause-4 of this order, which is relevant for our purpose, reads thus:

"4. Persons who retired on or after 30th September, 1987 but not later than the 30th April, 1979 will have an option to choose either of the two alternatives below:

a) to have their pension and DCR Gratuity calculated on their pay excluding the element of Dearness Pay as indicated in para 2 above in accordance with the rules in force on 30-9-1977, and get graded relief on pension to the full extent admissible from time to time;

OR

b) to have their pension and DCR Gratuity recalculated after taking into account the element of dearness pay. In such cases, the first four instalments of graded relief sanctioned upto the average index level 272 will not be admissible; these pensioners will be entitled only to the instalments of graded relief sanctioned beyond the average index level 272.

The option will have to be exercised by 31-12-79. The option once exercised will be final. In cases where the retired Government servant has died before exercising an option the Head of Office will, on an application made to him, calculate the pension and death-cum-retirement gratuity on the existing basis as well as on the basis of merged portion of dearness allowance, and allow the more advantageous of the two to the persons entitled to receive the balance under CCS (Pension) Rules, 1972. Those fail to exercise the option or make an application (in the case of death of a pensioner) within the stipulated period will be governed by para 4(b) above."

As this clause did not give relief to the applicant and others, who had retired from 30-4-1979 to 30-4-1982, they

they represented

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- 5 -

represented to Government to extend the benefits of that order for those who had retired during the said period also. On an examination of those representations, Government in its order dated 8-8-1986 very rightly accepted the same. Paras 2 and 3 of this order which are relevant, read thus:

- "2. The Govt. have been receiving representations from Officers who retired after 30-4-1979 and who have not been permitted to exercise option as mentioned in foregoing paragraph stating that they have been placed at a disadvantage compared to the officers who retired on or after 30-9-1977 but not later than 30-4-1979 in as much as they were neither allowed to exercise option nor granted the graded relief upto average index level 272. According to them the officers in receipt of pay Rs.2158/- and above were either entitled to reduced rates of dearness allowance, by way of adjustment, or no dearness allowance at all with reference to index level 272, but they were allowed only graded relief (Dearness relief) sanctioned beyond the average index level 272. The Government has reconsidered the matter and keeping in view the hardship caused to such officers, the President is pleased to decide that Government Servants drawing pay of Rs.2,518 or above who retired after 30-4-1979 but not later than 30-1-1982, may be allowed an option on the lines of paragraph 4 of the Ministry of Finance O.M. No.19(4)-E/79 dated 25-5-1979. The option may also be exercised by those Government servants drawing pay of Rs.2,158 or above who retired between 31-1-1982 and 30-5-1985 and who had opted for paragraph 4(a) of the Ministry of Finance O.M.No.F.1(3)E/82 dated 8-4-1982. The option will have to be exercised within a period of six months from the date of issue of these orders. The option once exercised shall be final. These persons who fail to exercise an option within the stipulated period will continue to receive pension and

and graded relief in accordance with the existing orders.

3. Where the option is in favour of para 4(a) of the O.M. dated 25-5-1979, the pension DCRG and graded relief will be revised. The revision will be from 1-4-1986."

On the principle accepted here, the applicant has no grievance and his grievance is limited to the last sentence occurring in para-3 to the effect, "The revision will be from 1-4-1986" later modified from 1-1-1986."

9. The two orders made by Government, which should be read as one order, really accept the claim of the applicant and others similarly situated pensioners, makes this position crystal clear. But, Government having rightly accepted their claim, had somewhat niggardly denied the same by adding a rider that the benefit of revision will be effective only from 1-4-1986, which ^{is} later modified as from 1-1-1986. We need hardly say that there is no logic or reason for the same. In a way, the rider sets at naught what is rightly accepted by Government and is self-contradictory.

10. In its later order, Government was remedying the injustice occasioned to those who had retired from 30-4-1979 to 30-1-1982. When so doing, it cannot deny the financial benefits flowing from the same, which is only logical and is consequential. Even otherwise, the benefit given was a drop in the ocean and should have been

A3/8

been extended to all without any rider. The rider imposed by Government is irrational, arbitrary and is even unjust.

11. In Nakara's case, the Supreme Court dealing with the scheme of extending Liberalised Pension Rules, which came into force from 1-4-1979 only to those who had retired on and from that date had exhaustively examined the legal position and had ruled that picking a date for extension of reliefs to pensioners was violative of Articles 14 and 16 of the Constitution. We are of the view that on the very principles enunciated in Nakara's case, the rider added by Government is violative of Article 14 of the Constitution and is liable to be struck down and appropriate directions issued to Government.

12. In All India Pensioners Associations' case, the Supreme Court did not depart from the principles enunciated in Nakara's case and ruled that it did not apply to cases of "one time payment" like death-cum-retirement gratuity. But, that is not the position in the present case. On the other hand, the claim of the applicant is for a component of monthly pension that accrues and becomes payable every month and is not a "one time payment". Hence, the ratio in The All India Pensioners Associations' case does not bear on the point .

13. In his application, Shri Lall had claimed interest on the delayed payments. But at the hearing,

Sri

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Sri Lall did not rightly press the same. We, therefore, reject the claim of the applicant for payment of interest.

14. On the foregoing discussions, we hold that the last sentence occurring in para-3 of the order dated 8-8-1986, namely, "The revision will be from 1-4-1986" is liable to be struck down and appropriate direction issued to Government in that behalf. On this conclusion, we can only direct Government to extend the benefit of our order to the applicant only and not others who are not before us. But, we do hope and trust that Government itself will extend this benefit to all others who are similarly situated, avoiding all unnecessary litigation before Courts and Tribunals.

15. In the light of our above discussion, we make the following orders and directions :

- (i) We strike down the last sentence of para-3 of the Order dated 8-8-1986 of Government (Annexure-D), which reads thus:

"The revision will be from 1-4-1986" later modified to 1-1-1986.

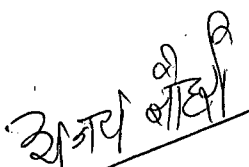
- (ii) We direct the respondents to make available the difference of arrears of Pension Relief at the Rs.100 per month, to the applicant, from 1-8-1979 to 31-12-1985 with all such expedition

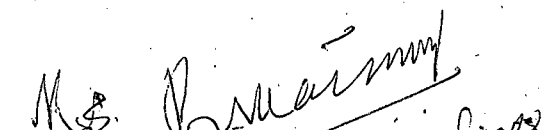
as

as is possible in the circumstances of the case and in any event, on or before 31-12-1988 and regulate the payments thereafter on that basis.

16. Application is allowed. But, in the circumstances of the case, we direct the parties to bear their own costs.

17. Let this order be communicated to all the parties within ten days from to-day.


(AJAY JOHRI)
MEMBER (A).


(K.S. PUTTASWAMY)
VICE CHAIRMAN. 7/10/1988

kms:



Reg. No. 567 of 1987
Central Administrative Tribunal
Allahabad Bench
ALLAHABAD/PATNA/JABALPUR

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985... BEFORE ALLAHABAD BENCH
Date of Filing: X
Date of Receipt by Post: 30.6.87
Deputy Registrar.

Title of the case: S. K. LALL vs UNION OF INDIA

INDEX

S. No.	Description of documents relied upon	Page No.
1.	Application* in triplicate with Annexure@ pertaining to item 6 of the Application- " Facts of the case ", and undermentioned Appendices (A to H) thereto being true copies attested by a Gazetted Officer.	* (1) to (9) XXXXXX @ (10) to (16)
(A) Appendix A :	Accountant General, U.P., Allahabad, Pension Order No. PA/C/V/29482/79-80, dated 4-8-1979, in the applicant's case.	(17)
(B) Appendix B :	Government of India , Ministry of Finance , Department of Expenditure, New Delhi, O.M. No. 19(4)-EV/79, dated 25-5-1979, about dearness allowance/relief under the new pension scheme of 1979.	(18) to (21)
(C) Appendix C :	Letter No. 5470-EV/83, dated 19-9-1983, from Shri K.Ratan, Deputy Secretary to the Government of India ,Ministry of Finance, Department of Expenditure, New Delhi, to the applicant rejecting the applicant's representations against injustice in (B) above.	(22)
(D) Appendix D :	Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners' Welfare, New Delhi,	(23) & (24)

O.M. No. 38/9/86-P&PW, dated 8-8-1986, partly rectifying (B) above by covering the relevant lacuna therein from 1-4-1986 (later modified to 1-1-1986).

Page

(E)- Appendix E :

(25) & (26)

Applicant's representation dated 20-10-1986 to Shri I.K.Rasgotra, Additional Secretary to the Government of India, Department of Pension and Pensioner's Welfare, New Delhi, requesting that the lacuna covering in (D) above should be effective from the operative stage of the lacuna containing circular of 25-5-79 vide (B) above; this representation was in my representative capacity as Vice-President of the All India Organisation of Pensioners (East Zone), at Lucknow, and it also mentioned my personal case.

(F)- Appendix F :

(27)

Applicant's reminder dated 14-3-1987, to above mentioned Shri Rasgotra, concentrating on my personal case.

(G)- Appendix G :

(28)

Letter No. 38/35/87-P&PW dated 27-5-1987, from Shri A.K.Patnaik, Deputy Secretary to the Government of India, Department of Pension and Pensioners' Welfare, New Delhi, to the applicant rejecting the representation at (F) above.

(H)-Appendix H :

(29)

Applicant's Recorded Delivery letter to the above noted Shri A.K.Patnaik, withdrawing the review petition sent by the applicant a fortnight earlier to the Hon'ble Minister of State, Department of Pension and Pensioners Welfare, New Delhi, requesting him to review the decision conveyed with letter dated 27-5-87. vide (G) above.

For use in Tribunal's
Office:
Date of receipt by Post
Registration No.

Signature of the applicant
Signature for Registrar

25-6-87
(S.K. LALL)

20/20

A/50

සූර්‍යා, සාගර, සාගර, සූර්‍යා, සූර්‍යා, සූර්‍යා

APPLICANT

AND

RESPONDENT

* * * * *

DETAILS OF APPLICATION:

1. Particulars of the applicant:

- (i) Name of the applicant- S.K.LALL
- (ii) Name of Father- Late Shri S.LALL
- (iii) Age of the applicant- 65 years-born
1-8-1921.
- (iv) Designation and particulars of office
(name and station) in which employed,
or was last employed before ceasing to
be in service:
COMMISSIONER OF INCOME-TAX,LUCKNOW.
(was an officer in the Indian Revenue
Service (Income-tax),retiring therefrom
on reaching age of superannuation on
31-7-1979).

- (v) Office Address- Nil

- .(vi)Address for service of notices:

Shri S.K.LALL, I.R.S.(Retd)

B- 1180, INDIRA NAGAR,

LUCKNOW, 226016.

2. Particulars of the respondent:

- (i) to (iv)- ADDITIONAL SECRETARY TO THE
& GOVERNMENT OF INDIA,

- (iv) to (vi)-Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners' Welfare,

Nirvachan Sadan, Ashoka Road, New Delhi, 110001.

3. Particulars of the order against which application is made:

(i) to (iii)-

Letter No. 38/35/87-P&PW, dated 27-5-87 to the applicant from Shri A.K. Patnaik, Deputy Secretary to the Government of India, New Delhi, in the Department of Pension and Pensioners' Welfare, conveying rejection of my representation dated 14-3-87, which was in the context of earlier representation dated 20-10-86, The representation dated 20-10-86 was in my representative capacity as Vice-President of the All India Organisation of Pensioners (east Zone), Lucknow, and also mentioned my personal case, whereas the follow up representation dated 14-3-87 concentrated on my personal case which is the subject of this Application.

(iv) Subject in brief :

Detailed particulars are given against item 6 below as "Facts of the case" in Annexure to the Application and to this Annexure, are attached attested copies of relevant key documents and these papers may please be referred to. Briefly put, the Government of India in the Ministry of Finance, Department of Expenditure, New Delhi, as then dealing with the subject of pension, had, while issuing a basic order on the subject of merger of salary dearness allowance and drawing graded dearness relief on pension for purposes of calculating pension/as per No. 19(40)-EV/79 dated 25-5-79/ (para 4 thereof) and connected order No. 13(14)-EV/79 dated 31-5-79/ (for incidental mention only) rates pertaining to graded dearness relief/on pensions, committed a grievous error in as much as officials drawing pay of Rs 2158 and above and retiring after 30-4-79 were neither allowed the benefit of merger of the dearness allowance drawn on salary, for purposes of calculating pension, (circular of 25-5-79), nor were they allowed graded dearness relief on pension on retirement, up to index level 272 ~~(Circular No. 13(14)-EV/79 dated 31-5-79)~~; they were thus made to fall between two stools and deprived both ways, vis a vis their confreres who retired upto 30-4-79 and were allowed the option of electing for one or the other benefit from the two mentioned above, merger or relief, even for 272 points. Representations from the thus wronged officials (including me) against the above noted inadvertent discrepancy, causing grave injustice, came up but were initially rejected by the Finance Ministry, but

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the Ministry of Personnel, Public Grievances and Pension, in the Department of Pension and Pensioners' welfare, who took over the subject of pensions from the Finance Ministry, relented and issued their rectificatory orders No. 38/9/86-P&PW, dated 8-8-86 remedying the above noted discrepancy in the circular of 25-5-79, but regrettably, only from 1-4-86 (later changed to 1-1-86, in another context of general revision of pensions with effect from that date in consequence of the IV Pay Commission Report and the Department of Pension and Pensioners' Welfare orders thereon, dated 16-4-87 read with their clarification dated 1-5-87). ~~XXXXX~~ I represented against the aforementioned only partly rectificatory orders of 8-8-86, with my letter dated 20-10-86 to Shri I.K. Rasgotra, Additional Secretary handling the subject in the Dept. of Pension and Pensioners' Welfare, and followed it up with a reminder dated 14-3-87 to him; I pleaded that when the circular dated 8-8-86 admitted that a mistake had inadvertently crept in the basic circular of 25-5-79 and it had caused unintended hardship to the particular omitted category of retirees, the remedy and rectification as a result of long years of representation by the faultless sufferers should have been not from an ad-hoc arbitrary date (1-4-86, later 1-1-87), but from the stage the mistake became operative as per circular of 25-5-79 (in my case it hit me from the date I started drawing pension, 1-8-79); I contended accordingly that I should not be deprived of warranted ab-initio rectification, losing by this unjust curtailment of remedy, my due arrears to the tune of Rs 7,700 (seven thousand and seven hundred), for the period of seventy seven months (1-8-79 to 31-12-85), at Rs 100 per month - the amount of arrear aforementioned was not a paltry amount for any one much less a pensioner with reduced resources for living. The Department of Pensions and Pensioners' Welfare have however, rejected my representation on the patently wrong plea that conceding my request would negate their general approach against retrospectivity in pensionary relief matters! In this negating decision and the ground cited therefor, they have failed to realise that firstly they had themselves given a measure of retrospectivity (from 1-4-86 to start

with) and secondly this was not a case of an initially extended pensionary benefit where their conceding retrospectivity could compromise their stand in litigations on the principle of retrospectivity in other spheres (vide the Central Administrative Tribunal, Delhi Bench, order dated 5-8-86 in the case of the All India Services Pensioners Association, Rajasthan, vs Union of India), but it was a simple case of an error occurring in drafting the basic order (of 25-5-79) which extended initially a retirement benefit, and the only issue pressed and arising now was the rectification of the said error ab initio as justice demands, and not from a subsequent ad hoc date, depriving the victimised blameless pensioners of substantial arrears. Because of Government's obduracy and refusal to see the matter in correct perspective and ~~refrain from~~ mixing up ^{of} issues in a patently illogical manner, relief has now to be sought before the learned Central Administrative Tribunal.

4. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order, against which he wants redressal is within the jurisdiction of the Central Administrative Tribunal and the case falls within the purview of the Allahabad Bench of the Tribunal, because the applicant's last posting was as Commissioner of Income-tax at Lucknow, his pension order was passed by the Accountant General, U.P. at Allahabad, and lastly the applicant after retiring is residing at Lucknow (B-1180, Indira Nagar).

5. Limitation:

The Application is well within limitation, being against the Department of Pension and Pensioners' Welfare letter dated 27-5-87, rejecting my representation for preponing the effect of their rectificatory order dated 8-8-86. For details please see comments against item 3(iv) above and item 6 below (Facts of the Case, with copies of relevant letters appended). I have not sought any other ~~remedy~~ remedy except as aforesaid (before the Departments of the Government involved), and not moved the High Court or Supreme Court. It may be added that against the Department of Pension and P.W. rejection letter dated 27-5-87, I had addressed an informal review petition to the Hon'ble Minister

of State for Pension and Pensioners' Welfare, (no formal Memorial lies to the President against orders which are from the Government itself instead of subordinate authorities), but on further consideration and consultation with those familiar with Secretariat procedure, I have withdrawn the said review petition with my Recorded Delivery letter dated 18-8-87 to Shri A.K. Patnaik, Deputy Secretary in the Department of Pension & P.W., the subject being handled by him. The aforesaid withdrawal was for the reason that the rejection letter dated 27-5-87 mentioned that it also disposed of my simultaneous representation to the Hon'ble Prime Minister's Secretariat, and it stands to reason that for a rejection covering also a representation to the P.M.'s office, the Minister of State would have already been involved, rendering a review from him expectedly futile as a channel. With the Minister and P.M.'s Secretary involved as de facto decision makers here, Memorial to President, too had no place.

6. Facts of the case:

Please see self contained Annexure attached to this application, to serve as "statement of facts of the case" and copies of main documents mentioned therein and relied upon, duly attested as true copies, by a Gazetted Officer, are appended thereto as Appendices A to H.

7. Details of the remedy exhausted:

Please see item 6 above and the mentioned facts of the case Annexure with Appendices thereto, also comments against items 3(iv) and 5 above. Relevant chronological developments were as under:

(a) My pension order dated 4-8-79 (for my retirement from 1-8-79 pension/and graded dearness relief of Rs 100 per month thereon) from the Accountant General, U.P., Allahabad, vide Appendix A to the Annexure to this application, referred to in item 6 above; the Accountant General's order was based on the erroneous Govt order dated 25-5-79--Appendix B ibid. I was allowed graded dearness relief of only Rs 100 per month, whereas a comparable official retiring before 30-4-79 was allowed such relief at Rs 200 per month; this was a travesty in as much a later retiree was placed worse in the matter of retirement benefits than an earlier one, the generally ordained trend being, ^{although} in the reverse!

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(b) Series of representations against the above noted erroneous circular of 25-5-79 were sent by the affected officials, and e.g. those drawing salary of/over Rs.2158 per month who retired after 30-4-79; they were neither allowed the merger of their drawn dearness allowance (I was drawing it at Rs 150 per month), nor given on their pensions the graded dearness relief upto 272 index level which worked out to Rs 100 per month, but the same salary bracket officer retiring upto 30-4-79 was given as per para 4 of the circular dated 25-5-79 the option to have the merger on the 272 point relief. My own ^{representative} representations in my/capacity as Vice President of the All India Organisation of Pensioners (East Zone), Lucknow, and also mentioning my personal case were turned down (as others representations), vide the Finance Ministry, Expenditure Department's letter ^{to me} dated 19-9-83 (Appendix C ibid), they being in charge then of pension matters.

(c) Representations continuing even thereafter (I had myself again done so with letter dated 22-3-84 in reply to above rejection dated 19-9-83), the successor dealing organisation for the subject of pensions, the Ministry of Personnel, Public Grievances and Pension in their Department of Pension and Pensioners' Welfare, relented and issued rectificatory orders dated 8-8-86 (Appendix D ibid) admitting that there was discrepancy in the orders dated 25-5-79 and hardship had been caused, and they made amends by ^{having} extended to this unfortunate excluded category also the option as per para 4 of circular dated 25-5-79 for others. However this belated rectification, after some seven years of cogitation and delay on Government's part, for which the retirees concerned were in no way responsible (they had kept up their protests all the while), was inexplicably given effect from only from 1-4-86 (later modified to 1-1-86 in another context)

(d) Against the half hearted and squeamish approach of the aforesaid rectificatory ^{order} of 8-8-86, I sent a representation dated 20-10-86 to Shri I.K.Rasgotra , Additional Secretary in the Department of Pension & P.W. with a follow up reminder dated 14-3-87 (Appendices E and F ibid) , pleading that the rectification in fairness should be from the stage of hurt i.e. when order dated 25-5-79 became operative or ^{earlier} ~~dated~~ of retirement.

(e) Department of Pension & P.W. rejected my aforesaid representations (14-3-87) with their letter dated 27-5-87 (Appendix G *ibid*) and the present Application before the learned Tribunal is against this rejection, which is totally misconceived and cussed.

8. Matters not previously filed or pending with any other Court:

Please see detailed comments against item 5 above on 'Limitation', those comments covering this item 8 also.

(9) Reliefs sought:

(i) The learned Central Administrative Tribunal be pleased, on all the facts and circumstances of the case detailed and discussed above, to direct the Government of India in the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare, New Delhi, that the lacuna admittedly existing in the Government of India, Finance Ministry, Department of Expenditure O.M. No. ^{DA 25-5-79} 19(4)-EV/79, merits correcting from the operative date thereof in the applicant's case viz 1-8-79, and not from 1-4-86 (later modified to 1-1-86), as attempted by the Department of Pension and P.W. in their O.M. ^{No. 38/9/86-P&PW} Dated 8-8-86 and subsequent O.M.s on the subject, and arrears thus due to him be paid to him forthwith.

(ii) On the above noted arrears, the learned Tribunal may be pleased to direct the said Department of Pension and P.W. to pay interest to the Applicant at commercial rate presently prevailing viz 15 % ^{per annum} (generally available interest on deposits with Companies) for the period 1-8-79, the date of deprivation of patently unjust nature in his case, and compounding, till the date of payment orders by the Department on the learned Tribunal's decision of approval. The Government is entirely responsible firstly for the mistake in their circular of 25-5-79, secondly for the inordinately long time taken in admitting the mistake after repeated representations of sustained and widespread kind, which for some time were most unfairly turned down, thirdly ~~xxx~~ for the illogical curtailment of rectificatory effect as per their circular of 8-8-86 and lastly for their untenable resistance to representations thereafter, seeking pre-ponement of the rectificatory effect to the time stage of hurt inflicted; the sole responsibility for the mess and delay lies squarely at the doors of the Government whose handling of the subject has been a saga of

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dogged injustice and irresponsible insensitivity. For award of interest in such cases of ^a ptent and persistent unfairness, please refer to the Central Administrative Tribunal, Delhi Bench, order dated 5-8-86 in the case of All India Services Pensioners Association (Rajasthan) vs Union of India, wherein the Tribunal have mentioned the Punjab & Haryana High Court judgement dated 15-7-83 in the case of W.P. Gautam vs Union of India, inter alia awarding interest at 12 % per annum, the judgement quoted as having been upheld upto the Supreme Court, that Court declining to interfere.

(iii) Lastly the learned Tribunal may be pleased to award (including legal consultation, clerical, stationary and postage), ** cost in this case unnecessarily thrust upon the Applicant by the Government unjustifiably turning a deaf ear to all his representations which were valid and warranted.

(10) Interim order, if any, prayed for: NIL

(11) Oral hearing for admission of Application, if sent by Registered Post:

Such oral hearing for admission not considered necessary in the nature of the Application and hence not requested; however, only if there is any problem discovered with the admission, the Applicant may be notified as per attached self addressed letter card for oral submissions on admission issue.

(12) Particulars of the Bank Draft in respect of the Application Fee:

(1) Name of the Bank on which drawn: THE INDIAN OVERSEAS BANK, ALLAHABAD, favouring the Registrar, Central Administrative Tribunal.

(2) Demand Draft No. OT/82/P- 636620-10/13 dated 20-6-87, from the Indian Overseas Bank, Indira Nagar, Lucknow, for Rupees Fifty only.

(13) List of Enclosures:

(a) With this Application (Form I) in Paper Book form in triplicate and with Index at the beginning is also Annexure (for Facts of the Case as per item 6 of the Application) and the Appendices A to H mentioned therein.

(b) With the simultaneous letter to the Registrar of the Tribunal, placed in the same Registered cover as contains the above noted Paper Books, are attached the following:

(i) Bank Draft (Crossed)-as per item 12 above.

(ii) One empty file size envelope, bearing full

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address of the Respondent.

(iii) Self addressed letter card as per item 11 above.

(iv) Receipt Slip- Form II

VERIFICATION

I, S,K,LALL,(son of Late Shri S.LALL) Age 65 years,
Retired Commissioner of Income-tax, Lucknow, resident
of B-1180, Indira Nagar, Lucknow,U.P., do hereby verify
that the contents of comments against items 1,2,3(i)-(iii),
6,8,10-13 of the Application and of the comments
in paras (1) to (3) & (6) of the Annexure thereto
are true to my personal knowledge and the comments contents
against items 3(iv),4,5,7 & 9 of the Application and
in paras (4) and (5) of the Annexure threto are
believed to be true on legal advice and that I have not suppressed
any material fact.

Date: 25-6-87

Place: Lucknow



(S. K. LALL)

Signature of the applicant

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" FACTS OF THE CASE"

dated 25-6-87

(For item 6 of the Application Form I/before the Central Administrative Tribunal, Allahabad Bench, in the case of S.K.LALL vs Union of India, 1987)

Shri S.K.LALL (son of Late Shri S.LALL), I.R.S. (Retd), formerly Commissioner of Income-tax, Lucknow, resident of B-1180, Indira Nagar, Lucknow, born on 1-8-1921, is the Applicant in this Application dated 25-6-87, before the Central Administrative Tribunal, Allahabad Bench, under section 19 of the Administrative Tribunals Act, 1985. The "facts of the case" as per item 6 of the Application are as under:

(1) The Applicant joined Central Government service (Income-tax) on 22-3-44, and entered the Indian Revenue Service, subsequently on 15-12-48 on the basis of the I.A.S. & Allied Services competition held in 1947. In the last phase of his service he was posted as Commissioner of Income-tax at Lucknow. He retired on 31-7-79 on reaching the superannuation age of 58 years and started drawing pension with effect from 1-8-79. At the time of retirement he was drawing salary of Rs 2750 per month in the scale of Rs 2500-125 $\frac{1}{2}$ -2750 and dearness allowance of Rs 150 per month; the salary was Rs 2750 per month from 1-1-79, before which it was Rs 2625 and the dearness allowance was from 1-12-78, before which there was no dearness allowance. The average ^{monthly} emoluments on the basis of salary alone (dearness allowance was not merged for purposes of calculating pension) for the last 10 months as per the Central Civil Services (Pension) Rules, 1972, as amended into 1979, came to Rs 2712. He had completed full qualifying service for pension at the time of retirement.

(2) Before his retirement, the new pension terms which modified the aforesaid Rules of 1972, had come in May, 1979, on the basis of the III Central Pay Commission Report. His pension was fixed by the Accountant General, U.P., Allahabad, with his order No. PA(C) I/W/29482/79-80, dated 4-8-79 (copy attached as Appendix A), at Rs 1210 per month basic as per the Government of India, Ministry of Finance, Department of Expenditure (then dealing with the subject of pensions), New Delhi, No. 19(3) EV/79

on basic pension rates, and there is no dispute dated 25-5-79, ~~(and basic pension dispute)~~ about it. The Accountant General in his said order also fixed graded dearness relief on pension at Rs 100 per month in accordance with another circular of the Department of Expenditure on the same date 25-5-79, with No. ~~XXXXXX~~ 19(4)EV/79, and this is the subject of this dispute; a copy of this disputed circular is attached as Appendix B. With this circular the Government had conveyed decision about firstly the merger of serving period dearness allowance in salary for purposes of calculating pension, and also the principle for grant of graded dearness relief on pensions, vide para 4 thereof. In accordance with this circular the officials retiring upto 30-4-79 were allowed the option of either having merger of dearness allowance for calculating pension or getting full graded dearness relief i.e. upto 272 point index level and then further above. Inadvertently, while spelling out the varied treatment on this point for different category of officials, the circular omitted to extend the aforementioned option to those drawing salary of Rs 2158 and above per month and retiring after 30-4-79; there could be no design in this omission possibly but it hit unintentionally thousands of retirees falling in this unfortunate group; I was one of them, with the result that I was neither allowed to merge my dearness allowance of Rs 150 per month in salary for purposes of calculating pension basic, nor was I allowed graded dearness relief upto 272 index level, which came to Rs 100 per month in my case, in sum, I came to draw graded dearness relief of only Rs 100 per month (attracted above 272 level) as against Rs 200 per month (upto 272 level and above) allowed to my confreres retiring upto 30-4-79; this was the reverse of generally prevailing practice from the Government side to grant better pension comparatively to later retirees. The graded/dearness relief position was given in detail in the Expenditure Department circular No. 13(14)EV/79 dated 31-5-79, but that supplemental detail needs only incidental mention here.

(3) Soon after the above noted hardship came to be unwittingly inflicted on my category of retirees, by the erring circular of 25-5-79, representations were made by these retirees to the Expenditure Department, and so did I, in my representative capacity as Vice-President of the All India



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or the date retirement of the concerned officials, if that be later. To quote from this rectificatory circular:

" The Govt have been receiving representations from officers who retired after 30-4-79 and who have not been permitted to exercise option as mentioned in foregoing paragraph, stating that they have been placed at a disadvantage compared to the officers who retired on or after 30-9-77 but not later than 30-4-79, in as much as they were neither allowed to exercise option nor granted the graded relief upto average index level 272, but they were only allowed graded relief (dearness relief) sanctioned beyond the average index level 272. The Govt has reconsidered the matter and keeping in view the hardship caused to such officers, the President is pleased to....."

All the above quoted preamble nobly expressed, however, got diluted with yet another Bureaucratic stroke, not now of bungling (as with 25-5-79 circular) but of squamishness of a thoughtless kind; having had to swallow the camel, they were ^{now} straining at a gnat and making a last ditch stand! No canons of equity, natural justice and fairplay could support their ordaining in this circular that the operative effect of the aforesaid rectification would be from 1-4-86 and not ab initio from the stage of hurt; a totally indefensible ad hoc and arbitrary date was indicated for the remedy's effect. There was no realisation of the striking feature of the subject that it was not a case of bounty being endowed from date of the giver's choice; it was a case of acceptance of the right of wronged ones and the remedying had necessarily to be from the time stage of hurt - the bounty stage was over with the issue of circular of 25-5-79, embodying Government's decision on the III Central Pay Commission's Report, if that can be called as bounty as between the employer and the employee in modern times of welfare and rights awareness. It may be added that the aforementioned operative date of 1-4-86 was later preponed to 1-1-86 with the Department of Pension & P.W. circulars dated 16-4-87 and clarification dated 1-5-87 in another connection viz revision of pensions generally on the basis of IV Central Pay Commission's Report; proper retrospectivity however continued to be ignored for this issue.

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The long seven years or so the Government took to cogitated and accept their mistake which had been plain as pike staff, were visited as ^a punishment on the thousands of pensioners who had cried hoarse all this while sending representations after representations ; they were now made to forego substantial arrears because the Government could not galvanise betimes! The circular of 8-8-86 compounded the Government's rough shod treatment by adding its own inequity to the infirmity of the earlier circular of 25-5-79. In my personal case the refusal to remedy the lapse from the stage it hit me , meant a loss of very much due arrears of Rs seven thousand and seven hundred (for the seventy seven months from proceeding on pension on 1-8-79 to 31-12-85 , only after which the remedy came to operate, and the monthly loss being Rs 100, which additional graded relief I started drawing from 1-1-86 as per Government's remedial directions).

(5) Against the aforementioned substantial injustice in the circular of 8-8-86, I sent a representation dated 20-10-86 (copy attached as Appendix E) to Shri I.K.Rasgotra, the Additional Secretary concerned , in the Department of Pension & P.W. The representation was sent in my representative capacity of the Vice President, All India Organisation of Pensioners (East Zone), Lucknow, (this Association, a Registered one has its Head Office at Delhi); in the representation I mentioned my personal case also. There being no response, I sent a reminder dated 14-3-87 to Shri Rasgotra, ~~Copies of the representation dated 20-10-86 and 14-3-87 are attached as Appendixes~~ vide copy attached as Appendix F. Simultaneously with this self contained reminder , concentrating on my personal case, I addressed likewise the Secretary to the Hon'ble Prime Minister. A reply came to me with letter No. 38/35/87-P&PE, dated 27-5-87 (copy attached as Appendix G), from Shri A.K.Patnaik, Deputy Secretary in the Department of Pension and P.W. It stated " it has not been considered necessary to further prepone it , as desired by you, as it will have repercussion in the cases of many other orders which are conventionally given prospective effect". There was no repelling here, as could not possibly be , the merits of the preponing request made


reaching to the root, but grounds trotted which are misconceived and show deplorable confusion in approach, The ground advanced is untenable, specious, lame and laboured. What the Department of Pension & P.W. have failed to take cognisance of is the patently obvious fact that the benefit offered by the circular of 8-8-86 was not a basic advantage extended initially at a time stage, which we now seek to get applied even to cases which arose earlier; such a seeking could ~~perhaps~~ ^{perhaps} have their apprehended possibility of repercussions, they being engaged ~~with~~ in numerous litigations with pensioners before the Supreme Court, High Courts and the Central Administrative Tribunal (vide the Tribunal's Delhi Bench order dated 5-8-86 in the case of All India Services Pensioners Association (Rajasthan) vs Union of India) on the general principle of basic advantage's retrospectivity in the field of retirement benefits, in the light of the Supreme Court judgement in the well known Nakara's case. On the other hand this is a very different and clearly distinguishable case, within a strictly narrow ^t compass, of a mistake admitted by the dispensing authorities being ~~rectified~~ ^{sought to be} rectified from the deserved date of incidence as against an ad hoc and arbitrary later date. The initial benefit extension was by circular of 25-5-79 and my request is not for its retrospectivity beyond that ordained therein; that circular ~~made~~ ^{made} a sad omission as since admitted by the Government itself; in remedying that omission, the Govt instead of applying the remedy from the stage of incidence to put these inadvertently omitted category of pensioners at par with the others as they should be, has given the relief from a much later date just because they took inordinately long time to decide about it, the pensioners concerned being at no fault either for the lapse or its delayed remedy. The thousands of pensioners involved have been subjected to long agony and wait, and now finally ^{also to} the uncalled for substantial loss of arrears which if available to them on time in their curtailed resources would have been of needed help or earned good interest.

(6) The Government having thus obstinately failed to see reason and mete out justice in a problem of their own creation, I am left with no other alternative except to move the learned Tribunal against the Govt's high handed and ham handed stand.

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It may be added that against the aforementioned rejection dated 27-5-87 I had sent a review petition to the Hon'ble Minister of State for Pension & P.W., but on further consideration as detailed in the comments against item 5 of the Application, I have withdrawn that review petition vide my letter dated 18-6-87 to the Deputy Secretary concerned in the Department of Pension & P.W. (copy attached as Appendix H).

Dated 25-6-87
Lucknow


(S. K. LALL)
Applicant.

Enclosures: Appendices A to H as below (attested copies):

- A- AGUP's pension order dated 4-8-79
- B- Finance Ministry's circular dated 25-5-79, in error.
- C- Finance Ministry's memo to me rejecting representation against B above.
- D. Pension Department's circular dated 8-8-86 remedying the error in B above but from an ad-hoc date only.
- E. My representation dated 20-10-86 to Pension Deptt for effect to D above from the time of error hit.
- F. My reminder representation to the Pension Deptt dated 14-3-87.
- G. Pension Deptt's rejection letter dated 27-5-87, on F above.
- H. My letter dated 18-8-86 to the Pension Deptt with-
drawing my review petition sent ^{earlier} to the Pension Minister against G above.

REGISTERED

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H.M. LAKSHAKAR KARYALAYA: U.P. II: ALLAHABAD.

APPENDIX A

NO. P.A.(C)I/V/29432/79-80/

Dated: August, 1979.

To,

The Treasury Officer,
Lucknow.

Subject: Pension case of Sri S.K. Lall holder of PPO No.
12/20211.

Sir,

In continuation of this office letter No. PA(C)I/V/29432/79-80/808-808, dated 14-6-79, forwarding, therewith, the PPO mentioned above, I am to state that in his special and Author letter No. 240/180/IT/Pension/W/1111, dated 1-8-79, The Zonal Accounts Officer, C.D.D.I. (Department of Income Tax), Lucknow has intimated reduction in pensionary benefits of Sri Lall. As such, you are requested to arrange the payment of the revised pension as follows :-

- (1) Superannuation pension @ Rs. 1210-00 per month (Rs. One thousand two hundred ten only) w.e.f. 1.8.79.
- (2) Relief in pension @ Rs. 100-00 per month as already authorised on the PPO No. 12/20211.

~~AMENDMENT~~

- (1) All payment of pension @ Rs. 1216-00 (if made on the PPO No. 12/20211) which is payable w.e.f. 1.8.79 may be adjusted, if necessary, before payment of reduced pension as now authorised.

The above amendment may please be made in both the halves of the PPO No. 12/20211 quoting the number and date of this letter as authority and payment carried out accordingly under intimation to this office.

Please acknowledge receipt.

Yours faithfully,

(J.S. LAWRENCE)
ACCOUNTS OFFICER.

No. P.A.(C)I/V/29432/79-80/

of dated 14-8-79

Copy forwarded for information to :-

1. The Accounts Officer, Office of the Zonal Accounts Officer, C.D.D.I., Department of Income Tax, 37, Ram Tirath Marg, Lucknow.
2. The Commissioner of Income Tax, Lucknow.
3. Sri S.K. Lall, 11180 Ram Nagar Misra Nagar.

Tana Gfz
yana
(सूचक वी.सिंह)
जायकर अधिकारी
(मुकदमा) प्रमाण
मुकदमा

Kumar
7/8/79
Accounts Officer
2-11/8/79

No. 19(4)-EV/79

Government of India
Ministry of Finance
Department of Expenditure

8/37

New Delhi, the 25th May, 1979

OFFICE MEMORANDUM

Subject:- Treatment of a portion of the Dearness Allowance as pay for the purpose of retirement benefits.

The undersigned is directed to say that the question of treatment of a portion of Dearness Allowance as pay has been engaging the attention of the Government of India, and the President has been pleased to decide that in respect of Government servants who retired on or after the 30th Sept., 1977, the amount of Dearness Allowance indicated in para 2 below, shall be treated as pay for the purposes and to the extent specified hereinafter

2. While there will be no change in the scale of pay attached to the various posts and the basis on which dearness allowance is calculated, out of the dearness allowance admissible, the following amounts shall be treated as 'dearness pay' in relation to pay in the different pay ranges specified below, for the purposes of retirement benefits:

(a)

Pay Range

Amount of dearness pay

- | | |
|--|--|
| i) Upto Rs. 300/- | 35% of pay |
| ii) Above Rs. 300/- and upto Rs. 2157 | 27% of pay subject to a maximum of Rs. 103 and maximum of Rs. 2431 |
| iii) Above Rs. 2157 and upto Rs. 2399. | Amount by which pay falls short of Rs. 2400. |

(b) In the case of officers drawing pay above Rs. 2180 and retiring on or after 1.12.1978, the amount of dearness pay to be treated for purposes of retirement benefits will be as follows in substitution of the provisions of para 2(a)(iii) above.

19.6.79
(आई. सी. चटर्जी)
आयकर अधिकारी (सतर्कता)
कायलिय गुप्त अनुसूच (वसुधा) उ.प्र.
एवं आयकर अधिकारी,
बलनग

(P.T.C.)

(TRUE COPY)

C.No. 5470-EV /83

GOVERNMENT OF INDIA

Ministry of Finance, Department of Expenditure,

New Delhi, the 19th September, 1983.

To

Shri S.K.Lall,

Vice-President , All India Organisation of Pensioners,

East Zone, B-1180, Indira Nagar,

Lucknow.

Sir,

Sub- Benefits of D.A. merger to pensioners.

I am directed to refer to your letter dated 1st August, 1983, requesting that the benefit of the merger of D.A. sanctioned to employees retiring on or after 31-1-82 may be given also to those who had retired before that date. The matter has been carefully considered , but it has not been found possible to accede to the request.

Yours faithfully ,

Sd- K.Ratan

Deputy Secretary to the Govt of India.

(एच. पी. सिंह)

आयकर अधिकारी

(मुख्यालय) प्रणाली

संलग्न

14/2/79

APPENDIX D

TREATMENT OF A PORTION OF THE DEARNESS ALLOWANCE AS PAY FOR THE PURPOSE OF RETIREMENT BENEFITS OF CENTRAL EMPLOYEES.

1/40

(Pension Ministry New Delhi No. 38/9/86-P&PW, dated: 8.8.86.)

As per Ministry of Finance, No. 19(4)-EV/79 dated 25.5.1979, persons who retired on or after 30.9.77 but not later than 30.4.79, were allowed an option to choose either of the two alternatives below.

(a) to have their pension and DCR Gratuity calculated on their pay excluding the elements of Dearness Pay as indicated in para 2 of the O.M. dt. 25.5.79 in accordance with the rules in force on 30.9.79, and get graded relief on pension to the full extent admissible from time to time.

(b) to have their pension and DCR Gratuity recalculated after taking into account the element of dearness pay. In such cases, the first four instalments of graded relief sanctioned upto the average index level 272 will not be admissible; these pensioners will be entitled only to the instalments of graded relief sanctioned beyond the average index level 272.

2. The Govt. have been receiving representations from officers who retired after 30.4.79 and who have not been permitted to exercise option as mentioned in foregoing paragraph stating that they have been placed at a disadvantage compared to the officers who retired on or after 30.9.77 but not later than 30.4.79 in as much as they were neither allowed to exercise option nor granted the graded relief upto average index level 272. According to them the officers in receipt of pay Rs. 2158/- and above were either entitled to reduced rates of dearness allowance, by way of adjustment, or no dearness allowance at all with reference to index level 272, but they were allowed only graded relief (Dearness relief) sanctioned beyond the average index level 272. The Government has reconsidered the matter and keeping in view the hardship caused to such officers, the President is pleased to decide that Government Servants drawing pay of Rs. 2,518 or above who retired after 30-4-1979 but not later than 30-1-1982, may be allowed an option on the lines of paragraph 4 of the Ministry of Finance O.M. No. 19(4)-E /79 dated 25.5.79. The option may also be exercised by those Govt. servants drawing pay of Rs. 2,158 or above who retired between 31-1-1982 and 30-5-1985 and who had opted for paragraph (4) a of the Ministry of Finance O.M. No. F.1(3)E /82 dated 8-4-1982. The option will have to be exercised within a period of six months from the date of issue of these orders. The option once exercised shall be final. These persons who fail to exercise an option within the stipulated period will continue to receive pension and graded relief in accordance with the existing orders.

2158

3. Where the option is in favour of para 4(a) of the O.M. dt. 25-5-79, the pension DCRG and graded relief will be revised. The revision will be from 1-4-1986.

P.T.O.

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APPENDIX F

THE ALL INDIA ORGANISATION OF PENSIONERS (REGD)
(EAST ZONE)

8/11

East Zonal Office:-
B-1180 Indira Nagar, Lucknow

Dated: 20-11-86

Dear Shri Rasgotra,

Sub: Revision of Pension of Central Govt.
employees who retired after 30.7.79
but not later than 30.1.82 and had
drawn pay of Rs.2158 or above at the
time of retirement - exercise of *option*
~~opinion~~ for -

.....

Please refer to the Ministry of Pensions O.M.
No.38/9/86-P&PW dated 8.8.86. While we the pensioners
generally and especially those affected (like me
personally) are grateful to the Government for
ultimately ~~considering~~ *conceding* our point raised ever since
the invidious and unjustified discrimination was
inadvertently inflicted by the provisions of Ministry
of Finance O.M.No.19(4)-EV/79 dated 25.5.1979, we are
at a loss to understand why the ordered revision is to
take effect only from 1.4.86 and not, as justice clearly
demands, from inception when the erring circular dated
25.5.1979 took effect. Once the anomaly involved and
the hardship unreasonably imposed were recognised, it is
imperative that the mischief is undone from the start
and not from any subsequent ad-hoc date, the latter
course adopted still partly retaining the effect of the
unkind cut. If the Government took over seven years to
consider and remedy their mistake, this is through no
fault of the victim pensioners who have cried hoarse &
represented all along, and why should they be driven
now towards further agitation or litigation, when it is

P.T.O.

-27-

14/20
APPENDIX F

S.K.Lall
I.R.S.(Retd.)
Ex-Commissioner of
Incometax.

B-1180
Indira Nagar,
Lucknow
14.3.87.

Dear Shri Rasgotra,

Kindly refer to my representation dated 20.10.86 (copy attached) sent to you, in connection with the Pension Ministry's Circular O.M.No.38/9/86-P & PW dated 8.8.86. The representation is self explanatory; there has been no reply or acknowledgement yet. I am personally also affected by the relevant anomaly in the general pensionary instructions of 25.5.79 against which I and others in similar situation, had represented right from the start. However, the rectificatory instructions dated 8.8.86 now received, arbitrarily give effect to the correction from 1.4.86 only, instead of the time since the erring circular dated 25.5.79 came into operation (or the date of retirement, if later). I retired with effect from 31.7.79 and while I gain additional dearness relief of Rs.100/-p.m. as per circular dated 8.8.86 but it is only with effect from 1.4.86, I suffering loss of Rs.8000/- thereby as arrears, from my retirement till 31.3.86 (six years and eight months), for no fault of mine. For this patent injustice of not curing the perpetrated anomaly since inception, thousands of officials retiring from senior positions during the relevant few years period (79-85) are being deprived of arrears clearly due to them.

2. It is requested that you may kindly have necessary alleviating instructions issued, the total financial outlay not being large for the country, but its component for individual cases being very significant for them in retirement.

Thanking you and with kind regards,

Yours sincerely,

Encl: 1

Sd/-S.K.LALL

Shri I.K.Rasgotra, I.A.S.,
Addl. Secretary,
Ministry of Pensions,
New Delhi

Handwritten: *True copy*
Stamp: (14.3.87)
Stamp: 14.3.87
Stamp: 14.3.87
Stamp: 14.3.87
Stamp: 14.3.87

- 28 -

APPENDIX G

No.38/35/87-R&PW
Department of Pension and Pensioners' Welfare

New Delhi, dated the 21st May, 1987.

To :

Shri S.K.Lal,
IRS(Retd)
B-1180,
Indira Nagar,
Lucknow.

Subject: Representation from Shri K.Lal, IRS(Retd) for making the provisions contained in O.M.No. 38/9/86-P&PW dated 8.8.1986 effective from 30.9.1977 or the date of retirement whichever is later.

Sir,

Please refer to your letter dated the 14th March, 1987 addressed to Shri I.K.Rasgotra, Additional Secretary, Department of Pension and Pensioners' Welfare on the above subject.

2. As you are already aware the date of effect of this Department's O.M.No.38/9/86-P&PW dated the 8th August, 1986 has already been pre-poned to 1st January, 1986 to coincide with the implementation of the Pay Commission's recommendations. It has not been considered necessary to further prepone it as desired by you, as it will have repercussion in the case of many other orders which are conventionally given prospective effect.

3. This also disposes your letter to the Prime Minister's Office on the same subject.

Yours faithfully,

Sd/-A.K.Patnaik
Deputy Secretary to the Government of India.

(आई. सी. वर्जो)
आयकर अधिकारी (सतर्कता)
कार्यालय मुख्य आयुक्त (पशासन) उ.प्र.
एवं आयकर आयुक्त,
लखनऊ

APPENDIX

"H" -29-

S.K. Lall
IRS (Retd)
Ex-Commissioner of
Income-tax
Phone : 72499

Recorded Delivery

B-1180, Indira Nagar
LUCKNOW.

18-6-1987.

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Dear Shri Patnaik,

Subject: Representation against the effect stage of Deptt. of Pension & P.W.O.M. No.38/9/86 P&PW, dated 8.8.86 from 1.1.86, request for pre-poning.

Please refer to your letter No.38/35/87-P&PW dated 27.5.87 informing me about the Govt.'s inability to prepone the effect of O.M. dt. 8.8.86 to the date of damage as per the erring O.M. dated 25.5.79 in relevant case of particular retiree. A fortnight ago I had addressed against this negative decision, and appeal to the Hon'ble Minister. I am, however, now advised by those familiar with Secretariat procedure that when the negative decision, as intimated, also disposed of my request simultaneously made on the subject to the Hon'ble Prime Minister's office, the decision would ~~have~~ have been with the Hon'ble Minister's involvement already. There is no point, therefore, in waiting any longer on this pending subject of about eight years since 1979 for me (retired on 31.7.79 and adversely affected by O.M. of 25.5.79), and I hereby withdraw my above noted appeal/review petition to the Hon'ble Minister. I am instead proceeding to "Move an application for redress, before the Central Administrative Tribunal". This withdrawal may please be noted accordingly.

Thanking you,

Yours sincerely,

Sd/- S.K. Lall

Shri A.K. Patnaik,
Deputy Secretary,
Deptt. of Pension & P.W.
Govt. of India,
NIRVACHAN SADAN
NEW DELHI.

True copy attested

25/6/87

(S. Z. Ahmad)

भायकर अधिकारी (न्यायिक)

कार्यालय आयकर आयुक्त

लखनऊ

Registered

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

No. CAT/CB/LKO/ 623/622

Dated : _____

OFFICE - MEMO

Registration No. O.A. 567 of 1937.
T.A.

S. K. Lall

Applicant's

Versus

U. O. 2

Respondent's

A copy of the Tribunal's Order/Judgement
dated 7/10/00 in the abovenoted case is forwarded
for necessary action.

For DEPUTY REGISTRAR (H)

Encl : Copy of Order/Judgement dated 7/10/00

To.

①

Sri V. K. Chaudhry, Adv. for O.P.

②

Sri S. K. Lall, I.R.S. (Retd.)

B-1180, Indira Nagar
Lucknow 226006

dinesh/

Recd on
Register

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

A.O. No. 567 of 1987

20/9/88

SL (4)

replied

S.K. Lal

... Applicant

Versus

The Union of India &
others.

... Respondents.

APPLICATION FOR CONDONATION OF DELAY IN
FILING COUNTER AFFIDAVIT ON BEHALF OF
RESPONDENTS.

The respondents beg to submit as under:-

1. That the above mentioned case was being conducted by Shri N.B. Singh, Senior Standing Counsel, Central Government, High Court, Allahabad. But the case was transferred to this Circuit Bench at Lucknow and Shri Singh could not come for ~~xxxxx~~ doing paravi in the case.
2. That the counter affidavit is now ready duly sworn for filing and it is expedient in the interest of justice that the accompanying counter affidavit be taken on record and the delay of its filing be condoned.
3. That the delay is neither willful nor deliberate on the part of the respondents, but

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22-8-88
(S.K. Lal)

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the same is due to the circumstances and
the same is liable to be condoned.

It is, therefore, most respectfully
prayed that the accompanying counter affidavit be
taken on record and the delay of its filing be
condoned.



(V.K. CHAUDHARI)
Counsel for the Respondents.

Lucknow,

Dated: 22 August, 1988.

(15/3)

Before the Central Administrative Tribunal,

Circuit Bench Lucknow .

A.O. No. 567 of 1987

S.K. Lall

.....

Applicant

Versus.

The Union of India and others

Respondents

Counter Affidavit on behalf of the
Respondents.

I, A. K. Patnaik aged about 35 years,

son of Ghri S. D. Patnaik at present posted as Deputy

Secretary in the Department of Pension and Pensioners' Welfare
in the Ministry of personnel, Public Grievances and
Pension, New Delhi, do hereby solemnly affirm and state
as under:-

1. That the deponent is working in the office of
Respondent No. 2 on the post of the Deputy Secretary and is dealing
the case of the applicant.

2. That the deponent who has been authorised to file this
Counter affidavit on behalf of the respondent, has read and
understood the contents of the application of the applicant
along with its enclosures as well as the facts deposed to
here in under,

3. That the reply to Annexure I 'Facts of the case' for
item No. 6 is being given as under:-

Paragraph 1. This respondent has no comments to make on the
averments made by the petitioner in this paragraph.

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Paragraphs 2 and 3 :- In respect of Government servants who retired on or after the 30th September, 1977, the amount of dearness allowance as indicated below was treated as pay for retirement benefits, in the Ministry of Finance, Department of Expenditure O.M. No. 19(4) /EV/79 dated the 25th May, 1979:-

<u>Pay Range</u>	<u>Amount of dearness pay</u>
1) Upto Rs. 300/-	36% of pay
ii) Above Rs. 300 and upto Rs. 2157 .	27% of pay subject to a minimum of Rs. 108 and a maximum of Rs. 243.
iii) Above Rs. 2157 and upto 2399	Amount by which pay falls short of Rs. 2400.

These orders inter-alia provided that persons who retired on or after the 30th September, 1977 but not later than the 30th April 1979 will have an option to choose either of the two alternatives below:-

a) to have their pension and DCR Gratuity calculated on their pay excluding the element of Dearness pay as indicated in para 2 above in accordance with the rules in force on 30.9.1977 and get graded relief on pension to the full extent admissible from time to time.

OR

B) to have their pension and DCR Gratuity re-calculated after taking into account the element of dearness pay. In such cases the first four instalments of graded relief sanctioned upto the average index 272 will not be admissible; these pensioners will be entitled only to the instalments of graded relief sanctioned beyond the average index level 272.

However this option was not available to those retiring after 30th April, 1979, although in their cases also, more particularly in the case of Senior officers drawing pay of Rs.

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2158/- or above little or no benefit accrued to them by merger of DA into pay. On the contrary their dearness relief was regulated at depressed rate as if they had full benefit of merger of DA into pay. Recognising the anomalous position, orders were issued by this respondent on 8.8.86 allowing them an option on the lines indicated ^{at} (a) and (b) above. The revision was made effective from 1.4.1986.

Paragraphs 4 and 5: A letter dated the 14th March, 1987 was received from the petitioner forwarding therewith a copy of the letter dated the 20th October, 1986. The petitioner wanted that the instructions contained in the O.M. dated the 8th August, 1986 should be made effect ^{ive} from the 30th September, 1977 which is the date from which the provisions contained in the Ministry of Finance O.M. dated the 25th May, 1979, treating a portion of dearness allowance as dearness pay for pensionary benefits came into effect. As already stated the O.M. dated 8th August, 1986 giving an option to (i) ~~to~~ the Government servants drawing pay of Rs. 2158/- or above who retired after 30.4.1979 but not later than 30.1.1982 on the lines indicated at (a) and (b) above and (ii) ~~to~~ the Government servants drawing pay of Rs. 2158/- or above who retired between 31.1.1982 and 30.5.1985 and who had opted for (a) above, was made effective from 1.4.1986. However considering that the officers will lose substantially if their pension was consolidated from 1.1.1986 in terms of ^P pay Commission's recommendations with reference to their pre-revised pension, the date of effect of the O.M. dated 8.8.1986 was preponed to 1.1.1986 to coincide with the implementation of the ^P pay Commission's recommendations. The petitioner's request to prepon the date of effect of the O.M. dated 8.8.1986 to a date earlier than 1.1.1986 was examined exhaustively but it was not found



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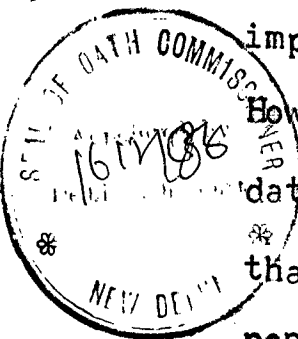
possible to accede to the request as it was felt that it will have repercussion in the case of many other orders which are conventionally given prospective effect. Accordingly, a reply was sent to the petitioner on 27th May, 1987 explaining the position. Subsequently another letter dated 2.6.1987 addressed to the Minister for personnel, Public Grievances and Pensions was received from the petitioner for reconsidering the decision taken in the matter.

In reply the petitioner was informed that it was not found possible to accede to the request.

Paragraphs 6

The orders of the Government having financial implications are conventionally given prospective effect.

However while issuing the instructions contained in the O.M. dated the 8th August, 1986 as referred to above, it was felt that the additional benefits should be available to the pensioners from the financial year itself and accordingly the date of effect was given as 1.4.1986. Further as the Government's decisions on the recommendations of the Fourth Central pay Commission pertaining to pension were made applicable to Government servants who retired/died in harness for after 1.1.1986, it was noticed that officers will lose substantially if their pension was consolidated from 1.4.1986 in terms of pay Commission's recommendations with reference to their pre-revised pension. Accordingly, the date of effect of the O.M. dated the 8th August 1986 was preponed to 1.1.1986 to coincide with implementation of pay Commission's recommendations. This was done in the interest of the pensioners as otherwise they would have been deprived of a substantial amount in person. It was not found possible to prepone the date of effect to a date earlier than 1.1.1986 for the reasons explained above.



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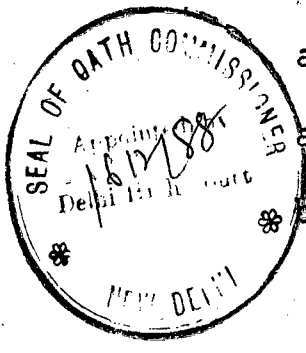
4. That the applicant is not entitled to get any relief as claimed in the application ^{and} ~~on~~ the application under section 19 is liable to be dismissed.

New Delhi
Dated:-

Asal
Deponent.

Verification.

I the/above named deponent do hereby verify that the contents of para 1 and 2 of this affidavit are true to my personal knowledge and those of para 3-1 to 3-6 are believed to be true on the basis of official records and information gathered and those of para 4 are believed to be true on the basis of legal advise



Signed and verified this on 10th day of July 1988 at New Delhi.

New Delhi
Dated 10-8-88

HE DEPONENT
N. C. Pathak
S. D. Pathak
Deponent.
Identified by
I solemnly affirm before me at
New Delhi on 10th August 1988
that the contents of the affidavit
which have been read over & explained to
him are true & correct to his knowledge.
G. C. Pathak
Oath Commissioner, New Delhi

To

The Registrar,
Central Administrative Tribunal,
Circuit Bench,
Gandhi Bhavan,
Lucknow.

Filed today
by 20/9/88
RA

Sir,

Case No. A.O. 567/87 of S.K.Lall, Retired Commissioner of Income-tax, Lucknow, VS Union of India through the Additional Secretary to the Govt of India, in the Deptt of Pensions, Nirvachan Sadan Ashok Road, New Delhi- Last hearing 22-8-88, next hearing 20-9-88- filing of Rejoinder Affidavit by the Applicant in reply to the Respondent's Counter submitted by Govt Counsel Shri V.K.Chaudhuri on 22-8-88.

I enclose herewith ~~two~~ ^{three} copies of my above noted Rejoinder Affidavit, a third copy having been sent directly to the Respondent's Counsel, Shri V.K.Chaudhuri ~~xxxxxx~~, (along with a copy of my earlier 'written arguments/exposition', submitted to the Tribunal on 19-7-88). It is requested that hearing in the case may now kindly be fixed, the papers being complete.

Thanking you,

Yours faithfully,

Dated 31-8-88/20-9-88

(S.K.Lall)

Encl , as above.

Retired Commissioner of Income-tax,
B-1180, Indira Nagar, Lucknow.

Copy with a copy of the Rejoinder Affidavit and my above noted 'written arguments/exposition', sent to Shri V.K.Chaudhuri, Central Govt Counsel before the Central Administrative Tribunal, Lucknow.

Dated 31-8-88

(S.K.Lall)

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Before the Central Administrative Tribunal,
Circuit Bench, Lucknow.

A.O. 567 of 1987
.....

S.K. Lall, Retired Commissioner of
Income-tax, Lucknow.

Applicant

Versus

The Union of India through the
Additional Secretary to the
Government of India, in the
Department of Pensions, New Delhi.

Respondents

Rejoinder Affidavit on behalf of the Applicant in
reply to the Counter Affidavit filed by the Respondents on
his Application before the learned Tribunal.

I, S.K. Lall, aged 67 years, Retired Commissioner
of Income-tax, Lucknow, son of late Shri S.Lall, and
residing at B-1180, Indira Nagar, Lucknow, do hereby
solemnly state and affirm as under :

1. That I have been supplied on 22.8.88 with a copy
of the Respondent's Counter Affidavit on my above noted
pending Application under section 19 of the Administrative
Tribunal Act, 1985. I have read and understood the said
Counter Affidavit on my Application pending before the
learned Tribunal, and my Rejoinder comments on the averments
in the Counter Affidavit are given in the paragraphs hereafter.

Contd....(2)

(S.K. Lall)
30-8-88

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2. That the factual narrative with regard to the relevant Govt. circulars dated 25-5-79 and 8-8-86 (vide copies at Annexures B and D to my Application) is not fully and objectively given in the Counter Affidavit. The Counter Affidavit does no doubt point out with regard to the offending Circular dated 25-5-79 whose terms governed my pension cum dearness relief from the date of drawal of pension on retirement viz, 1-8-79, that the proffered "option was not available to those retiring after 30-4-79, although in their case also, more particularly in the case of senior Officers drawing pay of Rs.2158/- p.m. or above, little or no benefit accrued to them by merger of dearness allowance into Pay; on the contrary their Dearness Relief was regulated at depressed rate, as if they had full benefit of merger of Dearness Allowance into Pay; recognising this anomalous position, orders were issued by the Government on 8.8.86, allowing them 'option'.....effective from 1-4-86".



3- That while the Counter Affidavit thus concedes that there was 'anomaly' in the Circular of 25-5-79 with regard to officers of my category, it fails to elucidate further, even as expressly admitted and stated in the remedying Circular of 8-8-86 that " the Government have been receiving representations from officers who retired after 30-4-79 and who have not been permitted to exercise option " and that " Government has reconsidered the matter and keeping in view the hardship caused to such officers", remedy was made available to them in the form of "option", but only from 1-4-86, which was later modified to 1-1-86. The representations and hardship aspects are thus not noted in the Counter Affidavit although already admitted in the remedying Circular of 8.8.86.

Hari Ram
Adv. & NOTARY
COLLECTORATE, LUCKNOW

30/4/88

4. That the crux of the matter is that the circular

contd....(3)

30-2-88
(S.K. Vell)

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of 25-5-79 had made a blatant slip, without any reason whatsoever, in omitting from the purview of the proffered 'option', the particular class of retirees to which the Applicant belongs, and this chance lacunae resulting from drafting carelessness had caused unintended and unthought of hardship to this class of retirees. The Applicant thus received for no reason at all short dearness relief on pension as compared to other categories in the same group, the shortfall coming to Rs. 100 per month which from the pension drawal date of 1-8-79 to the pre-remedy date viz 31-12-85 meant a loss of arrears over seventy seven months, to the tune of Rs seven thousand and seven hundred with interest yield thereon. Against this inadvertent error in the circular of 25-5-79, there were continuous representations from harmed retirees (the Applicant too had represented) and only after long seven years, the Government relented and rectified the error by circular dated 8-8-86, but callously enough, only from 1-4-86, later amended to 1-1-86. The proper and inevitable course left for the Government was to remedy the omission ab-initio, so as to provide relief from the time stage of hurt, and this had been, as precedent, done for three other sets of omissions occurring in the very circular of 25-5-79, vide those relevant curing circulars of 24-7-79, 7-8-79 and 30-12-81 which have been mentioned in and copies annexed (Annexures I, II, & III) with my Miscellaneous Application No.135/87 filed before the learned Tribunal, for interim stay orders for a contingency in this case, expected but later not materialising, so that the stay Application had to be kept pending. A copy of this stay Misc Application was forwarded by the Tribunal Registry to the Respondent's address by Registered Post on 29.12.87.

GOVERNMENT OF UTTAR PRADESH
SECRETARY
PENSIONERS' WELFARE
LUCKNOW

Dr. K. N. Srivastava
Adv. & NOTARY
COLLECTORATE, LUCKNOW

30/12/87

Contd....(4)

30-12-88
S. K. (all)

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The said three ab-initio rectificatory circulars are also mentioned in a detailed 'written ^{note} exposition' of his case by the Applicant, filed in triplicate (one copy ^{being sent directly} for the Respondents) before the learned Tribunal on 19-7-88.

5. That apart from the Counter Affidavit suffering from incomplete narration of factual position with regard to the relevant circulars, as brought out above, the Respondents argument in the Counter Affidavit that giving retrospective effect for ab - initio curing of the conceded 'anomaly' in in the circular of 25-5-79, would have been against the Government's general policy on prospectivity/retrospectivity is also a mix of patent confusion and worse. This argument had already been advanced by the Government in their letter dated 21-5-87 (Annexure G to my Application) to me while rejecting my representations (Annexure F to my Application), and I had adequately repelled it with valid grounds, in my Application (pages 14-15 thereof) to which repelling contentions, the Respondents have not replied in their Counter Affidavit, as they should have done, and obviously they have no answer.

6. That my contention noted in the foregoing ^{Hari Ram Srivastava} paragraph, as elaborated in my Application and also the subsequent 'written exposition' dated 19-7-88, is that the Government may be having a general policy about not giving retrospective effect to advantageous steps taken by them at a particular stage of time for their employees and pensioners, and it is known that the Govt. are involved in a number of litigation cases before judicial authorities on this issue, despite the Supreme Court decision, against such stand of the Government, in the famous Nakra case (A.I.R. 1983-S.C.130)

Contd....(5)

30/8/88
(S.K. Vally)

26/5

and C.A.T. Delhi Bench order dated 5-8-86 in the case of All India Services Association (Rajasthan) Vs. Union of India (AISLJ 1986/3) CAT 466). But all that is besides the point here for whatever be the Govt's stand or the position obtaining with regard to the principle of prospectivity/retrospectivity on an advantage initially enounced, it is an entirely different matter ^{here} ~~and~~ ^{the cited principle} ~~is not at all relevant or~~ applicable to the type of Applicant's case. In my above noted written exposition dated 19-7-88, on page 3, ^(which please see) a case ^{and detailed} has been cited wherein Rajasthan High Court repelled similar attempt at bringing in retrospectively general stand in a case of routine omission.

7- That the amending circular of 8-8-86 covering the Applicant's case did not extend an advantage initially, which it could possibility make propective; this circular was only rectifying a mistake which had occurred in the earlier circular of 25-5-79. The Applicant is not asking for any further retrospective effect for the initial advantage extending circular of 25-5-79, beyond the period covered by it. The Applicant is only asking that the inadvertent omission therein sought to be remedied subsequently from 1-1-86, be remedied from the time stage of the affected party's hurt as compared to others, the omission being only by accident of chance and not by design. On this very self evident principle, to avoid the affected persons suffering for no fault of theirs but of the draftsman, as many as three sets of omissions in the very circular of 25-5-79 were remedied ~~adibitio~~ ab initio by three circulars as detailed above, and there is no reason why this fourth set of mistake should be treated

Contd..... (6)

30-8-88
(S.K. Vell)



Ram Ram Srivastava
Adv.
COLLECTORATE, LUCKNOW

AB/6

8/5

differently and not cured ab-initio if in the circular of 8-8-86, Govt. ^{could} ~~reverse~~ give retrospective effect ^{partially} ~~positively~~ viz. from 1-4-86, why not from the ab - initio stage. The Respondent's failure to assess the situation in correct perspective, is an attempt to confuse issues and tag on the Applicants simple and limited purview case of rectification, with protracted, complicated and manifold litigation cases on prospectivity and retrospectivity issue. The Applicant seeks the indulgence of the learned Tribunal for protecting him from this un-warranted and misconceived mix up, and drawing a clear line of distinction between the issue at stake in the Applicants case and that canvassed by the Respondents for clouding the subject; it is a crystal clear distinction between a simple rectification matter and general considerations of prospectivity/retrospectivity.

8. That the Applicant's Application is thus liable to be allowed for grant of arrears, with interest and also cost; on the other hand the Respondent's stand is liable to be held as off the mark and untenable. On interest, besides judicial decisions cited on page 5 of above noted written exposition, the relevant Govt. Rule vide Pension Deptt. ^{1/3} ~~1/3~~ Your retirement Benefits Booklet page 7 ^{which} reads: "you are entitled to receive interest on the amount of pension if its ^{payment} ~~payment~~ is delayed due to ^{administrative} ~~administrative~~ ^{time} ~~time~~ lapse ^{beyond} ~~has~~ a period of 3 months. The prescribed rate of interest is 7% per annum beyond 3 months but upto one year and 10% beyond one one year."

Lucknow

Dated : 30-8-88

(S.K. LALL)
DEPONENT

Contd.... (7)

30-8-88
(S.K. Lall)

I, the above named deponent do hereby verify that the contents for paras 1 to 3 of this affidavit are true to my personal knowledge and those of paras 4 to 7 are believed to be true on the basis of information gathered and those of para 8 are believed to be true on legal advice.

Lucknow
 R O F
 Dated: 20-8-48
 SRINIVASA
 AG. ENCL. 100
 F U O K

Deponent

I have not identified the deponent
by name and have only
said that he was a member of the
K.K.K. before me.

3-27-21
3-27-21
5-1-21
R. M. M. M.
A. M. M. M.

30-8-88
(S. K. Lall)

Hari Ram Srivastava
Adv. & NOTARY
COLLECTORATE, LUCKNOW.

3/4/00

REGISTERED, A. D.

To,

THE REGISTRAR,
Central Administrative Tribunal,
Allahabad Bench,
Thornhill Road,
Allahabad, U.P.

Sir,

Subject:

Case before the Tribunal, Regd No. 567 of 87-
S.K.Lall, Retired Commissioner of Income-Tax,
Lucknow, VS Union of India, through the Addl
Secretary to the Govt of India, Deptt of Pen-
sions, Nirvachan Sadan, Ashoka Road, New Delhi.

In the above noted case filed by the undersigned Applicant, under Section 19 of the Administrative Tribunal's Act, 1985, before the Allahabad Bench of the Tribunal, I submit herewith ~~xx~~ a Miscellaneous Application under Section 24 and the Proviso thereof, seek interim stay orders against the Respondents, in favour of status-quo till the disposal of the Main Application, in which the next date is fixed for 17-12-87.

2. This Miscellaneous Application for interim stay is submitted, in triplicate, as a supplementary paper book, with Index, at the beginning. An addressed envelope for the Respondents, for transmitting copy of this Application, is also enclosed. The Application is accompanied by relevant documents' copies as Annexures. An Application Receipt Form is also attached, for use in your office.

Receipt may kindly be acknowledged.

Thanking you,

Yours faithfully,

Enclosures:
as above.

Lucknow,
Dated 23-11-87

(S. K. Lall)

Retired Commissioner of Income-Tax,
B*1180, INDIRA NAGAR,
LUCKNOW, 226016.

DR (P) for
M.A.



25/11/87

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

18/82

Receipt of Application under Section 24 & the Proviso thereof, of the Administrative Tribunal Act, 1985, filed by Shri S.K.Lall, Retired Commissioner of Income-Tax, B-1180, Indira Nagar, Lucknow, is hereby acknowledged; case No.567/87.

For Registrar,

Central Administrative Tribunal,
Allahabad Bench,

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BEN
 MISCELLANEOUS APPLICATION UNDER SECTION 24 (TWENTY FOUR)
 AND THE PROVISO THEREOF (INTERIM STAY), IN THE CASE OF
 S.K.LALL, RETIRED INCOME TAX COMMISSIONER, LUCKNOW, VS THE
 UNION OF INDIA THROUGH THE ADDITIONAL SECRETARY TO THE GOVT OF
 INDIA, IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES, AND
 PENSION, DEPARTMENT OF PENSION, NIRVACHAN SADAN, ASHOKA ROAD,
 NEW DELHI, REGISTERED IN THE TRIBUNAL AT NO. 567 of 1987.

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17/2

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

MISCELLANEOUS APPLICATION SEEKING INTERIM ORDER OF
STAY UNDER SECTION 24 ^(2 & 3 RULES THEREOF) of the ADMINISTRATIVE TRIBUNALS
ACT, 1985,

IN THE PENDING CASE (APPLICATION UNDER SECTION
19 of the said ACT dated 25-6-1987) REGD No.

567/87 , of S.K.LALL, RETIRED COMMISSIONER OF INCOME-
TAX, VS } ADDITIONAL SECRETARY TO THE GOVERNMENT OF
INDIA, DEPARTMENT OF PENSIONS & PENSIONERS WELFARE,
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI.

The petitioner S.K.Lall, resident of B-1180, Indira Nagar,
Lucknow, hereby makes the following submissions ~~for~~ for consi-
deration of the learned Tribunal:-

(1) The aforesaid Application, submitted by Registered Post,
under Section 19 of the Administrative Tribunal's Act, 85, was
registered in the Tribunal's office as No. 567/87, and a copy
thereof furnished by the petitioner applicant, as per Rules,
was sent by the Tribunal's office, by Registered A.D. noticed
dated 17-7-87, to the Respondent, Additional Secretary in the
Pensions Department, New Delhi, for filing objections, if any,
against admission of the Application, and fixing date 10-8-87;
copy of the Notice came to the Applicant also, who entrusted his
case to duly authorised Advocate, Shri R.A.Sharma, 21-Dr.Lohia
Marg, Allahabad, for pursuing before the Tribunal. On the fixed
date and till then there was no response or presence on behalf
of the Respondent before the Tribunal, and the same continued
to be the case on and till the adjourned dates fixed subsequent-
ly for 10-9-87, and 12-11-87, the case now standing adjourned
to 17-12-87.

(2) The petitioner Applicant is at a loss to understand
the reasons for delay on the part of the Respondent in compliance,
especially for the reasons narrated hereafter and within the
knowledge of the Respondent. The disputed Govt of India, Depart-
ment of Pensions O.M. ²³ No 38/9/86-P&PW, dated 8-8-86, in so far
as its operative date ^{is} is concerned (copy available at ~~Appendix~~ ^{Appendix} ~~XXXXXX~~
D, on pages 23-24 of the main Application paper book); ⁵ sought to
rectify an omission in the Govt of India, Ministry of Finance,
Deptt of Expenditure (who then handled pension matters), O.M.
No. 19(4)-EV/79 dated 25-5-79 (copy available at Appendix B, on
page 18=21 of the said paper book), but the rectification was
made operative from ad hoc date 1-4-86 (late modified to 1-1-86)
and not from the stage the omission hurt the pensioners concerned.
Now the said Finance Ministry's basic O.M. dated 25-5-79 was no
model of drafting and soon after its issue, representations on its
omissions and lacunae started pouring in the Govt's office from

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the affected pensioners, and some of these omissions and lacunae got covered expeditiously, and with retrospective effect from the stage of hurt, vide, for example the Ministry of Finance, Deptt of Expenditure, OM Nos 19(4)-EV/79 dated 24-7-79, and 7-8-79, also No. 19(4)-EV/81 dated 30-12-81, copies, duly attested, attached herewith as Annexures I, II, and III serially. This patently just approach of rectification of inadvertent omissions and lacunae in the O.M. of 25-5-79, from the stage of hurt, was, however, inexplicably abandoned in respect of yet another omission which despite persistent representations, was allowed to drag on for long years and then rectified with the successor Pensions Deptt's O.M. dated 8-8-86, mentioned above, surprisingly from an ad-hoc date 1-4-86 (later modified to 1-1-86), and not from the ~~date~~ stage of hurt, the principle followed for earlier rectifications noted above, having been abandoned for no valid reasons and to the severe detriment of the Pensioners concerned, who have been thus deprived of their due arrears of Rs (^{thousands of} seven thousand and ^{seven} ~~xxx~~ hundred in the petitioners case at 100/-p.m. from 1-8-79, the date of retirement to 31-12-85-i.e. six years and ^{five} ~~six~~ months).

(3) It was against the above noted injustices in the O.M. dated 8-8-86, ^{and} after failing to get redress from the Govt (Pensions Deptt) on repeated representations, I submitted my relevant Application in June, 87 to the Central Administrative Tribunal at Allahabad, for relief. While thus agitating against the denial of relief before 1-1-86 at the hands of the Govt, I took steps to secure ^{1-1-86 onwards} relief afforded by the O.M. For that the O.M. had directed the pensioners concerned to exercise 'Option' (omitted in 25-5-79 O.M.) now made available to the missed category to which I belonged, for getting the relevant benefit, and this 'Option' exercisable ~~by~~ within six months from 8-8-86, was exercised by me in my letter dated 6-10-86 sent through prescribed channel, to the designated authority, the Accountant General, U.P. at Allahabad, vide copy of that letter with enclosure, attached herewith, duly attested, as Annexure IV. The Option was endorsed by the Zonal Accounts Officer of my Income-Tax Deptt, as per his letter dated 14-11-86 (copy attached, duly attested, as Annexure V) and the Accountant General finding it in order, sanctioned increase consequently in the dearness relief on pension, to the extent of Rs 100/- per month from 1-4-86, vide copy of his letter dated 26-2-87 (duly attested attached herewith as Annexure VI) the same being confirmed by the said Zonal Account Officer with letter dated 3-4-87 (copy, attested, attached as Annexure VII herewith). Following further ante-dating of the effect of the O.M. of 8-8-86, from 1-1-86 and other relief for pensioners of this category, by the Govt (Pension Deptt's) O.M. NO. 2/1/87-PIC, dt 16-4-87 (^{copy attached} ~~relevant extracts~~), attested, at Annexure VIII herewith), the Accountant General comprehensively revised my pension with effect from 1-1-86 (the Punjab National Bank, H.A.L. Lucknow from whom I draw my pension-a/c no. 2449, giving ~~an~~

Con-sequential relief as authorised disbursing authority in this behalf, by substituting my old dearness relief by 95% of old basic pension). A copy of the Accountant General's letter dated 23-7-87 for this comprehensive revision is attached, attested, as Annexure IX; it may be added that The aforesaid Govt's orders dated 16-4-87 were on the basis of the Central Pay Commission IV Report. The comprehensively revised pension with pertaining dearness relief is now being drawn by me and arrears from 1-1-86 have ^{also} been drawn as permitted by O.M. of 16-4-87.

(4) While, thus on the basis of O.M. of 8-8-86, the consequential exercise of Option dated 6-10-86 by me and the effect thereof also on the treatment coming from O.M. dated 16-4-87, I had derived pension increase benefit from 1-1-86 and had applied to the Tribunal for connected relief before 1-1-86, developments have taken place which necessitate the present Miscellaneous Application, in continuation of the Main Application, and in this Miscellaneous Application I have to seek from the Tribunal, interim orders urgently, pending decision on my Main Application, although in the said Main Application I had not asked for any interim orders vide entry against Item 10 thereof at page (8) of the same. The need for this request for interim orders of stay against any attempt on the part of the Administration to disturb the status quo, to my disadvantage, pending decision on my pending Main Application, ^{before Tribunal} has arisen in the following circumstances developing since I submitted my ^{aforesaid} Main Application. It has been noted above that the Option remedially allowed by O.M. of 8-8-86 within 6 months thereof, was duly exercised by me and, may be, some others who got to know about it, and the Option exercised within the limit of six months allowed, got effected accordingly, but some other pensioners of this category, who did not get to know about the O.M. of 8-8-86 and its permitted option, could not exercise the option in time allowed and they represented to the Govt for extension of the option time limit; the Govt thereupon ordered with their (Pensions Deptt) O.M. No. 38/9/86-P&PW dated 3-6-87 (attested copy attached as Annexure X herewith) that the time limit for exercising option stood extended upto 31-12-87. A friend of mine, in the same category of pensioners, Shri B.J. Khodaiji, I.A.S. (Retired), exercised his option accordingly under this extended time limit, on 31-7-87, forwarding the same, through the U.P. Govt, to the Accountant General U.P., at Allahabad. The Accountant General instead of accepting the option straightaway, as in my and other cases of option within the original time limit, went on ^{now} to impose ^{conditional} acceptance, vide ~~Attested copy of Shri B.J. Khodaiji's letter dated 7-9-87 (No. A, G, A&E II/217), attached as Annexure XI. With this letter, the Accountant General enclosed an Option Form devised by him which stipulated an undertaking from the optee (that no claim for Pre-1-1-86 benefit would be made) before the benefit from 1-1-86 could be allowed! There was no such 'conditionality' mentioned in the Govt's above noted O.M.s dated 8-8-86 and 3-6-87, and Shri Khodaiji understandably sent letters of protest to the Accountant General, and also to the Govt in the Pensions Deptt, the latter being incharge~~

of policy, the former only concerned with execution as an agency in this behalf. Copies of Shri Khodaiji's letters 21-9-87 to the Accountant General and dated 12-10-87 to the Govt in the Pensions Deptt are attached, duly attested, as Annexures XII & XIII respectively. He had hoped that the Govt will intervene to restrain the Accountant General from going beyond the directions in the Govt's O.M.S dated 8-8-86 and 3-6-87, and ensure that the "conditionality" devised by the Accountant General was not attached to the Option, the benefit thereof being given from 1-1-86 to the pensioners, leaving it to them (as legitimate rights clothed citizens of this democratic country with a Constitution guaranteeing certain rights to its citizens) to accept it as final, or to claim in representations to the Executive and petitions to the Judiciary, ^(both of whom could accept or reject these) according to prescribed procedure for redress; ^{prima facie} the pre-1-1-86 benefit ~~for which claim~~ ^{had} ~~there was~~ abundant justification (as brought out in my Main Application and in para 2 above), for it was not a case of an altogether new benefit being initially extended by the O.M. dated 8-8-86, where "take it or leave it" condition could be attached, but this was a rectification of an admitted omission in the basic benefit O.M. of 25-5-79 which had covered certain categories but just inadvertently omitted one particular category, though ~~the~~ ^{category} too fell squarely in the group and could not be discriminated against for any reason; imposing "conditionality" of the type mentioned above was patently illegal strong-arm tactics, seeking to ^{drive} ~~dprive~~ ^{under} ~~under~~ duress, the long suffering pensioners of this category (who had been wronged for all this while ^{by O.M. 25-5-79} for no fault of theirs) of their legitimate dues; it was exploiting the helpless situation of aged pensioners with little resources and less time margin left with them for agitating, so that possibly some will give up and buy peace in the evening of their lives. But Shri Khodaiji had vainly appealed to the more responsible levels of Govt, for the Pensions Department replied to his appeal in the negative and vide the attached attested copy of their letter No. 5/1387-PIC, dated 30-10-87, (Annexure XIV), they have held that the "conditionality" imposing Option Form devised by the Accountant General conformed to the "spirit" of the Government orders (of 8-8-86 and 3-6-87)... ! Thus the approach of gag, got endorsed!

(5) Thus what was not to be found in the "letter" of the two relevant O.M.s of Govt (dated 8-8-86 & 3-6-87), was discovered in the "spirit" thereof to support what should have been disowned legitimately as preposterous and untenable; it was ^{unreasonably} considered, on the contrary, as a convenient (its patent illegality notwithstanding) escape route from the tight spot in which the Pensions Deptt had placed itself by denying ab-initio effect to its rectificatory O.M. of 8-8-86, in contradistinction with the earlier ^{ab-initio} rectificatory precedents for the O.M. of 25-5-79, as discussed in para 2 above. It was not realised that in a civilised society like ours governed by rule of law and not of jungle based on might, the cardinal principle of jurisprudence ^{prevails} that an inherent right cannot be validly made to disappear by getting a renouncement under duress; the right

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to legitimate ventilation of grievance before the executive and judiciary inheres as much in the citizen, as the right of the executive and judiciary to accept or reject the same after consideration on merits, but there can be no shutting off the very (initiating) attempt, by an arbitrary rule of the thumb. The misconceived conditionality imposed by the Accountant General and upheld by the Govt in the Pensions Deptt, in the above mentioned case of Shri Khodaiji, has been inflicted on some other cases also from here, as known to me and falling within the category of pensioners concerned, who exercised their Option during the extended time limit later allowed. It has not yet been so inflicted, by reopening, on cases closed and covered by Options exercised during the original time limit, when effect was given by the Accountant General by straight acceptance^{of option} of the conditionality device^{only} developed by him in the later extended phase. There is, however, every reason to believe that the subsequent brain wave of conditionality having surfaced and found support from Govt, will^{possibly} get foisted as a convenient beating down tool on the earlier closed cases of option^{too}, as in my own case, ^{settled} during originally allowed period. The consequences of 'option' operating, or barred (on application of conditionality, if not submitted to by pensioners) are substantial, as would be seen from the following illustration :-

I. Pensioners exercising Option during the original phase of six months from date of O.M. of 8-8-86	Pre-O.M. dt 16-4-87 benefit from 1-4-86 as per O.M. dt 8-8-86	Post-O.M. dt 16-4-87 benefit from 1-1-86, in revision, as per O.M. dt 16-4-87 read with O.M. dt 8-8-86
My case	Increase in dearness relief on pension @ Rs 100/p.m. from 1-4-86; no other change in pension.	Pension comprehensively revised @ 50% of average emoluments plus 25% of old basic pension substituted for old dearness relief, the entire two making base "consolidated pension" from 1-1-86, on which dearness relief at new rates to be given thereafter; no "conditionality" yet on scene.
ii. Pensioners exercising Option during the extended period allowed by O.M. dt 3-6-87.	Shri Khodaiji's case	There was no change in pension in this interim phase as his Option had not been filed, and was filed only in time for next column phase of operation, the same, however, in any case merging from 1-1-86, this column's interim benefit given from 1-4-86. - Ditto-, if "conditionality" imposed otherwise, the above 95% is liable to be substituted by 80%, the lower formula in O.M. dt 16-4-87 for other categories

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Page 16
in file
(✓✓) 2
Page 17
(✓) 2
also 2

It will be seen from the above data that in the case of Shri Khodaiji and his type, the penalty for not accepting the conditionality in the Option Form devised by the Accountant General (i.e. not renouncing their claim to pre-1-1-86 arrears of benefit given by O.M. of 8-8-86 in rectification of the omission in the O.M. of 25-5-79) will mean reduction from 95% formula in O.M. of 16-4-87, normally attracted in such cases, to the lower formula of 80% laid down in that O.M. ~~xxx~~ for other categories. This graft of conditionality has thus affected late optees like Shri Khodaiji, and if imported into closed cases of earlier optees (when there was no conditionality on the scene), like mine, it will spell the same ~~xxx~~ reduction there too. /6. It is to pre-empt this possibility in my case, that I seek protection from the Learned Tribunal, before whom my Application for pre-1-1-86 benefit of O.M. dt 8-8-86, is already pending and "sub-judice", and request for their interim orders of stay against Pensions Department, that they, till the decision of the aforesaid sub-judice matter, refrain and ensure that their agent in the matter, the Accountant General, U.P., refrains, from altering the status-quo to my disadvantage, they having assumed responsibility on the subject by endorsing and supporting the Accountant General's move, and ~~with~~ as in charge of policy, also ~~the~~ carrying out of their orders in O.M.s of 8-8-86, and 16-4-87; the status quo will mean that my overall pension as presently determined in accordance with O.M. dt 16-4-87 read with O.M. dt 8-8-86 be not altered to my disadvantage till the final disposal of the ~~main~~ matter, taken by me before the Tribunal. This is on ~~three~~ grounds that my plea for interim stay rests; firstly, it is an inherently wrong step to impose the kind of conditionality mentioned above, which the Pensions Deptt should have ~~intervened and got~~ abandoned; secondly, there should be no attempt to extend it from "extended option limit cases" of current nature, to the already closed "original option limit cases" which were settled as such without raising any conditionality issue and thus ~~those cases~~ stand concluded; thirdly, at any rate, my personal case has been sub-judice since ~~the~~ time before conditionality levy, and a matter before a Judicial Tribunal on the very issue should not be tinkered with at executive level, to pre-empt ~~the~~ judicial decision.

PRAYER:

ORDERS UNDER SECTION 24 & PROVISIONS THEREOF
(Ad. Tr. Ad. & J) Prayed accordingly, as per para 6 above, on the basis of facts and circumstances stated in the earlier paragraphs, which are true to the best of my knowledge and belief.

Dated, Lucknow,
the 23rd November, 1987.

Petitioner Applicant,

(S. K. LALL)

Retired Commissioner of Income-Tax,
B-1180, Indira Nagar, Lucknow.

Encl

Annexures I & XIV & XV (Last stamp copy photostat of Shri Khodaiji's letter to me dt 12-2-87, as evidence of his making available to me for use, his above noted correspondence with authorities).

- 7 -

K/8

Copy of OFFICE MEMORANDUM No.F.19(4)-EV/79 dated 24th July, 1979 issued by Deputy Secretary, Government of India, Ministry of Finance, Department of Expenditure New Delhi -

A2/7

Subject:-Treatment of a portion of the Dearness Allowances as pay for the purpose of retirement benefits -

The undersigned is directed to invite a reference to this Ministry's Office Memorandum No.F.19(4)-EV/79 dated the 25th May, 1979 and to say that certain doubts have been raised in respect of the application of these orders. The position is clarified as follows:-

- | <u>Points raised</u> | <u>Clarification</u> |
|--|--|
| (i) Whether dearness pay will count as pay for the purposes of family pension including family pension under the Extra-ordinary Pension Rules. | Dearness pay will not count as pay for the purpose of family pensions. There will thus be no reduction in the amount of graded relief after 30.9.77 payable on family pensions. |
| (ii) Para 2(b) does not cover the case of an employee drawing pay of Rs.2180/- per month. | In the narration below sub-para 2(b)(vi) for the figure 2179 read 2180 |
| (iii) A comparison of the contents of para 3(iii)(a)(ii) and 3(iii)(b)(i) of the Office Memorandum No.F.19(4)-EV/79, dated 25.5.79 reveals that an Officer drawing lesser pay gets more pension than the Officer getting higher pay. | In the case of such Officers whose pay is less than Rs.2400 and who have drawn dearness allowance for 10 months or more before retirement, the amount of pension should also be calculated taking into account the dearness pay in terms of para 2(a)(iii) and para 2(b) and allowed if it is more beneficial. |
| (iv) Whether Government Servants retiring on 28.2.1979 should be allowed the benefit of merger of full dearness pay or half dearness pay. | Government servants retiring on 28.2.1979 should be allowed the benefit of merger of dearness pay in full in terms of para 3(iii)(b)(i). |

TRUE COPY

(H.P. SINGH)
(इच. पी. सिंह)

आयुक्त

(मुद्रांक) ३३३३

लखनऊ

- 8 -

Copy of OFFICE MEMORANDUM No. F.19(4)-EV/79 dated 7th August, 1979 issued by Deputy Secretary, Government of India, Ministry of Finance Department of Expenditure, NEW DELHI -

Subject:- Treatment of a portion of the Dearness Allowance as pay for the purpose of retirement benefits -

The under-signed is directed to invite a reference to this Ministry's Office Memorandum No. F.19(4)-EV-79, dated the 25th May, 1979 and to say that in certain circles, a doubt has been raised whether in terms of para (3) of the Office Memorandum for those who retired between 30.9.1977 and 20.2.1978 or between 1.12.1978 and 20.4.1979, the benefit of half dearness pay or the full dearness pay should be allowed in calculating the amount of Death-cum-Retirement Gratuity. It is clarified that the Death-Cum-Retirement Gratuity is calculated on the last pay drawn by a Government Servant before retirement and not on the basis of average emoluments. Thus, where Death-cum-Retirement Gratuity is calculated after taking into account the element of Dearness Allowance, the full benefit of Dearness Pay should be allowed in the calculation of Death-cum-Retirement Gratuity.

TRUE COPY

(H.P. SINGH)

(सहायक सचिव)

आय और भुगतान विभाग

(मुख्यालय, दिल्ली)

संलग्नक

- 9 -

Copy of OFFICE MEMORANDUM No.F.19(4)-EV/81 dated
30th December, 1981 issued by Deputy Secretary,
Government of India, Ministry of Finance,
Department of Expenditure, New Delhi.

Subject:- Treatment of portion of the
Dearness Allowance as pay for
the purpose of retirement
benefits -

The undersigned is directed to invite attention
to para (2)(b) of Finance Ministry's Office Memorandum
of even number date the 25th May, 1979 and to say that
for item (VI) of this para, the following shall be
substituted:

<u>Pay Range</u>	<u>Amount of Dearness Pay</u>
Above Rs.2,650/-	Amount by which pay falls short of Rs.2,700/-

2. Past cases may also be regulated accordingly.
3. In so far as the employees of the Indian Audit
and Accounts Department are concerned these orders
have been issued after consultation with the
Comptroller and Auditor General of India.

TRUE COPY

(H.P. Singh)

(एच. पी. सिंह)

अधिकार अधिकारी

(मुख्यालय) प्रशासन

लखनऊ

S.K.LALL

I.R.S. (Retd)

Ex-Commissioner of Income-Tax

Phone - 72499

B-1180, Indira Nagar,
Lucknow, dated 6-10-86.

To,

The Accountant General, U.P.
Allahabad.

Through,

The Zonal Accounts Officer,
Income-Tax Deptt,
Lucknow

&

The Commissioner of Income-Tax
Lucknow.

Dear Sir,

As detailed in my attached memo, I hereby exercise option in favour of para 4(a) of the O.M. dated 25-5-79 (Ministry of Finance No. 19(4)-E V /79), approved for my category of pensioners vide Ministry of Pensions O.M. No. 38/9/86-P&PW dated 8-8-86. Accordingly my graded relief (dearness) may be revised (and consequently overall pension) from Rs 563 to Rs 663 p.m. indicated in relevant Annexures (Tables) to Ministry of Pensions orders on dearness relief, with effect from 1-6-86, being latest; basic pension stands at Rs 807 (excluding commuted Rs 403); this improvement by Rs 100 p.m. may be reflected in revised P.P.O. authorising the Treasury Officer, Lucknow and Punjab National Bank (H.A.L.), Fyzabad Road, Lucknow, the latter operating my Pension Account (S.B. 2449).

Urgent action will oblige,

Yours faithfully,

Sd- S.K.Lall

(आई. सी. लल्लू)
आयकर अधिकारी (सतर्कता)
कार्यालय मुख्य आयुक्त (प्रशासन), 3 फ़्लोर
एवं आयकर आयुक्त,
लखनऊ

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Pension case of Shri S.K.Lall, Retired Commissioner of
Income-tax, Lucknow, resident of B-1180, Indira Nagar, Lucknow.

Retired on --- 31-7-79.

Accountant General, U.P, Pension Payment Order No. 1/D 20211, dated
14-6-79, & 4-8-79.

I. Pension with effect from 1-8-79 Rs1210 p.m. plus dearness
relief 100/-p.m.
(beyond 272 index
points)

Including Commuted 403/-

Net 807/- + Dearness relief 100/
p.m.

Pension drawn from 1-6-86 807/- + 563/- dearness rel.
Total 1370/- p.m.

II Pension fixed as per Govt of India ,Ministry of Finance O.M.
No. 19(4)-EV/79 dated 25-5-79, on the data below:-

Salary upto 31-12-78 Rs 2625/- p.m.

" from 1-1-79 Rs 2750/- p.m.

Dearness Allowance from 1-12-78---Rs 150/- p.m. (none
before)---not considered for fixing pension.

III Now Govt of India ,Ministry of Pensions O.M. No. 38/9/86-
P&PW, dated 8-8-86, allows option (ealire available to those
retiring on or after 30-9-77 but not later than 30-4-79, as
per above noted o.m. dated 25-5-79) even to those retiring
after 3-4-79, like me (but not later than 30-1-82), drawing
salary of Rs 2158 or above. This option has to be exercised
within 6 months, for:

(a) pension calculated on pay exluding dearness allce
, and get this pensionplus relief fully i.e. even upto in-
dex point 272, or

(b) Pension recalculated on pay including dearness
allce but with relief (dearness) only beyond 272 points.



भारत सरकार
कार्यालय आंचलिक लेखाधिकारी
केंद्रीय प्रत्यक्ष कर परिषद
आयकर विभाग

विद्युत ध्वनि : क्षेत्रीयलेखा
दूरभाष : 3 2 2 4 2

REGISTERED

UNDER SPECIAL SEAL AUTHORITY

57, राम तीर्थ मार्ग
लखनऊ

संख्या-आ. ले. अ. / लखनऊ / आई. टी.

सेवा में,

The Accountant General U.P.-II A & B
Sarojini Naidu Marg,
ALLAHABAD

दिनांक.....

विषय :-

Correction in P.P.O No. 19/20211 for Rs. 1210/=(after commutation
Rs. 807=00 only) of Shri S.K. Lall, retired on 31.7.79

Sir,

Consequent upon exercise ~~by~~ of option by Shri S.K. Lall in terms of para 4(a) of the M.O.F O.M. No. 19(4)-EV/79 dated 25.5.79 read with Department of Pension & Pensioners Welfare letter No. 38/9/86-P & PW dated 8.8.86 Sri S.K. Lall is entitled for the graded relief/between 30.9.77 to 30.4.79 and had not opted for merger of D.A. Previously Sri Lall was allowed only graded relief (Dearness relief) sanctioned beyond the average index level 272. Therefore the graded relief of 4 instalment admissible upto the index level 272 is also admissible to him in addition to the graded relief which has already been authorised. The deference of arrear is admissible w.e.f. 1.4.86 as per provisions of O.M. dated 8.8.86. (1st April 1986)

You are therefore requested to advise Treasury Officer, Lucknow accordingly. The other terms & conditions of P.P.O will remain unaltered.

Shri Lall is drawing pension from Punjab National Bank, H.A.L Branch, Faizabad Road, Lucknow.

Copy of his revised option is enclosed herewith.

Encl: As above.

Yours faithfully,

(S. M. SINGH)
Accounts Officer.

Even No & Date: 22/3

Copy forwarded to:-

Dr 14.11.86.

- 1:- Commissioner of Income-tax, Lucknow with reference to letter No. Ent/C No. 45(4) 71/3 dated. 14.10.86.
- 2:- Shri S.K. Lall, B-1180, Indira Nagar, Lucknow.
- 3:- Chief Controller of Accounts, Control Board of Direct-taxes, 9th floor, Lok Nayak Bhawan, Khan Market, New Delhi-3.

S.M. Singh
Accounts Officer. 16/11

(आई. टी.)
आयकर अधिकारी (मुख्य)
कार्यालय मुख्य आयुक्त (आ. ले. अ.)
एवं आयकर अधिकारी
लखनऊ

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OFFICE OF THE ACCOUNTANT GENERAL (AGE) II, UTTAR PRADESH
ALLAHABAD.

No. P.E. (C) I/V/25482/79-80/830

Dated 26.2.87

To,

The Treasury Officer
Lucknow (U.P.)

Sub:- Revision of graded relief payable w.e.f. 1.4.86 to
Shri S.K. Lall holder of P.P.O. NO. ID/20211.

Sir,

Consequent upon the orders contained in Deptt. of Pension and Pensioners welfare's letter no. 38/9/86- P&P.W. dt. 8.8.86, Shri S.K. Lall holder of P.P.O. No. ID/20211 has exercised his option in terms of para 4(a) of M.O.F. O.M. No. 19(4) -EV/79 dated 25-5-79. Therefore Shri Lall is entitled for the graded relief w.e.f. 1.4.86 payable to pensioners retired between 30.9.77 and 30.4.79 who have not opted for merger of Dearness allowance for calculation of his pension.

It is, therefore, requested that graded relief @ Rs.650/- i.e. 130% forigonal pertien w.e.f. 1.4.86 may be paid to Shri S.K. Lall on his pension as per table I of the orders issued by Govt. of India for the payment of graded relief to the central Government pensioners. The difference of arrears is admissible w.e.f. 1.4.86 only. Necessary amendment may be made in the both halves of P.P.O. NO. ID/20211 under proper attestation quoting this letter as an authority. The other terms and conditions of P.P.O. will remain unchanged.

Shri S.K. Lall is drawing his pension from Punjab National Bank, H.O. Branch, Faizabad, Lucknow.

Yours faithfully,

Accounts Officer.

P.T.O.



भारत सरकार
कार्यालय आंचलिक लेखाधिकारी
केन्द्रीय प्रत्यक्ष कर परिषद
आयकर विभाग

विद्युत ध्वनि : क्षेत्रीयलेखा
दूरभाष : 3 2 2 4 2

57, राम तीर्थ मार्ग
लखनऊ

संख्या-आं. ले. अ. / लखनऊ / आई. टी.

दिनांक.....

सेवा में,
The Accountant General U.P.-II
(AAE), Sarojani Naidu Marg,
Allahabad.

विषय :- Revision of graded relief & correction in P.P.O/ID/20211 of
Shri S.K. Lall retired Commissioner of Income-tax,

Sir,

With reference to your letter No. PE(e)I/V/29428/79-80/830 dt. 26.2.87 addressed to the Treasury Officer, Lucknow & copy endorsed to this office on the above subject I am to state that the revised authorisation of graded relief of Rs. 100/- from 1.4.86 has since been made vide this office special seal authority No. 383940 dt. 19.3.87. However it is confirmed that the authorisation made by you vide your letter referred to above is correct.

In this connection it is requested that relief graded to pensioner for time to time may please be authorised at your level instead of returning the case to the Pension sanctioning authority to avoid hardship to the pensioner.

Yours faithfully,

B. S. SRIVASTAVA
Accounts Officer
3/4/87

Even No & Date: /3

1:- Copy forwarded to the Treasury Officer, Lucknow with the request that necessary amendment of graded relief may please be made in the pension records of the above pensioner at your end & P.N.Bank, H.A.L Branch, Faizabad Road, Lucknow authorised suitably for early payment of arrears to him.

2:- Copy also forwarded to Shri S.K. Lall, I.R.S.(Retd) B-1180, Indira Nagar, Lucknow for information & necessary action.

Accounts Officer. 3/4

(आई. टी.)
आयकर विभाग
कार्यालय मुलाना उदय प्रसाद
एवं आयकर विभाग,
लखनऊ

Arvind Verma
3-04-1987

MOST IMMEDIATE

OFFICE MEMORANDUM

(B) In the case of Government servants who retired -

(i) Between 30th September, 1977 and 30th April, 1979 and have opted or are deemed to have opted for the benefit of merger of dearness allowance in pay upto CPI 272 in terms of Ministry of Finance, Department of Expenditure Office Memorandum No.19(4)-EV/79 dated the 25th May, 1979.

(ii) After 30th April, 1979 but before 31st January, 1982 and have not opted in favour of paragraph 4(a) of Ministry of Finance O.M. dated the 25th May, 1979 in terms of Department of Pension and Pensioners' Welfare O.M. dated the 8th August, 1986.

(iii) On or after 31st January, 1982 but before 31st March, 1985 and did not opt for merger of additional

dearness allowance upto CPI 320 in terms of Ministry of Finance O.M. No.F.1(3)-E.V/82 dated the 8th April, 1982 and also did not opt in favour of paragraph 4(a) of Ministry of Finance O.M. dated the 25th May, 1979 in terms of Department of Pension and Pensioners' Welfare O.M. dated the 8th August, 1986

the additional relief shall be admissible as follows:

(a) In the case of pensioners drawing pension of Rs.500/- or less, additional relief shall be 10% of total amount of existing pension plus existing dearness relief subject to the condition that the additional relief shall in no case be less than Rs.50/-

(b) In the case of pensioners drawing pension above Rs.500/- additional relief shall be equal to the difference between the existing fixed relief of Rs.538/- and the notional relief calculated at 80% of existing pension as defined in Para 3.1(b) subject to the condition that where the said difference shows negative amount or is less than Rs.125/- the additional relief shall be Rs.125/-

(c) In the case of Government servants who retired on or after 31.1.1982 but before 31.3.1985 and have opted or deemed to have opted for merger of dearness allowance upto CPI 320 in pay in terms of Ministry of Finance, Department of Expenditure O.M. No. F.1(3)-EV/82 dated the 8th April, 1982, the additional relief shall be admissible as follows:

(a) In the case of pensioners drawing pension of Rs.500/- or less, the additional relief shall be equal to 10% of total amount of existing pension plus existing dearness relief subject to the condition that the additional relief shall in no case be less than Rs.50/-

(b) In the case of pensioners drawing pension above Rs.500/- additional relief shall be equal to the difference between the existing fixed dearness relief of Rs.463 and the notional relief calculated at 70% of existing pension as defined in para 3.1(b) subject to the condition that where the said difference shows negative amount or is less than Rs.100/-, the additional relief shall be Rs.100/-

(D) In the case of Government servants who retired on or after 31.3.1985 and upto 31.12.1985, no additional relief would be admissible corresponding to the increases sanctioned in clauses (A), (B) and (C) above.

Note: Reference to Ministry of Finance O.M. dated 25.5.79, 8.4.82, and 8.8.86 will include corresponding orders applicable to railway employees and members of All India Services.

4.2 If the amount of additional relief works out in fraction of a rupee, it will be rounded to the next higher rupee.

4.3 To facilitate transition to the rationalised pension structure in terms of these orders it has been decided that the date of effect of the following orders shall be preponed to take effect from 1.1.1986.

(i) Department of Pension and Pensioners' Welfare O.M. No.38/86-P&PW dated the 12th March, 1986 regarding discontinuance of reduction of pension equivalent of gratuity from pension of pre 1938 entrants. (Paragraph 2 and 3 of the said O.M.)

(ii) Department of Pension and Pensioners' Welfare O.M. No.38/9/86-P&PW dated the 8th August, 1986 regarding treatment of a portion of dearness allowance as pay for the purpose of retirement benefits. (Paragraph 3 of the said O.M.)

Copies of both these orders are enclosed for ready reference (Annexures I and II)

RECALCULATION OF PENSION AT 50% OF AVERAGE EMOLUMENTS IN PLACE OF SLAB FORMULA

5. In the case of existing pensioners, whose pension was calculated under the slab formula, the pension will be recalculated at 50% of average emoluments. There will be no upper ceiling on the amount of pension so worked out. The reckonable emoluments and the reckonable qualifying service in their case will however remain unchanged. The additional pension becoming due under these provisions will not however be taken into account for computation of additional relief sanctioned in the preceding paragraph nor will it qualify for additional commutation.

CONSOLIDATION OF PENSION

6.1 The pension/family pension of existing pensioners/family pensioners will be consolidated with effect, from 1.1.1986 by adding together

- (i) the existing pension/existing family pension,
- (ii) the existing dearness relief, and
- (iii) the additional benefits accruing from paragraph 4 and 5 above.

The amount so arrived at will be regarded as pension/family pension with effect from 1.1.1986. The upper ceiling on pension plus relief laid down in the Department of Pension and Pensioners' Welfare O.M.No. 42(4)-P&PW/86 dated the 3rd March, 1986 will stand removed. Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements.

6.2 Some of the existing pensioners who retired between 31.3.1985 to 31.12.1985 are in receipt of personal pension. The said personal pension will continue to be granted as a separate element and will not be merged into the pension as consolidated above.

6.3 Since the consolidated pension/family pension arrived at as per paragraph 6.1 includes dearness relief upto average index level 608 sanctioned in this Department's O.M.No.42(4)-P&PW/86 dated the 3rd March, 1986, dearness relief will be admissible thereon only beyond index average 608 in accordance with the revised scheme of dearness relief for which orders are being issued separately. The three instalments of dearness relief under the old pattern sanctioned from 1.4.1986, 1.6.1986 and 1.7.1986 in this Department's O.M.No.42(4)P&PW/86 dated the 25th June, 1986, O.M.No.42(16)P&PW/86 dated the 28th August, 1986 and O.M.No.42(16)P&PW/86 dated the 14th October, 1986 respectively shall be adjusted in the manner indicated in the orders regarding revised pattern of dearness relief for pensioners being issued separately.

MINIMUM PENSION / MINIMUM FAMILY PENSION

7.1 Where the consolidated pension/family pension in terms of paragraph 6 works out to an amount less than Rs.375/- the same shall be stepped upto Rs.375/-. This will be regarded as pension/family pension with effect from 1.1.1986. In the case of pensioners who are in receipt of more than one pension, the floor ceiling of Rs.375/- will apply to the total of all pensions taken together.

7.2 Where the Disability Pension under the CCS(EOP) Rules is drawn in addition to Invalid Pension under the CCS (Pension) Rules, 1972, the minimum limit of Rs.375/- will apply to total of two pensions as indicated in paragraph 7.1. Where the

Disability Pension is drawn in isolation, the minimum limit of Rs.375/- will apply for 100% disability. For lesser degree of disability the minimum limit will be proportionately less.

7.3 In the cases where the minimum pension/minimum family pension has already been stepped upto Rs.375/- per month in pursuance of this Department's O.M.No.2/14/87-PIC dated the 5th March, 1987 and in which no change is involved as a result of implementation of provisions of these orders, the said minimum pension/minimum family pension of Rs.375/- will remain undisturbed and will be regarded as pension/ family pension with effect from 1.1.1986.

8. The employed/re-employed pensioners/family pensioners are not getting dearness relief on pension at present under the extant orders. In their case the notional dearness relief which would have been admissible to them but for their employment/re-employment will be taken into account for calculating the additional relief under paragraph 4 and their pension will be consolidated in terms of paragraph 6 as if they were drawing the dearness relief. Their pay will be refixed with effect from 1.1.1986 with reference to the consolidated pension becoming admissible to them. Dearness relief beyond 1.1.1986 will however not be admissible to them during the period of employment/re-employment.

9.1 Family pension carries two rates viz. (i) Normal rate; and (ii) Enhanced rate applicable during the first seven years from the date of death of the Government employee or until the date on which he would have attained the age of 65 years if he were alive, whichever is earlier. Family pension will accordingly be consolidated in terms of these orders as follows:

- (a) Where the family pension is drawn at normal rate, additional relief thereon will be allowed in terms of paragraph 4.1(A) and the same will be consolidated in accordance with the Paragraph 6.1 above. Where the consolidated family pension falls short of Rs.375/- it will be raised to Rs.375/- in accordance with paragraph 7.
- (b) In cases where family pension is drawn at enhanced rate, it will be necessary to consolidate family pension both at enhanced rate as well as at normal rate separately, so that the updated normal rate can be applied from the date the family ceases to be eligible for enhanced rate. Additional relief will be calculated independently with reference to the actual amount of family pension under the two rates and will similarly be consolidated separately. The floor ceiling of Rs.375/- per month will also be applied separately for both the rates. It is not the intention to apply twice the updated normal rates where and for the period for which family pension is to be paid at enhanced rate in respect of existing family pensioners from 1.1.1986.

9.2 In the case of existing pensioners in whose case the family pension has not come into operation as pensioners are/were alive on 1.1.1986, the rates of family pension at enhanced rate and at normal rate noted on their Pension Payment Order will be updated and consolidated in terms of these orders by the Pension Disbursing Authorities. The updated rates of family pension will apply as and when family pension becomes payable in such cases.

10. The cases of Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies will be regulated as follows:

(a) **PENSION:**
Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, their pension will be updated in terms of these orders. In cases where the Government servants have drawn one time lumpsum terminal benefits equal to 100% of their pensions, their cases will not be covered by these orders.

(b) **FAMILY PENSION**
In cases where, on permanent absorption in public sector undertakings/autonomous bodies, the terms of absorption permit grant of family pension under the CCS(Pension) Rules, 1972 or the corresponding rules applicable to railway employees/members of All India Services, the family pension in their cases will be updated in accordance with these orders.

11.1 The provisions of these orders will be given effect to in the following manner:

(a) **Pensioners in receipt of pension of Rs.500/- or less per month:-**

All Pension Disbursing Authorities including Public Sector Banks handling disbursement of pension to the Central Government pensioners are hereby authorised to pay pension/family pension at the revised rates without any further authorisation from the concerned Accounts Officers. A table indicating the existing pension and the consolidated pension due from 1.1.1986 is enclosed for ready reference (Annexure III). This table may be used where the pensioner is in receipt of a single pension only. Where a pensioner is in receipt of more than one pension, consolidation may be done separately in terms of paragraph 6.1 and as indicated in paragraph 7, floor ceiling of Rs.375/- may be applied to total pension from all sources taken together. A suitable entry regarding the revised consolidated pension shall be recorded by the Pension Disbursing Authorities in both halves of the Pension Payment Order. In the case of living pensioners entry regarding updated family pension in terms of paragraph 9.2 of these orders shall also be recorded in both halves of the Pension Payment Order by the Pension Disbursing Authorities. An intimation regarding this may be sent by the pension disbursing authorities to the Accounts Officer which had issued the PPO in the form given at Annexure V so that the latter can update the Pension Payment Order Register maintained by him. An acknowledgement shall be obtained by the Pension Disbursing Authorities from the respective Accounts Officers in this behalf.

(b) **Pensioners in receipt of pension above Rs.500/- per month:**

In these cases consolidation of pension will be done in two stages. Pension Disbursing Authorities referred to above are authorised to do part consolidation by adding together:

- (i) the existing pension;
- (ii) existing dearness relief; and
- (iii) additional relief admissible under paragraph 4 of these orders.

A table showing existing pension and partly consolidated pension due from 1.1.1986 is at Annexure IV for ready reference. The same procedure as indicated under clause (a) above will be applied in these cases.

In the second stage the respective Accounts Officers will intimate to the Pension Disbursing Authorities the additional amount of pension becoming due under Paragraph 5 of these orders. Necessary action in this behalf will be initiated by the concerned Accounts Officers *suo-moto* without waiting for any

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application either from the pensioners or from the pension disbursing authority. On receipt of intimation regarding revised pension from the respective Accounts Officers, difference between pre-revised pension and revised pension shall be added by the Pension Disbursing Authorities to the partly consolidated pension referred to above.

11.2 In the case of pensioners who retired between 30th April, 1979 and 30th March, 1985 and have exercised their option in favour of paragraph 4(a) of the Ministry of Finance O.M.No.19(4)-EV/79 dated the 25th May, 1979 in terms of Department of Pension and Pensioners' Welfare O.M.No.38/9/86-P&PW dated the 8th August, 1986 referred to at Sub clause (iii) of Clause (A) of paragraph 4.1 it will be necessary to recalculate their pension by the pension

sanctioning authorities and issue a revised PPO. The Pension Disbursing Authorities should therefore await the revised PPO from the appropriate authorities before allowing them the benefit admissible under these orders.

11.3 In case of any doubt in any individual case the Pension Disbursing Authorities shall refer the matter to the appropriate Accounts Officer before implementing these orders.

12. These orders issue with the concurrence of the Ministry of Finance, Department of Expenditure vide their U.O.No.3710-FS/87 dated 2.4.1987.

13. In their application to the persons belonging to Indian Audit and Accounts Department these orders issue in consultation with the Comptroller and Auditor General of India.

14. Ministry of Agriculture etc. are requested to bring the contents of these orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached and Subordinate Offices under them on a top priority basis. All pension disbursing offices are also advised to prominently display these orders on their notice boards for the benefit of pensioners.

15. Hindi version of these orders follow separately.

L.K. Rasgotra

(L.K. Rasgotra)

Additional Secretary to the Government of India

To
All Ministries/Departments of Government of India etc.

No.214/87-PIC-I

Copy to :-

1. President's Secretariat
2. Vice President's Secretariat
3. Prime Minister's Office
4. Lok Sabha Secretariat
5. Rajya Sabha Secretariat
6. Cabinet Secretariat
7. Secretary, U.P.S.C., New Delhi
8. Supreme Court of India
9. Election Commission
10. Planning Commission
11. Comptroller and Auditor General of India
12. Accountants General of all States
13. Director of Audit, Central, Madhu Industrial Estate, P.B.Marg, Bombay
14. Director of Audit (Central), Calcutta
15. Director of Audit, Central Revenue, New Delhi
16. Director of Audit, Central, Bombay
17. Director of Audit, Scientific and Commercial Department, Bombay
18. Director of Audit Commerce, Works and Miscellaneous, New Delhi
19. Controller General of Accounts
20. Directorate of Accounts, P.A.I. Section, Panaji, Goa
21. Controller of Accounts, Delhi Administration, 'B' Block, Vikas Bhavan, Indraprasthan Estate, New Delhi
22. Controller General of Defence Accounts
23. Controller of Defence Accounts (Pension) Allahabad
24. Controller of Defence Accounts (Navy), Bombay
25. Controller of Defence Accounts (Air Force), New Delhi
26. Deputy Controller of Defence Accounts, (Pension Disbursement), New Delhi
27. Finance Secretaries of All States and Union Territories
28. Chief Secretaries of Governments of all States and Union Territories

29. All Attached and Subordinate Offices of the Department of Personnel & Training
30. All Officers and Sections in the Department of Personnel & Training/Department of Pension & Pensioners' Welfare
31. A.I.S. Division, Department of Personnel & Training
32. E.V. Section, Department of Expenditure
33. J.C.A. Section (With 100 spare copies for circulation among members of National Council (JCM))
34. Under Secretary (P), Deptt. of Pension (with 30 spare copies for circulation among members of SCOVA)
35. Parliament Library
36. National Library.

Copy with usual number of spare copies also to

1. Reserve Bank of India, Bombay
2. Allahabad Bank
3. Bank of Baroda
4. Bank of Maharashtra
5. Canara Bank
6. Central Bank of India
7. Indian Bank
8. Indian Overseas Bank
9. Dena Bank
10. Bank of India
11. Punjab National Bank
12. Union Bank of India
13. United Bank of India
14. Syndicate Bank
15. United Commercial Bank
16. State Bank of India
17. State Bank of Patiala
18. State Bank of Bikaner & Jaipur
19. State Bank of Hyderabad
20. State Bank of Indore
21. State Bank of Mysore
22. State Bank of Saurashtra
23. State Bank of Travancore

M.R. Vaidya

(M.R. Vaidya)
Deputy Secretary

REGISTERED

OFFICE OF THE ACCOUNTANT GENERAL, UTTAR PRADESH ACCOUNTS-II,
ALLAHABAD.

NO.P.E.(C V Gr.V/P.P.O.No. 18/20211/

Dated: 23-7-87

To

The Treasury Officer,

Lucknow

Subject:- Rationalisation of pension structure for pre- 1.1.86 pensioners- Implementation of Government decision on the recommendation of the Fourth Central Pay Commission.

In terms of para 11.1(b) of the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioner's Welfare O.M.No. 2/1/87- Pic./II dated 16.4.87 and in modification of this office P.P.O.

18/20211..... in favour of Sri S.K. Hal..... drawing pension from Lucknow Treasury..... pensionary entitlements of the pensioner are revised to the extent indicated below with effect from 1.1.86 to be added to the partly consolidated pension at your end.

Revised pension Rs. 1357.00.....

Pre-revised pension Rs. 1210.00.....

Additional pension Rs. 147.00 (one hundred and forty seven only)

2. The amount of pension already paid/Committed may be adjusted before making payment of consolidated pension on this authority.

3. The additional pension becoming due under these provisions will not qualify for computation of additional relief sanctioned in para 4 of the O.M. nor will it qualify for additional commutation.

Contd.... 2/-

050

Annexure X
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No. 38/9/86-P&PW
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Pension and Pensioners' Welfare

New Delhi, the 3rd June, 1987.

OFFICE MEMORANDUM

Subject:— (i) *Treatment of a portion of DA as pay for the purpose of retirement benefits; and*
(ii) *Rationalisation of pension structure for pre 1.1.1986 retirees.*

The undersigned is directed to refer to this Department's O.M. No. 38/9/86-P&PW dated 8.8.1986 referring to (i) above read with paragraph 4.3 of this Department's O.M.No.2/1/87-PIC-I dated 16.4.1987 on the above mentioned subjects respectively and to state that requests have been received for extension of time for option from pensioners, who are covered by the orders, but who have not been able to exercise their option within the stipulated period of 6 months from 8.8.1986.

2. After careful consideration of all aspects, the President is pleased to decide that the persons who were eligible for option in terms of the letter dated 8.8.1986 but have not exercised that option can do so upto 31.12.1987. The option may be communicated to the Head of Office who prepared the pension papers. The option once exercised shall be final. The pensioners who fail to exercise an option within the extended period will be deemed to have accepted the pension already sanctioned after merger of a portion of dearness allowance in pay.

3. These orders will also apply mutatis mutandis to the officers of the All India Services, Railway employees and civilians paid from the Defence Services Estimates.

4. The heads of offices may bring these instructions to the notice of all concerned retired officers.

5. These orders issue in consultation with the Ministry of Finance vide their U.O.No. 944-EV/87 dated 19.5.1987.

P.T.O.

रवि सक्सेना

आई. ए. एच. ए. एस.

Ravi Saxena

L.A. & A.S.



सत्यमेव जयते

महालेखाकार (मेला व हककारी) II, 30 वी
इलाहाबाद - 211001

ACCOUNTANT GENERAL (A & E) H. U. P.
ALLAHABAD - 211001

दूरभाष : कार्यालय 2268 निवास 2839 टेलीफोन : 0840-204
Phones : Off. Res. Telex :

D.O.No. AG(A&E) II/ 217

September 7, 1987

Dear Sir,

I invite your attention to paragraph 2 of Government of India, O.M. No.38/9/86 P&PW dated 8-8-86 read with Government of India, O.M. No.38(9)/86 P&PW dated 3-6-87 wherein such Government servants who were drawing pay of Rs.2158 and above and who retired between 1-5-79 to 30-1-82 have also been allowed to exercise option on the lines of paragraph 4 of Government of India, O.M. No. 19(4)-EV/79 dated 25-5-79, i.e., to get the benefit of revision of their pension (with effect from 1-1-1986) in terms of paragraph 4.1(A)(iii) of Government of India, O.M.No. 2/1/87-PIC-I dated April 16, 1987.

2. In your case, the exercising of said option in favour of paragraph 4(a) of G.I., O.M. dated 25-5-79, referred to above, would result in enhanced pensionary benefits than what you have been receiving till now. Therefore, the amount of your pension has been revised/consolidated suo moto without actually waiting for your option to facilitate early payment of pensionary benefits to you and accordingly a revised authority for the consolidated (Revised) pension has been issued to the P.A.O./T.O. concerned. The intimation copy meant for you is enclosed. The revised pension, in question, will be paid only if you exercise the option, in question, and hand it over to the disbursing officer.

3. As the option from you is a legal requirement, I request you to kindly fill up the enclosed form and send it to me by return of post.

4. I sincerely hope that you are able to draw revised entitlement of your pension soon.

With Best wishes,

Yours sincerely,

R. Saxena
(Ravi Saxena)

Encl: As stated.

Master
20/9/87
Dec 1/87
(आई. ए. एच. एस.)
अध्यक्ष अ. वि. वि. (सतर्का)
कार्यालय मुख्य आयुक्त (प्रशासन) उ. प्र.
एवं अध्यक्ष आयुक्त,
म. लखनऊ

-25-

FORM OF OPTION

(referred to in para 4 (a) of the O.M.)

In accordance with the provision contained to paragraph-2 of Government of India Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners Welfare O.M. No. 38/9/86- P & P W dated 8th August 1986, I _____

_____ Son of _____ and holder of
P.P.O No. _____ OPT paragraph 4 (a) of G.I.O.M.
No. 19(4)-EV/79 dated 25-5-79 for refixation of my pension and
D.C.R.G., accordingly from 1-1-1986.

2. I undertake as follows:-

- (a) to refund the amount of overpayment, if any, made to me on this account which may come to notice at a later date.
- (b) not to claim any arrears on account of such refixation of Pension prior to 1-1-1986.

Place:

Dated:

Signature of the Pensioner

Name :-

Full Present

Postal Address :-

The above form should be sent to

THE ACCOUNTANT GENERAL (A&E)-II
(P.R.-I Section)
UTTAR PRADESH, ALLAHABAD

Done
1-2-87

AK Ashed hme
copy delivered
13/9/87
(आई.ओ. डी.ओ.)
अ. ग. र. डी.ओ. (संकेतित)
अ. ग. र. डी.ओ. (अमानत) उ.प्र.
अ. ग. र. डी.ओ. (अमानत) उ.प्र.
अ. ग. र. डी.ओ. (अमानत) उ.प्र.

B.J. Khodaiji,
I.A.S. (Retd.)
Member, U.P. Minorities Commission
Director, U.P. Minorities Finance &
Development Corporation Limited.

Freny Manor, Ist Floor,
6, Park Road,
Lucknow - 226001.

To,

Dated: September 21st, 87

Shri Ravi Saxena,
I.A. & A.S.
Accountant General (A&E) II,
U.P., Allahabad - 211001.

Dear Shri Saxena,

I acknowledge with thanks your D.O.No. AG(A&E)11/217 dated: September 7, 1987, alongwith a letter No. PR-1/Cno.20311/81-82/84 issued by your office and which has been addressed to the Treasury Officer, Lucknow and as was received by me vide PR-1/C.No. 20311/81-82/980 dated September 6, 1987.

I herewith send to you a copy of my letter dated July 31st, 1987 alongwith its enclosures, which I had addressed to Shri Harish Chandra Gupta, Secretary Appointment Department U.P. Govt. The said letter was forwarded to your goodself by Shri Munnalal Awasthi, Deputy Secretary, Appointment Section VI, vide his D.O. No. 4562/2-6-2419 dated August 4, 1987.

In paragraph 2 of your D.O. under reply, you have stated that the revised pension, in question, will be paid only if I exercise the option, in question, and hand it over to the Disbursing Officer. It is also mentioned in para 3 of your D.O. under reply that I should fill up a form enclosed by you and send it to your goodself by return of post.

In the Form of Option supplied by you, a reference has been made in regard to para 4(a) of the O.M. Presumbaly the O.M. in question is No. 19(4)-EV-79 dated May 25th, 1979. I shall be grateful if you will kindly enlighten me how an Unconditional Option once excersied by me on July 31, 1987, is being restricted by a Form forwarded to me in your DO under reply. However if the position is that such a Form in a prescribed language has been laid down by the Govt. Of India, I shall feel thankful if a copy of the communication of the Government of India prescribing the said Form is supplied to me.

An urgent reply in the matter will be very much appreciated

(TRUE COPY ATTESTED)

With best wishes,

Yours sincerely,
Sd/-
(B.J. KHODAIJI)

(एच० पी० सिंह)

अधिकार क्षेत्र में

मुख्यालय) प्रसाद

संलग्न

Anwar X

- 27 -

UNDER CERTIFICATE OF POSTING
IMPORTANT/IMMEDIATE

Phone: 46392

B.J. Khodaiji,
I.A.S. (Retd.)
Member, U.P. Minorities Commission
Director, U.P. Minorities Finance &
Development Corporation Limited

Freny Manor, 1st Floor,
6, Park Road,
Lucknow - 226 001.
Dated: October 12, 1987

To,

Shri I.K. Rasgotra,
Additional Secretary, Department of Pensions,
Government of India, Nirvacahan Sadan,
Ashok Marg, New Delhi - 11001.

Dear Sir,

I enclose herewith for your information an electrostat copy of a D.O. letter, No. AG(A&E)II/217 dated September 7, 1987, together with a copy of a Form of Option as was received by the undersigned.

Thereupon, I sent a D.O. letter dated September 21st, 1987, to the Accountant General, an electrostat copy of which is also enclosed herewith. I have accordingly to request you to advise the A.G., U.P. Allahabad, appropriately, as the "condition" not to claim any arrears on account of refixation of pension prior to 01.01.86 is not to be found in Government circulars quoted in the A.G.'s letter. Such a condition is patently illegal also. As regards the exercising of Option, I had exercised the same in my letter dated July 31st, 1987, addressed to the Secretary to the U.P. Govt. in Appointment Department. My option was forwarded by the Administrative Department to the A.G., U.P., Allahabad, vide their letter dated August 4, 1987. Therefore, once the Option was exercised by the undersigned, the description of 'SUOMOTO' exercise of option by the A.G. does not seem to apply to my case. I am grateful to the A.G. for sending to me a revised authority for the consolidated (revised) pension which has been sent by him directly to the P.A.O./TO concerned. However, the Form of Option as laid down by the A.G. is obstructing the drawal of my enhance pensionary benefits rather than facilitating their early payment. So far I have not received any reply from Shri Ravi Saxena, A.G.

I shall therefore feel highly grateful if you will kindly issue necessary instructions to Shri Ravi Saxena, A.G., U.P. Allahabad, and send a copy thereof to me for my information.

Thanking you,

JE COPY ATTESTED)

Yours faithfully,

(Signature)
(एच. पी. सिंह)
आयकर अधिकारी
(मुख्यालय) प्रशासन
लखनऊ

sd/-
(B.J.KHODAJI)

Dr. ... X 17
- 28 -

Copy of letter No.5/13/97-P&PW(PIC) dated 29/30
October, 1997 from Shri I.K.Rasgotra, Additional
Secretary, Department of Pension and Pensioners
Welfare, Ministry of Personnel, Public Grievances
and Pensions, New Delhi addressed to Shri
B.J.Khodaiji, IAS(Retd) Pany Manor, 1st floor,
6-Park Road, Lucknow, 226001 -

....

Kindly refer to your letter dated the 12th
October 1987 regarding your pension.

2. In accordance with this Department's O.M.No.
38/9/86-P&PW dated the 8th August, 1986 where the
pensioners opt in favour of 4(a) of the O.M. dated
the 25th May, 1979, the pension, DCR Gratuity and
graded relief was to be revised with effect from
1.4.1986. This date of effect was anti-dated to
1.1.1986 to coincide with the date of effect of
the orders implementing Government decisions on the
recommendations of the Fourth Central Pay Commission
vide paragraph 4.2 of this Department's O.M.No.
2/1/97-P.I.C.(1) dated the 16th April, 1997. The
last date for exercising option contained in the
O.M. dated the 8th August, 1986 was also extended
to 31.12.1997 vide this Department's O.M. No.38/
9/86-P&PW dated the 3rd June 1997. A copy each of
these orders is enclosed for your ready reference.
The option is to be conveyed to the sanctioning
authority. While no form for exercise of option
was proscribed as such, the pension drawn prior to
1.1.1986 is not to be readjusted. Paragraph 2 of
the option form sent to you by the Accountant
General, UP therefore conforms to the spirit of
the orders.

.....

TRUE COPY

(H.P. Singh)

(एच० पी० सिंह)

आयकर अधिकारी

(मुख्यालय) प्रयागराज

लखनऊ

A2/25-20-

Annexure XV

B. J. Khodaiji
I. A. S. (Retd.)

Phone : 46382

Freny Manor, 1st Floor,
6, Park Road,
Lucknow-226001

Dated October 12, 1987

My dear Lal Sahab,

I thank you for your letter 25th ultimo which was delivered to me by a messenger so kindly sent by you to my residence.

As desired, I have addressed a letter to Mr. I.K. Rasgotra a copy of which is enclosed herewith, I am grateful to you for your keen interest and guidance provided from time to time.

With kind regards,

Yours sincerely,

(B. J. KHODAIJI)

Encl: as above

Shri S.K. Lall,
I.R.S. (Retd.)
Ex Commissioner of Income-Tax,
B-1180, Indira Nagar,
Lucknow-226 016.

REGISTERED A.D.

The Registrar,
Central Administrative Tribunal,
Allahabad Bench,
23-A, Thornhill Road,
ALLAHABAD.

Sir,

Re. Case of S.K. Lall, Retired Income Tax Commissioner,
Lucknow, Vs Union of India through the Additional Secretary to the Govt of India, Deptt of Pensions, Nirvachan Sadan, New Delhi; Regd No. 567/87 and further Miscellaneous Application for interim stay, No. 135/87; last date of hearing 17-2-88, next date of hearing 13-4-88 at Allahabad.

I am grateful to learn that as requested in my Application for adjournment dated 9-2-88, the Learned Tribunal has been pleased to postpone hearing of my above noted case to 13-4-88, and I shall present myself accordingly before the Allahabad Bench, for personally pleading my case, as already intimated after rescinding my Wakalatnama.

2. I have not received yet any intimation with regard to "Counter" required as per rules to be filed by the Pension Deptt, and although as early as July, 87, the Registrar of the Tribunal had sent a copy of my plaint to the Pension Deptt as Regd A.D. letter dated 17-7-87, to the said Pension Deptt as Respondents, for showing cause / filing objection, within a month of the Application be not admitted (hearing was fixed for 10-8-87 and has been adjourned a number of times) but nothing has been heard from the Govt, more than six months having passed. I therefore humbly request the Learned Tribunal, that I may be heard on the merits of the case, on the next hearing date 13-4-88, ex-parte decision, as may be considered feasible. Two extra copies of this letter are attached, so that a copy, if considered necessary may be passed on to the Respondents.

3. With regard to the subsequent Misc Application (No. 135/87) filed by me requesting for interim stay, for preventing adverse change of status quo, the urgency therefor has abated in the circumstances since developed and intimated by me to the Learned Tribunal with my letter (Regd A.D.) dated 4-1-88; the Accountant General, U.P. had resiled from his offending 'condition' dictating stand in the case comparable to mine, and although the Govt had not modified their supporting declaration for the Accountant General's condition laying, the matter has rested over these months with the A.G.'s resiling; thus if my main Application itself can be now taken up for consideration, as requested in the preceding paragraph, the interim stay application can be allowed to lie over.

Thanking you,

Yours faithfully,

Address: B-1180, Indira Nagar,
Lucknow. 226016

(S.K. LALL)

11-3-88

(17)
15/3/88
recd at 5 PM
today 15/3/88

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S.D. Jit
+ Conference
Hear
15/3/88

2 R (J)
for
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15/4

By Messenger
on 28-4-88

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From:

Shri S.K.Lall,
Retired Income-tax Commissioner,
B-1180, Indira Nagar,
Lucknow .Pin.226001.

To

The Deputy Registrar,
Central Administrative Tribunal,
Gandhi Bha-wan, Lucknow.

Sir,

Ref:- My case No. 567/87 (and Misc. application No.135/87) S.K.Lall Vs Union of India through the Additional Secretary to the Government of India, Department of Pensions Nirvachan Sadan, Ashoka Road, New Delhi, "admitted" by the circuit Bench at Lucknow on 22.3.88.

.....

In the above noted case of this applicant, the Hon'ble Bench was pleased to direct on 22.3.88, the Additional Central Government Counsel Shri Choudhary (to whom fresh copies of the Main application and the Misc. application were given by the Applicant on the Spot by the applicant) that the respondent Government of India in the Department of Pensions file their "Reply" on 28.4.88, whereupon the applicant file within the next 10 days following, his "counter", the case standing "admitted".

2. In this connection I have to submit that I have to ~~leave~~^{be} out of station from 26th to 30th April ,88 on Government work (presiding over Banking Services Recruitment Board interviews at Gorakhpur on those dates) and hence, in case of Government "reply" ~~being~~^{be-} filed on the appointed dated 28.4.88, a copy thereof, meant for applicant, may kindly be made over to the bearer, Shri A.S.Khan whose signature is herewith attested by me and who is hereby authorised by me to receive that document, on my behalf, no Advocate now helping me, and the case ~~being~~^{be-} handled by me on my own; I shall thereupon file my counter within the next ten days as already directed, or carry out other such instructions as the Hon'ble Bench may be pleased to issue on 28.4.88; the bearer above noted Shri A.S.Kha-n

Contd ..2

(2)

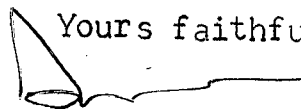
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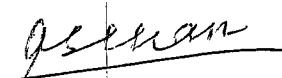
~~shall be~~
~~being~~ present there at my request, and ^{is} carrying this letter.


Thanking you,

Yours faithfully,


(S.K. LALL)


Dated : 11-4-88

→ 
Signature of Shri
A.S. Khan attested.


(S.K. LALL)
11-4-88

(Advance copy also sent by post)
BEAT 101210

By Messenger

To

The Deputy Registrar
Central Administration
General
Tribunal
Law
Tribunal

From

S. K. Jha

B-1180

1st Floor, Dagon

Lawrence

Registered A . D .

To

The Registrar,

Central Administrative Tribunal,

23 A , Thorn-Hill Road,

Allahabad.

Sir,

Re- Case No. 567/87 of S.K.Lall, Retired Income- Tax Commissioner, B-1180, Indira Nagar, Lucknow, Vs Union of India, through the Additional Secretary to the Govt of India in the Deptt of Pension, Nirvachan Sadan, Ashoka Road, New Delhi, and also Misc Application No. 135/87 for interim stay orders, heard at Allahabad for 13th April, 1988.

With reference to the above case, I submit that today's

Times of India, Lucknow, has a news item from Shri Jagdish Chandra, Deputy Registrar of the Tribunal, that the Allahabad Bench of the Tribunal will hold a circuit court (Bench) at Gandhi Bhawan, Lucknow, to hear fresh Applications , on 21 and 22 March, 88, from the Applicants of Districts comprised in Avadh region. In this connection Having already placed ~~on record~~ my request with Registered Letters dated 5-2-88, for hearing of the case at Lucknow when a Bench functions here, I have today sent an express telegram to you, vide post copy attached herewith, soliciting that my case be heard by the circuit Bench at Lucknow on the 22nd March, 88, and I will appear accordingly here. In case it is not found feasible to accommodate hearing for my case before the proposed circuit Bench at Lucknow on the 22nd March, 88, the hearing fixed at Allahabad for 13-4-88 may be adjourned and a hearing date fixed before the circuit Bench at Lucknow in its next following session, so that for this case arising at Lucknow, in Avadh region, I am spared the considerable inconvenience of appearing and pursuing the case at Allahabad, especially when I have to do so on my own now, without the help of any Advocate, as already intimated.

2. Further, as indicated in my last letter (Regd) at 11-3-88, there is no pressure left now for consideration of my, isc Application for interim stay, this Application for stay may be kept in dormant position for the present and my main case itself be heard soon, ex-parte, if necessary, as the Govt have not replied to the plaint over more than six months now despite several adjournments, and obviously they have no interest in defending the case, having no defence, as it seems.

Yours faithfully,

(S.K.LALL) 18/3/88

Encl. 1
Address: B-1180, Indira Nagar,
Lucknow, 226016
cc to the Deputy Registrar
Circuit Bench, Gandhi Bhawan
Lucknow.
for favour of necessary action.

for Magister

(COPY)

Telegram Express

To

Registrar,
Central Administrative Tribunal
Thornhill Road
Allahabad

B2/5

A/4

Pray my case 567/87 fixed Allahabad 13th April be heard Lucknow 22nd March circuit (.) I attending.

Dated 18-3-88

S.K.Lall
Retired Income Tax Commissioner
B-1180, Indira Nagar,
Lucknow

Copy be post in confirmation.

(S.K.LALL)

Dated 18-3-88

Retired Income Tax Commissioner
B-1180, Indira Nagar,
Lucknow. Tel 72499

ZCZC UADCCQ466 PPP UADCCC

X 0840 P 2 LUCKNOW 18 34

REGISTRAR GEN, TRALADMINISTRATIVE TRIBUNAL

THOIRNHILL ROAD ALLAHABAD

PRAYMGCASE 567/87, FIXED ALLAHABAD

THIRTEENTH APRIL BE, HEARD LUCKNOW TWENTYSECOND MARCH

CIRCUIT I ATTENDING - S K LALL RETIRED INCOME TAX (

COM, MISSIONER B-1180

INDIRANAGAR LUCKNOW

COL175P 2 REGISTRAR 567/87 B-1180 -- ULWCCDQ175 NNNN

Recd today at 5:15 PM

The date fixed is too short

13.4.88. It should be given 25

November 2018 for Lucknow

10/11/87
3.88

From

Shri S.K.Lall,
Retired Income-Tax Commissioner,
B-1180, Indira Nagar,
Lucknow, 226016.

B2/9

To

The Deputy Registrar,
Central Administrative Tribunal,
Gandhi Bhavan, Lucknow.

Sir,

My case No. 567/87 (and Misc Application No. 135/87)-
S.K.Lall vs Union of India through the Additional Sec-
retary to the Govt of India , Deptt of Pensions, Nir-
vachan Sadan, New Delhi- ' admitted ' by the Circuit
Bench at Lucknow on 22-3-88.

Kindly refer to my letter dated 26-5-88 submitted per-
sonally in your Lucknow office on that date fixed for the case.
Despite another adjournment allowed for 19-7-88, there has been
no reply from the respondent Pension Deptt of Govt of India,
to my Application filed over a year ago on 1-7-87 before the
Allahabad Bench; about a dozen adjournments allowed at Allaha-
bad and later at Lucknow, have been of no avail in eliciting
response from the Govt.

2. I repeat therefore my tentative request in the above
noted letter dated 26-5-88 (copy was given to Shri Chaudhury,
Govt Counsel too) , that my case be now decided by the learned
Tribunal ex parte; my own exposition of the case has been recor-
ded by me in the attached Note for consideration by the Tribunal
in this connection and as of now I have nothing more to add. I
am representing my case myself; submitted in triplicate.

Thanking you,

Yours faithfully,

(S.K.Lall)

Encl. Note

Dated 19-7-88

Retired Income-Tax Commissioner,
B-1180, Indira Nagar, Lucknow, 226016
(Telephone 72499)

APPLICANT'S CASE PRESENTATION - SYN

Case No. 567/87 before the Central Administrative Tribunal Lucknow Bench- S.K.Lall, Retired Income-Tax Commissioner, Lucknow vs Union of India through the Additional Secretary to the Govt of India, Deptt of Pensions, New Delhi, and connected Misc Application No, 135/87 (for interim orders).

The Applicant , represented by himself, is S.K.Lall, who retired as Commissioner of Income-Tax at Lucknow , on 31-7-79, after completing over 35 years of service with the Central Govt. At the time of retirement , the relevant pensionary rules applicable were as revised by two circulars of the Finance Ministry, then looking after pensionary matters, the subject since transferred to the Pensions Ministry/Deptt. Both these circulars were issued after considering the ^{report of the} Third Pay Commission (predecessor to the last Fourth Commission): these circulars bear Nos 19(3)-EV/79 and 19(4)-EV/79 and are of the same date 25-5-79. The first circular covered rates of basic pension and is not in dispute here; the other circular covered the dearness compensation related to pension and is the subject of dispute in this case (copy of the circular is at Appendix B to the Application).

2. The Applicant's starting pension and the dearness relief thereon were fixed by the Accountant General, U.P. Allahabad, with his P.P.O. dated 4-8-79 (copy at Appendix A to the Application), in accordance with the above noted two circulars. The Applicant felt aggrieved with the treatment on dearness issue as related to pension, for he was getting overall Rs 100 per month less gross pension (including dearness relief) as compared to persons retiring from the same salary level, in earlier periods upto 30-4-79. The Applicant (and others of his category) made representations to the Finance Ministry on the subject repeatedly; the Applicant has not preserved over these long years all the correspondence, but had ^{with him} the negating reply dated 19-9-83 , being crucial, from the Finance Ministry, and a copy of that is at Appendix C to the Application; against this rejection, the Applicant again represented with letter dated 22-3-84 ~~but no reply was received~~ but received no reply. However, on transfer of the subject to the Pensions Ministry/Deptt and representations from the discriminated pensioners of my category persisting, the Pensions Deptt relented and issued their remedying circular dated 8-8-86 (copy at Appendix D to the Application). It may be elucidated that the Finance Ministry had received representations against a couple of other lacunae too in their abovenoted disputed circular of 25-5-79, and these lacunae were corrected by them ^{with} ab-initio retrospective effect , vide their amendments dated 24-7-79, 7-8-79 and 30-12-81 (copies attached at Annexures I to III of the Applicant's Miscellaneous Application No. 135/87 for interim orders). And yet when the successor Pensions Deptt rectified with their Memo dated 8-8-86, the remaining lacuna in the Finance Ministry's disputed circular of 25-5-79, they did not give ab-initio/ total retrospective effect (as done for other lacunae detailed above), but ^{gave} only partial retrospective effect from 1-4-86, later modified to 1-1-86, thereby depriving

the wronged pensioners of arrears before that date, from the time of hurt; it works out to nearly Rs 8000/- in the Applicant's case and hence his petition before the learned Tribunal.

3. In essence the lacuna in the Finance Ministry's circular dated 25-5-79 rectified by the Pension Deptt circular dated 8-8-86 was as follows. In the circular of 25-5-79, various groups and categories of pensioners according to their pre-retirement salary brackets and time stage of retirement, were given different kinds of treatment in the matter of merger of their salary related dearness allowance in pay for purposes of calculating pension and secondly for drawing pension related dearness relief after retirement. In this complicated exercise, the circular, by no means, model of fool proof drafting, perpetrated a number of omissions and commissions. At least three sets of these were shortly after brought to the notice of the Finance Ministry and got rectified with total retrospective effect from the stage of mischief, as pointed out in para 2 above, and thus no harm came to those concerned. However, the particular lacuna which remained unattended, was that affecting the Applicant's category of pensioners, viz those drawing salary of Rs 2158 per month or above, and retired after 30-4-79. As per this erring circular these officials were not allowed option as per para 4 of the circular, for merger of their dearness allowance with pay for calculating pension, or for being allowed pension related dearness relief upto index level 272. The officials of this very pay bracket who had retired earlier, viz from 30-9-77 to 30-4-79 were, however, allowed these alternative benefits to choose from. There could be no intention or rationale for excluding the Applicant's category of pensioners as detailed above, from the option extended to predecessors, and this discrimination got perpetrated through sheer inadvertence, a drafting slip; yet it was quite significant, for in Applicant's own case, a loss of pension related dearness relief of the extent of Rs 100 per month (as attracted upto index level 272), as compared to the earlier comparable retirees. Generally those retiring later get more favourable terms for pension but here was an exceptional regression. The amending circular of 8-8-86 explicitly admits, firstly that there had been representations from the concerned pensioners and secondly that there was "hardship caused to such officers", in as much as they were neither allowed the D.A. merger benefit, nor the bottom slab of dearness relief (which was given to them only beyond 272 level); one or the other of these benefits had been offered by para 4 of the 25-5-79 circular to the earlier retirees of this salary bracket. The amending circular of 8-8-86 extended this option now also to the Applicant's group of pensioners, who were earlier omitted; it covered another group of inadvertently omitted pensioners at another stage but with that we are not concerned here. Thus after over seven years of grievance nursed, it was at long last and after persistent representations, redressed, but even so there was a sting. The sets of omissions and commissions in the circular of 25-5-79 remedied earlier by three amendments, were given total retrospective effect as due, vide narration in para 2 above, but

Strange to say, the first and third of these amendments admittedly cured inter alia, one situation each arising in the carelessly drafted circular dt 25-5-79, whereby a higher salary official was getting less pension than the lower salary official, retiring simultaneously!

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in the case of the latest rectification dated 8-8-86, only partial and not total retrospective effect was given ; the sufferers had thus not only lost for the denied period the yield(interest for example), ^{on the amount withheld for nearly seven years} but they were told now to forget about even the principal amount . This came to happen not because of any fault of theirs (they merited relief and had represented persistently against their omission), but because the Govt took such inordinately long time in seeing reason behind the representations and in rectifying the glaringly obvious lacuna. When further representations were made to the Pension Deptt that the rectification effect should not be from 1-4-86 (later modified to 1-1-86), but from the time stage of hurt in the relevant cases (1-5-79 or date of subsequent retirement , whichever is later, ³⁰⁻⁴⁻⁷⁹ the retirees upto 30-4-79 having already been covered), the Pension Deptt turned down the plea. I myself sent such a representation to the Additional Secretary to the Govt of India in the Pensions Deptt, with my letter dated 28-10-86 (copy at Appendix E to the Application) in my representative capacity as Vice President of the All India Organisation of Pensioners, East Zone , at Lucknow, also mentioning my specific case , and followed it up with a reminder dated 14-3-87 (vide Appendix F ibid) ; the Deputy Secretary in the Deptt sent me a reply dated 27-5-87 (Appendix G ibid) rejecting the representation. In this rejection letter , a specious and irrelevant plea was taken that any further "anterior to 1-1-86" retrospective effect " will have repercussion in the case of many other orders which are conventionally given prospective effect". This was an attempt to give a confusing cover to a simple case of inadvertent omission (in order dt 25.5.79) meriting rectification , not from any ad hoc and arbitrary subsequent date, as attempted by circular dt 8-8-86, but from the ab initio stage of the erring omission, as natural justice and equity demanded. There could properly be no question of mixing up of this simple matter with the flaunted generalities of retrospectivity and prospectivity. It was not a case of ~~xxxxxxx~~ ^{an} advantage being initially extended by Govt, where possibly they could give only prospective effect in the circumstances of the case, but here was an instance of an advantage giving circular(dt 25-5-79) leaving out , due to an admitted mistake, a particular segment of the same category of beneficiaries, and therefore this unintended discrimination had to be set right and cured ab initio with total retrospectivity, to get the wronged ones at par with others. A broadly ~~and not~~ ^{and} quite similar case of discrimination of patent nature came up for consideration ~~before~~ before the Rajasthan High Court in their Division Bench Civil Appeal No. 36 of 1986, decided on 11-3-87; in this case of State of Rajasthan vs Retired Contributory Provident Fund Holders Association, ^{while dismissing the State Govt's appeal} Jodhpur, the Court ~~served~~ ^{served} as follows " In the present case there is no question of retrospective or prospective operation of a provision. Rather the point is about discrimination in giving the chance to opt for pension. It is this principle enunciated in D.S.Nakra's case and subsequently followed in a number of cases..... ". In the case of the Applicant and his category, the Pension Deptt are in an even weaker position of

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defence, for they ^{had} themselves rectified the discriminatory omission without at that time thinking of retrospectivity and prospectivity principle as such and they did give a measure of retrospectivity when they gave effect to the amending circular (dt 8-8-86) from 1-4-86 (later modified to 1-1-86). Their attempt ^{was} to raise the issue of retrospectivity/prospectivity, belatedly and baselessly, when confronted with the plea for ab-initio rectification, is apparently to ^{the} tie up this simple case with the genral and seemingly interminable legal tussle on the issue of retrospectivity/prospectivity, involved in a number of pending and in the pipeline cases before the C.A.T/High Courts/ Supreme Court; this mischievous attempt has been made in the instant case (which spearheads the cause of affected group of pensioners) , so that it deters the lone Applicant or the relevant group of pensioners from judically testing the matter, when dragged (because of the implications of the laboured in principle) to further stages of litigation, especially when limited time and resources are left to these senior aged retired people to face this prospect; although the stake viz arrears of thousands of rupees is not inconsiderable for these pensioners, the protracted litigation effort, time stretch and cost of the Pension Dept's generalised design would calculatedly be prohibitive for them; a short decision as attracted by this simple issue as such , would apparently not fit in with their tiring out plans.

4. It may be added that the date 1-4-86 chosen by the amending circular of 8-8-86 for effect (partly retrospective) to the rectification , was purely arbitrary with no rationale behind it; the subsequent modification to 1-1-86 was as per circular dated 16-4-87 issued for revision of pensions generally on the basis of the recommendations of the Fourth Pay Commission, and this general circular covered a variety of pensioners and in fair manner - for future, i.e. from 1-1-86, it placed my group of hitherto neglected pensioners also at par with the rest of their category; the damage to this neglected group for the pre-1-1-86 period, however, remained and this continued neglect is the subject of this Application. To resume the narration of events relevant, against the Pension Dept's above noted rejection letter dt 27-5-87 turning down my plea for ab-initio rectification, I submitted an appeal to the Pensions Minister of State ^{dt 2-6-87}, but later withdrew it with letter ^{dt 18-6-87} (copy at Appendix H to the Application), for I noticed that the Dept's rejection had obviously been with the Minister's involvement and there being thus no chance of review, I intended to petition the C.A.T. without delay; any way the appeal to the Minister got turned down as per intimation dt 27-6-87 from the ^e Dpt and my Application got lodged in the C.A.T. ALLD office on 1-7-87. The main thrust in the Application to the C.A.T. is that the Govt's only ground advanced in their rejection letter dt 27-5-87(viz retrospectivity/prospectivity implications) being inapplicable, laboured and irrelevant, it deserves to be given a short shrift (as by the Rajasthan High Court in the above noted case on 11-3-87, vide page 3 ante) and the relief well merited in the ~~xxx~~

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detailed circumstances of the Applicant's case, as narrated above, be allowed viz, arrear dearness relief of Rs 100 per month from commencement of his retirement on 1-8-79 to 31-12-85, after which the Govt's remedial step came into operation; for this 77 months period at Rs 100 per month, the total amount comes to Rs 7700. Secondly, a request has been made in the Application for ordering payment of interest at suitable compounding/annual rate on the arrears from year after 1-8-79 progressively on accumulated balance of principal plus interest stage by stage till the time Govt passes orders for payment on the basis of the learned Tribunal's decision, as may be warranted. The Govt delayed relief, despite valid representations, for nearly seven years in callous procedural procrastination, and even after amendment, by further resistance to proper retrospective effect; they should therefore be held responsible for and made to re-imburse the loss to the Applicant. There are any number of judicial decisions in support of allowance of interest claim in clear cases of obduracy as the instant one. To cite some cases: (i) On 15-6-84, the Supreme Court ordered in the case of Delhi Cloth Mills Ltd vs Manoharlal that Manoharlal employee be paid gratuity with compound interest at 9 % per annum from the date of his retirement till the date of actual payment (report in Hindustan Times dt 16-6-84); (ii) Interest at 12 % compound on due arrears was inter alia ordered by the Punjab and Haryana High Court judgment dated 15-7-83 in the case of V.P. Gautam vs Union of India - the Supreme Court declined to interfere with the overall judgment, vide discussion in the C.A.T Delhi Bench order dt 5-8-86 in the case of All India Services Association (Rajasthan) vs Union of India - Mr. Gautam's writ had been allowed with cost; (iii) very recently (April 88), the Allahabad High Court allowed 12 % interest in the family pension writ case of Mrs Chandramala Agarwal the widow of late Mr. Justice C.B. Agarwal, the interest on the family pension due since the demise of Mr. Justice Agarwal; (iv) Patna High Court has also allowed 12% interest on gratuity arrears since retirement in the case No. 9011 of 1985- Hardeo Prasad Srivastava vs State of Bihar decided on 8-12-87, the judgment quoting another such decision of that Court in the case of Birendra Prasad Sinha vs Union of India (No. 5886 of 1986). Thirdly, in the Application, expenses have been claimed, because the Applicant has been driven to seek judicial remedy in a case fully deserving of administrative relief and which was most unjustly denied; for this case in the C.A.T. at Allahabad from July 87 to March 88 (when it got transferred to the new Lucknow Bench), he had to travel from his

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(waiting Govt's reply, that number of dates (fixed) were 13 A/101)
place Lucknow to Allahabad about half a dozen times/for dates fixed before the Allahabad Bench and for consultation with ~~his~~ Advocate engaged there; on transfer of the case to Lucknow Bench, ~~I~~ ^{the Applicant} started attending to the case ~~himself~~. Then there are other usual expenses for stationary, typing, clerical help, postage etc.

5. Before concluding, it may be just reiterated, as already intimated in the Applicant's letter dated 11-3-88 to the learned Tribunal, that the situation leading to his filing of the Miscellaneous Application ^(NO. Misc. 135/87) subsequently, asking for interim orders of stay, has since abated and the Misc Application asking for interim orders of stay is not pressed, and orders on the main Application only are now solicited, for which, however, documents at Annexures I to III to the Misc Application are relevant as quoted at the bottom of page 1 ante, and may kindly be referred to.

Dated 19-7-88


(S.K. LALL)

Retired Commissioner of Income-Tax,
B-1180, Indira Nagar, Lucknow, 226016.
(Telephone 72499)

TA 567/87

B2/14 A/102

To

The Deputy Registrar
Central Administrative Tribunal
Gandhi Bhavan, Lucknow.

Sir,

Refer my case No.567/87 before the Central Administrative Tribunal, Lucknow - S.K.Lall, Retired Commissioner of Income-tax, Lucknow Vs. Union of India, through the Additional Secretary to the Government of India, Department of Pension, Nirvachan Sadan, New Delhi - fixed for 26.5.1988.

In my above noted case, the learned Central Administrative Tribunal were pleased to "admit" my application dated 25.6.1987, on preliminary hearing on 22.3.1988, and to direct the Additional Standing Counsel (Shri V.K.Chaudhari), present for Central Govt. that the Government file their "reply" to my application by 28.4.1988, whereupon I file my "Counter" thereon, within the next 10 days. However, the Government reply was not filed on 28.4.1988 and the matter was adjourned to 26.5.1988. No Govt. reply has however been filed even today the 26th May, 1988.

2. My application was registered in the Office of the Central Administrative Tribunal at Allahabad, on 1.7.1987, and a copy thereof was duly sent by that Office by Registered post to the Pension Department on 17.7.1987 for comments. The Government respondent is also otherwise required by Law to file "reply" within one month of service of Application but the Government did not care to comply, although the Central Administrative Tribunal, Allahabad which was then handling the case, fixed number of dates over the next 6 months or so, till the case transferred, at my request, to the Lucknow Circuit Bench.

3. Having regard to Government's persistent non-compliance at Allahabad, and then at Lucknow, I humbly request that the learned Tribunal may be pleased to fix this nearly year old pending case for final disposal, ex-parte if needed, some time in the near future, after hearing me; (I am representing my case myself).

Thanking you,

Yours faithfully,

(S.K. LALL)

Retired Commissioner of Income-tax,
B-1180, Indra Nagar, Lucknow-226016
Telephone No.72499

Dated: 26.5.1988.

S. K. Lall

I. R. S. (Retd.)
EX-COMMISSIONER OF INCOME-TAX
Phone : 72499

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Delivery

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B-1180, Indira Nagar,
LUCKNOW.

9-7-1987

To

The Registrar,
Central Administrative
Tribunal,
Allahabad Bench,
Allahabad.

(B2/12)

Information
sent to S. K. Lall
on 13/7/87
Sir,

Re: My Application dt
25-5-87, Registration no. 567/
87/19647 dated 1-7-87.

Kindly refer to your
admission hearing notice
no CAT/ALLO/JVS/19647
dt 2-7-87 fixing admission
hearing on 8-7-87. This
Registered notice has been
received by me only today,
after the fixed date. I hope
the Application has been
found in order and admitted
which may kindly be confirmed.

In addition
to
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P.T.O.

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=ADMISSION AND HEARING NOTICE FOR THE EXTEND ON CASE 567/37-19467

RECEIVED ONLY ON 9TH STOP KINDLY CONFIRM

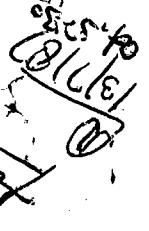
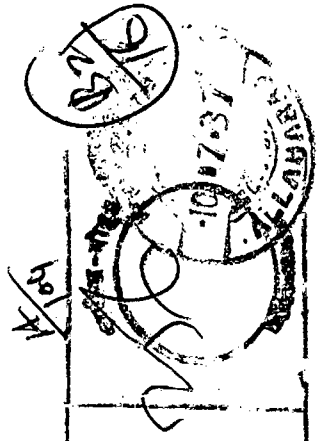
ADMISSION OR FIXED ANOTHER

=S K LALL P-1130 IN IRANAGAR LUCKNOW

So (T) for
neg. ~~over~~

=LN 3 P 53 567/37-19647 RPT 567/37-19467 + 647 PL CRT IT 567/37-19647 RPT

567/37-19647 S K LALL P-1130 RPT P-1130 IN IRANAGA LUCKNOW



REGISTERED A.D.

A 152/17

To,

The Registrar,
Central Administrative Tribunal,
Allahabad Bench,
23-A, Thornhill Road,
Allahabad, 211001.

Sir,

Subject:

Case before the Tribunal, Regd No. 567 of 1987-
S.K.Lall, Retired Commissioner of Income-Tax,
Lucknow, VS Union of India through the Addl Sec-
retary to the Govt of India, Deptt of Pensions,
Nirvachan Sadan, Ashoka Road, New Delhi- Misc
Application by the Applicant for Interim Orders,
Regd No. Misc 135 of 87 , date fixed 21-1-88 as
per Notice No 25896 dated 29-12-87.

With reference to the above Notice for 21-1-88, I have to submit that since the submission of my Misc Appln dated 23-11-87 for interim orders, a further development in the relevant case of Shri B.J.Khodaiji, I.A.S.(Retd), cited by me as broadly comparable, has been that the Accountant General, (A&E), II, U.P., Allahabad, with his letter No. PR I /203011/81-82/1824-25, dated 2-12-87 (copy attached as Annexure A herewith), has taken note of the 'Option' earlier filed voluntarily by Shri Khodaiji, and resiled from the previous 'conditionality' stand of the Acctt General's letter to him of 7-9-86, and allowed him to draw the benefit of Pension Deptt O.M. dated 8-8-86, without undertaking to forego claim for pre-1-1-86 arrears on the issue; these references are explained and documented in my Original and Misc Applications.

2. However, the Govt of India , Deptt of Pension, has not relented from their stand in letter dated 30-10-87 to Shri Khodaiji, supporting approvingly the Acctt General's 'conditionality' letter dated 7-9-86. Not only the Pension Deptt have not replied to Shri Khodaiji's protest letter dated 14-12-87 (copy attached as Annexure B herewith), in reply , but they have issued similar letter of 'conditionality' support in another case here from the same group, viz, Shri P.N.Tripathi, Indian Forest Service (Retd). Thus the plea in my Misc Application for interim order against the Dptt of Pension, remains valid, and may kindly be considered by the Tribunal on 21-1-88, when my Advocate Shri R.A.Sharma of Allahabad will comply on my behalf, as may be necessary, There is no need to involve the Accountant General, because even earlier he was only interpreting the Pension Deptt's M.M. dated 8-8-86, in his agency role,

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and now he has in any case from 'conditionality' imposition in cases where the pensioner had voluntarily exercised the 'option' prescribed in the Pension Deptt O.M. of 8-8-86 (as Shri Khodaiji did within the extended time limit and I had done even within the original time limit set by the Govt O.M.) . The Pension Deptt have to be prevented from pushing their wholly unjustified stand (letter dated 30-10-87 to Shri Khodaiji) to my case (they have done so in Shri Tripathi's case mentioned above), especially because my case is ^{of} voluntarily exercised option within the original time limit, and long concluded by Acctt General's acceptance, and nextly my case is sub-judice before the Tribunal, specifically on the issue of O.M. dated 8-8-86 benefit for pre- 1-1-86 period , and they should not be allowed to pre-empt the expected judicial decision of the Tribunal, by executive co-ercion and duress; there should be no interference by them with the status quo in my case till the Tribunal's decision on my Main Application.

3. Submitted for updating record and consideration; two extra copies are attached.

Encl Annexures

A & B

Also two extra sets.

Yours faithfully,

(S. K. Lall), 4-1-88

Retired Commissioner of Income-Tax,
B-1180, Indira Nagar, Lucknow.

226016

Annexure A

Post Bag No. 89
Grants : MAHALEKHA DO
Telex : 540 : 204



सत्यमेव जयते

पोस्ट बैग नं० ८९
ग्रांट : महालेखा दो
टेलिक्स : ५४० : २०४

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कार्यालय महालेखाकार (लेखा व उपायार्थी) - २, २० प्र०

• इलाहाबाद-२२१००१

Office of the Accountant General (Acctt. & Entt.) - 2, U. P.
PR 1/203011/81-82/1824

ALLAHABAD-211 001

2-12-1987

No.

दिनांक

Dated

To

The Treasury Officer,

Lucknow.

Sub : Consolidation of pension under
option of para 4(a) of G.I.O.M.
dt. 8.8.66 in respect of Shri B.J.
Khodaiji, IAS (Retd) holder of
PPO No. LKN/15630.

Sir,

I am to invite a reference to this office
letter no. PR 1/203011/81-82/1824 dated 6.9.87
on the above subject.

2. The required option from the pensioner
has been received. You are, therefore, requested
to get the pensionary benefits released vide the
aforesaid authority letter, without asking the pensioner
to furnish the option form.

3. Action taken in the matter may be intimated
to this office immediately.

Yours faithfully,

ACCOUNTS OFFICER

No. PR 1/1825 Dated : 2-12-87

Copy to Shri B.J. Khodaiji, IAS (Retd),
Erany Nagar, 1st Floor, 6, Park Road, Lucknow. The
option already sent by you vide letter dated 6.9.87
has been accepted. Kindly contact the treasury
officer for payment of your dues.

ACCOUNTS OFFICER

Received by
Register's post
today.

5/12/87

Page

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Annexure B

B2/20

A/166

Phone : 46382

B. J. Khodajji

I. A. S. (Retd.)

Member, U. P. Minorities Commission
Director, U. P. Minorities Finance &
Development Corporation Limited

Preyn Manor, 1st Floor,
6, Park Road,
Lucknow - 226 001

Dated December 14, 1987

To

Sri I.K. Rasgotra,
Addl. Secretary to the
Government of India,
Department of Pension & Pensioners Welfare,
Ministry of Personnel,
Public Grievances and Pensions,
New Delhi-11001

Dear Shri Rasgotra,

Kindly refer to your LO letter no. 5/13/87-P&PW (PIC) dated 30-10-87 in reply to my letter dated 12-10-87 to you in which I had pointed out the legal viability of the 'coercive' Option Form devised by the Accountant General, Uttar Pradesh in respect of your department OM dated 08.08.87 followed up by OM dated 16.04.87 respectively.

I regret to say that I find unacceptable your observation about the AG's Option Form with its 'condition' clause which according to you is in accordance with the 'spirit' of Government OM's concerned.

I have drawn my revised pension after filing with the Treasury Officer, Lucknow, the Option Form as devised by the A.G., U.P. Allahabad. I have also conveyed my objection to the A.G. that the said 'Option Form' has been filed unadvisedly and I reserve my right to adjudicate the issue before the Central Administrative Tribunal or a competent court in course of time.

True Copy

14.12.87
B. J. Khodajji

Yours sincerely

14-12-87
(B. J. KHODAJJI)

REGISTERED A.D.

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To,

The Registrar,
Central Administrative Tribunal,
Allahabad Bench,
23-A, Thornhill Road,
Allahabad, 211001.

Sir,

Subject:

Case before the Tribunal, Regd No. 567 of 1987-
S.K.Lall, Retired Commissioner of Income-Tax,
Lucknow, VS Union of India through the Addl Sec-
retary to the Govt of India, Deptt of Pensions,
Nirvachan Sadan, Ashoka Road, New Delhi- Misc
Application by the Applicant for Interim Orders,
Regd No. Misc 135 of 87, date fixed 21-1-88 as
per Notice No 25896 dated 29-12-87.

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and now he has in any case from 'conditionality' imposition in cases where the pensioner had voluntarily exercised the 'option' prescribed in the Pension Deptt O.M. of 8-8-86 (as Shri Khodaiji did within the extended time limit and I had done even within the original time limit set by the Govt O.M.) . The Pension Deptt have to be prevented from pushing their wholly unjustified stand (letter dated 30-10-87 to Shri Khodaiji) to my case (they have done so in Shri Tripathi's case mentioned above), especially because my case is ^{of} voluntarily exercised option within the original time limit, and long concluded by Acctt General's acceptance, and nextly my case is sub-judice before the Tribunal, specifically on the issue of O.M. dated 8-8-86 benefit for pre- 1-1-86 period , and they should not be allowed to pre-empt the expected judicial decision of the Tribunal, by executive co-ercion and duress; there should be no interference by them with the status quo in my case till the Tribunal's decision on my Main Application.


3. Submitted for updating record and consideration; two extra copies are attached.

Encl Annexures

A & B

Also two extra sets.

Yours faithfully,


(S. K. Lall),

Retired Commissioner of Income-Tax,
B-1180, Indira Nagar, Lucknow.

226016

Annexure A

Post Bag No. 89
Grams : MAHALEKHA DO
Tel : 540 : 204



भारत गणराज्य

पोस्ट बैग नं० ८९
ग्राम : महालेखा डो
टेलीग्राम : ५४० : २०४

B2/23

A/109

कार्यालय महालेखाकार (लेखा व दफ्तरी)-२, ३० नं०

इलाहाबाद-२११००१

Office of the Accountant General (Acct. & Entl.)-2, U. P.
PR 1/203011/81-82/1824

ALLAHABAD 211 001

2-12-1987

दिनांक

Dated

To

The Treasury Officer,
Lucknow.

Sub : Consolidation of pension under
option of para 4(a) of G.I.O.M.
dt. 8.8.85 in respect of Shri H.J.
Khodaiji, IAS (Retd) holder of
PPO No. LKN/15819.

Sir,

I refer to letter in reference to this office
letter no. PR 1/203011/81-82/979-91 dated 5.9.87
on the above subject.

Received by
Registrar's post
today.

1. The required option from the pensioner
has been received. You are, therefore, requested
to get the provisionally benefits released vide the
aforesaid authority letter, without asking the pensioner
to furnish the option form.

4/12/87

2. Action taken in this matter may be intimated
to this office immediately.

Yours faithfully,

ACCOUNTANT GENERAL

No. PR 1/1825 dated 2-12-87

Copy to Shri H.J. Khodaiji, IAS (Retd),
Kreny Manar, 1st Floor, T. Park Road, Lucknow. The
option already sent by you with your letter dated
11.12.87 has been received. Kindly contact the treasury
officer for payment of your dues.

ACCOUNTS OFFICER

1.58.99

Annexure B

B2
24

A/10

Phone : 46382

B. J. Khosla

I. A. S. (Retd.)

Member, U. P. Minorities Commission
Director, U. P. Minorities Finance &
Development Corporation Limited

Freny Manor, 1st Floor,
6, Park Road,
Lucknow - 226 001

Dated 24-12-87

To

Sri L. K. Raghoebar,
Asst. Secretary to the
Government of India,
Department of Pension & Pensioners Welfare,
Ministry of Personnel,
Public Relations and Pensions,
New Delhi-110 011

Dear Shri Raghoebar,

Kindly refer to your LO letter no. 5/13/87-P&PW (P1C) dated 30-10-87 in reply to my letter dated 12-10-87 to you in which I had pointed out the legal viability of the 'coercive' Option Form revised by the Accountant General, Uttar Pradesh in respect of your Department OM dated 03.08.87 followed up by OM dated 16.04.87 respectively.

I regret to say that I find unacceptable your observation about the A.G.'s Option Form with its 'condition' clause which according to you is in accordance with the 'spirit' of Government OM's concerned.

I have given my informed opinion after filing with the Treasury Office, Lucknow, the Option Form as revised by the A.G., on 11.11.87. I have also conveyed my objection to the A.G. that the A.G.'s Option Form has been filed un-
dressed and I reserve my right to adjudicate the issue before the Central Administrative Tribunal or a competent court in course of time.

True to file

th regards,
B. J. Khosla

Yours sincerely

14-12-87

(B. J. KHOSLA)

REGISTERED A.D.

B2
25
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TH

To,

The Registrar,
Central Administrative Tribunal,
Allahabad Bench,
23-A, Thornhill Road,
Allahabad, 211001.

Sir,

Subject:

Case before the Tribunal, Regd No. 567 of 1987-
S.K.Lall, Retired Commissioner of Income-Tax,
Lucknow, VS Union of India through the Addl Sec-
retary to the Govt of India, Deptt of Pensions,
Nirvachan Sadan, Ashoka Road, New Delhi- Misc
Application by the Applicant for Interim Orders,
Regd No. Misc 135 of 87, date fixed 21-1-88 as
per Notice No 25896 dated 29-12-87.

With reference to the above Notice for 21-1-88, I have to
submit that since the submission of my Misc Appln dated 23-11-87
for interim orders, a further development in the relevant case of
Shri B.J.Khodaiji, I.A.S.(Retd), cited by me as broadly comparable,
has been that the Accountant General, (A&E), II, U.P., Allahabad,
with his letter No. PB I /203011/81-82/1824-25, dated 2-12-87 (copy
attached as Annexure A herewith), has taken note of the 'Option'
earlier filed voluntarily by Shri Khodaiji, and resiled from the
previous 'conditionality' stand of the Acctt General's letter to
him of 7-9-86, and allowed him to draw the benefit of Pension Deptt'
O.M. dated 8-8-86, without undertaking to forego claim for pre-
1-1-86 arrears on the issue; these references are explained and do-
cumented in my Original and Misc Applications.

2. However, the Govt of India, Deptt of Pension, has not relen-
ted from their stand in letter dated 30-10-87 to Shri Khodaiji, sup-
porting approvingly the Acctt General's 'conditionality' letter
dated 7-9-86. Not only the Pension Deptt have not replied to Shri
Khodaiji's protest letter dated 14-12-87 (copy attached as Annex-
ure B herewith), in reply, but they have issued similar letter of
'conditionality' support in another case here from the same group,
viz, Shri P.N.Tripathi, Indian Forest Service (Retd). Thus the plea
in my Misc Application for interim order against the Dptt of Pen-
sion, remains valid, and may kindly be considered by the Tribunal
on 21-1-88, when my Advocate Shri R.A.Sharma of Allahabad will com-
ply on my behalf, as may be necessary. There is no need to involve
the Accountant General, because even earlier he was only interpre-
ting the Pension Deptt's O.M. dated 8-8-86, in his agency role,

A/112

B2
36

and now he has in any case from 'conditionality' imposition in cases where the pensioner had voluntarily exercised the 'option' prescribed in the Pension Deptt O.M. of 8-8-86 (as Shri Khodaiji did within the extended time limit and I had done even within the original time limit set by the Govt O.M.) . The Pension Deptt have to be prevented from pushing their wholly unjustified stand (letter dated 30-10-87 to Shri Khodaiji) to my case (they have done so in Shri Tripathi's case mentioned above), especially because my case is ^{or} voluntarily exercised option within the original time limit, and long concluded by Acctt General's acceptance, and nextly my case is sub-judice before the Tribunal, specifically on the issue of O.M. dated 8-8-86 benefit for pre- 1-1-86 period , and they should not be allowed to pre-empt the expected judicial decision of the Tribunal, by executive co-ercion and duress; there should be no interference by them with the status quo in my case till the Tribunal's decision on my Main Application.

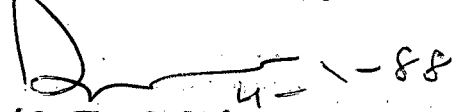
3. Submitted for updating record and consideration; two extra copies are attached.

Encl Annexures

A & B

Also two extra sets.

Yours faithfully,


(S. K. Lall),

Retired Commissioner of Income-Tax,
B-1180, Indira Nagar, Lucknow.

226016

Post Bag No. 89
Grams : MAHALEKHA DO
Telex : 540 : 204



सत्यमेव जयते

पोस्ट बैग सं० ८९
तार : महालेखा दो
टेलिक्स : 540 : 204

कार्यालय महालेखाकार (लेखा व हकदारी)-२, ३० प्र०

इलाहाबाद-२११००१

Office of the Accountant General (Acctt. & Entt.)-2, U. P.
PR I/203011/81-82/1824

ALLAHABAD-211 001.

2-12-1987

सं०.....

No.....

दिनांक.....

Dated.....

To

The Treasury Officer,
Lucknow.

Sub : Consolidation of pension under
option of para 4(a) of G.I.O.M.
dt. 8.8.86 in respect of Shri B.J.
Khodaiji, IAS (Retd) holder of
PPO No. LKN/15630.

Sir,

I am to invite a reference to this office
letter no. PR I/203011/81-82/979-81 dated 6.9.87
on the above subject.

2. The required option from the pensioner
has been received. You are, therefore, requested
to get the pensionary benefits released vide the
aforesaid authority letter, without asking the pensioner
to furnish the option form.

3. Action taken in the matter may be intimated
to this office immediately.

Yours faithfully,

ACCOUNTS OFFICER

No. PR I/1825 dated : 2-12-87

Copy to Shri B.J. Khodaiji, IAS (Retd),
Freny Manar, 1st Floor, 6, Park Road, Lucknow. The
option already sent by you vide your letter dated
31-7-87 has been accepted. Kindly contact the treasury
officer for payment of your dues.

ACCOUNTS OFFICER

Received by
register's post
today.

5/12/87

Regd.

Oct 8-99

Amrinder B

Secretary, 1st floor,
Post Office Road,
New Delhi - 110 001

A/114

B2/28

Shri A.K. Rasgotra,
Addl. Secretary to the
Government of India,
Department of Pensions & Pensioners Welfare,
Ministry of Labour,
Public Grievances and Pensions
New Delhi-11001

Dear Shri Rasgotra,

Kindly refer to your LO letter no. 1/13/87-PW (PIC) dated 30-10-87 in reply to my letter dated 12-10-87 to you in which I had pointed out the legal viability of the 'voluntary' Option Form devised by the Accountant General, Central Government in respect of your Department OM dated 04.08.85 & 15.08.85 respectively.

I regret to say that I find unacceptable your conviction about the AG's 'form' with its 'condition' which is in complete violation of the 'policy' of Government of India's concern.

I have drawn my revised pension after filing with the Treasury Officer, Lucknow, the Option Form as devised by the AG, U.P. Allahabad. I have also conveyed my objection to the AG that the said 'Option Form' has been filed under duress and I reserve my right to adjudicate the issue before the Central Administrative Tribunal or a competent court in course of time.

Yours faithfully,
A.K. Rasgotra

Yours sincerely

Amrinder B

102

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TTS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

ALLAHABAD BENCH,

23-A Thornhill Road, Allahabad-211001

Regd. Post

No. CAT/LLD/

Dated:

567/87 In re

Registration No.

of 198

S.K. Lall

APPLICANT

VERSUS

Minis of India & others

RESPONDENTS

To,

1. Secy Cee to Govt of India

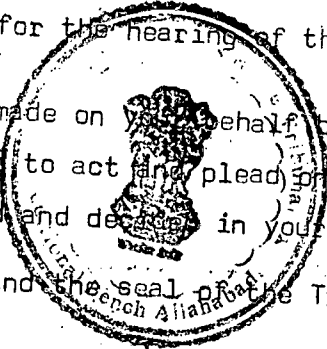
2. S.K. Lall

B. 1180 - Indira Nagar Lucknow

Please take notice that the applicant abovenamed has presented an application, a copy whereof is enclosed herewith, which has been registered in this Tribunal, and the Tribunal has fixed 10.8.87 day of 198..... for the hearing of the said application.

If no appearance is made on your behalf by yourself, your pleader or by someone duly authorised to act and plead on your behalf in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 13/7/87 day of 198



Chandra
DEPUTY REGISTRAR

10
A/47

From

Shri S.K.Lall,
Retired Income-Tax Commissioner,
B-1180, Indira Nagar,
Lucknow, 226016.

To

The Deputy Registrar,
Central Administrative Tribunal,
Gandhi Bhavan, Lucknow.

Sir,

My case No. 567/87 (and Misc Application No. 135/87)-
S.K.Lall vs Union of India through the Additional Sec-
retary to the Govt of India , Deptt of Pensions, Nir-
vachan Sadan, New Delhi- ' admitted ' by the Circuit
Bench at Lucknow on 22-3-88.

Kindly refer to my letter dated 26-5-88 submitted per-
sonally in your Lucknow office on that date fixed for the case.
Despite another adjournment allowed for 19-7-88, there has been
no reply from the respondent Pension Deptt of Govt of India,
to my Application filed over a year ago on 1-7-87 before the
Allahabad Bench; about a dozen adjournments allowed at Allaha-
bad and later at Lucknow, have been of no avail in eliciting
response from the Govt.

2. I repeat therefore my tentative request in the above
noted letter dated 26-5-88 (copy was given to Shri Chaudhury,
Govt Counsel too) , that my case be now decided by the learned
Tribunal ex parte; my own exposition of the case has been recor-
ded by me in the attached Note for consideration by the Tribunal
in this connection and as of now I have nothing more to add. I
am representing my case myself; submitted in triplicate.

Thanking you,

Yours faithfully,

(S.K.Lall)

Retired Income-Tax Commissioner,
B-1180, Indira Nagar, Lucknow, 226016
(Telephone 72499)

Encl. Note

Dated 19-7-88

APPLICANT'S CASE PRESENTATION_ SYNOPSIS. K/1

Case No. 567/87 before the Central Administrative Tribunal, Lucknow Bench- S.K.Lall, Retired Income-Tax Commissioner, Lucknow, vs Union of India through the Additional Secretary to the Govt of India, Deptt of Pensions, New Delhi, and connected Misc Application No, 135/87 (for interim orders).

The Applicant , represented by himself, is S.K.Lall, who retired as Commissioner of Income-Tax at Lucknow , on 31-7-79, after completing over 35 years of service with the Central Govt. At the time of retirement , the relevant pensionary rules applicable were as revised by two circulars of the Finance Ministry, then looking after pensionary matters, the subject since transferred to the Pensions Ministry/Deptt. Both these circulars were issued after considering the ^{report of the} Third Pay Commission (predecessor to the last Fourth Commission): these circulars bear Nos 19(3)-EV/79 and 19(4)-EV/79 and are of the same date 25-5-79. The first circular covered rates of basic pension and is not in dispute here; the other circular covered the dearness compensation related to pension and is the subject of dispute in this case (copy of the circular is at Appendix B to the Application).

2. The Applicant's starting pension and the dearness relief thereon were fixed by the Accountant General, U.P. Allahabad, with his P.P.O. dated 4-8-79 (copy at Appendix A to the Application), in accordance with the above noted two circulars. The Applicant felt aggrieved with the treatment on dearness issue as related to pension, for he was getting overall Rs 100 per month less gross pension (including dearness relief) as compared to persons retiring from the same salary level, in earlier periods upto 30-4-79. The Applicant (and others of his category) made representations to the Finance Ministry on the subject repeatedly; the Applicant has not preserved over these long years all the correspondence, but had ^{with him} the negating reply dated 19-9-83 , being crucial, from the Finance Ministry, and a copy of that is at Appendix C to the Application; against this rejection, the Applicant again represented with letter dated 22-3-84 ~~but no reply was received~~ but received no reply. However, on transfer of the subject to the Pensions Ministry/Deptt and representations from the discriminated pensioners of my category persisting, the Pensions Deptt relented and issued their remedying circular dated 8-8-86 (copy at Appendix D to the Application). It may be elucidated that the Finance Ministry had received representations against a couple of other lacunae too in their abovenoted disputed circular of 25-5-79, and these lacunae were corrected by them ^{with} ab-initio retrospective effect , vide their amendments dated 24-7-79, 28-7-8-79 and 30-12-81 (copies attached at Annexures I to III of the Applicant's Miscellaneous Application No. 135/87 for interim orders). And yet when the successor Pensions Deptt rectified with their Memo dated 8-8-86, the remaining lacuna in the Finance Ministry's disputed circular of 25-5-79, they did not give ab-initio/ total retrospective effect (as done for other lacunae detailed above), but ^{only} partial retrospective effect from 1-4-86, later modified to 1-1-86, thereby depriving

Strange to say, the first and third of these amendments admittedly cured interdictalia, one situation each arising in the carelessly drafted circular dt 25-5-79, whereby a higher salary official was getting less pension than the lower salary official, retiring simultaneously.

11/18

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A/R
SC 130

In the case of the latest rectification dated 8-8-86, only partial and not total retrospective effect was given; the sufferers had thus not only lost for the denied period the yield interest for (example), but they were told now to forget about years the principal amount. This came to happen not because of any fault of theirs (they merited relief and had represented persistently against their omission), but because the Govt took such inordinately long time in seeing reason behind the representations and in rectifying the glaringly obvious lacuna. When further representations were made to the Pension Deptt that the rectification effect should not be from 1-4-86 (later modified to 1-1-86), but from the time stage of hurt in the relevant cases (1-5-79 or date of subsequent retirement, whichever is later, the retirees upto 30/4-79 having already been covered), the Pension Deptt turned down the plea. I myself sent such a representation to the Additional Secretary to the Govt of India in the Pension Deptt, with my letter dated 28-10-86 (copy at Appendix B to the Application) in my representative capacity as Vice President of the All India Organisation of Pensioners, East Zone, at Lucknow, also mentioning my specific case, and followed it up with a reminder dated 14-3-87 (vide Appendix F 1b1d); the Deputy Secretary in the Deptt sent me a reply dated 27-5-87 (Appendix C 1b1d) rejecting the representation. In this rejection letter, a specious and irrelevant plea was taken that any further anterior to 1-1-86 retrospective effect "will have repercussions in the case of many other orders which are conventionally given prospective effect". This was an attempt to give a continuing cover to a simple case of inadvertent omission in order at 25.5.79) rectifying rectification, not from any ad hoc and arbitrary subsequent date, as attempted by circular at 8-8-86, but from the ab initio stage of the erring omission, as natural justice and equity demanded. There could properly be no question of mixing up of this simple matter with the flimsy generalities of retrospectivity and prospectivity. It was not a case of ~~arbitrary~~ advantage being initially extended by Govt, where possibly they could give only prospective effect in the circumstances of the case, but here was an instance of an advantage given circularly (at 25-5-79) leaving out, due to an admitted mistake a particular segment of the same category of beneficiaries, and therefore this unintended discrimination had to be set right and cured ab initio with total retrospectivity, to set the wronged ones at par with others. A broadly and not even quite similar case of discrimination of patent nature came up for consideration before the Rajasthan High Court in their Division Bench Civil Appeal No. 36 of 1986, decided on 11-3-87; in this case of State of Rajasthan vs Retired Contributory Provident Fund Holders Association, Jaipur, the Court's appeal while dismissing the State Govt's appeal, observed as follows "In the present case there is no question of retrospective or prospective operation of a provision. Rather the point is about discrimination in giving the chance to opt for pension. It is this principle enunciated in D.S. Nataraj's case and subsequently followed in a number of cases....". In the case of the Applicant and his category, the Pension Deptt are in an even weaker position of

defence, for they themselves rectified the discriminatory omission without at that time thinking of retrospectivity and prospectivity principle as such and they did give a measure of retrospectivity when they gave effect to the amending circular (at 8-8-86) from 1-4-86 (later modified to 1-1-86). Their attempt to raise the issue of retrospectivity/prospectivity, belatedly and baselessly, when confronted with the plea for ab-initio rectification, is apparently to be up this simple case with the general and seemingly interminable legal tussle on the issue of retrospectivity/prospectivity, involved in a number of pending and in the pipeline cases before the C.A./High Court/Supreme Court; this mischievous attempt has been made in the instant case (which spearheads the cause of affected group of pensioners), so that it deters the lone Applicant or the relevant group of pensioners from judiciously testing the matter, when dragged (because of the implications of the laboured in principle) to further stages of litigation, especially when limited times and resources are left to these senior/aged retired people to face this prospect; although the stake viz arrears of thousands of rupees is not inconsiderable for these pensioners, the protracted litigation effort, time stretch and cost of the Pension Dept's generalised design would calculatedly be prohibitive for them; a short decision as attracted by this simple issue as such, would apparently not fit in with their trying out plans.

4. It may be added that the date 1-4-86 chosen by the amending circular of 8-8-86 for effect (partly retrospective) to the rectification, was purely arbitrary with no rationale behind it; the subsequent modification to 1-1-86 was as per circular dated 16-4-87 issued for revision of pensions generally on the basis of the recommendations of the Fourth Pay Commission, and this general circular covered a variety of pensioners and in fair manner for future (i.e. from 1-1-86) it placed my group of hitherto neglected pensioners also at par with the rest of their category; the damage to this neglected group for the pre-1-1-86 period, however, remained and this continued neglect is the subject of this Application. To resume the narration of events relevant, against the Pension Dept's above noted rejection letter at 27-5-87 turning down my plea for ab-initio rectification, I submitted an appeal to the Pensions Minister of State, with letter at 18-6-87 (copy at Appendix H to the Application), for I noticed that the Dept's rejection had obviously been with the Minister's involvement and there being thus no chance of review, I intended to petition the C.A.T. without delay; any way the appeal to the Minister got turned down as per intimation at 27-6-87 from the Dpt and my Application got lodged in the C.A.T. ALTD on 1-7-87. The main thrust in the Application to the C.A.T. the Govt's only ground advanced in their rejection letter 5-87) viz retrospectivity/prospectivity implications) being feasible, laboured and irrelevant, it deserves to be given a shrift (as by the Rajasthan High Court in the above noted case -5-87, vide page 3 ante) and the relief well merited in the

detailed circumstances of the Applicant's case, as narrated above, be allowed viz, arrear dearness relief of Rs 100 per month from commencement of his retirement on 1-8-79 to 31-12-85, after which the Govt's remedial step came into operation; for this 77 months period at Rs 100 per month, the total amount comes to Rs 7700. Secondly, a request has been made in the Application for ordering payment of interest at suitable compounding/rate on the arrears from year after 1-8-79 progressively on accumulated balance of principal plus interest stage by stage till the time Govt passes orders for payment on the basis of the learned Tribunal's decision, as may be warranted. The Govt delayed relief, despite valid representations, for nearly seven years in callous procedural procrastination, and even after amendment, by further resistance to proper retrospective effect; they should therefore be held responsible for and made to/compensate the loss to the Applicant. There are any number of judicial decisions in support of allowance of interest claim in clear cases of obduracy as the instant one. To cite some cases: (1) On 15-6-84, the Supreme Court ordered in the case of Delhi Cloth Mills Ltd vs Manoharlal that Manoharlal employee be paid gratuity with compound interest at 9% per annum from the date of his retirement till the date of actual payment (report in Hindustan Times dt 16-6-84); (11) Interest at 12% compound on due arrears was ordered by the Punjab and Haryana High Court judgment dated 15-7-83 in the case of V.P. Gautam vs Union of India - the Supreme Court declined to interfere with the overall judgment, vide discussion in the C.A.T Delhi Bench order dt 5-8-86 in the case of All India Services Association (Rajasthan) vs Union of India - Mr. Gauram's writ had been allowed with costs (111) very recently (April 88) - the Allahabad High Court allowed 12% interest in the family pension writ case of Mrs Chandramala Agarwal the widow of late Mr. Justice C.B. Agarwal, the interest on the family pension due to since the demise of Mr. Justice Agarwal; (14) Patna High Court has also allowed 12% interest on gratuity arrears since retirement in the case No. 9011 of 1985- Hardeo Prasad Srivastava vs State of Bihar decided on 8-12-87, the judgment quoting another such decision of that Court in the case of Birendra Prasad Sinha vs Union of India (No. 5886 of 1986). Thirdly, in the Application, expenses have been claimed, because the Applicant has been driven to seek judicial remedy in a case fully deserving of administrative relief and which was most unjustly denied; for this case in the C.A.T. at Allahabad from July 87 to March 88 (when it got transferred to the new Lucknow Bench) - had to travel from

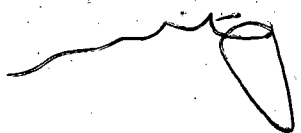
1986(3)
 1987(2)
 1988(3)

1983(2)
 1984(2)

Retired Commissioner of Income-Tax,
B-1180, Indira Nagar, Lucknow, 226016.
(Telephone 72499)

(S.K.LALL)

Dated 14-7-88



(waiting Govt's reply, that number of dates/fixed) my place Lucknow to Allahabad about half a dozen times/for dates fixed before the Allahabad Bench and for consultation with ~~my~~ Advocate engaged there; on transfer of the case to Lucknow Bench, I started attending to the case myself. Then there are other usual expenses for stationary, typing, client- can help, postage etc.

5. Before concluding, it may be just reiterated, as already intimated in the Applicant's letter dated 11-3-88 to the learned Tribunal, that the situation leading to his filing of the Miscellaneous Application/subsequently asking for interim orders of stay, has since abated and the Misc Application asking for interim orders of stay is not pressed, and orders on the main Application only are now solicited, for which, however, documents at Annexures I to III to the Misc Application are relevant as quoted at the bottom of page 1 ante, and may kindly be referred to.

From

Shri S.K.Lall,
Retired Income-Tax Commissioner,
B-1180, Indira Nagar,
Lucknow, 226016.

To

The Deputy Registrar,
Central Administrative Tribunal,
Gandhi Bhavan, Lucknow.

Sir,

My case No. 567/87 (and Misc Application No. 135/87) -
S.K.Lall vs Union of India through the Additional Sec-
retary to the Govt of India , Deptt of Pensions, Nir-
vachan Sadan, New Delhi- ' admitted ' by the Circuit
Bench at Lucknow on 22-3-88.

Kindly refer to my letter dated 26-5-88 submitted per-
sonally in your Lucknow office on that date fixed for the case.
Despite another adjournment allowed for 19-7-88, there has been
no reply from the respondent Pension Deptt of Govt of India,
to my Application filed over a year ago on 1-7-87 before the
Allahabad Bench; about a dozen adjournments allowed at Allaha-
bad and later at Lucknow, have been of no avail in eliciting
response from the Govt.

2. I repeat therefore my tentative request in the above
noted letter dated 26-5-88 (copy was given to Shri Chaudhury,
Govt Counsel too) , that my case be now decided by the learned
Tribunal ex parte; my own exposition of the case has been recor-
ded by me in the attached Note for consideration by the Tribunal
in this connection and as of now I have nothing more to add. I
am representing my case myself; submitted in triplicate.

Thanking you,

Yours faithfully,

(S.K.Lall)

Encl. Note

Dated 19-7-88

Retired Income-Tax Commissioner,
B-1180, Indira Nagar, Lucknow, 226016
(Telephone 72499)

A/24

APPLICANT'S CASE PRESENTATION_ SYNOPSIS.

Case No. 567/87 before the Central Administrative Tribunal, Lucknow Bench- S.K.Lall, Retired Income-Tax Commissioner, Lucknow, vs Union of India through the Additional Secretary to the Govt of India, Deptt of Pensions, New Delhi, and connected Misc Application No, 135/87 (for interim orders).

The Applicant , represented by himself, is S.K.Lall, who retired as Commissioner of Income-Tax at Lucknow , on 31-7-79, after completing over 35 years of service with the Central Govt. At the time of retirement , the relevant pensionary rules applicable were as revised by two circulars of the Finance Ministry, then looking after pensionary matters, the subject since transferred to the Pensions Ministry/Deptt. Both these circulars were issued after considering the Third Pay Commission (predecessor to the last Fourth Commission): these circulars bear Nos 19(3)-EV/79 and 19(4)-EV/79 and are of the same date 25-5-79. The first circular covered rates of basic pension and is not in dispute here; the other circular covered the dearness compensation related to pension and is the subject of dispute in this case (copy of the circular is at Appendix B to the Application).

2. The Applicant's starting pension and the dearness relief thereon were fixed by the Accountant General, U.P. Allahabad, with his P.P.O. dated 4-8-79 (copy at Appendix A to the Application), in accordance with the above noted two circulars. The Applicant felt aggrieved with the treatment on dearness issue as related to pension, for he was getting overall Rs 100 per month less gross pension (including dearness relief) as compared to persons retiring from the same salary level, in earlier periods upto 30-4-79. The Applicant (and others of his category made representations to the Finance Ministry on the subject repeatedly; the Applicant has not preserved over these long years all the correspondence, but had ^{with him} the negating reply dated 19-9-83 , being crucial, from the Finance Ministry, and a copy of that is at Appendix C to the Application; against this rejection, the Applicant again represented with letter dated 22-3-84 ~~but no reply was received~~ but received no reply. However, on transfer of the subject to the Pensions Ministry/Deptt and representations from the discriminated pensioners of my category persisting, the Pensions Deptt relented and issued their remedying circular dated 8-8-86 (copy at Appendix D to the Application). It may be elucidated that the Finance Ministry had received representations against a couple of other lacunae too in their abovenoted disputed circular of 25-5-79, and these lacunae were corrected by them with ab-initio retrospective effect , vide their amendments dated 24-7-79, 28-7-8-79 and 30-12-81 (copies attached at Annexures I to III of the Applicant's Miscellaneous Application No. 135/87 for interim orders). And yet when the successor Pensions Deptt rectified with their Memo dated 8-8-86, the remaining lacuna in the Finance Ministry's disputed circular of 25-5-79, they did not give ab-initio/ total retrospective effect (as done for other lacunae detailed above), but only retrospective effect from 1-4-86.

8/25

the wronged pensioners of arrears before that date, from the stage of hurt; it works out to nearly Rs 8000/- in the Applicant's case and hence his petition before the learned Tribunal.

3. In essence the lacuna in the Finance Ministry's circular dated 25-5-79 rectified by the Pension Deptt circular dated 8-8-86 was as follows. In the circular of 25-5-79, various groups and categories of pensioners according to their pre-retirement salary brackets and time stage of retirement, were given different kinds of treatment in the matter of merger of their salary related dearness allowance in pay for purposes of calculating pension and secondly for drawing pension related dearness relief after retirement. In this complicated exercise, the circular, by no means model of fool proof drafting, perpetrated a number of omissions and commissions. At least three sets of these were shortly after brought to the notice of the Finance Ministry and got rectified with total retrospective effect from the stage of mischief, as pointed out in para 2 above, and thus no harm came to those concerned; However, the particular lacuna which remained unattended, was that ~~one~~ affecting the Applicant's category of pensioners, viz those drawing salary of Rs 2158 per month or above, and retired after 30-4-79. As per this erring circular these officials were not allowed option as per para 4 of the circular, for merger of their dearness allowance with pay for calculating pension, or for being allowed pension related dearness relief upto index level 272. The officials of this very pay bracket who had retired earlier, viz from 30-9-77 to 30-4-79 were, however, allowed these alternative benefits to choose from. There could be no intention or rationale for excluding the Applicant's category of pensioners as detailed above, from the option extended to predecessors, and this discrimination got perpetrated through sheer inadvertence, a drafting slip; yet it was quite significant, for in Applicant's own case, a loss of pension related dearness relief of the extent of Rs 100 per month (as attracted upto index level 272), as compared to the earlier comparable retirees. Generally those retiring later get more favourable terms for pension but here was an exceptional regression. The amending circular of 8-8-86 explicitly admits, firstly that there have been representations from the concerned pensioners and secondly that there was "hardship caused to such officers", in as much as they were neither allowed the D.A. merger benefit, nor the bottom slab of dearness relief (which was given to them only beyond 272 level); one or the other of these benefits had been offered by para 4 of the 25-5-79 circular to the earlier retirees of this salary bracket. The amending circular of 8-8-86 extended this option now also to the Applicant's group of pensioners, who were earlier omitted; it covered another group of inadvertently omitted pensioners at another stage but with that we are not concerned here. Thus after over seven years of grievance nursed, it was at long last and after persistent representations, redressed, but even so there was a sting. The sets of omissions and commissions in the circular of 25-5-79 remedied earlier by three amendments, were given total retrospective effect as due, vide narration in para 2 above, but

Strange to say, the first and third of these amendments admittedly cured inter alia, one situation each arising in the carelessly drafted circular dt 25-5-79, where by a higher salary official was getting less pension than the lower salary official, retiring simultaneously!

What a pity!

in the case of the latest rectification dated 8-8-86, only partial and not total retrospective effect was given ; the sufferers had thus not only lost for the denied period the yield(interest for example), ~~on the amount withheld for nearly seven years~~ but they were told now to forget about even the principal amount . This came to happen not because of any fault of theirs (they merited relief and had represented persistently against their omission), but because the Govt took such inordinately long time in seeing reason behind the representations and in rectifying the glaringly obvious lacuna. When further representations were made to the Pension Deptt that the rectification effect should not be from 1-4-86 (later modified to 1-1-86), but from the time stage of hurt in the relevant cases (1-5-79 or date of subsequent retirement , whichever is later, the retirees upto 30/4-79 having already been covered), the Pension Deptt turned down the plea. I myself sent such a representation to the Additional Secretary to the Govt of India in the Pensions Deptt, with my letter dated 28-10-86 (copy at Appendix E to the Application) in my representative capacity as Vice President of the All India Organisation of Pensioners, East Zone , at Lucknow, also mentioning my specific case , and followed it up with a reminder dated 14-3-87 (vide Appendix F ibid) ; the Deputy Secretary in the Deptt sent me a reply dated 27-5-87 (Appendix G ibid) rejecting the representation. In this rejection letter , a specious and irrelevant plea was taken that any further "anterior to 1-1-86" retrospective effect " will have repercussions in the case of many other orders which are conventionally given prospective effect". This was an attempt to give a confusing cover to a simple case of inadvertent omission (in order dt 25.5.79) meriting rectification , not from any ad hoc and arbitrary subsequent date, as attempted by circular dt 8-8-86, but from the ab initio stage of the erring omission, as natural justice and equity demanded. There could properly be no question of mixing up of this simple matter with the flaunted generalities of retrospectivity and prospectivity. It was not a case of ~~unintentional~~ advantage being initially extended by Govt, where possibly they could give only prospective effect in the circumstances of the case, but here was an instance of an advantage giving circular(dt 25-5-79) leaving out , due to an admitted mistake a particular segment of the same category of beneficiaries, and therefore this unintended discrimination had to be set right and cured ab initio with total retrospectivity, to get the wronged ones at par with others. A broadly and not ~~even~~ quite similar case of discrimination of patent nature came up for consideration ~~before~~ before the Rajasthan High Court in their Division Bench Civil Appeal No. 36 of 1986, decided on 11-3-87; in this case of State of Rajasthan vs Retired Contributory Provident Fund Holders' Association, ~~Jodhpur~~ ^{while dismissing the State Govt's appeal} the Court ~~served~~ served as follows " In the present case there is no question of retrospective or prospective operation of a provision. Rather the point is about discrimination in giving the chance to opt for pension. It is this principle enunciated in D.S.Nakra's case and subsequently followed in a number of cases..... ". In the case of the Applicant and his category, the Pension Deptt are in an even weaker position of

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defence, for they themselves rectified the discriminatory omission without at that time thinking of retrospectivity and prospectivity principle as such and they did give a measure of retrospectivity when they gave effect to the amending circular (dt 8-3-86) from 1-4-86 (later modified to 1-1-86). Their attempt to raise the issue of retrospectivity/prospectivity, belatedly and baselessly, when confronted with the plea for ab-initio rectification, is apparently to take up this simple case with the general and seemingly interminable legal tussle on the issue of retrospectivity/prospectivity, involved in a number of pending and in the pipeline cases before the C.A.T./High Courts/ Supreme Court; this mischievous attempt has been made in the instant case (which spearheads the cause of affected group of pensioners) , so that it deters the lone Applicant or the relevant group of pensioners from judiciously testing the matter, when dragged (because of the implications of the laboured in principle) to further stages of litigation, especially when limited time and resources are left to these senior aged retired people to face this prospect; although the stake viz arrears of thousands of rupees is not inconsiderable for these pensioners, the protracted litigation effort, time stretch and cost of the Pension Dept's generalised design would calculatedly be prohibitive for them; a short decision as attracted by this simple issue as such , would apparently not fit in with their tiring out plans.

4. It may be added that the date 1-4-86 chosen by the amending circular of 8-8-86 for effect (partly retrospective) to the rectification , was purely arbitrary with no rationale behind it; the subsequent modification to 1-1-86 was as per circular dated 16-4-87 issued for revision of pensions generally on the basis of the recommendations of the Fourth Pay Commission, and this general circular covered a variety of pensioners and in fair manner & for future, i.e. from 1-1-86, it placed my group of hitherto neglected pensioners also at par with the rest of their category; the damage to this neglected group for the pre-1-1-86 period, however, remained and this continued neglect is the subject of this Application. To resume the narration of events relevant, against the Pension Dept's above noted rejection letter dt 27-5-87 turning down my plea for ab-initio rectification, I submitted an appeal to the Pensions Minister dt 2-6-87, but later withdrew it with letter dt 10-6-87 (copy at Appendix II to the Application), for I noticed that the Dept's rejection had obviously been with the Minister's involvement and there being thus no chance of review, I intended to petition the C.A.T. without delay; any way the appeal to the Minister got turned down as per intimation dt 27-6-87 from the Dpt and my Application got lodged in the C.A.T. ALLD office on 1-7-87. The main thrust in the Application to the C.A.T. is that the Govt's only ground advanced in their rejection letter dt 27-5-87(viz retrospectivity/prospectivity implications) being inapplicable, laboured and irrelevant, it deserves to be given a short shrift (as by the Rajasthan High Court in the above noted case on 11-3-87, vide page 3 ante) and the relief well merited in the

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detailed circumstances of the Applicant's case, as narrated above, be allowed viz, arrear dearness relief of Rs 100 per month from commencement of his retirement on 1-8-79 to 31-12-85, after which the Govt's remedial step came into operation; for this 77 months period at Rs 100 per month, the total amount comes to Rs 7700. Secondly, a request has been made in the Application for ordering payment of interest at suitable compounding/rate on the arrears from year after 1-8-79 progressively on accumulated balance of principal plus interest stage by stage till the time Govt passes orders for payment on the basis of the learned Tribunal's decision, as may be warranted. The Govt delayed relief, despite valid representations, for nearly seven years in callous procedural procrastination, and even after amendment, by further resistance to proper retrospective effect; they should therefore be held responsible for and made to ^{re-imburse} the loss to the Applicant. There are any number of judicial decisions in support of allowance of interest claim in clear cases of obduracy as the instant one. To cite some cases: (i) On 15-6-84, the Supreme Court ordered in the case of Delhi Cloth Mills Ltd vs Manoharlal that Manohar Lal's employee be paid gratuity with compound interest at 9 % per annum from the date of his retirement till the date of actual payment (report in Hindustan Times dt 16-6-84); (ii) Interest at 12 % compound on due arrears was ^{inter alia} ordered by the Punjab and Haryana High Court judgment dated 15-7-83 in the case of V.P. Gautam vs Union of India - the Supreme Court declined to interfere with the overall judgment, vide discussion in the C.A.T Delhi Bench order dt 5-8-86 in the case of All India Services Association (Rajasthan) vs Union of India - Mr. Gautam's writ had been allowed with cost; (iii) very recently (April 88), the Allahabad High Court allowed 12 % interest in the family pension writ case of Mrs Chandramala Agarwal the widow of late Mr. Justice C.B. Agarwal, the interest on the family pension due ^{to her} since the demise of Mr. Justice Agarwal; (iv) Patna High Court has also allowed 12% interest on gratuity arrears since retirement in the case No. 9011 of 1985- Hardeo Prasad Srivastava vs State of Bihar decided on 8-12-87, the judgment quoting another such decision of that Court in the case of Birendra Prasad Sinha vs Union of India (No. 5886 of 1986). Thirdly, in the Application, expenses have been claimed, because the Applicant has been driven to seek judicial remedy in a case fully deserving of administrative relief ^{Applicant's} and which was most unjustly denied; for this case in the C.A.T. at Allahabad from July 87 to March 88 (when it got transferred to the new Lucknow Bench), he had to travel from his

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1983 (2)
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CAT 466

(awaiting Govt's ⁶Reply, that number of dates ^{were} fixed) my place Luknow to Allahabad about half a dozen times/for dates fixed before the Allahabad Bench and for consultation with my Advocate engaged there; on transfer of the case to Lucknow Bench, I started attending to the case myself. Then there are other usual expenses for stationary, typing, clerical help, postage etc.

5. Before concluding, it may be just reiterated, as already intimated in the Applicant's letter dated 11-3-88 to the learned Tribunal, that the situation leading to his filing of the Miscellaneous Application ^(NO. Misc. 135/87) subsequently, asking for interim orders of stay, has since abated and the Misc Application asking for interim orders of stay is not pressed, and orders on the main Application only are now solicited, for which, however, documents at Annexures I to III to the Misc Application are relevant as quoted at the bottom of page 1 ante, and may kindly be referred to.

Dated 12-7-88



(S.K. LALL)

Retired Commissioner of Income-Tax,
B-1180, Indira Nagar, Lucknow, 226016.
(Telephone 72499)

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130

Registered A .D .

To

The Registrar,
Central Administrative Tribunal,
23 A , Thorn-Hill Road,
Allahabad.

Sir,

Re- Case No. 567/87 of S.K.Lall, Retired Income- Tax Commis-
sioner, B-1180, Indira Nagar, Lucknow, Vs Union of India, through
the Additional Secretary to the Govt of India in the Deptt of Pen-
sion, Nirvachan Sadan, Ashoka Road, New Delhi, and also Misc Appli-
cation No. 135/87 for interim stay orders, hearing fixed at Allahabad
for 13th April, 1988.

With reference to the above case, I submit that today's
Times of India, Lucknow, has a news item from Shri Jagdish Chandra,
Deputy Registrar of the Tribunal, that the Allahabad Bench of the
Tribunal will hold a Circuit court (Bench) at Gandhi Bhavan, Luck-
now , to hear fresh Applications , on 21 and 22 March, 88, from the
Applicants of Districts comprised in Avadh region. In this connection
Having already placed ^{on record} ~~my request~~ my request with Registered let-
ters dated 5-2-88, for hearing of the case at Lucknow when a Bench
functions here, I have today sent an express telegram to you, vide
post copy attached herewith, soliciting that my case be heard by the
circuit Bench at Lucknow on the 22nd March, 88, and I will appear
accordingly here. In case it is not found feasible to accommodate
hearing for my case before the proposed circuit Bench at Lucknow
on the 22nd March, 88, The hearing fixed at Allahabad for 13-4-88
may be adjourned and a hearing date fixed before the circuit Bench
at Lucknow in its next following session, so that for this case ari-
sing at Lucknow, in Avadh region, I am spared the considerable in-
convenience of appearing and pursuing the case at Allahabad, espe-
cially when I have to do so on my own now, without the help of any
Advocate, as already intimated.

2. Further, as indicated in my last letter (Regd) dt
11-3-88, there is no pressure left now for consideration of my ,isc
Application for interim stay, this Application for stay may be kept
in dormant position for the present and my main case itself be heard
soon, ex-parte, if necessary, as the Govt have not replied to the
plaint over more than six months now despite several adjournments,
and obviously they have no interest in defending the case, having
no defence, as it seems.

Encl. 1 B-
Address: B-1180, Indira Nagar,
Lucknow, 226016

cc to the Deputy Registrar
Circuit Bench, Gandhi Bhavan
Lucknow.

Yours faithfully,

Sd/
(S.K.LALL)

for favour of necessary action.

By
messenger

S.K. LALL
12/3/88

(COPY)

Telegram Express

To

Registrar,
Central Administrative Tribunal
Thornhill Road
Allahabad

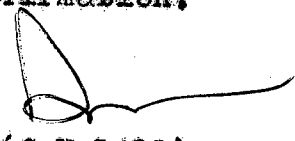
Pray my case 567/87 fixed Allahabad 13th April be
heard Lucknow 22nd March circuit (.) I attending.

Dated 18-3-88

S.K.Lall
Retired Income Tax Commissioner
B-1180, Indira Nagar,
Lucknow

Copy be post in confirmation.

Dated 18-3-88


(S.K.LALL)
Retired Income Tax Commissioner
B-1180, Indira Nagar,
Lucknow. Tel 72499

From:

Shri S.K.Lall,
Retired Income-tax Commissioner,
B-1180, Indira Nagar,
Lucknow .Pin.226001.

To

The Deputy Registrar,
Central Administrative Tribunal,
Gandhi Bhawan, Lucknow.

Sir,

Ref:- My case No. 567/87 (and Misc. application No. 135/87) S.K.Lall Vs Union of India through the Additional Secretary to the Government of India, Department of Pensions, Nirvachan Sadan, Ashoka Road, New Delhi, "admitted" by the circuit Bench at Lucknow on 22.3.88.

.....

In the above noted case of this applicant, the Hon'ble Bench was pleased to direct on 22.3.88, the Additional Central Government Counsel Shri Choudhary (to whom fresh copies of the Main application and the Misc. application were given by the Applicant on the spot by the applicant) that the respondent Government of India in the Department of Pensions file their "Reply" on 28.4.88, whereupon the applicant file within the next 10 days following, his "counter", the case standing "admitted".

2. In this connection I have to submit that I have to ~~leave~~ ^{be} out of station from 26th to 30th April, 88 on Government work (presiding over Banking Services Recruitment Board interviews at Gorakhpur on those dates) and hence, in case of Government "reply" ^{be} ~~being~~ filed on the appointed date 28.4.88, a copy thereof, meant for applicant, may kindly be made over to the bearer, Shri A.S.Khan whose signature is herewith attested by me and who is hereby authorised by me to receive that documents on my behalf, no Advocate now helping me, and the case ^{be} ~~being~~ handled by me on my own; I shall thereupon file my counter within the next ten days as already directed, or carry out other such instructions as the Hon'ble Bench may be pleased to issue on 28.4.88, the bearer above noted Shri A.S.Khan

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shall

~~be~~ present there at my request, and ^{is} carrying this letter.

Thanking you,

Yours faithfully,

Luckman

Dated : 11-4-88

Shri

Signature of Shri
A.S.Khan attested.

(S.K. LALL)

S.K. LALL

(S.K. LALL)

11-4-88

This
(Advance copy ~~is~~ sent by post)
to CAT, Lucknow.

From:

Shri S.K.Lall,
Retired Income-tax Commissioner,
B-1180, Indira Nagar,
Lucknow .Pin.226001.

The Deputy Registrar,
Central Administrative Tribunal,
Gandhi Bha-wan, Lucknow.

Sir,

Ref:- My case No. 567/87 (and Misc. application No. 135/87) S.K.Lall Vs Union of India through the Additional Secretary to the Government of India, Department of Pensions, Nirvachan Sadan, Ashoka Road, New Delhi, "admitted" by the circuit Bench at Lucknow on 22.3.88.

In the above noted case of this applicant, the Hon'ble Bench was pleased to direct on 22.3.88, the Additional Central Government Counsel Shri Choudhary (to whom fresh copies of the Main application and the Misc. application were given by the Applicant on the spot by the applicant) that the respondent Government of India in the Department of Pensions file their "Reply" on 28.4.88, whereupon the applicant file within the next 10 days following, his "counter", the case standing "admitted".

2. In this connection I have to submit that I have to ~~leave~~ ^{be} out of station from 26th to 30th April, 88 on Government work (presiding over Banking Services Recruitment Board interviews at Gorakhpur on those dates) and hence, in case of Government "reply" ~~being~~ ^{be} filed on the appointed dated 28.4.88, a copy thereof, meant for applicant, may kindly be made over to the bearer, Shri A.S.Khan whose signature is herewith attested by me and who is hereby authorised by me to receive that documents on my behalf, no Advocate now helping me, and the case ~~being~~ ^{be} handled by me on my own; I shall thereupon file my counter within the next ten days as already directed, or carry out other such instructions as the Hon'ble Bench may be pleased to issue on 28.4.88, the bearer above noted Shri A.S.Khan

Contd ..2

recd at 2 PM today
15/4/88

As the case has
already been transferred
to Lucknow Circuit Bench.
No action is needed at
Allahabad

15/4

Sir Majumdar
15/4

DR (S)
15/4

14/4
RS to Hon. VC.

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fresh
na

14/4/88

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shall be

~~be~~ present there at my request, ^{is} and carrying this letter.

Thanking you,

Yours faithfully,

Dated : 11-4-88

(S.K. LALL)

Signature
Signature of Shri
A.S. Khan attested.

(S.K. LALL)

11-4-88

(Advance copy also sent by post)
to CAT, Lucknow / ALD ✓

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH, LUCKNOW.

...567... No. 567 of 1987

1/26

S.K. Lal

PETITIONERS/APPLICANTS
APPELLANTS

Versus,

Union of India

OPPOSITE-PARTY/PARTIES
RESPONDANTS

FIXED FOR 28.4.88

MEMORANDUM OF APPEARANCE

In the above noted petition/case/ appeal I appear for the op
having been appointed as Additional Standing Counsel for the Govt. of India and its officers and so
instructed by department of Justice, Ministry of Law, Govt. of India, New Delhi to appear and
plead on his/ their behalf i. e. op

LUCKNOW : DATED :

28.4 1988 .

Wh

(V. K. CHAUDHARI)
Advocate

Counsel for op

Additional Standing Counsel
for Central Govt.

R/O 14/629, Barafkhana, Nai-Basti
Udaiganj, Lucknow.

Tel. Nos. 34986 (Residence)

33640 (Cham. - High Court)

RECEIPT OF MEMO

RECEIVED the Memo of Appearance from Sri V. K. Chaudhari, Advocate High Court,
Additional Central Govt. Standing Counsel High Court, Lucknow Bench of Allahabad High Court
in No. of 19.....

Bench Secy. Court No.....

Sec. officer.....

TO

THE REGISTRAR,
CENTRAL ADMINISTRATIVE TRIBUNAL (ALLAHABAD BENCH),
ALLAHABAD.

FORM II

(Rule 4(4))

Receipt of the application filed in the Central Administrative Tribunal, Allahabad Bench, by Shri S.K.Lall, Retired Commissioner of Income-tax, residing at B-1180, Indira Nagar, Lucknow, 226016, is hereby acknowledged. 8th July, 1987 has been fixed for hearing on admission.

Reg. No. 567/87/19647

Chandra
For Registrar,

Central Administrative Tribunal,

Allahabad Bench.

(VINOD CHANDRA)

Section Officer

Central Administrative Tribunal
Additional Bench, Allahabad.

Date : 1.7.87

Seal:

No. ~~567~~ CAT/ALLD/Jud/19647 Dated 2.7.87
O/c

To Shri S.K. Lall

Retd. Commissioner of Income Tax

H/o

REGISTERD A. D.

To,

THE REGISTRAR,
CENTRAL ADMINISTRATIVE TRIBUNAL (ALLAHABAD BENCH),
THORN HILL ROAD,
ALLAHABAD, U. P.

LUCKNOW, DATED 25-6-87

Sir,

I am attaching herewith, in triplicate, in the prescribed Paper Book format and Form I, my Application dated 25-6-87, to the Central Administrative Tribunal (Allahabad Bench) under Section 19 of the Administrative Tribunal's Act, 1985, for consideration of the learned Tribunal.

2. Attached to the Application (Form I), ~~xxx~~ in the Paper Books (3) are the Annexure to the Application, being "Facts of the case", as required in item 6 of the Application; the Annexure is accompanied by its mentioned Appendices A to H, being copies of relevant documents, duly attested by a Gazetted Officer.

3. I also attach herewith, as statutorily required for the purpose:

(a) Bank Draft (crossed), No. OT/82/P 636620 dated 20-6-87 from Indian Overseas Bank, Indira Nagar, Lucknow for Rs Fifty only (Application fee), drawn on the Indian Overseas Bank, Allahabad, favouring the Registrar, Central Administrative Tribunal.

(b) One empty file size envelope, bearing full address of the Respondent.

(c) One self addressed letter card for intimation for oral hearing at the application admission stage, if at all considered necessary on some problem arising in this connection, no oral hearing of this initial kind having, however, been requested by me when no hurdle is seen in the way of admission.

(d) Application Receipt Slip (Form II).

4. Receipt may kindly be acknowledged.

Thanking you, ✓

Yours faithfully,

Enclosures : as above..

Retired

(25)
REGISTERED. A.D.

To

The Registrar,
Central Administrative Tribunal,
Allahabad Bench
23-A, Thornhill Road,
ALLAHABAD.

521/82-18
567/87
139

Sir,

Subject: Case of S.K.Lall, Retired Commissioner of Income-Tax, Lucknow, Vs Union of India, through the Addl Secretary to the Govt of India in the Department of Pensions, Nirvachan Sadan, New Delhi; Registered No 567/87 and further Misc Application for interim stay No. 135/87; last date of hearing 21-1-88 and next date of hearing 17-2-88 at Allahabad.

I understand from my Advocate, Shri R.A.Sharma, 21 Lohia Marg, Allahabad, that my stay application noted above has been fixed for hearing on 17-2-88 at Allahabad. In that connection I beg to state that since a Bench of the Central Administrative Tribunal has since been notified to function at Lucknow (Gandhi Bhavan) from today, the 5th February, 88, it is my request (under Section 29 of the Adm Tribunals Act, 85) that my above noted case be kindly transferred now onwards for consideration by the said Lucknow Bench, as I reside at Lucknow (B-1180, Indira Nagar) and it would be convenient and economical for me to attend to the case locally at Lucknow. Pray that it may be ordered accordingly, so that instead of the case being taken up at Allahabad on the fixed date 17-2-88, it may now be taken up at Lucknow on the said date ~~17-2-88~~ 17-2-88, or any other subsequent date, as may be convenient to the Tribunal. I shall wait for the Tribunal's dispensation on this request accordingly and comply.

2. Secondly, as I proposed to attend to my case at requested place, Lucknow, hereafter myself, being resident here, ^{my} Wakalat Nama in favour of Shri R.A.Sharma, Advocate, Allahabad, may be treated as rescinded from now. Any notices and papers in connection with my above noted case, may hereafter be kindly sent to me directly at my address noted below. This request under Section 23 of the Tribunals Act, may also kindly be granted, viz for my handling my case personally, now onwards.

Thanking you, two extra copies attached.

Yours faithfully,

(S.K.LALL)

Encl
2 Extra copies

Retired Commissioner of Income-Tax,
B-1180, INDIRA NAGAR, Lucknow, 226016.

Copy for information and favour of necessary action to the Officer-in-Charge, Office of the Central Administrative Tribunal, Gandhi Bhavan, (near Residency), Lucknow.

(S.K.LALL)

Copy with compliments to Shri R.A.Sharma, Advocate,
21, Dr. Lohia Marg, Allahabad.

(S.K.Lall)
B-1180, Indira Nagar, Lucknow.

50/87

REGISTERED. A.D.

To

The Registrar,
Central Administrative Tribunal,
Allahabad Bench
23-A, Thornhill Road,
ALLAHABAD.

Sir,

Subject: Case of S.K.Lall, Retired Commissioner of Income-Tax, Lucknow, Vs Union of India, through the Addl Secretary to the Govt of India in the Department of Pensions, Nirvachan Sadan, New Delhi; Registered No 567/87 and further Misc Application for interim stay No. 135/87; last date of hearing 21-1-88 and next date of hearing 17-2-88 at Allahabad.

I understand from my Advocate, Shri R.A.Sharma, 21 Lohia Marg, Allahabad, that my stay application noted above has been fixed for hearing on 17-2-88 at Allahabad. In that connection I beg to state that since a Bench of the Central Administrative Tribunal has since been notified to function at Lucknow (Gandhi Bhavan) from today, the 5th February, 88, it is my request (under Section 29 of the Adm Tribunals Act, 85) that my above noted case be kindly transferred now onwards for consideration by the said Lucknow Bench, as I reside at Lucknow (B-1180, Indira Nagar) and it would be convenient and economical for me to attend to the case locally at Lucknow. Pray that it may be ordered accordingly, so that instead of the case being taken up at Allahabad on the fixed date 17-2-88, it may now be taken up at Lucknow on the said date ~~17-2-88~~ 17-2-88, or any other subsequent date, as may be convenient to the Tribunal. I shall wait for the Tribunal's dispensation and this request accordingly and comply.

2. Secondly, as I proposed to attend to my case at requested place, Lucknow, hereafter myself, being resident here, ^{my} Wakalat Nama in favour of Shri R.A.Sharma, Advocate, Allahabad, may be treated as rescinded from now. Any notices and papers in connection with my above noted case, may hereafter be kindly sent to me directly at my address noted below. This request under Section 23 of the Tribunals Act, may also kindly be granted, viz for my handling my case personally, now onwards.

Thanking you, two extra copies attached.

Yours faithfully,

(S.K.LALL)

Encl
2 Extra copies

Retired Commissioner of Income-Tax,
B-1180, INDIRA NAGAR, Lucknow, 226016.

Copy for information and favour of necessary action to the Officer-in-Charge, Office of the Central Administrative Tribunal, Gandhi Bhavan, (near Residency), Lucknow.

(S.K.LALL)

Copy with compliments to Shri R.A.Sharma, Advocate,
21, Dr. Lohia Marg, E Allahabad.

(S.K.Lall)
B-1180, Indira Nagar, Lucknow.

REGISTERED. A.D.

To

The Registrar,
Central Administrative Tribunal,
Allahabad Bench
23-A, Thornhill Road,
ALLAHABAD.

A/
1990

Sir,

Subject: Case of S.K.Lall, Retired Commissioner of Income-Tax, Lucknow, Vs Union of India, through the Addl Secretary to the Govt of India in the Department of Pensions, Nirvachan Sadan, New Delhi; Registered No 567/87 and further Misc Application for interim stay No. 135/87; last date of hearing 21-1-88 and next date of hearing 17-2-88 at Allahabad.

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2. Secondly, as I proposed to attend to my case at requested place, Lucknow, hereafter myself, being resident here, my Wakalat Nama in favour of Shri R.A.Sharma, Advocate, Allahabad, may be treated as rescinded from now. Any notices and papers in connection with my above noted case, may hereafter be kindly sent to me directly at my address noted below. This request under Section 23 of the Tribunals Act, may also kindly be granted, viz for my handling my case personally, now onwards.

Thanking you, two extra copies attached.

Yours faithfully,

(S.K.LALL)

Retired Commissioner of Income-Tax,
B-1180, INDIRA NAGAR, Lucknow, 226016.

Encl
2 Extra copies

Copy for information and favour of necessary action to the Officer-in-Charge, Office of the Central Administrative Tribunal, Gandhi Bhavan, (near Residency), Lucknow.

(S.K.LALL)

Copy with compliments to Shri R.A.Sharma, Advocate,
21, Dr. Lohia Marg, Allahabad.

(S.K.Lall)
B-1180, Indira Nagar, Lucknow.

REGISTERED. A.D.

To

The Registrar,
Central Administrative Tribunal,
Allahabad Bench,
23-A, Thornhill Road,
ALLAHABAD.

FF 17/2/88

Sir,

Case of S.K.Lall, Retired Commissioner of Income-Tax, Lucknow, Vs Union of India, through the Additional Secretary to the Govt of India in the Department of Pensions, Nirva-
chan Sadan, New Delhi; registered No 567/87 and further Misc
Application for interim stay No. 135/87; last date of hear-
ing 21-1-88 and next date of hearing 17-2-88 at Allahabad.

I beg to invite reference to my previous letter dt 5-2-88, and to say that the mentioned impending start of a C.A.T. Bench at Lucknow, was on the basis of reports circulating here, but my subsequent enquiries here indicate that it may take some time for this to materialise. I regret my above noted mention accordingly. My case thus stands to be pursued at Allahabad for the present and having rescinded my Vakalatnama in favour of Shri R.A. Sharma, Advocate, 21 Lohia Marg, Allahabad, as per my aforesaid letter dated 5-2-88, I would have appeared myself before the learned Tribunal on the fixed date 17-2-88 for hearing of the interim stay petition, but an unfortunate circumstance prevents me from doing so. My aged mother-in-law who since her widowhood long years ago has been staying with me, my wife being her only issue, has been gravely ill for the last one month with cerebral stroke confining her to bed. A medical certificate of date from the attending Doctor Shankdhar, is attached, and he advises another two months treatment and nursing to help her out. As there is no other male member in my family, I have to stick around here for her continuous treatment and attendance.

2. I humbly request therefore, that the case fixed for 17-2-88 may kindly be adjourned to some time in April next, when I shall comply and appear myself before the learned Tribunal at whatever venue ordained.

Thanking you,

Yours faithfully,

Encl 1 M.C.

(with typed copy)

(S.K.LALL)

Retired Commissioner of Income-Tax,
B-1180, Indira Nagar, Lucknow, 226016.

D RIT

So (SIT)
for mlg bl
Dec
DRC
11-2-89

HOSPITAL :

इरावली मार्ग

C-1056 (MIG)

Indiranagar, Lucknow.

Phone : 72651

क्षितिज हास्पिटल

OUT PATIENT WING

डा० एल० के० शंखर

M.B.B.S., M.D. (Medicine),

D.M.R.E., A.D.M.O. (Ex.)

Registered by G.M.C. (U.K.)

My No. 18594

RESIDENCE :

आकांक्षा

A-553 (HIG) Duplex)

Indiranagar, Lucknow

Phone : 72644

डा० एल० के० शंखर

B.Sc., M.B.B.S. (Lucknow)

M.I.M.A., Medical Officer

(P & T-Ex.)

1/12

This is to certify that
Mrs. Shahmili Devi care of her
son in law Mr. S.K. Lal, Retired
Income Tax Commissioner, resident
of B-1180 (MIG) Indira Nagar, Lucknow,
whose specimen signature are
given below, is suffering from
CEREBRAL ISCHEMIA CAUSE
ARTERIOSCLEROSIS, Presenting as
QUADRIAPARESIS WITH ANAESTHESIA and
is receiving medical supervision
of this hospital for last one
month.

It may not be out
of place to mention that she
needs a very immaculate

Facilities available : 1. X-Ray 2. E.C.G. 3. Pathology 4. Family Welfare Measures
5. Orthopaedics 6 E.N.T. 7 Vaccinations 8. Staff For observation

P-12

(COPY)

C-1056, Indira Nagar,
Lucknow.

Dr. L. K. Shankdhar,
M.B.B.S., M.D.

Regd No. 18584

143
KSHITIJ HOSPITAL
OUT PATIENTS WING

This is to certify that Mrs. Shakuntala Devi (care of her son-in-law, Mr. S.K.Lall, Retired Income-Tax Commissioner, resident of B-1180, Indira Nagar, Lucknow), whose specimen signatures are given below, is suffering from Cerebral Ischemia, cause Arteriosclerosis, presenting as quadriparesis with amnesia and is pursuing medical supervision OF this Hospital for last one month.

It may not be out of place to mention that she needs a very immaculate medical care, specially nursing, during the period of her ailment. Since she is being treated domiciliary, nursing by relatives is of paramount significance.

She is being advised such an intensive treatment and nursing for two months more, in continuation of her present treatment, w.e.f. 9-2-88.

Dr. (L.K.SHANKDHAR)
9-2-88

Sd Shakuntala Devi
(Specimen signature)

REGISTERED. A. D.

A/
144

To,

THE REGISTRAR,
Central Administrative Tribunal,
Allahabad Bench,
Thornhill Road,
Allahabad, U.P.

Sir,

Subject:

Case before the Tribunal, Regd No. 567 of 87-
S.K.Lall, Retired Commissioner of Income-Tax,
Lucknow, VS Union of India, through the Addl
Secretary to the Govt of India, Deptt of Pen-
sions, Nirvachan Sadan, Ashoka Road, New Delhi.

In the above noted case filed by the undersigned Applicant, under Section 19 of the Administrative Tribunal Act, 1985, before the Allahabad Bench of the Tribunal, I submit herewith a Miscellaneous Application under Section 24 and the Proviso thereof, seek interim stay orders against the Respondents, in favour of status-quo till the disposal of the Main Application, in which the next date is fixed for 17-12-87.

2. This Miscellaneous Application for interim stay is submitted, in triplicate, as a supplementary paper book, with Index, at the beginning. An addressed envelope for the Respondents, for transmitting copy of this Application, is also enclosed. The Application is accompanied by relevant documents' copies as Annexures. An Application Receipt Form is also attached, for use in your office.

Receipt may kindly be acknowledged.

Thanking you,

Yours faithfully,

(S. K. Lall)

Retired Commissioner of Income-Tax,
B*1180, INDIRA NAGAR,
LUCKNOW, 226016.

Enclosures:
as above.

Lucknow,
Dated 23-11-87

REGISTERED A.D.

To

The Registrar,
Central Administrative Tribunal,
Allahabad Bench,
23-A, Thornhill Road,
ALLAHABAD.

Sir,

Re. Case of S.K. Lall, Retired Income Tax Commissioner, Lucknow, Vs Union of India through the Additional Secretary to the Govt of India, Deptt of Pensions, Nirvachan Sadan, New Delhi; Regd No. 567/87 and further Miscellaneous Application for interim stay, No. 135/87; last date of hearing 17-2-88, next date of hearing 13-4-88 at Allahabad.

I am grateful to learn that as requested in my Application for adjournment dated 9-2-88, the Learned Tribunal has been pleased to postpone hearing of my above noted case to 13-4-88, and I shall present myself accordingly before the Allahabad Bench, for personally pleading my case, as already intimated after rescinding my Wakalatnama.

2. I have not received yet any intimation with regard to "Counter" required as per rules to be filed by the Govt (the Pension Deptt), and although as early as July, 87, the Deputy Registrar of the Tribunal had sent a copy of my plaint by Regd A.D. letter dated 17-7-87, to the said Pension Deptt as Respondents, for showing cause / filing objection, within a month, why the Application be not admitted (hearing was fixed for 10-8-87 and has been adjourned a number of times) but nothing has been heard from the Govt, more than six months having passed. I therefore humbly request the Learned Tribunal, that I may be heard on the merits of the case, on the next hearing date 13-4-88, for ex-parte decision, as may be considered feasible. Two extra copies of this letter are attached, so that a copy, if considered necessary may be passed on to the Respondents.

3. With regard to the subsequent Misc Application (No. 135/87) filed by me requesting for interim stay, for preventing adverse change of status quo, the urgency therefor has abated in the circumstances since developed and intimated by me to the Learned Tribunal with my letter (Regd A.D.) dated 4-1-88; the Accountant General, U.P. had resiled from his offending 'condition' dictating stand in the case comparable to mine, and although the Govt had not modified their supporting declaration for the Accountant General's condition laying, the matter has rested over these months with the A.G.'s resiling; thus if my main Application itself can be now taken up for consideration, as requested in the preceding paragraph, the interim stay application can be allowed to lie over.

Thanking you,

Address:

B-1180, Indira Nagar,
Lucknow. 226016

Yours faithfully,

3-88

(B)

CENTRAL ADMINISTRATIVE

व अदालत श्रीमान

TRIBUNAL (ALLAHABAD)

महोदय

[वादी] अपीलान्त

Tax Commissioner, Lucknow

प्रतिवादी [रिस्पान्डेंट]

Union of India
(Through Additional
Secretary to the Govt
of India, Dept of
Finance & Economic
Welfare, New Delhi)

Reg. No. 567/87

वकालतनामा

टिकट

वादी (अपीलान्त) S. K. Lall,
Retd Income-Tax
Commissioner,
Lucknow

बनाम

प्रतिवादी (रिस्पान्डेंट)

नं० मुकदमा

567/87/19647 dt 1-7-87

ऊपर लिखे मुकदमा में अपनी ओर से श्री

सन

पेशी की ता०

R. A. Sharma

Shri K. K. Singh Advocates
21 Dr. Dheer Marj Malhotra

एडवोकेट

महोदय

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ। और लिखे देता हूँ इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाब देही व प्रश्नोत्तर करें या कोई कागज़ दाखिल करें या लौटावें या हमारी ओर से डिंगरी जारी करावें और रुपया वसूल करें या सुल्हनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकदमा उठावें या कोई रुपया जमा करें या हमारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें --वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

B-1180, INDIRA NAGAR, LUCKNOW

साक्षी (गवाह)

दिनांक

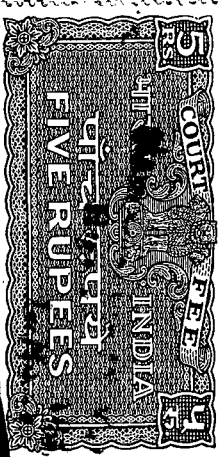
महीना

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स्वीकृत

नाम मुकदमा नं० 567/87/19647
नाम फरीकन S. K. Lall बनाम Union of India



No.

**SUPREME COURT
INDIA**

D.No. 681/89/XI

Dated New Delhi, the 31st March, 1994

All communications should
be addressed to the Registrar,
Supreme Court, by designation,
Not by name.

Telegraphic address:—

"SUPREMECO"

FROM:

SH.H.S.KAICKER, B.A., LL.B.,
ASSISTANT REGISTRAR

TO:

THE ADDITIONAL REGISTRAR
HIGH COURT OF JUDICATURE
ALLAHABAD, U.P.

Central Administrative Tribunal
Allahabad Bench at Lucknow

CIVIL APPEAL NO. 1773 OF 1994
(From Central Administrative Tribunal dated 7th October, 1988 in Original Application No. 567 of 1987 (L))

Union of India

....Appellant

Versus

S.K. Lall

....Respondent

Sir,

In pursuance of Order 13, Rule 6, S.C.R. 1966, I am directed by their Lordships of the Supreme Court to transmit herewith a Certified copy of the Judgment/Order dated the 17th March, 1994 in the appeal above-mentioned.

The Certified copy of the decree made in the said appeal and the Original Records if any will be sent later on.

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR

Mr. Raza
Put up with
file on 21-4-94
211
19-4

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--: 1 :-

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

505856

CIVIL APPEAL NO.517 OF 1987

Union of India

Appellant

Versus

P.N. Menon & Ors.

Respondents

Certified to be true copy

Assistant Registrar (Judicial)

Supreme Court of India

J U D G M E N T

N.P. SINGH, J.

The respondents, who are retired Government servants, filed a writ application before the High Court, questioning the validity of Office Memorandum No.F-19(4)-E.V./79 dated 25th May, 1979, issued by the Government of India, treating a portion of the dearness allowance, as pay for the purpose of retirement benefits in respect of Government servants who retired on or after the 30th September, 1977. According to respondents, who retired from service before 30th September, 1977, the said benefits

intelligible differentia. The said classification had also no rational nexus with the object sought to be achieved.

The Office Memorandum No.F-19(4)-E.V./79, with which we are concerned, states that the question of treatment of a portion of dearness allowance as pay had been under consideration of the Government of India and the President had been pleased to decide that "in respect of Government servants who retired on or after the 30th September, 1977, the amount of dearness allowance indicated in para 2 below, shall be treated as pay for the purposes and to the extent specified hereinafter." It further says that part of the dearness allowance, shall be treated 'dearness pay', in different pay ranges specified in the said Office Memorandum for the purpose of retirement benefits. Upto pay range of Rs.300/-, 36% of the pay shall be deemed to be dearness pay. Similarly, in respect of pay range above Rs.300/- and upto Rs.2157/-, 27% of the pay subject to a minimum of Rs.108/- and maximum of Rs.243/- shall be treated as amount of dearness pay. In respect of pay range above Rs.2157/- and upto Rs.2399/-, the dearness pay shall be the amount by which the pay falls short of Rs.2400/-. In the case of officers drawing pay above Rs.2180/- and retiring on or after 1st December, 1978, the amount of dearness pay to be treated for the purpose of retirement benefits, has been specified in the said Office Memorandum. In paragraph 3(1) of that Office Memorandum, it has been said that the dearness pay shall count as emoluments for pension and gratuity in terms of Rule 33 of

But, in the case of persons who have already retired on or after 30th September, 1977, but not later than 30th April, 1979, the ultimate average emoluments will be calculated according to the procedure prescribed. In the case of persons who retired between 30th September, 1977 and 28th February, 1978, and on or after 1st December, 1978 but not later than 30th April, 1979, one-half of the appropriate pay, equal to such average emoluments, shall be added to the average emoluments. In the case of persons who retired after 28th February, 1978 and after 30th April, 1979, full dearness pay appropriate to the pay equal to such average emoluments, shall be added to the average emoluments. It further provides that pension and gratuity of persons, who have already retired on or after 30th September, 1977, shall be recalculated on the basis aforesaid and arrears, if any, be paid subject to such adjustment as may be necessary. Paragraph 4 of the said Office Memorandum says that persons, who retired on or after 30th September, 1977 but not later than 30th April, 1979, will have an option to choose either of the two alternatives given in the said Office Memorandum:-

- (a) to have their pension and DCR Gratuity calculated on their pay excluding the element of Dearness Pay as indicated in para 2 above in accordance with the rules in force on 30.9.1977, and get graded relief on pension to the full extent admissible from time to time;
- OR
- (b) to have their pension and DCR Gratuity

recalculated after taking into account the element of dearness pay. In such cases, the first four instalments of graded relief sanctioned upto the average index level 272 will not be admissible; these pensioners will be entitled only to the instalments of graded relief sanctioned beyond the average index level 272."

The aforesaid Office Memorandum introduced a scheme to treat a portion of the dearness allowance as pay in respect of Government servants, who retired on or after 30th September, 1977. With reference to different pay ranges, amount of dearness pay has been fixed; that dearness pay is to be counted as emoluments for pension and gratuity in terms of Rule 33 of the Central Civil Services (Pension) Rules, 1972. Thereafter, an option has been given to persons who have retired on or after 30th September, 1977 but not later than 30th April, 1979, to exercise an option out of the two alternatives, of getting pension and death-cum-retirement gratuity, calculated either by excluding the element of dearness pay or by including the element of dearness pay. It can be said that the Office Memorandum in question has evolved a concept of treating a portion of

recalculated after taking into account the element of dearness pay. In such cases, the first four instalments of graded relief sanctioned upto the average index level 272 will not be admissible; these pensioners will be entitled only to the instalments of graded relief sanctioned beyond the average index level 272."

The aforesaid Office Memorandum introduced a scheme to treat a portion of the dearness allowance as pay in respect of Government servants, who retired on or after 30th September, 1977. With reference to different pay ranges, amount of dearness pay has been fixed; that dearness pay is to be counted as emoluments for pension and gratuity in terms of Rule 33 of the Central Civil Services (Pension) Rules, 1972. Thereafter, an option has been given to persons who have retired on or after 30th September, 1977 but not later than 30th April, 1979, to exercise an option out of the two alternatives, of getting pension and death-cum-retirement gratuity, calculated either by excluding the element of dearness pay or by including the element of dearness pay. It can be said that the Office Memorandum in question has evolved a concept of treating a portion of dearness allowance as pay in respect of officers in different pay ranges fixing different percentages of the amount of dearness pay for purpose of retirement benefits. The lower the pay range, the higher is the percentage of the dearness pay. Thereafter, such dearness pay is to be taken into consideration for fixation of pension and gratuity.

Now the question which is to be answered is as to

The concept of 'dearness pay' was evolved in respect of employees in different pay ranges with different percentages of the dearness pay. Thereafter the pension and gratuity were worked out and an option was given to persons, who retired on or after 30th September, 1977 but not later than 30th April, 1979, to choose either of the two alternatives - (i) to have their pension and death-cum-retirement gratuity calculated on their pay excluding the element of dearness pay as indicated in paragraph 2 of the said Office Memorandum; or (ii) to have their pension and death-cum-retirement gratuity recalculated after taking into account the element of dearness pay. If the stand of the respondents is to be accepted that this scheme should have been made available, without there being a cut off date, to all including those who have retired even 20 to 25 years before the introduction of the scheme, then, according to us, the whole scheme shall be unworkable, because it is linked with the payment of dearness allowance, which is based on the level of price index. Different institutions/departments have introduced the system of payment of dearness allowance at different stages to mitigate the hardship of their employees with the rise in the prices of the essential articles as a result of the inflation.

On behalf of the Union of India, it has been stated that in the aforesaid Office Memorandum dated 25th May, 1979, 30th September, 1977 was fixed as the cut off

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date, with reference to the average cost of living index at 272, which fell on 30th September, 1977. It has been further stated that those who were entitled to the benefits of the said Office Memorandum, were given option either to opt for the revised formula or retain the existing formula. Some of the persons entitled to the new formula opted to retain their existing position, because in their case the application of the new formula would have resulted either in the reduction of the total pension or the increase which would have been only marginal. It has been said that under the Office Memorandum aforesaid, dearness allowance with reference to average price index level at 272 was treated as dearness pay for the purpose of pension for those who retired after 30th September, 1977. It has also been pointed out that pensioners, who retired on or after 30th September, 1977 with the benefits of dearness pay, became entitled to less dearness relief, as compared to those who retired before 30th September, 1977 or retired after 30th September, 1977, but had opted not to get the benefit of the impugned Office Memorandum.

In respect of grievance regarding encashment of earned leave upto maximum encashment of six months' leave, which was made available, it was pointed out that it was a new facility allowed to serving Government servants and as such a date had to be fixed for its application. The date of its operation was fixed in consultation with the representatives of the Government servants. Respondents,

the cut off date has been selected in an arbitrary manner. Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay-scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay-scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations.

In the case of Action Committee South Eastern Railway Pensioners v. Union of India, (1991) Supp. 2 SCC 544, the concept of 'dearness pay' was examined, including the two options which had been framed, beyond average price index level at 272, fixing a cut off date. It was held that merger of a part of the dearness allowance as dearness pay on average price index level at 272, with reference to different pay ranges, was not arbitrary in any manner and

that on principle of D.S. Nakara's case (supra), it cannot be held that Provident Fund retirees, who had opted for the same, were being discriminated because the pension retirees in course of time because of revision, were better placed. The contention that a fresh option be given was also rejected, because after exercising the option the Provident Fund retirees formed a separate class from pension retirees.

Another Constitution Bench in the case of Indian Ex-Services League v. Union of India, (1991) 1 SCR 158, had to consider the grievance of ex-servicemen, claiming on basis of the decision in D.S. Nakara's case (supra) that all retirees, who held the same rank, irrespective of their date of retirement, must get the same amount of pension. A claim had also been made for grant of same death-cum-retirement gratuity to pre-1.4.1979 retirees, as had been granted to post-1.4.1979 retirees; claim had also been made for merger of dearness allowance backwards. While negating the claims aforesaid, it was pointed out that the conclusion of this Court in D.S. Nakara's case (supra), was in context of the benefits of liberalisation given in accordance with liberalised pension scheme, which had to be given equally to all retirees, irrespective of their date of retirement and those benefits could not be confined to only the persons who retired on or after the specified date. After referring to the Krishena Kumar's case (supra), it was said:-

"We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read Nakara decision as

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In yet another case of All India Reserve Bank Retired Officers Association v. Union of India, AIR 1992 SC 767 = (1992) Suppl. 1 SCC 664, the Retired Officers Association of the Reserve Bank of India questioned the validity of introduction of Pension Scheme in lieu of Contributory Provident Fund Scheme. The Bank employees, who retired prior to 1st January, 1986, had not been given benefit of the said Pension Scheme. It was held that the said cut off date was neither arbitrary nor artificial or whimsical.

The scheme to merge a part of the dearness allowance for purpose of fixing the dearness pay, was evolved, and was linked with the average of cost of living index fixed at 272, which fell on 30th April, 1977. In this background, it cannot be said that the date, 30th September, 1977, was picked out in an arbitrary or irrational manner, without proper application of mind. The option given to employees, who retired on or after 30th September, 1977 but not later than 30th April, 1979, to exercise an option to get their pension and death-cum-retirement gratuity calculated by excluding the element of dearness pay as indicated in the aforesaid Office Memorandum or to get it included in their pension and death-cum-retirement gratuity, was not an exercise to create a class within class. The decision having a nexus with the price index level at 272, which it reached on 30th September, 1977, was just and valid. It has been rightly pointed out that respondents had never been in receipt of dearness pay and as such the

157.

CA 567/87

21.4.94 order of Hon. Supreme Court
of India dt 17.3.94 through
DNO 681/89/x, dt 5/4/94
received and kept on record as
no action is needed.

P.S.D.

RE

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OR

The copy of C.M. Am. No 10/89(L) has already been
served by the applicant to the O.P. & as such
further notice has not been sent.

for

17/2

OR

In compliance with court's order dt.
23/1/89, objection not filed

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17/2

22-2-89.

Hon. D.S. Mishra, Jm.

The applicant in person
is present.
Sri V.K. Chaudhary for
the respondents is present.
Hence this case on
22-2-89 for orders

be

Am.

for

3/2/89

Hon. D.S. Mishra, Jm.
Hon. G.S. Sharma, Jm.

The applicant in person
is present.
Sri V.K. Chaudhary
for respondents is also present.
On the request of the
parties, the case is
adjourned to 28-6-89.

be

for

Jm.

Am.

8/89

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
APPEL. BENCH, ALLAHABAD (CIRCUIT
BENCH, LUCKNOW)

O.A. No. 567 of 1987

Please take notice that
this appn. will be heard
on 27.1.89 before Circuit Bench
at Lucknow.

S.K. Lal

-versus - Union of India & others

APPLICATION FOR EXTENSION OF TIME FOR
IMPLEMENTATION OF JUDGEMENT.

The applicant/Respondents begs to submit as follows:-

- Reply to O.A.
22.2.89*
1. That the applicant/Respondents are going to file Special Leave petition in the Hon'ble Supreme Court of India against the judgement dated 17.10.1988 passed in the above noted case by this Hon'ble Tribunal.
 2. That it will take quite considerable time in filing Special Leave petition and therefore, it will not be possible for Union of India to implement the judgement of the Hon'ble Tribunal.
 3. That in the circumstances aforesaid, it is very much expedient in the interest of justice that the Respondents are allowed six months time to implement the judgement of the Hon'ble Tribunal.

P A Y F P.

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to allow six months time for implementation of the judgement dated 17.10.1988 passed by this Hon'ble Tribunal in the above noted case.

(V.K. CHAUDHARY)
Advocate, High Court

Recd copy
gslhan
CA-3, Lucknow
In Smt. S.K. Lal
17/1/89.

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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL BENCH ALLAHABAD
(CIRCUIT BENCH, LUCKNOW)

O.A. NO. 567 pf 1987

S.K. LAL

Vs Union of India & Others

NOTICE OF MOTION

The respondents moved to court through an application dated 12.1.1989 in the abovenoted case.

2. That the abovecase was decided on 17.10.1988 but the respondents are unable to implement the Judgment in time and hence moved an application for extension of Time to implement the judgment.

3. That the said application is fixed for hearing on 13.1.1989 at 10.30 hrs before the Hon'ble Tribunal.

4. Kindly take notice for 13.1.1989 and you are advised to appear on ~~13.10.1989~~ at 10.30 hrs on 13.1.1989 before the Hon'ble Central Administrative Tribunal Circuit Bench, Lucknow.

(V.K. Chaudhari)

Advocate

LUCKNOW:

Add. Standing Counsel for Central Govt

Dated: 12 January, 1989 Counsel for the Respondents.

Handwritten notes:
This application
for order
for 13.1.89
11/1/89
Sir,
The applicant 12
is being informed
through special
messenger
the Department.

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDL. BENCH, ALLAHABAD (CIRCUIT

BENCH, LUCKNOW)

C.M. An. No. 10/89 (L)

O.A. No. 567 of 1987

S.K. Dal

-versus - Union of India & others

APPLICATION FOR EXTENSION OF TIME FOR
IMPLEMENTATION OF JUDGEMENT.

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1. That the applicant/Respondents are going to file Special Leave Petition in the Hon'ble Supreme Court of India against the judgement dated 17.10.1988 passed in the above noted case by this Hon'ble Tribunal.
2. That it will take quite considerable time in filing Special Leave Petition and therefore, it will not be possible for Union of India to implement the judgement of the Hon'ble Tribunal.
3. That in the circumstances aforesaid, it is very much expedient in the interest of justice that the Respondents are allowed six months time to implement the judgement of the Hon'ble Tribunal

P R A Y E R.

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to allow six months time for implementation of the judgement dated 17.10.1988 passed by this Hon'ble Tribunal in the above noted case.

(V.K. CHAUDHARI)

Advocate, High Court
Counsel for the applicant/Respondents

Dt. 12.1.1989

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDL. BENCH, ALLAHABAD (CIRCUIT

BENCH, LUCKNOW)

C.M. No. 10189 (S)

O.A. No. 567 of 1987

S.K. Dal

-versus - Union of India & others

APPLICATION FOR EXTENSION OF TIME FOR
IMPLEMENTATION OF JUDGEMENT.

The applicant/Respondents begs to submit as follows:-

1. That the applicant/Respondents are going to file Special Leave Petition in the Hon'ble Supreme Court of India against the judgement dated 17.10.1988 passed in the above noted case by this Hon'ble Tribunal.
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3. That in the circumstances aforesaid, it is very much expedient in the interest of justice that the Respondents are allowed six months time to implement the judgement of the Hon'ble Tribunal

P R A Y E R.

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to allow six months time for implementation of the judgement dated 17.10.1988 passed by this Hon'ble Tribunal in the above noted case.

(V.K. CHAUDHARI)
Advocate, High Court
Counsel for the applicant/Resr