

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW .

INDEX SHEET

CAUSE TITLE State of U.P. vs. M/s. ... of 1990 (L)

Name of the parties M/s. ... Applicant.

Versus.

State of U.P. Respondents.

Part A.B.C.

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...
...

(A7)
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

O. A. No. 20 of 1988(L)

Narendra Bihari Lal Applicant.

vs.

Union of India & Ors. Respondents.

Hon'ble Mr Justice K. Nath, V.C.

Hon'ble Mr K. Obayya, Adm.Member

(By Hon. K. Obayya, A.M.)

In this application under Section '19' of the Administrative Tribunals Act, 1985 the applicant who was a member of Indian Administrative Service (I.A.S.) borne in U.P. State Cadre, having retired on superannuation on 31.01.82 in super-time-scale, from the post of Commissioner and Director Consolidation of Land Holdings, U.P. State Government, has sought the following reliefs.

I. Quash orders dated 23.12.1987, 26.10.1987 and 14.01.1988 (Annexures I, II, III) and direct respondents 1 and 2 to allow the applicant to exercise a revised fresh option under 4(a) of O.M. 01.06.1982 read with that of 10.05.1983 and fix his pension according to O.M. of 16.04.1987 and in the alternative, respondents 1 & 2 to grant the applicant same benefit as has been granted to the officers retiring before or after the period between 31.01.1982 to 29.06.1982.

II. Quash Government of India letter no. 25011/11/82/A.I.S. dated 01.06.1982 (Annexure 4) so far as it relates to exercise of option.

III. Quash O.M. dated 08.08.1986 so far as relates to exercise of fresh option (Annexure 5).

IV. To pay consequential arrears with interest.

2. The case of the applicant is that as a member of I.A.S., he is governed by A.IS. (All India Services) (Death-cum-Retirement) Rules 1958 and the orders of Government of

Contd.....p2/-

(A9)

India, Ministry of Personnel, Administrative Reforms, issued from time to time, regarding his pension and other retirement benefits. His pension was fixed at Rs 1225/-per month in accordance with the provisions of Rule 18(1) which was substituted by Rule 4(ii)1(i) of the above said Rules. The pension, however, was revised in terms of the orders of Government of India contained in their letters No. 25011/11-82/A.I.S. dated 01.06.1982 and 10.05.1983(Annexures IV, Annexure A-1), whereby a portion of 'Additional Dearness Allowance' was merged with pay for purposes of pension and other retirement benefits. The applicant being in the upper bracket was eligible for the highest amount, of Dearness Allowance i.e. Rs 370/- per month, but only half of this amount was merged in his 'Dearness Pay' as he fell in the category of those officers retired/retiring between 31 January, 1982 and 29th June, 1982. He exercised an option in favour of Merger of 'Dearness Allowance', but noticed that the pension, he was getting worked out to a sum less than that of some of the officers, who retired earlier, though they had no benefit of Merger of Dearness Allowance in their Pay. He represented to the Ministry of Personnel, Accountant-General to rectify his pension pointing out this anomaly, but the same were rejected, on the ground that he has exercised his option for Merger of Dearness Allowance with pay and that option has become final and the issue cannot be reopened.

3. For a clear understanding of the problem, it would be necessary to go through the relevant orders which are contained in Annexure IV and Annexure 'A' to the application.

The letter dated 01.06.1982 is as under:

No. 25011/11/82-A.I.S.(II)
Government of India/Bharat Sarkar
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
(KARMIK AUR PRASHASHNIK SUDHAR VIBHAG)

New Delhi, the 1st June, 1982

To,

- (1) Chief Secretaries to the Government of all States.
- (2) All the Accountants-General of States.

SUB: All-India Services (DCRB) Rules, 1958, Rule 2(1) -
Merger of a portion of additional dearness allowance
with pay with effect from January 31, 1982 for the
purpose of retirement benefits - Regarding.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

This department have considered the question of extending the above orders to members of All-India Services who retired/retire on or after January 31, 1982. The orders issued by the Ministry of Finance earlier regarding treating a portion of dearness allowance as dearness pay, vide their O.M.No. 19(4)-EV-79, dated May 25, 1979 have been extended to members of All-India Services, vide this Department's letter No. 25011/15/79-A.I.S.(II), dated July 27, 1979. It has been decided that the orders now issued by that Ministry treating a portion of additional dearness allowance as dearness pay in the case of Central Government servant should also be extended to members of All-India Services. Accordingly, it has been decided that out of the additional dearness allowance now admissible, the following amount shall be treated as pay under sub-claus (iii) of clause (g) of sub-rule (1) of rule 2 of A.I.S. (DCRB), Rule 19:58 in the case of members of the service who retired/retire on or after January 31, 1982.

<u>Pay Range</u>	<u>Amount of dearness pay</u>
(i) Pay upto Rs.2,037/- ..	15% of pay subject to a maximum of Rs.120/-
(ii) Pay above Rs.2,037/- ..	Rs.363/- including the amount of dearness allowance treated as dearness pay under this Deptt's letter no. 25011/15/79-AIS(II) dated July 27, 1979.

xxx

xxx

xxx

xxx

In the case of officers who have already retired on or after January 31, 1982 or may retire hereafter, but within ten months from that date, the ultimate average emoluments will be calculated as follows:-

(a) in the case of officers who retired/retire between January 31, 1982 and June 29, 1982.

one half of dearness pay appropriate to the pay equal to such average emoluments as per para 2 above, shall be added to the average emoluments.

(b) in the case of officers who retire after June 29, '82.

Full dearness pay appropriate to the pay equal to such average emoluments as per para 2 above, shall be added to the emoluments.

Officers who retired/retire on or after January 31, 1982 will have an option to choose either of the two alternatives below:-

(a) to have both pension/service gratuity and DCR gratuity calculated on their pay, without including the element of dearness pay indicated in para 2 above, and get dearness relief on pension as for those governed under para 4(b) of this Deptt's letter dated the 27th July, 1979.

'OR'

(b) to have both pension/service gratuity and DCR gratuity calculated after taking into account of the element of dearness pay now being merged. In such cases, the pensioners will be entitled only to the instalments of dearness relief sanctioned beyond the average index level 320.

The option may be exercised within six months before retirement. Officers who have retired on or after January 1982 but before the issue of these orders, may exercise the option within six months from the date of issue of this order. The option once exercised shall be final. Those who fail to exercise the option within the stipulated period will be deemed to be governed by para 6(b) above. If a pensioner has died before exercising the option, the State Government/Accounts General shall calculate the pension and gratuity under both options in para 6 above, and sanction the more advantageous of the two.

xxx

xxx

xxx

xxx

Sd/

Contd.....p5

(AII)

The second letter under challenge dated 10.05.1983
reads as follows:-

"No.25011/11/82-A.I.S.(II)
GOVERNMENT OF INDIA/BAHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
(KARMIK AUR PRASHASHNIK SUDHAR VIBHAG)

New Delhi, the 10th May, 1983

To

- (1) The Chief Secretaries to the Government of all States
- (2) All the Accountant-General of States.

SUB: All-India-Services (DCRB) Rules, 1958-Rule 2(1)
Merger of a portion of additional dearness allowance
with pay with effect from January 31, 1982 for the
purpose of retirement benefits- Regarding.

Sir,

I am directed to refer to his Department's letter of even number dated 1st June, 1982 treating a portion of additional dearness allowance as pay with effect from January 31, 1982 for the purpose of retirement benefits and to say that the Ministry of Finance have issued orders in the case of Central Government servants vide their O.M.No. F-1(3)EV-82, dated the 4th March, 1983 fixing the maximum amount of additional dearness allowance that could be merged with pay at Rs.127/- per month fixed by them earlier. In view of this, it has been decided to substitute the amount of dearness pay indicated in para 2 of this Department's letter dated 1st June, 1982 by the following:-

<u>Pay range</u>	<u>Amount of dearness pay</u>
i. pay upto Rs.2,037/-	.. Rs.100/- plus 3% of pay subject to a maximum of Rs.127/-
ii. Pay above Rs.2,037/-	.. Rs.370/- including the amount of dearness allowance treated as pay under this Department's letter No. 25011/15/79, A.I.S.(II), dated 27th July, 1979.

2. In view of the change made above, it has been decided to give a fresh option to members of All-India-Services who retired or retire on or after January 31, 1982 and have exercised or are deemed to have exercised an option in terms of this Department's letter dated 1st June, 1982 to choose either of the two alternatives mentioned in para 6 of that letter as amended vide para 1 above. The option may be exer-

Contd.....p6/-

(A12)

within six months from the date of issue of this letter, where no change in the existing option, is intimated by the end of that period, the existing option/deemed option should stand ~~option is intimated~~. In the case of deceased pensioners, the State Government/Accountant-General shall ~~take~~ into account the revised rates of dearness pay as mentioned in para 1 above for calculating the pension and gratuity under both the options in para 6 of letter dated 1st June, 1982 and sanction the advantageous of the two.....

.....

Sd/-_____."

3. In terms of the above Government orders, the pension emoluments of the applicant were worked out to Rs.2378/-
A comparative position of emoluments of those who retired earlier and not governed by 'Merger of Dearness Pay' indicated that the applicant has actually gained nothing, but was a net loser. The applicant in his letter dated 14.11.1987 to the Additional Secretary, Government of India (Annexure I-A) highlighted the anomaly and requested its rectification. The difference in emoluments as worked out by him were as follows:-

	For those who retired before 31.01.1982.	For those who retire on or after 31.1.82 and before 30.06.1982.
1. Pay at time of retirement ..	2,750.00	2,750.00 + 185.00 2,835.00
2. Pension fixed originally ..	1,225.00	1,299.00
3. Part consolidation under O.M. of 16.4.87(para'4')	2,369.00	2,209.00
4. Revised pension under O.M. of 16.4.87(para'6')	1,375.00	1,468.00
5. Total consolidation pension ..	2,539.00	2,378.00

Contd.....p7/-

[Handwritten signature]

'Dearness Pay' and his pension was fixed as admissible to him. Since his pension was fixed in accordance with the rules, pension settlement has become final. He justified the criteria of 50 per cent 'Merger of Additional Dearness Allowance' as 'Dearness Pay' to those who retired between 31.01.1982 and 29.06.1982 and 100 per cent to those who retired after 29.06.1982 as a reasonable criteria to give even benefits. The orders passed rejecting the request of the applicant to exercise fresh option are not arbitrary or discriminatory and not violative to the constitutional provisions.

6. The applicant in his submissions pointed out that the Impugned Order (Annexure-4) has resulted in creation of a sub-class between a class of pensioners, in that those who retired between 31.01.1982 and 29.06.1982 have been allowed the benefit of merger to the extent of only half of dearness pay while in the case of those who retired after 29.06.1982, full dearness pay was allowed. This classification within the homogeneous class of pensioners is not based on reasonable criteria and has no nexus to the object sought to be achieved. He further urged that giving option to the pensioners to chose the alternative either in favour of merger or against it has no meaning since even in cases where no options are exercised, the pensioners are deemed to be governed by 'Merger Rule'. He also pointed out that by order dated 08.08.1986 (Annexure '5') pensioners, who retired between the period 30.04.1979 to 30.01.1982 were given opportunity to exercise

Contd.....p9/-

B

their options on the 'Merger of Dearness Allowance', but the door is shut to pensioners, who retired after 31.01.1982. This, he alleged, amounts to discrimination among the class of pensioners. In support of his contentions, he cited the case of Ranga Joshi and Ors. vs. U.O.I. (S.L.J., 1988(1) page 85) decided by Bangalore Bench of this Tribunal and the decision of the Supreme Court in D.S. Nakara and Ors. vs. U.O.I. (1983 (1) S.L.J., 131(SC)). The issue involved in the case of Ranga Joshi and ors. vs. U.O.I., referred to above related to treatment of 'Additional Dearness Allowance' as 'Dearness Pay' for purposes of computation of pension and other retirement benefits. Certain employees of the Postal Department challenged the operation of para 3(III) (a) & (b) of the order of Ministry of Finance, Department of Expenditure contained in F. 1(3)-EV/82 dated 8.04.1982; the relevant para reads as under:

Para 3.

(iii) In the case of persons who have already retired on or after 31.1.1982 or may retire thereafter but within ten months of that date, the ultimate average emoluments will be calculated as follows:

- | | |
|--|---|
| (a) In the case of person who retire/retired between 31.1.1982 and 29.6.1982 | One half of dearness pay appropriate to the pay equal to such average emoluments as per para 2 above, shall be added to the average emoluments. |
| (b) In the case of persons retired after 29.6.1982 | Full dearness pay appropriate to the pay to equal such average emoluments as per para 2 above shall be added to the average emoluments." |

7. Relying on the judgment of the Hon. Supreme Court in the case of D.S. Nakara vs. U.O.I., referred to above, the Tribunal held that the classification of pensioners based on specified dates as under para 3(III) (a) and 3 (III) (b) is unrelated to the objective sought to achieve and is arbitrary

and suffers from the vice of the Article '14 of the Constitution.
It was observed:

"that the homogeneous class of pensioners has been classified into separate classes on the ground that they had retired before 30.6.1982 or after that date and that classification has no rational nexus to the object sought to be achieved by the order at all. This classification made by Government is an impermissible and invalid classification and contravenes Article 14 of the Constitution. On both these grounds and for all the reasons found by the Supreme Court in Nakara's case the impugned portions of the order suffer from the vice of Article 14 of the Constitution of India and are therefore, liable to be struck down."

The offending portions of the para 3(III) were struck down. In effect, this meant 'Full Dearness Pay' to be added to the average emoluments for purposes of computation of pension for all the pensioners retiring on or after 31.1.1982 and differential treatment to those retiring between 31.1.1982 and 29.6.82 thereafter has been done away with. We are in full agreement with the decision of the Tribunal.

8. In D.S. Nakara case (supra) the Constitution Bench of the Hon. Supreme Court observed that pension is not a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character, that the pension is not an ex-gratia payment but it is a payment for the past service rendered it is a social welfare measure rendering the socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It was also held that the pensioners constitute a class and dividing them on the basis of a specified date for differential treatment is unjust and violative of Article 14 of the Constitution. It is now well settled that it is the responsibility of the State to ensure safety and welfare of the pensioners ; viewed in this background

B

ART

-11-

the problems and anomalies in the application of Government orders brought to the notice of the authorities by the pensioners deserve serious consideration and not be brushed off lightly on technical grounds.

9. In the instant case it would appear that the applicant has only been knocking at the doors of the authorities to set right an anomaly in which the application of the Govt. order dated 1.6.1982 has worked out to his disadvantage in as much as some of his colleagues who retired earlier were getting more pension. In giving option for 'Merger of Dearness Allowance', he appears to have been chasing a mirage, but he had not realised that what he chose was not to his advantage and he wanted to withdraw his option and exercise fresh option in terms of the order dated 8.8.1986 (Annexure 5). His request was rejected on the ground that under this G.O. only pensioners who retired after 30.4.1979 and before 30.1.1982 were eligible to exercise option and that since he has already exercised the option in terms of Annexure A-4 it was not open to him to withdraw the same. The rejection was not on consideration of merits of the case. It is not the case of the respondents that what the applicant ~~what~~ is seeking is not to his advantage. Further it is noticed that in the order dated 10.5.1983 (Appendix No. 1 to Annexure A) while seeking fresh option from All India Service officers retiring or retired on or after 31.1.1982, it is indicated that "in the case of deceased pensioners the State Government/Accountant General shall take into account the revised rates of dearness pay as mentioned in para 1 above for calculating the pension and gratuity under both the options in para 6 of the letter dated 1.6.1982 and sanction the advantageous of the two." From this it is evident that the objective of the Government order is to ensure that maximum advantage is passed on to the pensioners. The fact remained that the applicant stood at

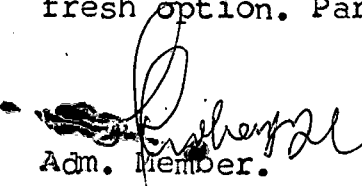
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(A/D)

-12-

disadvantage because of his option, and he has legitimate grievance to get this anomaly corrected. What he is asking is for a better alternative available to him in the terms of Government orders.

10. In these circumstances, we are of the view that the rejection of the applicant's request to withdraw his option and exercise fresh option is on technical grounds which cannot be sustained. We, accordingly set aside the impugned orders dated 23.12.1987, 26.10.1987 and 14.01.1988 (contained in Annexures I, II and III to the application) and direct the respondents to permit the applicant to exercise a fresh option and refix his pension as per his entitlement bearing in mind the observations contained in the body of this judgment and settle his arrear claims within a period of 90 days from the date of receipt of fresh option. Parties to bear their costs.


Adm. Member.


Vice Chairman.

Lucknow Dated: 1st October, 1990.

(A1) Filed on 29.4.88.
28/4

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. CA-20 of 1988(2)

APPLICANT (s) Nagendra Behari Lal

RESPONDENT(s) G. O. Sudra & others

6/4 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 |
| (b) Is the application in paper book form ? | yes |
| (c) Have six complete sets of the application been filed ? | yes (5 sets) |
| 3. (a) Is the appeal in time ? | yes |
| (b) If not, by how many days it is beyond time ? | N.A. |
| (c) Has sufficient case for not making the application in time, been filed ? | N.A. |
| 4. Has the document of authorisation/Vakalat-nama been filed ? | No, In Person |
| 5. Is the application accompanied by B. D./Postal-Order for Rs. 50/- | yes D.D.N. OT/82/P-636862
D 4.4.88 for Rs 50/- only |
| 6. Has the certified copy/copies of the order (s) against which the application is made been filed ? | Unattested Copy is filed. |
| 7. (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 ? | No |

ORDER SHEET (A3)
O. A. No. 20/88(L)

① 2.5.88 Hon K. Madhwa Reddy Chairman,
 Hon B.C. Muttar. VC

Notice
 issued
 2/6

Direct. One month for it.
 15 days for RA
 Pu L up 11.7.88

② 20-7-88.

Registrar

None responds. Reply has not been
 filed. Inform respondent to file reply
 by 19/9/88.

Q²⁰
 7

Registrar

2/8/88

Inform the Respondents

Inst
 2/8

③ 19.9.88. Counsel for respondent Sri. V.K. Choudhary
 is present.

put up this case on 26.10.88
 for filing reply. Send a reminder also
 to Govt of U.P. for filing reply on that
 date.

le
 DR.

12-10-88

DR

Reminder sent to the respondent
 dt 3.

Inst
 10/10/88

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.

O.A./T.A. No. 20 1988 (L)

Hagedrao Bilani Lal Applicant(s)

Versus

Union of India Respondent(s)

Sr. No.	Date	Orders
④	26.11.88	Applicant Sri Hagedrao Bilani Lal present in person. Sri V.K. Chaudhary Counsel for the respondents filed Counter affidavits on behalf respondents no 2 & 3. rejoinder if any may be filed by 25.11.88. Respondent no 1 may also be filed Counter by the date fixed. (D.R.S)
⑤	25.11.88	D.R (J) Rejoinder Affidavit filed on behalf of Respondent No 2. Sri Chaudhary requests time for filing Counter Affidavit on behalf of other parties. The same can be filed by 24.1.89. D.R
⑥	24.12.88	Reply filed today. Rejoinder can be filed by 23.2.89 as proposed. D.R
⑦	23.2.89	D.R Today Rejoinder filed by Counsel for Applicant. The case is adjourned to for Hearing 27-4-1989. D.R

Applicant
Sri CA 1/17
25/11

(H 4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

D.A.NO. 20 of 1990⁸⁸ (L)
S.A.NO.

DATE OF DECISION 1-10-90

Narendra Behari Lal

PETITIONER

Applicant in person

ADVOCATE for the
Petitioner (s)

VERSUS

Union of India & Ors

RESPONDENT

Shri V. K. Chaudhary

Advocate for the
Respondent (s)

CORAM :

The Hon'ble Mr. Justice K. Nath, VC

The Hon'ble Mr. K. G. Bhatia, AM.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporters or not? Yes
3. Whether their Lordship wish to see the fair copy of the Judgement? Yes
4. Whether to be circulated to other Benches? Yes

S.S.U./



1.10.90

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
AT LUCKNOW.

BETWEEN

NARENDRA BEHARI LAL PETITIONER

AND

The Union of India & Others Respondents.

PAPER BOOK

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Filed on
29/4/00.
A.C.S.N.
29/4/00

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H.	Crossed Bank Draft on Indian Overseas Bank, Allahabad, No. OT/82/P 636862/11/30 dated 4.4.1988 for Rs.50/- only.	---			
I.	Three empty file size envelopes bearing full address of the Respondents.	----			
J.	Self-addressed letter-card	----			
K.	Receipt-slip(Form II).	----			

18/7
 Namendra Behari Singh

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW.

Between

Narendra Behari Lal
(I.As S. Retd)

last employed as Commissioner
& Director Consolidation of Land
Holdings U.P., Lucknow

.. PETITIONER

AND

The Union of India, through the Additional Secretary
to Govt. of India, Ministry of Personnel, Public
Grievances & Pensions, Department of Pensions &
Pensioner's Welfare, New Delhi-110 001

.. RESPONDENT NO. 1

Accountant General
(A&E) II, U.P., Allahabad

... RESPONDENT NO. 2

State of Uttar Pradesh, through the
Chief Secretary to Govt. of Uttar Pradesh
Vidhan Bhawan Lucknow-226001.

... RESPONDENT NO. 3.

1. PARTICULARS OF THE APPLICANT:

- (i) Name of applicant - Narendra Behari Lal
- (ii) Name of father: - Late Sri Manmohan Lal
- (iii) Age of applicant - 64 years (born 3.1.1924)
- (iv) Designation and particulars of office (Name & Stations) in which employed or was last employed before ceasing to be in service Indian Administrative Service (U.P. Cadre); as Commissioner & Director of Land Holdings, Uttar Pradesh, Lucknow retiring therefrom on reaching age of superannuation on 31.1.1982.

(v) Office address: Nil

(vi) Address for service of Notice:

N.B. Lal, IAS (Retd)
C-361, Indira Nagar,
Lucknow-226016

Telephone: 0522 - 72534

2. PARTICULARS OF RESPONDENTS:

- (1) Additional Secretary to Government of India
Ministry of Personnel, Public Grievances and Pension
Department of Pension and Pensioner's
Welfare Nirvachan Sadan
Ashoka Road, New Delhi- 110001.

Filed today
2nd May 1988
29/4/88

Handwritten signature

- (ii) Accountant General, U.P. II (A & E)
Allahabad - 211001.
- (iii) Chief Secretary to Government of Uttar Pradesh,
Vidhan Bhawan, Lucknow - 226 001.

3. PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION
IS MADE :

- (A) Annexure-I Government of India Ministry of Personnel,
Public Grievances & Pensions Department
of Pension & Pensioners Welfare Order
No. 5/13/87-F & PW(PIC) dated 23 Dec., 1987
rejecting petitioner's representations
dated Nov. 14, 1987 and dated Dec. 7, 1987
(Annexure ^{IA}IA & ^{IB}IB) and dated Dec. 29,
1987 (Annexure ^{IC}IC).
- * Annexure-II Accountant General (A & E) II U.P.
Allahabad D.O. No. PR I/203262/81-82/1028
dated Oct. 26, 1987 rejecting petitioner's
representation dated Sept. 8, 1987
(Annexure ^{IIA}IIA) and reminder dated
19.9.87 (Annexure ^{IIB}IIB).
- Annexure-III Accountant General (A & E) II U.P.
Allahabad DO No. PR I/203262/81-82/1138
dated Jan. 14, 1988 rejecting petitioner's
representation December 7, 1987 & Dec. 29,
1987 (Annexures ^{IIIA}IIIA & ^{IIB}IIB).
- Annexure-IV Govt. of India, Ministry of Home Affairs
(Department of Personnel & Administrative
Reforms) letter No. 25011/11/82-AIS(II)
dated June 1, 1982, so far it relates to
exercise of option contained in para.7
thereof to the effect that option once
exercised shall be final.
- Annexure-V Govt. of India, Deptt. of Pension &
Pensioner's Welfare O.M. No. 38/9/86-
P&PW dated 8th August, 1986 so far it
relates to allowing fresh option only
to such pensioners as have exercised
their option in para.4(a) of Govt. of
India (Ministry of Finance) O.M.
No. F.1(3)EV/82 dated 8.4.1982.

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(B) SUBJECT IN BRIEF :

Detailed particulars of petitioner's case are given against item 6 below as "Facts of the Case" in Annexure A to this application and to this Annexure are attached attested copies of relevant documents. These papers may please be referred to.

Briefly put, the background of impugned orders are :-

1. The pension to Indian Administrative Service Officers is governed by the AIS (Death-cum-Retirement) Rules, 1958 and orders of Government of India, Ministry of Personnel Administration and Reforms issued thereunder from time to time

2. The pension to All India Service Officers retiring after 31.3.79 is to be calculated according to rule 18 sub-rule (i) as amended by AIS (DCRB) Third Amendment Rules, 1979, MHA Deptt. of Personnel & AR notification No. 25011/14/79-AIS(II) dated Sept. 1, 1979 according to amending Rules 4 (1)(b)(i) by which original rule 18 Sub-rule (i) was substituted and reframed as follows :-

// "4(ii)(b)(i): In case a member of the Service retires from Service in accordance with the provisions of those rules, after completing qualifying service of 33 years or more, pension shall be admissible to him as set out in the Table below, namely,

Average emoluments	Amount of monthly pension
1. First Rs.1000 of average emoluments reckonable for pension.	50% of average emoluments
2. Next 500 of average emoluments reckonable for pension.	45% of average emoluments
3. Balance of average emoluments reckonable for pension	40% of average emoluments.

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Provided that the pension calculated as above shall be subject to a ceiling of Rs. 1,500/-|| The petitioner's initial pension was calculated at Rs. 1,225/- accordingly.

3.A. Government of India by letter No. 25011/11 82-AIS (II) dated 1.6.1982 ^(Annex IV) para 2 (relevant part reproduced below) decided that out of additional dearness allowance (then) admissible, the "following shall be treated as pay under Sub-clause (iii) of clause (g) of Sub-rule (i) of rule 2 of AIS (DCRB) Rules 1958 in the case of members of the service who retired/retire on or after Jan. 31, 1982.

<u>Pay Range</u>	<u>Amount of Dearness Pay</u>
(i) Pay upto Rs. 2,037	15 per cent of pay subject to a maximum of Rs. 120/-
(ii) Pay above Rs. 2,037/-	Rs. 363 including the amount of dearness allowance treated as dearness pay under this Department's letter no. 25011/15/79-AIS(II) dated July 27, 1979."

B. Para 3 (iii) of this OM is reproduced below :-

" 3(iii) In case of persons who have already retired on or after Jan. 31, 1982 or retire hereafter but within ten months of that date the ultimate average emoluments will be calculated as follows:

- (a) In the case of pensioners who retired between 31.1.82 and 29.6.82. One half of dearness pay appropriate to the pay equal to such emoluments as per para 2.
- (b) In case of persons who retire after June 29, 1982. Full dearness pay appropriate to the pay equal to such emoluments as per para 2 above shall be added.

(c) In the same letter of Govt. of India para 6 read as follows :-

"Officers who retired/retire on or after Jan 31, 1982 will have an option to choose either of the two alternative below :-

(a) to have both pension/service gratuity and D.C.R. gratuity calculated on their pay without including the element of dearness ~~relief~~ pay indicated in para 2 above, and get dearness relief on pension as for those governed by para 4(b) of this department's letter dated the 27th July, 1979.

OR

(b) to have both pension/service gratuity and DCR gratuity calculated after taking into account the element of dearness pay now being merged. In such cases pensioners will be entitled only to the instalments of dearness relief sanctioned beyond the average index level 320."

(c) The para 7 of same letter required option (between alternatives in para 6) to be exercised within 6 months from those who retired on or after January 31, 1982 but before issue of these orders. It also provided that option once exercised will become final. It also said that those who fail to exercise option will be deemed to be governed by alternative in para 6 (b) namely computation based on merger of dearness pay beyond 320 points.

3. B. (a) The Govt. of India by letter no. 25011/11/82-AIS(II), dated 17th May, 1983 ^(App 16 Annex A) substituted the amount of dearness pay as indicated in para 2 of their above quoted letter of 1.6.82 to read as follows :-

contd....6

<u>Pay Range</u>	<u>Amount of dearness pay</u>
(i) Pay upto Rs. 2,037	Rs. 100 plus 3 percent of pay subject to a maximum of Rs. 127.
(ii) Pay above Rs. 2,037	Rs. 370 including the amount of dearness allowance treated as pay under the GOI letter no. 25011/15/79-AIS (II), dated 27th July, 1979.

(b) Para 2 of the same letter reiterated that those officers of All India Services who retired on or after 31st January, 1982 could choose either of the two alternatives in para 6 of that letter within six months of the date of issue of this letter where there is no change in the existing options the existing/deemed option shall stand.

3.C (a) The OM(s) of Govt. of India referred to above in paras 3-A (a) and 3-B (a) which allow merger of only half of the dearness pay (period between 31.1.82 and 29.6.82) viz. Rs. 185 in petitioner's case and full i.e. Rs. 370/- in case of those who retired after 29.6.82 have not spelled out any reasons, whatsoever, for this difference the dearness allowance and Addl. dearness allowance being the same for both categories. Thus a class has not only been created amongst the pensioners who constitute one class but a sub-class in the same category amongst those who retired on or after 31.1.82. This is violative of Arts. 14 & 16 of the Constitution as the classification and such classification is not based on any reasonable criteria which has no nexus to the object sought to be achieved.

(b) The offer to pensioners who retired on or after 31.1.82 upto 29.6.82 referred to in para 3A(c) & 3 B(b) above to exercise an option between the two alternatives mentioned

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contd...7

therein was qualified further to say that if no option was exercised the second viz. merger of half (of full) dearness will be automatically deemed. The exercise of option in favour of ^{new} ~~was~~ formula had no meaning as in the absence of exercise of such an option the result would have been the same as those who had not exercised any option would have got the same advantage or disadvantage. These two sets of employees could not be said to belong to two different classes as the demand and exercise of option in favour of new pensionary benefit was redundant. The giving of the benefit of exercise of such option by G.O. dated 8.8.86 ^(Annex V) ~~on~~ only to those who had earlier not given any option and denial of this right to those who had exercised an option in favour of merger was discriminatory.

3.D. The OM of Govt. of India no. F-1(3) dated 8.4.83 provided amounts of reliefs admissible from 1.1.82 to 1.12.82 to those not opting for merger and those so opting. These were higher in case of former so as to bring their total pensionary emoluments including dearness relief nearly at par. This would be evident from Chart appended ^{at 5} to Item 6 "Facts of Case" (Annexure A). The ~~so~~ real examples have been given therein to show how petition has been put to disadvantage vis-a-vis (i) those who retired before 30.1.82 & could not then opt for merger of any dearness pay and (ii) those who retired on or after 30.6.82 & were to get full dearness pay of Rs. 370/- merged.

3-E (a) That Accountant General III, U.P. Pension Audit Department PR-I Section brought to notice of State Government in their letter D.O. No. AG-III/PR-I/AIS/3(i)/2099. dated 25.1.83 that officers retiring on or after 31.1.82 had not

sent their options under para.6 of Govt. of India's letter (3A(c) aforesaid) and requested that options if received may be forwarded otherwise they would be deemed to be governed by para. 6(b) of Govt. of India's letter of 1.6.82.

(b) The State Government intimated to the petitioner this letter of Accountant General by D.O. letter No. 658/II-4-36/2, Appointment Department (G), dated 28.2.83. With this letter for the first time Govt. of India's letter of 1.6.1982 was brought to notice of petitioner and other officers.

Re Am IV

Am 5

3-F (a) The Govt. of India Department of Pensions and Pensioners' Welfare in O.M. No. 38/9/86-P & PW dated 8.8.86, extending exercise of option between two alternatives to persons who retired between 30.8.77 to 30.4.79 and also to those who were drawing pay Rs.2158/- or above ^{those} ~~those~~ who retired between 30.4.79 and 30.1.82 in para.2 also provided :

" This option may also be exercised by those government servants drawing pay of Rs.2158/- or above who retired between 31.1.82 and 30.5.85 and who had opted for para. 4(a) of Ministry of Finance O.M. No. FI(3)EV/82, dated 8.4.82. This 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. Those 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."

(b) By para.5 of this order the orders are made applicable mutatis mutandis to officers of all India Services in partial modification of the orders issued vide letter No. 25011/15/79-AIS-14 dated 27.7.79 and letter No. 25011/15-82-AIS-11, dated 1.6.82 read with letter of

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same no. dated 10.5.83.

3-G (a) The Govt. of India in OM. dated June 3, 1987 in para.2 extended time for choosing and opting between alternatives in terms of letter dated 8.8.1986 (in ^{3 f} (a) above) upto 31.12.1987. The option once exercised was to be final and that the pensioners who failed to exercise an option within the extended period would be deemed to have accepted the pension already sanctioned after merger of a portion of dearness allowance in pay.

(b) These orders are applicable mutatis mutandis to the officers of All India Services.

3-H. & Above sub-Paras. (F), (G) and (H) show that all along the Government of India have been offering options without precisely defining comparative advantages of alternate options, extending dates for their exercise and threatening the assuming of second alternate if no option was exercised. The finality of option real/deemed has always been shifted to later dates by Govt. when ^{doubts} ~~interests~~ arose about the pensioners having been made aware in time or not the 'finality' however fastened on the pensioners, once they exercised option.

4. Summarised the position emerging is that :

(a) the petitioner who retired on 31.1.82 had his pension computed under Rule 18 sub-rule (i) of AIS (BCRB) Rules 1958 as amended by rule 4(1)(b)(i) of Third Amendment. Thereafter by letters 25011, etc. of 1.6.82 and 10.5.83 he was allowed a merger of only Rs.185/- that is half of computed dearness pay of Rs.370/- and asked for exercising option to ^{being governed by para 4(a) or 4(b)} continue within 6 months. If he did not, automatic merger would be deemed. Other members who retired after 29.6.82 would get benefit of full dearness pay merger. Those who retired before 31.1.82 were at first not allowed any option. Later

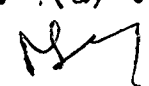
by O.M. of 8.8.86 and 3.6.87 this option was offered to those retiring prior to 30.1.82 and also to those between 31.1.82 and 29.6.82. This was to be done before 31.12.87. This was essentially done to open options once again to give an opportunity to make fresh options which position Accountant General has been consistently, in impugned letters (Annexures II & III) denying the petitioner.

(b) The merger created anomalies and disparities in total pensionary benefits and the distortion was sought to be at least partially corrected by different amounts of relief set forth in 3(F) above. This on 1.4.82 brought almost at par pensioners who retired before 31.1.82 and those who retired between 31.1.82 and 29.6.82 who opted or did not for merger of Rs.185/- (half dearness pay of Rs.370/-) for they would be automatically so deemed to be governed by second option. The offer to exercise option was at the best a show of anxiety to appear fair and equitable when in fact it was redundant.

(c) The Government of India has been constantly shifting its ^{stand} ~~stand~~ and changing its orders arbitrarily creating confusion, discrimination and inequality amongst the same class of pensioners without satisfying the twin tests of being based on intelligent differentia and that those differentia are based on rational nexus to the object sought to be achieved.

(d) The accepted principle by Govt. of India has always been that whenever options in matter of pensionary benefits are made available, the one more advantageous to the beneficiary is to be applied even if no option is exercised.

(e) The submissions in paras. 4(a) to (d) relate



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to statutory and administrative provisions regarding grant of pension to All India Service Officers relevant to this petition.

(f) Specific facts of petitioner's case are given in Annexure-A "Facts of the Case" referred to in item 6 of this Petition. They may kindly be perused in this background of position stated herein.

(g) Because of Government of India's and Accountant General's obduracy and refusal to see the matter in correct perspective, mixing up of issued in a patently illogical manner and perpetuating discrimination ~~in~~ between members of the same class causing inequalities in violation of Article ^{14 and} 16 of the Constitution, relief is being sought before the learned Central Administrative Tribunal.

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 at Lucknow of the Tribunal because the applicant's last posting was as Commissioner and Director, Consolidation of Land Holdings, U.P., at Lucknow and his pension order was passed by the Accountant General II, U.P. at Allahabad and the applicant after retiring is residing at Lucknow and also that he is paid pensionary benefits out of the Consolidated Fund of U.P. Government who have also been impleaded as one of the respondents.

5. LIMITATIONS

(A) The application is well within

limitation being mainly against the orders of Govt. of India and Accountant General, U.P. ^{Annex I, II, III, IV and V} rejecting representations for :

(a) correcting anomaly and distortion by paras. 6 & 7 of Govt. of India order dated 1.6.82 and para.2 of order dated 17.5.83, amounting to discrimination violative of Article ¹⁴16 of the Constitution.

(b) for exercise of a revised option in terms of Govt. of India OM dated 8.8.86 and 3.6.1987.

(c) He has not sought any other remedy except as aforesaid (representations to the Departments of Govt. involved) and not moved the High Court or Supreme Court.

(B) Respondent No.3 has been impleaded as payments are made out of the Govt. of Uttar Pradesh's Consolidated Funds; as a matter of abundant precaution.

6. FACTS OF THE CASE :

Please see self contained Annexure 'A' to this application to serve as 'Statement of Facts of Case' and the attested copies of main documents mentioned therein appended and relied upon.

7. DETAILS OF REMEDIES EXHAUSTED :

Please see item 6 above and the mentioned facts therein and also relevant comments.

Relevant chronological developments are as set forth in Annexure A 'Facts of Case'. This situation has caused a travesty inasmuch as an earlier retired officers and also later ones have been placed better in the matter of retirement benefits than the petitioner, although the generally accepted trend is the reverse; this travesty has been due to :

(a) discrimination in orders in Govt. of

India OM's of 1.6.1982 and 10.5.83,

(b) half hearted and squeamish application of the even rectificatory orders of 8.8.86 and 3.6.87.

(c) inconsistency and anomaly in framing para. 4.1(B) & (c) of OM of 16.4.87 inasmuch as they concern the petitioner.

(d) rejections by Govt. of India and Accountant General, U.P. of representations, the rejections are totally misconceived and cussed.

8. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

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

9. RELIEFS SOUGHT

The Hon'ble Central Administrative Tribunal be pleased to :

I. Quash the impugned orders (Annexure Nos. I, II & III) ^{dated 25-12-87, 24-10-87 & 14-1-88 respectively} by Respondents 1 and 2 and direct them to allow petitioner to exercise a revised/fresh option ~~to be exercised~~ option under 4(a) of OM of 1.6.82 read with that of 10.5.1983 and have his pension refixed according to O.M. of 16.4.87, and in the alternative to direct the Respondents 1 & 2 to grant to petitioner the same retrenchment benefits as have been granted to officers retiring before or after the period between 31.1.82 to 29.6.82.

II. The respondent no.3 namely Govt. of Uttar Pradesh has been made a party as the pensionary benefits are payable from their consolidated fund. They be directed to abide by the orders as and when passed by this Hon'ble Tribunal.

III. Direct the respondents to pay consequential arrears with interest at 12% generally available as deposits

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in National Savings Certificate & Unit Trust of India.

IV. Quash the Annexure No. IV, Govt. of India, Ministry of Home Affairs (Department of Personnel & Administrative Reforms) letter No. 25011/11/82-AIS(II) dated June 1, 1982, so far it relates to exercise of option to the effect that option once exercised shall be final occurring in para.7 of the said letter.

V. Quash Annexure No.V, Govt. of India, Deptt. of Pension and Pensioners' Welfare OM. No. 38/9/86-P&PW dated 8th August, 1986 so far it relates to allowing fresh option only to such pensioners as have exercised option in para.4(a) of Ministry of Finance O.M. No. F.1(3)EV/82 dated 8.4.1982.

VI. Award costs, including legal consultation, clerical, stationery and postage, in this litigation unnecessarily thrust upon the petitioner by respondents nos. 1 and 2 by unjustifiably turning down his representations.

10. INTERIM ORDER : NIL

11. ORAL HEARING FOR ADMISSION OF APPLICATION IF SENT BY REGISTERED POST :

Such oral hearing for admission is not considered necessary in the nature of 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 submission on admission issue.

12. PARTICULARS OF THE BANK DRAFT IN RESPECT OF APPLICATION FEE :

1. Name of Bank on which drawn : Indain Overseas Bank, ALLAHABAD.

2. Demand Draft No. : OT/82/P 636862/11/30 dt.4.4.88.

for Rs. 50/- only.

13. LIST OF ENCLOSURES :

(a) with this application (Form I), in Paper Book form in quintuplicate and Index at beginning as also Annexure-A for "Facts of the Case" as per item 6 of Application and Appendices ~~Annex~~ 1 to 5 mentioned therein.

(b) with the simultaneous letter to the Registrar of 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) Three empty file size envelopes bearing full address of the Respondents.
- (iii) Self-addressed letter card as per item 11 above.
- (iv) Receipt-slip - Form II.

Verification.

I, Narendra Behari Lal, aged about 64 years, retired IAS, resident of C-361, Indira Nagar, Lucknow do hereby verify that contents of comments against items 1, 2, 3, 6, 7, 10, 11 and 12 of the application and of the contents in paras. 1.1 to 1.22 of the Annexure-A thereto are true to my personal knowledge and the comments/contents against item 3(B) sub-item 3-C, 4 & 5 of the application and in paras. 20, 21, 22 & 23 of the Annexure-A thereto are believed to be true on legal advice and that I have not suppressed any material fact.

Date : April 28, 1998.

Place : Lucknow.

Narendra Behari Lal

Signature of Applicant.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW.

Between

Narendra Behari Lal

..... Petitioner

AND

The Union of India and others

..... Respondents.

ANNEXURE - I

No. 5/13/87- P & PW (PIC)

Government of India,

Ministry of Personnel, Public Grievances & Pensions

Department of Pension & Pensioners' Welfare

6th floor, Nirvachan Sadan,
Ashok Road,
NEW DELHI - 110 001.

23 Dec., 1987.

To

Shri N.B.Lal
C-361, Indira Nagar,
LUCKNOW - 226016

Subject : Revision of Pension w.e.f. 1.1.86

- Request for change of option under OM dated 8.4.82.

Sir,

I am directed to refer to your letter dated 14.11.1987 on the subject mentioned above and to say that your request for change of option has been carefully considered by us. It is regretted that the same can not be acceded to.

Yours faithfully,

Sd/-

(M.R.Vaidya)
Deputy Secretary to
Govt. of India.

Attested True Copy

B. N. Chaturvedi
28/11/87

ADVOCATE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

AT LUCKNOW

Between

Narendra Behari Lal

..... Petitioner.

AND

The Union of India & others

..... Respondents.

ANNEXURE I AN.B. LAL
IAS(Retd.)C-361, Indira Nagar,
Lucknow - 226016.

Dated : Nov. 14, 1987.

Dear Sri Rasgotra,

Kindly see enclosed detailed representation against fixation of my pension at a level lower than my erstwhile colleagues who retired only one or two months earlier than me date of retirement 31.1.1982, and were not also eligible for merger of any part of ADA as dearness pay for purposes of computation of pension according to para 4 of Govt. of India O.M. of 16th April, 1987. The difference is clearly brought out by following :

	For those who retired before 31.1.82.	For those who retired on or after 31.1.82 and before 30.6.82
1. Pay at time of retirement	2750	2750 + 185 2835
2. Pension fixed originally	1225	1299
3. Part consolidation under OM of 16.4.87(Para 4)	2369	2209
4. Revised pension under OM of 16.4.87(para 6)	1375	1468
5. Total consolidation Pension	2539	2378

.....2.

- :2: -

that is those like me who retired on after 31.1.82 and up to 29.6.82 get $2539 - 2378 = 161$ less and are placed at a considerable disadvantage for all times to come.

Options under para 4(b) of O.M. of 1.6.82 were exercised as they were more beneficial at that time. But they should not mean long lasting loss. Whenever options are to be exercised the Govt. have always held that more beneficial of the two is adopted.

2. There would perhaps be some more cases like mine and Govt. of India may be looking into them. I shall be grateful if you could kindly move the Government to rectify the anomaly.

With regards,

Yours sincerely,

Encl: As above

sd/-
(NARENDRA BEHARI LAL)

Sri I.K. Resgotra,
Additional Secretary to Govt. of India,
Ministry of Personnel, Pensions etc.
Department of Pensions,
NEW DELHI.

True Copy
Mh
(N.B. Ls)

PSY

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW

Between

Narendra Behari Lal

..... Petitioner.

and

The Union of India & others

..... Respondents.

ANNEXURE I A

From :

Sri Narendra Behari Lal, IAS (Retd.)
C-361, Indira Nagar,
Lucknow-226016

To,

Sri I.K. Rasgotra,
Addl. Secretary to Govt. of India
Ministry of Personnel,
Public Grievances and Pensions
Deptt. of Pensions
Nirvachan Sadan,
Ashoka Road,
New Delhi-110001

Dated: 14th November, 1987.

Sub : Representation against revision/consolidation of
pension with effect from 1.1.1986 by A.G.(A&E) U.P.
of Sri Narendra Behari Lal retired from Indian
Administrative Services on 31.1.1982.

Sir,

I herewith bring to your kind notice an anomaly
in interpreting/implementing Govt. of India's OM No.2/1/87-PIC-1
dated 16th April, 1987 regarding rationalization of pension
structure in pursuance of implementation of Government's
decision on fourth Pay Commission's Report. The facts of my
case are that :-

(i) I, Narendra Behari Lal s/o Late Sri Manmohan Lal
retired from Indian Administrative Services (U.P. Cadre) on
January 31, 1982.



- :2: -

(ii) On the date of retirement I was officiating in the super time scale of the IAS on the post of Commissioner & Director, Consolidation of Holdings, Uttar Pradesh.

(iii) On the date of retirement for more than ten months I was drawing pay of Rs.2750/- in the super time scale. Rs. 2500-125/- - 2750 plus Rs.1500/- as DA/ADA etc.

(iv) According to IAS Pension Rules and government orders then in force the Accountant General issued PPO No.LKN/19098, dated Jan. 30, 1982 fixing :

Basic Pension	Rs. 1222.00	} from 1.2.82
Relief	Rs. 212.50	

(v) Since the average salary for 10 months prior to retirement had not been correctly calculated on my representation the Accountant General (III) by his letter PPO Cell (ii) 853 dated 20.4.82 revised it :

Basic Pension from 1.2.82	Rs. 1225.00
Relief " "	Rs. 225.00

(vi) By their order No.25011/11/83-AIS(II), dated June 1, 1982 read with subsequent order of even no. dated 10th May 1983 decided to treat as dearness pay Rs. 370/- including the amount of dearness allowance. In para 5 of the former it was provided that :

" (a) in case of officers who retired between Jan. 31, 1982 & June 29, 1982.	One half of dearness pay appropriate to the pay equal to such average emoluments as per para 3 above shall be added to the average emoluments.
--	--

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.....3.

- (b) in the case of officers : full dearness pay appropriate who retire after equal to such average emoluments as per para 2 above shall June 29, 1983. be added to the average emoluments".

The Govt. of India's order reveals no rationale for differentiating and discriminating for merged amounts of ADA between two classes of retired government servants viz. those who retired between 31.1.82 and June 29, 1983 and thereafter.

(vii) By para 4 of order 25011 of 1.6.1982 an option was to be exercised (para 6) read with para 2 of order of same number dated 10.5.1983 by those members of All India Services who retired on or after January 31, 1982 were enabled to exercise within 6 months one of the two options viz.,

(a) to have both the pension/service gratuity and death-cum-retirement gratuity calculated on their pay, without including the element of dearness indicated in para 2 above, and get dearness relief on pension as for those governed under para 4(b) of the orders dated 25th May, 1979. OR

(b) to have both the pension/service gratuity and death-cum-retirement gratuity calculated after taking into account the element of dearness pay now being merged. In such cases, the pension will be entitled to the instalments of dearness relief sanctioned beyond the average index level 320".

By order of 10.5.83 para 2 a fresh option to members of All India Services who retired or retire on or after 31.1.1982 and have exercised or are deemed to have exercised an option in of letter dated 1.6.1982, to choose either of the two alternatives mentioned para 6 of that letter as amended by para 2 of this letter within six months.

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- 4: -

(viii) In both the letters of 1.6.82 (para 6) and 10.5.83 (para 2) where option is not exercised or where there is no change in the existing option intimated or the pensioner is dead will be deemed to be option will be deemed under para 4(b). " In case of death of pensioner the Head of Office (In case of All India Services Accountant General) will calculate and sanction the more advantageous of the two".

(para 6 and 2) of letters dated 1.6.82 and 10.5.83)

It has been Government of India's convention, practice and decision that when options are available the more advantageous is applied where no option is exercised or the government servant dies".

→ (ix) In terms of para 2 of letter of 10.5.83 I sent my option to Accountant General (III), U.P. on 8.11.83 to treat and merge additional dearness allowance as dearness pay to my basic pay for purposes of calculation of pension. The A.G., U.P. III by his letter No.PA.III/9540, dated 2.11.84 revised basic pension at Rs. 1274/- which should have been Rs. 1299/- and I addressed many communication to him.

✓ (x) On receipt of Government of India's OM No.2/1/87-PIC-1, dated 16.4.87 I again represented to Accountant General on 15th July 1987 to rectify mistake in original pension and sanction additional pension in terms of para 5. These were done by A.G. (A&E) U.P. by letter PA.III/7799, dated 31.7.87 and PRI/FPCPR Cell/890, dated 3.8.87 as follows :

PM

- 5: -

1. Amount of original pension already being drawn	Rs 1299 w.e.f. 1.2.82
2. 50% of average emoluments subject to length of qualifying service i.e. revised pension by actual calculations	Rs 1468.00
3. Addl. pension w.e.f. 1.2.86 (5-4)	Rs 169.00
4. Partly consolidated pension under para 4.1(c) read with column 4 of the annexure (i) of the G.I. O.M. of 16.4.87	Rs 2209.00
5. Consolidated Pension	Rs 2378.00

(xi) Orders of Govt. of India regarding pensions etc.

issued from tune to tune have been many and varied.

We pensioners cannot learn of them in time. ~~xxxxxxxxxxx~~

The State Government too does not care to inform us of them or does it very late e.g. GOI letters of 9.5.83, was received on 1st November 1983 and OM's of 8.8.86 and 3.6.87 for exercising options has been sent only on 25.9.87; the OM of 16.4.87 has not been received at all. No pensioner can, therefore, be sure of the status of his pension and benefits made available by the Department of Pensions and Pensioners Welfare.

(xii) I happened to meet my erstwhile colleagues S/s P.C.Saxena and H.K. Mehrotra who had retired on 30.11.81 and 31.12.81 respectively and found that the Accountant General has computed their pension as follows :-

1. Basic pay of both officers in IAS - super time scale at time of retirement	2750/-
2. Pension w.e.f. 1.12.81 and 1.1.62 respectively	1225/-
3. Pension w.e.f. 1.1.86	1375/-
4. Partly consolidation pension under para 4.1(B)(ii) of OM of 16.4.87 (vide col.1 of Annex.IV)	2369/-
5. Total consolidated Pension	2539/-

- :6: -

Whereas in my case when date of retirement is only 2 and 1 month(s) respectively later and opted and allowed benefit of merger of half of DA & ADA (Rs. 185/-) the total pension has been worked out and allowed by AG, UP at 2378/- as shown in sub para (x) above that is :

	Rs. 2539
minus	Rs. 2378

	Rs. 161 less

than them.

(xiii) Since I have been placed at a considerable disadvantage I wrote to A.G. on Sept. 8, 1987 pointing out the anomaly (copy enclosed) requested that in view of GOI OM No. 38/9/85- P&PW, dated 8.8.86 and my being covered by its provisions the anomaly may be rectified or if I could revoke my earlier option.

(xiv) Since no reply was received and State Govt had in the meanwhile communicated copies of Govt. of India's O.M. 38/9/86-P&W, dated 3rd June, 1987 and O.M. of even number of dated 8.6.86 I again addressed A.G. on 19.9.87 and requested for option in whichever manner if be found more beneficial to me.

(xv) The Accountant General has in his letter dated 26.10.87 rejected my request on the ground that option under G.I.O.M. No.38/9/86-P&PW, dated 8.8.86 is not applicable to my case as it was applicable only to those officers who were drawing pay of Rs.2158/- or above (before retirement) and who retired after 30.4.1979 but not

- 25 -
- :7: -

later than 30.1.1982. He has held that as I retired on 31.1.82, the benefit of ADA upto 320 points admissible under para 4(b) of G.I. OM No.F I(3)-EV/82, dated 8.4.82 had already been allowed while calculating pension @ Rs.1299/- p.m. w.e.f. 1.2.1982 and that pension cases finalized under para 4(b) of O.M. of 8.4.82 cannot be reopened for revision/consolidation of pension for the purposes of option under para 4(a). Copy of letter is enclosed.

(xvi) The AG's view is contrary to para 2 of OM of 8.8.86 read with OM of 3.6.87. The former specifically says "This option may also be exercised by those Govt. Servants drawing pay of R Rs.2158/- or above who retired between 31.1.1982 and 30.5.1985 and who had opted for paragraph 4(a) of OM of 8.4.1982.

The latter OM of 3.6.87 is in consonance with it. Hence if exercise of option can be made upto 31.12.1987 a revocation or revision should be possible if it is more advantageous to the retired officer.

(xvii) It could never be the intention of the Government that government servants like me retiring later should be placed at a severe disadvantage in pension and suffer a permanent loss of substantial amount just because they had exercised an option which was more beneficial to them (8.4.82) at that time.

(xviii) There would perhaps be several similar cases of government servants like me who retired between 31.1.82 and 29.6.82.

.....8.

- 26 -
- :8: -

2. The anomaly as has occurred on account of option exercised under para 4(b) of OM's dated 8.2.82 and 4.5.83 needs to be rectified by suitable amendment in para 4(B) and (c) of OM of 16.4.1987. Such officers who retired on or after 31.1.82 and before 30.6.82 may be treated at par with those who retired upto 30.1.82 and allowed part consolidation according to column 1 of annexure 4 of O.M. dated 16.4.87. This added to revised pension as on 1.2.82 will remove the anomaly.

3. I shall be grateful if Government of India is moved to consider my representation favourably and issue orders accordingly.

Thanking you,

Yours faithfully,

sd/-

(NARENDRA BEHARI LAL)

True Copy

His

(N.B. Lal)

PS

(A17)

-27-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW

Between

Narendra Behari Lal	Petitioner
AND		
The Union of India & Others	Respondents.

ANNEXURE IB

December 7, 1987.

Dear Sri Rasgotra,

Kindly refer to my registered d.o. letter dated November 14, 1987 and representation of even date against lower fixation of my pension by Accountant General-II(A&E) U.P. I had inter alia informed that within terms of Govt. of India O.M., of your Ministry and Department of Pensions dated 16th April, 1987 my pension was fixed at Rs.2378 (date of retirement 31st Jan. 1982) whereas my colleagues who retired only one or two months earlier have been fixed at Rs.2539/-. I have not been favoured with the decision of Govt. on my representation. The time for exercising option in para.2 of O.M. dated 3rd June 1987 read with O.M. of 8.8.86 will expire on 31st December, 1987.

2. I shall be grateful if you could kindly move the government to expedite their decision in my case.

With regards,

Yours sincerely,

Sd/-
(N.B. Lal)

Sri I.K. Rasgotra,
Addl. Secretary to Govt. of India,
Ministry of Personnel etc.,
Deptt. of Pensions,
Nirvachan Sadan, Ashoka Road,
NEW DELHI - 110001.

True copy
By
(N.B. Lal)
[Signature]

(A48)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW

Between

Narendra Behari Lal Petitioner.

and

The Union of India & others Respondents.

ANNEXURE IC

Reminder No.2

REGD.

NARENDRA BEHARI LAL
IAS(Retd.)

C-361, Indira Nagar,
LUCKNOW -226006

December 29, 1987.

Dear Sri Rasgotra,

I invite your kind personal attention to my registered d.o. letter dated November 14, 1987 enclosing a representation of even date regarding fixation of my pension by AG, U.P.II(A&E) followed by subsequent reminder of December 7, 1987. I had inter alia represented against fixation of my pension at Rs.2378/- (date of retirement 31st January, 1982) whereas my erstwhile colleagues in IAS supertime scale drawing same emoluments who had retired only on 31.12.81 and 30.11.81 had been authorised pensions of Rs.2539/-. This is mostly due to arbitrary distinction created by operation of Govt. of India's OM's 25011/11/83- AIS(II) dated 1.6.82 read with OM of even number dated 10.5.83 as well as the latest OM of 16.4.87 based on recommendations of Pay Commission. I have not been favoured with the decision on my representations to Govt. of India and Accountant General. The anomaly in my case can be readily removed if the

guy contd... page 2.

- :2: -

A.G. allows a new option to be exercised to enable me to opt for benefits in terms of para 4(a) of OM's of 1.6.82 and 10.5.83 read with OMs of 8.8.86 and 3.6.87. The latter OM's of 8.8.86 and 3.6.87 have ostensibly been issued to provide rectification of anomalies for those who retired like me between 31.1.82 and 29.6.82 or by amending para 4(c)(b) by raising present percentage of 70 % suitably to bring government servants retiring like me between 31.1.82 and 29.6.82 at par.

I request you to kindly consider and expedite decision.

With kind regards,

Yours sincerely,

sd/-

(N.B. LAL)

Sri I.K. Rasgotra,
Additional Secretary to
Government of India,
Ministry of Personnel etc.
Department of Pensions,
NEW DELHI-110 001.

True Copy
H.
(N.B. Lal)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW.

Between

Narendra Behari Lal Petitioner

AND

The Union of India and others Respondents.

ANNEXURE - II

Ravi Saxena,
I.A&A.S.

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

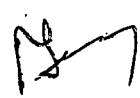
D.O.No. PR I/203262/81-82/1028

Dated: October 26, 1987.

Dear Shri Lal,

Kindly refer to your letter dated 7-9-87. The revision/consolidation of your pension w.e.f. 1.1.1986 done by this office under para 4.1(c) of G.I., O.M. No.2/1/87-PIC I dated 16.4.87 is correct. The option under G.I., O.M. No. 38/9/86-P& PW dt. 8.8.86 is not applicable to you as the same is applicable only to those Government servants who are drawing pay of Rs.2158 or above (before retirement) and who retired after 30.4.1979 but not later than 30.1.1982. As you retired on 30.4.1982, the benefit of A.D.A. upto 320 points admissible under para 4(b) of G.I., O.M. No.F.I(3)-EV/82 dated 8-4-82 has already been allowed, while calculating your pension @ Rs.1299 p.m. w.e.f. 1.2.1982. Further, the pension cases finalised under para 4(b) of G.I., O.M. dated 8.4.82 cannot be re-opened for the revision/consolidation of pension for the purposes of "Option" under para 4 (a).

2. The pension cases of Sarvashri P.C. Saxena and H.K. Mehrotra were covered under the option of para 4(a) of G.I., O.M. dated 8.8.86 and no dearness allowance/addl.D.A.



contd.. on page 2.

-31-

- :2: -

was taken/admissible to them while calculating their original pension. Hence your case cannot be treated at par with such pensioners (in whose case D.A./A.D.A. element was not taken into account at the time of fixation of original pension) as their cases were revised on account of exercising of "Option" under para 4(a) and their pension consolidated under para 4.1(a) of G.I., O.M. dated 16.4.87.

With best wishes,

Yours sincerely,

Sd/-
(Ravi Saxena)

Shri N.B.Lal, I.A.S.(Retd.)
C-361 Indira Nagar,
LUCKNOW - 226 016.

Attested True Copy

B. N. Chatterjee
B. N. CHATTERJEE 28/4/88
ADVOCATE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

AT LUCKNOW

Between

Narendra Behari Lal

..... Petitioner

and

The Union of India & others

..... Respondents.

ANNEXURE - IIA

N.B. LAL
IAS (Retd.)

C-361, Indira Nagar
LUCKNOW : 226016

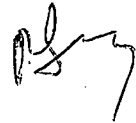
September 8, 1987

Dear Sri Saxena,

Thank you for quick and sympathetic response to my request for rectification of my pension in your letter No.FPCPR Cell/203262/81-82/894, dated Aug. 3, 1987. You have certainly earned gratitude of pensioners like me by the promptness which otherwise we had forgotten from our erstwhile colleagues.

I have, however, to bother you once again, I feel encouraged particularly in view of your offer in last para of your letter. I hope you would get looked into it send a clarification or rectification of my doubt. This is as follows :-

- (i) Initial fixation of original pension at Rs.1299/- taking into account merged D.A. in terms of my option to Govt. of India, OM of 1.6.82 etc. is correct (your authority of PA II/7798, dated 31.7.87).



.....2.

(A53)

-:2:-

(ii) Revised pension @ Rs.1468/- vide your letter No.FPCBR Cell/203262/81-82/890, dated 3.8.87 in terms of GOI OM of 16 April, 1987 appears correct.

(iii) In the calculation memo from A.O. of your office attached to your letter partly consolidated pension under para 4(1) (c) has been calculated according to column 4 of the annexure IV of OM at 70% i.e. fixed at Rs. 2209/- This makes finally consolidated pension at Rs.2378/-. This calculation appears anomalous as now I, who retired on 31.1.82 and opted for merger of ADA am getting much less pension than those who retired earlier i.e. on Nov.30, 1981 and Dec. 31, 1981. I happened to see the pension calculation memos of my erstwhile colleagues S/S P.C.Sexena (retired on 30.11.81) and H.K. Mehrotra (retired on 31.12.81). They were not eligible exercise options under OM of 1.6.82. Their pensions have been calculated as follows :-

1. Basic salary of both (IAS-super)	2750/-
2. Pension w.e.f. 1.12.81 & 1.1.82	1225/-
3. Pension w.e.f. 1.1.86	1375/-
4. Consolidated pension under OM of 16/4 under column 4 of annexure IV.	2539/-

(iv) Thus I who retired later with higher emoluments am to get :

Rs. 2539
- Rs. 2378
Rs. 161

less as pension I am not able to understand this substantial difference. If I had not opted I would get 161/- more as pension.

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.....3.

A54

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- :3: -

Consolidation according to column 1 or 2 of annexure IV of OM would remove the anomaly. If it is an error of calculation it may kindly be rectified. If it is not possible may I now revoke my option. Kindly advise.

I enclose two copies of this letter. Details are : -

1. Name of Pensioner - Sri NARENDRA BEHARI LAL
2. Service - IAS (U.P. Cadre)
3. Date of Retirement- 31.1.1982
- 4.- Original PPO No. - LKN/19098, dated 30.1.82
5. Rev. PPO No. - PA III/7798, dated 31.7.87

With regards,

Yours sincerely,

Encls: 1.

Sd/-

(N.B. LAL)

True copy

Ry

(N.B. Lal)

18/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

AT LUCKNOW

Between

Narendra Behari Lal Petitioner.

and

The Union of India & others Respondents.

ANNEXURE-II B

N.B. LAL
IAS (Retd.)

C-361, Indira Nagar
Lucknow -226016

September 19, 1987.

Dear Sri Saxena,

Kindly refer to my d.o. letter of September 8, 1987 regarding clarification on rectification of my pension in view of facts stated therein. Further to that I have learnt that the Govt. of India has extended date for exercising option para 2 of Pension Ministry's OM No.38/9/85-P&PW, dated 8.8.86 to December 1987. Since I retired from IAS (U.P. Cadre) on 31.1.1982 my case is covered by it. Since it is more beneficial to me I exercise my option under para 2 of O.M. dated 10.5.85 read with para 6(a) of O.M. dated 8th April, 1982 and O.M. of 27th July, 1979. I would request that my pension etc may be recalculated as follows :

- | | |
|---|------------|
| 1. Pay in super time scale of IAS on 31.1.82 | Rs. 2750/- |
| 2. Pension fixed as per existing rules by A.G. w.e.f. 1.2.82. | Rs. 1225/- |
| 3. Pension to be fixed in terms of this option w.e.f. 1.2.82 | Rs. 1225/- |
| 4. Pension w.e.f. 1.1.86 in terms of O.M. dated 16.4.87 | Rs. 1375/- |
| 5. Consolidated Pension in terms of para 4.1(B) column 1 | Rs. 2369/- |
| 6. Final consolidation 2369+150 | Rs. 2539/- |



.....2.

- 36 -

- :2: -

Since the GOI's orders have been so many and we pensioners and never informed of them we cannot determine the impact of reliefs given. Hence I would request you to consider my option in whichever manner you find more beneficial before 1.1.1986.

I am sorry to bother you and your office again and again but as I stand to lose substantially all my life I would beg to be excused. If required I may come down personally to discuss with you on any date convenient to you.

Yours sincerely,

Sd/R

(N.B. LAL)

Particulars

- | | |
|-----------------------|-------------------------------|
| 1. Name of Pensioner | : Narendra Behari Lal |
| 2. Service | : IAS (U.P. Cadre) |
| 3. Date of Retirement | : 31.1.1982 |
| 4. Original PPO NO. | : LKN/19098, dated 30.1.82 |
| 5. Revised PPO No. | : PA III/7798, dated 31.7.87. |

True copy

By

L.N.B. Lal

18/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW.

Between

Narendra Behari Lal

..... Petitioner.

AND

The Union of India & others

..... Respondents.

ANNEXURE - III

Copy of A.G's letter:

D.O. letter No. PR I/203262/81-82/1138

dated Jan 14, 1988.

Dear Shri Lal,

Please refer to your letter dated 7th December 1987
and 29th December, 1987.

2. As per your option dated 8-11-83 your pension was originally finalised under para 4(b) of G.I., O.M. dated 25.5.79 i.e. by giving benefit of Additional Dearness Allowance upto CPI 320 in pay, in terms of G.I., O.M. NO.F(1)(3)-EV/82 dated 8-4-82. Therefore, we are not empowered to reopen your case for the revision of your pension under para 4(a) of Government of India orders dated 25.5.77. Further the benefit of Additional Dearness Allowance upto CPI 320 had already been given to you while calculating your pension; hence the same benefit cannot be given by the revision of pension under para 4(a). In the cases of Shri P.C.Saxena and Shri H.K.Mehrotra no benefit of ADA upto CPI 320 was available at the time of their retirement. Your case is not identical to the said cases.

Yours sincerely,

Sd/-

(Ravi Saxena)

Attested True Copy

B. N. Chaturvedi
B. N. Chaturvedi 28/4/88
ADVOCATE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW

Between

Narendra Behari Lal

..... Petitioner.

and

The Union of India & others

..... Respondents.

ANNEXURE III BA

NARENDRA BEHARI LAL
IAS (Retd.)

C-361 Indira Nagar
Lucknow-226016

Dated: 29th Dec. 1987

Dear Sri Ravi Saxena,

I invite your kind attention to copies of representations to GOI dated Nov. 14, 1987 followed by reminder of Dec. 7, 1987 on the subject of lesser and inequitable fixation of my pension at a lower level than my colleagues S/s P.C. Saxena & H.K. Mehrotra who retired only on 30.11.81 & 31.12.87 in supertime scale of IAS & were drawing same emolument and myself who retired on 31.1.82. The Govt. of India by extending facility of option under para 4(a) of O.M. 25011 dated 1.6.82 & 10.5.83 by O.M. of 8.8.86 and 3.6.87 to 31.12.87 have tried to correct anomalies like mine. This means that there has been given an opportunity to exercise option once more. Interpretation to the contrary are not equitable. I would therefore request you to treat this letter as option under para 4(a) and fix my pension accordingly.

[Signature]

-:2:-

Details are :

1. Name of Pensioner - Sri Narendra Behari Lal
2. Service - IAS (U.P. Cadre)
3. Date of Retirement - 31.1.82.
4. Basic Pay on 31.1.82 - Rs. 2750/-
5. Original PPO No. - LKN/19098 dated 30.1.82
6. Revised PPO No. - PA III/7798 dated 31.1.87.

With regards,

Yours sincerely,

Sd/-
(N. B. LAL)

Sri Ravi Saxena
Accountant General (A&E) II, U.P.,
ALLAHABAD.

True Copy

N.B.
(N.B. Lal)
187

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(A60)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
SITTING AT LUCKNOW.

Petition No. _____

Narendra Behari Lal ... Petitioner
Versus
Union of India and others. ... Respondents

~~Appeal~~

ANNEXURE NO. ~~III~~ IV

IMMEDIATE

✓

No. 25011/11/82-AIS(II)

GOVERNMENT OF INDIA/ BHARAT SARKAR

MINISTRY OF HOME AFFAIRS/GRH MANTRALAYA

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS

(Karmik Aur Prashasnik Sudhar Vibhag)

New Delhi, the 1st June, 1982

To,

1. Chief Secretaries to the Government of all States.
 2. All the Accountants-General of States.
-

SUBJECT; All-India Services (DCRB) Rules, 1958, Rule 2(1)-
Merger of a portion of additional dearness allowance
with pay with effect from January 31, 1982 for the
purpose of retirement benefits- Regarding.

--

xxx

xxx

xxx

2. This Department have considered the question of
extending the above orders to members of All-India Services
who retired/retire on or after January 31, 1982. The orders
issued by the Ministry of Finance earlier regarding treating
a portion of dearness allowance as dearness pay, vide their
O.M.No. 19(4)-EV-79, dated May 25, 1979 have been extended

...2

to members of All-India Services, vide this Department's letter no. 25011/15/79-AIS(II), dated July 27, 1979. It has been decided that the orders ~~xxxxxx~~ now issued by that Ministry treating a portion of additional dearness allowance as dearness pay in the case of Central Government servants should also be extended to members of All-India Services. Accordingly it has been decided that out of the additional dearness allowance now admissible, the following amount shall be treated as pay under sub-clause (iii) of clause (g) of sub-rule (1) of rule 2 of A.I.S. (DCRB), Rules 1958 in the case of members of the Service who retired/retire on or after January 31, 1982.

Pay range	Amount of dearness pay
(i) Pay upto Rs.2,037 ..	15 per cent of pay subject to a maximum of Rs. 120.
(ii) Pay above Rs.2,037 ..	Rs.363 including the amount of dearness allowance treated as dearness pay under this Department's letter no.25011/15/79-AIS (II), dated July 27, 1979.

xxx xxx xxx xxx

5. In the case of officers who have already retired on or after January 31, 1982 or may retire hereafter, but within ten months from that date, the ultimate average emoluments will be calculated as follows:-

- (a) in the case of officers who retired/retire between January 31, 1982 and June 29, 1982. One half of dearness pay appropriate to the pay equal to such average emoluments as per para 2 above, shall be added to the average emoluments.

18/73

(b) in the case of officers who retire after June 29, 1982. Full dearness pay appropriate to the pay equal to such average emoluments, as per para 2 above, shall be added to the average emoluments.

6. Officers who retired/retire on or after January 31, 1982 will have an option to choose either of the two alternatives below :-

(a) to have both pension/service gratuity and DCR gratuity calculated on their pay, without including the element of dearness pay indicated in para 2 above, and get dearness relief on pension as for those governed under para 4(b) of this department's letter dated the 27th July, 1979.

OR

(b) to have both pension/service gratuity and DCR gratuity calculated after taking into account of the element of dearness pay now being merged. In such cases the pensioners will be entitled only to the instalments of dearness relief sanctioned beyond the average index level 320.

7. The option may be exercised within six months before retirement. Officers who have retired on or after January 31, 1982 but before the issue of these orders, may exercise their option within six months from the date of issue of this order. The option once exercised shall be final. Those who fail to exercise the option within the stipulated period will be deemed to be governed by para 6(b) above. If a pensioner has died before exercising the option, the State Government /Accountant General shall calculate the pension and gratuity ~~xxxx~~ under both the options in para 6 above, and

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sanction the more advantageous of the two.

XXX

XXX

XXX

XXX

Sd/ Smt. CHITRA CHOPRA,
Deputy Secretary to the Government of
India.

No. 25011/11/82-AIS(II)

New Delhi, the June 1, 1982

A copy ~~of~~ is forwarded for information to :-

- (1) All the Ministries and Departments of the Government of India.
- (2) Ministry of Home Affairs IPS Section
- (3) Ministry of Home Affairs UTS Section.
- (4) Department of Agriculture IFS Section
- (5) Chief Secretaries/Administrators of all-Union Territories.
- (6) Ministry of Finance (Department of Expenditure-EV Branch).

SMT. CHITRA CHOPRA,
Deputy Secretary to the
Government of India.

Attested True Extract

B. N. Chaturvedi
B. N. Chaturvedi
28/4/82
ADVOCATE

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44- In the Central Administrative Tribunal, Allahabad Bench,
At Lucknow.
Between Naranda Behari Lal AND The Union of India and others
Petitioner Respondent

Annexure No. V

Copy of the Department of Pension & Pensioner's Welfare
O.M. No. 38/9/86-P&PW dated 8th August, 1986 to all
Ministries/Department etc.

....

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

...

The undersigned is directed to say that according
to orders issued vide Ministry of Finance, Department of
Expenditure O.M. No. 19(4)-EV/79 dated 25th May, 1979,
persons who retired on or after 30.9.1977 but not later
than 30.4.1979 were allowed on ~~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 of the O.M. dated the 25th
May, 1979 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:
- (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 ~~xxrd~~
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 Government have been receiving representations
from officers who retired after 30.4.1979 and who had not
been permitted to exercise option as mentioned in foregoing
paragraph stating that they have been placed at a disadvan-
tage compared to the officers who retired on or after
30.9.1977 but not later than 30.4.1979 in as much as they

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(A65)

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 of 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 matter, 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. 2158 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)-EV/79 dated the 25th May, 1979. This option may also be exercised by those Government servants drawing pay of Rs. 2158/- 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)EV/82 dated 8.4.1982. The option will have to be exercised within a period of six months once exercised shall be final. Those 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.

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 1st April, 1986.

4. The Heads of Offices may bring these instructions to the notice of all the concerned retired officers.

5. These orders will also apply mutatis-mutandis to the

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(A66)

officers of the All India Services in partial modification of the orders issued vide letter No. 25011/15/79-AIS-11 dated 27.7.1979 and letter No. 25011/11/82-AIS-11 dated 1.6.1982 read with letter of same number dated 10.8.1983.

6. These orders do not apply to :-

- (a) Persons appointed on contract; and
- (b) Persons who are granted consolidated rates of pay and are not in receipt of dearness allowance.

7. These orders also do not apply to Railway employees and persons paid from the Defence Service Estimates. Similar order, if any, will be issued in respect of them by the Deptt. of Railways and Ministry of Defence respectively.

8. In so far as employees of the Indian Audit & Accounts Department are concerned, these orders issue in consultation with the Comptroller and Auditor General of India.

Attested True Copy

B. N. Chaturvedi
28/4/88
B. N. Chaturvedi
ADVOCATE

18-7

(A67)

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ANNEXURE- A

(Items 3(B) & 6 of Petition)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
AT LUCKNOW.

Petition No. of 1988.

Sri N.B. Lal

Petitioner

:Versus :

Union of India & Others

Respondents.

FACTS OF THE CASE

Facts of the case are that :

1. The petitioner Narendra Behari Lal was appointed to U.P. State Civil Services (Executive) and joined on 17.4.46.
 2. He was confirmed in the State Civil Service after period of probation and thereafter continued till April ~~1952~~ 1965 when he was selected by promotion to officiate in Senior Scale of IAS.
 3. He was appointed and confirmed in Indian Administrative Service in 1970 and allotted U.P. State Cadre.
 4. He was after holding various cadre posts in senior and selection grades promoted to officiate in the supertime scale from May, 1978 in Cadre post of Administrator and Mukhya Nagar Adhikari, Nagar Mahapalika, Lucknow.
 5. He was appointed to his last cadre post in service, Commissioner and Director, Consolidation of Land Holdings, U.P. from November 1979, which post
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he held till the date of retirement 31st January, 1982.

6. Before and on the date of retirement he was authorised by Accountant General, U.P. III (GAD Class I) vide authority no. G-6/IAS(C)/3205-22/1825, dated 23.8.82 (~~App. 1~~) and drew following pay and allowances :

	From 1.8.81	From 1.1.82	From 1.2.82
Substantive pay	2000.00	2000.00	Nil
Officiating pay	750.00	750.00	Nil
Dearness allowance	243.00	900.00	Nil
Addl. adhoc DA	507.00	700.00	
Total	3500.00	4250.00	

7. He had been drawing for more than ten months prior to retirement Rs.2750/- (substantive pay and officiating pay) plus DA/ADA admissible at that time.

8. The pension and other retirement benefits granted to the petitioner under AIS(DCRB) Rules, 1958 and orders of Govt of India to IAS officers borne on State cadre are disbursed from the Consolidated Fund of U.P. Government, Respondent No.3.

9. According to AIS (DCRB) Rules, 1958 as amended from time to time the petitioner was issued by AG III, U.P. Pension Payment Order No. LKN/19096 dated January 30, 1982 (~~App. 1~~) fixing

Basic pension Rs.1222.00

Relief Rs. 212.50

10. On representation the Accountant General by letter PPO Cell (ii) 853, dated 20.4.82 corrected the admissible pension as follows :

Basic pension from 1.2.82 Rs.1225.00 ✓

Relief Rs. 225.00 ✓

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11. Govt. of India Deptt. of Personeel by order no. 25011/11/83-IAS (ii) dated June 1, 1982 ^(Annex IV) read with subsequent order dated 10th May, 1983 ^(Annex IV) ~~(Annex 3A)~~ ^{App 1} ~~and 3B~~) decided to treat Rs.370/- of the dearness allowance as dearness pay of which, as explained in this main petition's paras. 3A and 3B, only half, that is, Rs.185/-, was added to monthly emoluments in case of officers who retired between Jan. 31, 1982 and June 29, 1982 and full Rs.370/- in case of those who retired after June 29, 1983. ✓

12. In their orders the Govt. of India (sub-para. 11 above) neither disclosed the basis of classification of pensioners viz. those (i) who retired between Jan 31, 1982 and June 29, 1982 and (ii) those who retired after June 29, 1982 nor satisfied the well established law laid down in the NAKARA CASE by the Hon'ble Supreme Court that the classification between same class should satisfy twin tests of (i) being founded on intelligent differentia which distinguish persons or things that are grouped together from those that are left out of the group; and (ii) that such differentia must have a rational nexus to the object to be achieved. Failure to satisfy these criteria renders an order or statute violative of Article 14. It has also been repeatedly held that as ~~was~~ when in service persons holding intential posts cannot be treated differently in the matter of pay, the pensioners too form a class and computation of pension cannot be by different formula according unequal treatment solely on the ground [✓] that some retired earlier and some later or else it would be violative of Article 19.

13. In terms of para.6 of Govt. of India's

✓

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(A70)

letter of 1.6.82 and 10.5.83 referred to in sub-para 10 above the petitioner was informed to choose either of the two options set forth in detail in sub-paras 3(B) A(C) & B(b) of this petition's main para 3 (Subject in Brief) within 6 months and was further informed that if no option was exercised the second one namely merger of Rs. 185/- of dearness allowance as dearness pay to average pay drawn ten months prior to retirement (31.1.82) would automatically be deemed. Accordingly as at that time the second option was to be more beneficial, the petitioner chose by letter dated 8th Nov. 1983 (App. 4). Even if no option was exercised this option would have been applied by the Accountant General for computing the revised pension. The latter stipulation made exercise of option redundant.

13. The Accountant General III, U.P. thereupon by letter No. PA III/9540, dated 2.11.84 w.e.f. 1.2.82 revised the pension to Rs. 1274/- which should have been Rs. 1299/- This anomaly was corrected after repeated reminders by AG(A&E) U.P. only on 31.7.87 and 3.8.87 by letters PA III/7799, and PRI/FPCIR Cell/890 (Appendices 5&6) that is after 3 years.

14. Following decision on recommendations of Fourth Pay Commission in terms of Govt. of India's (Ministry of Personnel etc. Deptt. of Pensioners etc.) OM.No. 2/1/87-PIC-1 dated 16.4.87^(App 3) the Accountant General by letters referred to in sub-para 11 and 12 above revised the petitioner's pension as follows :

- (1) Amount of original pension already fixed

Rs. 1299/- w.e.f. 1.2.82

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- (ATT)
- ~~SECRET~~
- | | | |
|-----|---|--------------------------|
| 121 | 50% of average emoluments for new pension | Rs. 1468/- w.e.f. 1.1.86 |
| (3) | Additional pension | Rs. 169/- (1468-1299) |
| (4) | Partly consolidated pension under para 4.1(c) read with column 4 of annexure (i) of GOI O.M. of 16.4.87 | Rs. 2209/- |
| (5) | Consolidated pension | Rs. 2378/- |

~~as shown in App. 3.~~

15. The Govt. of India further in O.M. of 5.8.86 (App. 3) again gave opportunity for exercising revised options within 6 months and later by OM of 3.6.87 till 31st December 1987 (App. 4) and so re-opened the options to all pensioners.

16. The petitioner's erstwhile colleagues S/s P.C. Saxena and H.K. Mehrotra, who retired on 30.11.81 and 31.12.81 respectively, two and one month earlier, were also on the IAS cadre of U.P. Government and drawing same pay and allowances as the petitioner; they have been authorised revised pension by the Accountant General as under :-

- | | | |
|-----|---|------------|
| (1) | Basic pay for pension | Rs. 2750/- |
| (2) | Pension w.e.f. 1.12.81 and 1.1.82 respectively | Rs. 1225/- |
| (3) | Revised pension w.e.f. 1.1.86 | Rs. 1375/- |
| (4) | Additional pension | Rs. 150/- |
| (5) | Partly consolidated pension under para 4.1(c)(ii) of OM of 16.4.87 (vide column 1 of Annexure IV) | Rs. 2369/- |
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(6) Total consolidated pension Rs. 2539/-

Thus the petitioner has been getting:

Rs. 2539/-

minus Rs. 2378/-

Rs. 161/- less w.e.f. 1.1.86

17. The petitioner's erstwhile colleague Sri SVS Dhesi^(MPS) who retired on 30.6.82 on same pay as the petitioner in the super-time scale of IAS only 5 months later than him has had his pension computed by the A.G. in terms of Govt. of India (1) orders of 1.6.82 read with 10.5.83 referred to in sub-paras 9 & 10 and OM dated 16.4.87 as follows:

- | | | |
|-----|---|--------------------------|
| (1) | Basic pay | Rs. 2750/- |
| (2) | Pension | Rs. 1225/- w.e.f. 1.7.82 |
| (3) | Revised pension in terms of GOI's letter of 1.6.82 and 10.5.83 | Rs. 1373/- -do- |
| (4) | Revised pension | Rs. 1560/- w.e.f. 1.1.86 |
| (5) | Additional pension | Rs. 187/- (1560-1373) |
| (6) | Partly consolidated pension under para 4.1(c) read with column 4 of Ann. 4 to OM of 16.4.87 | Rs. 2335/- -do- |
| (7) | Total consolidated pension | Rs. 2512/- -do- |

Thus even compared to those who retired five (5) months later the petitioner has been put in a disadvantageous position by being allowed

Rs. 2512/-

minus 2378/-

Rs. 134/- less pension w.e.f. 1.1.86

[Signature]

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(ATB)

18. (a) The petitioner addressed to the Accountant General a letter (Ann. I~~II~~ A) on Sept. 8, 1987 pointing out the anomalous position and requested him to rectify the anomaly or for reckoning earlier option in view of GOI's OM's dated 8.8.86 read with OM 38/9/86-P&W dated June 3, 1987.

(b) On receiving no reply another letter (Ann. I~~II~~ B) was addressed requesting for accepting the option in which ever manner it be found more beneficial.

(c) The Accountant General in the impugned letter dated 26.10.87 (Ann. II) referred to in para 3(A) rejected petitioner's representations on the ground that having retired on 31.1.82 the benefit of ADA upto 320 points had been taken into account and that pension having been finalized, reopening it was not possible.

(d) The petitioner again addressed him on 29th Dec. 1987 (Annexure II A) drawing attention to the extension of date for exercise of option to 31.12.87 under para 4(a) of Govt. of India OM's No. 25011, dated 1.6.82 and 10.5.83 in terms latest Govt. of India OM's of 8.8.86 and 3.6.87 requested that revised option may be accepted under para 4(a) of OM's of 1.6.82 and 10.5.83.

(e) The Accountant General by impugned D.O. letter No. PRI/203262/80-82/1138, dated Jan. 14, 1988 (Ann. ^{III} ~~IV~~ ~~A~~ ~~B~~ ~~C~~ ~~D~~ ~~E~~ ~~F~~ ~~G~~ ~~H~~ ~~I~~ ~~J~~ ~~K~~ ~~L~~ ~~M~~ ~~N~~ ~~O~~ ~~P~~ ~~Q~~ ~~R~~ ~~S~~ ~~T~~ ~~U~~ ~~V~~ ~~W~~ ~~X~~ ~~Y~~ ~~Z~~ ~~AA~~ ~~AB~~ ~~AC~~ ~~AD~~ ~~AE~~ ~~AF~~ ~~AG~~ ~~AH~~ ~~AI~~ ~~AJ~~ ~~AK~~ ~~AL~~ ~~AM~~ ~~AN~~ ~~AO~~ ~~AP~~ ~~AQ~~ ~~AR~~ ~~AS~~ ~~AT~~ ~~AU~~ ~~AV~~ ~~AW~~ ~~AX~~ ~~AY~~ ~~AZ~~ ~~BA~~ ~~BB~~ ~~BC~~ ~~BD~~ ~~BE~~ ~~BF~~ ~~BG~~ ~~BH~~ ~~BI~~ ~~BJ~~ ~~BK~~ ~~BL~~ ~~BM~~ ~~BN~~ ~~BO~~ ~~BP~~ ~~BQ~~ ~~BR~~ ~~BS~~ ~~BT~~ ~~BU~~ ~~BV~~ ~~BW~~ ~~BX~~ ~~BY~~ ~~BZ~~ ~~CA~~ ~~CB~~ ~~CC~~ ~~CD~~ ~~CE~~ ~~CF~~ ~~CG~~ ~~CH~~ ~~CI~~ ~~CJ~~ ~~CK~~ ~~CL~~ ~~CM~~ ~~CN~~ ~~CO~~ ~~CP~~ ~~CQ~~ ~~CR~~ ~~CS~~ ~~CT~~ ~~CU~~ ~~CV~~ ~~CW~~ ~~CX~~ ~~CY~~ ~~CZ~~ ~~DA~~ ~~DB~~ ~~DC~~ ~~DD~~ ~~DE~~ ~~DF~~ ~~DG~~ ~~DH~~ ~~DI~~ ~~DJ~~ ~~DK~~ ~~DL~~ ~~DM~~ ~~DN~~ ~~DO~~ ~~DP~~ ~~DQ~~ ~~DR~~ ~~DS~~ ~~DT~~ ~~DU~~ ~~DV~~ ~~DW~~ ~~DX~~ ~~DY~~ 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~~LB~~ ~~LC~~ ~~LD~~ ~~LE~~ ~~LF~~ ~~LG~~ ~~LH~~ ~~LI~~ ~~LJ~~ ~~LK~~ ~~LM~~ ~~LN~~ ~~LO~~ ~~LP~~ ~~LQ~~ ~~LR~~ ~~LS~~ ~~LT~~ ~~LU~~ ~~LV~~ ~~LW~~ ~~LX~~ ~~LY~~ ~~LZ~~ ~~MA~~ ~~MB~~ ~~MC~~ ~~MD~~ ~~ME~~ ~~MF~~ ~~MG~~ ~~MH~~ ~~MI~~ ~~MJ~~ ~~MK~~ ~~ML~~ ~~MM~~ ~~MN~~ ~~MO~~ ~~MP~~ ~~MQ~~ ~~MR~~ ~~MS~~ ~~MT~~ ~~MU~~ ~~MV~~ ~~MW~~ ~~MX~~ ~~MY~~ ~~MZ~~ ~~NA~~ ~~NB~~ ~~NC~~ ~~ND~~ ~~NE~~ ~~NF~~ ~~NG~~ ~~NH~~ ~~NI~~ ~~NJ~~ ~~NK~~ ~~NL~~ ~~NM~~ ~~NN~~ ~~NO~~ ~~NP~~ ~~NQ~~ ~~NR~~ ~~NS~~ ~~NT~~ ~~NU~~ ~~NV~~ ~~NW~~ ~~NX~~ ~~NY~~ ~~NZ~~ ~~OA~~ ~~OB~~ ~~OC~~ ~~OD~~ ~~OE~~ ~~OF~~ ~~OG~~ ~~OH~~ ~~OI~~ ~~OJ~~ ~~OK~~ ~~OL~~ ~~OM~~ ~~ON~~ ~~OO~~ ~~OP~~ ~~OQ~~ ~~OR~~ ~~OS~~ ~~OT~~ ~~OU~~ ~~OV~~ ~~OW~~ ~~OX~~ ~~OY~~ ~~OZ~~ ~~PA~~ ~~PB~~ ~~PC~~ ~~PD~~ ~~PE~~ ~~PF~~ ~~PG~~ ~~PH~~ ~~PI~~ ~~PJ~~ ~~PK~~ ~~PL~~ ~~PM~~ ~~PN~~ ~~PO~~ ~~PP~~ ~~PQ~~ ~~PR~~ ~~PS~~ ~~PT~~ ~~PU~~ ~~PV~~ ~~PW~~ ~~PX~~ ~~PY~~ ~~PZ~~ ~~QA~~ ~~QB~~ ~~QC~~ ~~QD~~ ~~QE~~ ~~QF~~ ~~QG~~ ~~QH~~ ~~QI~~ ~~QJ~~ ~~QK~~ ~~QL~~ ~~QM~~ ~~QN~~ ~~QO~~ 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Deptt. of Pensions etc, with a demi official letter (Annexure ~~II~~ ^I A ~~II~~ ^I B) pointing out the anomalies and requested that they may be rectified by suitable amendment in para 4(b) and (c) of OM 16.4.87 so that officers who retired on or after 31.1.82 and before 30.6.82. This, it was averred, could be done by allowing part consolidation of pension according to column 1 of Annexure 4.

(b) The Govt. of India has by impugned order No. 5/13/87-P&PW(PIC), dated 23 December, 1987 (Annexure I) summarily rejected petitioners representations.

(c) The above impugned orders do not disclose any reason or rationale for out right rejection of petitioners claims.

20. The averments in sub-paras 7, 8, 11, 12, 17(c) and (e) above are all indicative of confused thinking, perversity and lack of correct appreciation of facts and arbitrary interpretation of orders of Govt. of India by respondent No. 2 the Accountant General as also the arbitrary rejection by Respondent No. 1.

21. The facts stated in paras 16 and 17 clearly and conclusively prove the injustice caused to the petitioner by mere incidence of his having retired between 31.1.82 and 29.6.82 dates arbitrarily fixed by respondent No. 1 Government of India for conferring retirement benefits.

22. The facts and submissions conclusively show that the representations of the petitioner have been most casually determined by the two respondents and are a travesty in as much as earlier retirees and later retirees

18/3

- 55 -

(A75)

have been much better placed in the matter of retirement benefits, the general trend being the reverse (parity of benefits for same class of retirees).

23. The rejection of representations by the respondents 1 & 2 are violatives of articles 14, 16 and 19 of the Constitution.

24. Respondent No. 3 Govt. of U.P. has not passed any orders as the pension of All India Service officers is governed by Rules framed under Article 309, so no representation lay to them and so none has been made. They have been impleaded as proforma defendants as they are the disbursing authority from their consolidated Fund.

Narendra Behari Lal
(Narendra Behari Lal)

N

56 (176)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
SITTING AT LUCKNOW.

--

Petition No.

Narendra Behari Lal

...

Petitioner

Versus

Union of India and others.

...

Respondents

Appn. No. 21 ANNEXURE NO. A

IMMEDIATE

No. 25011/11/82-AIS (II)

GOVERNMENT OF INDIA/ BHARAT SARKAR

MINISTRY OF HOME AFFAIRS GRIH MANTRALAYA

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS

(KARMIK AUR PRASHASNIK SUDHAR VIBHAG)

New Delhi, the 10 May, 1983

To,

- (1) The Chief Secretaries to the Government of all States.
 - (2) All the Accountants-General of States.
-

Subject: All-India Services (DCRB) Rules, 1958--Rule 2(1)
Merger of a portion of additional dearness
allowance with pay with effect from January 31,
1982 for the purpose of retirement benefits- Regarding

Sir,

→

I am directed to refer to his Department's letter of even number dated 1st June, 1982 treating a portion of additional dearness allowance as pay with effect from January 31, 1982 for the purpose of retirement benefits and to say that the Ministry of Finance have issued orders in the case of Central Government servants vide their C.M. no. F-1(3)EV-82, dated the 4th March, 1983 fixing the maximum amount of additional dearness allowance that could be merged with pay at Rs. 122 p.m. instead of Rs. 120 p.m.

M7

(A70)

- 58 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT LUCKNOW.

Between

Sri Narendra Behari Lal	.. Petitioner
AND	
The Union of India and others	.. Respondents

Appn. No. 2
Annexure No. A

REDD.

To

Accountant General III-UP
Pension Audit Deptt.
P.A. Section
Allahabad.

Subject : Exercise of option for merger of a portion
of additional DA with pay with effect
from Jan 31, 1982 for purposes of
retirement benefits- All India Services
(DCRE) Rules 1955- Rule 2(1)

Sir,

With reference to para 2 of Govt. of India,
Ministry of Home Affairs, Department of Personnel &
Administrative Reforms No 25011/11/82-AIS(II) dated
May 10, 1983 (received from U.P. Govt on 6.11.83)
I wish to exercise my option for merger of
additional dearness allowance with my basic pay
in the super time scale of IAS for computation of
pension and relief. This option may kindly be
noted and PPO amended.

.....2/

57 (ATT)

be emerged with pay at Rs. 127 p.m. instead of Rs. 120 p.m. fixed by them earlier. In view of this, it has been decided to substitute the amount of dearness pay indicated in para 2 of this Department's letter dated 1st June, 1982 by the following :

Pay range	Amount of dearness pay
(i) Pay upto Rs.2,037	.. Rs.100 plus 3 per cent of pay subject to a maximum of Rs.127.
(ii) Pay above Rs.2,037	.. Rs.370 including the amount of dearness allowance treated as pay under this Department's letter no. 25011/15/79-AIS(II), dated 27th July, 1979.

2. In view of the change made above, it has been decided to give a fresh option to members of All-India Services who retired or retire on or after January 31, 1982 and have exercised or are deemed to have exercised, an option in terms of this Department's letter dated 1st June, 1982, to choose either of the two alternatives mentioned in para 6 of that letter as amended vide para 1 above. The option may be exercised within six months from the date of issue of this letter, where no change in the existing option, is intimated by the end of that period, the existing option/deemed option should stand option is intimated. In the case of deceased pensioners the State Government/Accountant General shall have into account the revised rates of dearness pay as mentioned in para 1 above for calculating the pension and gratuity under both the options in para 6 of letter dated 1st June, 1982 and sanction the advantageous of the two.

xxx

xxx

xxx

SD SMT. CHITRA CHOPRA

Deputy Secretary to the Government of India.

True Ex't out
H.S.

(H.D. Lal)

18/7

Particulars of service and pension are noted below :

1. Name : Narendra Behari Lal
2. Service : Indian Administrative Service (UP Cadre)
3. Date of retirement : 31 January 1982
4. PPO No : LKN/19098
5. GPO NO : LKN/28469

For ready reference a copy of relevant letter of AG sanctioning pension is enclosed.

Thanking you,

Yours faithfully

Nov 8, 1983

Narendra Behari Lal

C-361 Indira Nagar

Lucknow 226016

True copy

M

(N.B. Lal)

PL

60 — (A20)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
SITTING AT LUCKNOW.

Petition No. /

Narendra Behari Lal ... Petitioner

Versus

Union of India and others .. Respondents

Appen No. 43

ANNEXURE NO. A

MOST IMMEDIATE

No. 2/1/87-PIC-1
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
& PENSIONS DEPARTMENT OF PENSION AND
PENSIONERS' WELFARE

New Delhi, the 16th April, 1987

OFFICE MEMORANDUM

Subject: Rationalisation of pension structure for pre
1.1.1986 pensioners - Implementation of Government's
decisions on the recommendations of the Fourth
Central Pay Commission.

2.1 to 3.2 x x x x x x x x x x

4.1. ADDITIONAL RELIEF FOR EXISTING PENSIONERS -

Existing pensioners of the categories mentioned below shall
be granted additional relief at the rates indicated for
each :

(A) in the case of Government servants who retired -

(i) Prior to 30th September, 1977.

(ii) Between 30th September, 1977 and 30th April 1979
and have not opted for merger of dearness allowance in terms
of Ministry of Finance, Department of Expenditure O.M.No.
19(4)-E.V/79 dated the 25th May, 1979.

...2

(iii) Between 30th April, 1979 and 30th March, 1985 and have exercised their option in favour of Paragraph 4(a) of Ministry of Finance Office Memorandum dated the 25th May, 1979 referred to above in terms of Department of Pension and Pensioners' Welfare O.M.No. 38/9/86-P&PW dated the 8th August, 1986.

and all family pensioners and persons in receipt of extra-ordinary pension additional relief shall be admissible as follows:

(a) in the case of pensioners drawing pension of Rs.500/- or less, additional relief shall be equal to 15% 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. 75/-.

(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. 638 and the notional relief calculated at 95% 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. 175/- the additional relief shall be Rs. 175/-.

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

(i) Between 30th September, ~~1968~~ 1977 and 30th April, 1979 and have opted or are deemed to have opted for the benefit of merger of dearness allowance in pay up to 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.F1(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 up to 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 to 4.3 x x x x x x x x x

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.

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- (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 to 15 x xx x xx xxx

Sd/ I.K. Rasgotra
Additional Secretary to the
Government of India

To

All Ministries/Departments of Government
of India etc.

True Extract

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A05

App No 3

ANNEXURE ~~B~~ A (Contd)

(Paragraph 11.1(b))

TABLE SHOWING EXISTING PENSION AND THE PART OF CONSOLIDATED PENSION DUE FROM 1.1.1986 IN RESPECT OF PENSIONERS DRAWING PENSION ABOVE Rs. 500/-

Existing Pension	Part Consolidated pension due from 1.1.86				
	Para 4.1(A)	Para 4.1(B)	Para 4.1(C)	Para 4.1(D)	
	XXXXX		XXXXXX	XXXXX	
1225	2389	2205	2083	Amount equal to the total of Col.1 plus Rs.63/- in all cases.	
	XXXXXX		XXXXXXX		
1299	2534	2339	2209		
	XXXXXX		XXXXXXXXX		
1373	2678	2472	2335		
	XXXXXX		XXXXXXXXXX		

True Extract
By
(N.B. Col.)
[Signature]

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A06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALIHAHABAD
SITTING AT LUCKNOW.

Petition No. _____

Narendra Behari Lal

...

Petitioner

Versus

Union of India and others.

...

Respondents

Appn. No. 84

ANNEXURE No. A

No. 38/9/86-P&W
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.O.No. 38/9/86-P&W 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 stipulate 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

187 contd...2

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.

6. In their application to the persons who retired from Indian Audit and Accounts Department these orders issue in consultation with the C&AG.

7. Hindi version follows.

Sd/
I.K. RASGOTRA
Additional Secretary to the
Government of India.

True Copy

Sh
(A.B. Lal)
18/7

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Appen. 5 to Annex A (Para 32 of Petition)
Page 7)

CHART SHOWING DIFFERENCE IN RELIEF TO THOSE WHO COULD NO.
GET A MERGER OF DEARNESS PAY WHO COULD BE DEMAND TO
X OPT FOR IT ON OR AFTER 31.1.82 & 29.6.82 & AFTER
31.1.82.

<u>Net opting merger</u>				<u>Opting merger</u>			
		<u>Min.</u>	<u>Max.</u>			<u>Min.</u>	<u>Max.</u>
From 1.1.82	55%	55	275	1.2.82	40%	40	200
1.4.82	37.5%	57/50	287/50	1.4.82	42.5%	40/50	212/50
1.6.82	60%	300 60/-	300/-	1.6.82	45%	45/-	225/-
1.9.82	62.5%	62/50	313/-	1.9.82	45.5%	48/-	238/-
1.12.82	65%	65/-	325/-	1.12.82	50%	50/-	250/-

This meant that the petitioner retiring on 31.1.82
and who opted for merger, got on 1.4.82.

Pension Rs.1299 (Rs.185/- dearness pay was added
to emoluments for pension)

Relief Rs. 212.50

Total: Rs.1511.50

and his colleagues who retired earlier till 30.1.82 and did
not and could not opt for merger got

Pension Rs.1225 (No dearness pay was admissible)

Relief Rs. 287.50

Total: Rs.1512.50 i.e. Rs.1/- more in total
emoluments of pension than the
petitioner.

and those who retired on 30.1.82 and after till 29.6.82
if not opting for merger would have got

Pension Rs.1225

Relief Rs. 300

Total Rs.1525 i.e. Rs.14 more in total pensionary
emoluments and those who opt for merger have got

Pension Rs.1373 (Rs.370 dearness pay was added to
emoluments.

Relief Rs. 225/

Total Rs. 1598 i.e. Rs.86/50 more in total
pensionary emoluments.

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The inequitous and adverse affect of the operation of the orders of Govt. of India is obvious from above on petitioner who retired to inter regium 31.1.82 to 29.6.82

Note - above are real examples of my colleagues :

1. S/S P.C. Saxena retired on 30.11.81

H.K. ~~Mextar~~ Mehrotra retired on 31.12.81 and

2. Sri S.V.S. Dhesi retired on 30.6.82)

Navendra Behari

MSY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

O.A. NO. 20 OF 1988(L)

SHRI N.B. LAL

...APPLICANT

VERSUS

UNION OF INDIA

... RESPONDENT

COUNTER REPLY ON BEHALF OF RESPONDENT:

I, Smt. C.R.V. Hariharan, wife of Shri Hariharan, resident of New Delhi, do hereby submit as under:

1. That I am working as Desk Officer in the Department of Personnel & Training, Government of India and I am acquainted with the facts of this case in my official capacity.
2. That I am submitting this reply on behalf of the Respondent and I am authorised and competent to do so.
3. That I have read a copy of the application filed by the applicant and understood the contents thereof.

PARA-WISE COMMENTS:

4. Paragraphs 1,2,3(A) of the application are formal and do not need any comments.
5. As regards paragraphs (1)(ii), 3.A & 3.B of sub-para (B) of para 3 of the said application, no comments are called for as this is reproduction of rule provisions.
6. As regards para 3.C (a) is concerned, it is submitted that the orders contained in the Department of Personnel & A.R. letter No.25011/11/82-AIS(II) dated 1-6-82 are not violative of Article 14 and 16 of the Constitution as contended by the applicant. Classification founded on the intelligible different having rational nexus to the object sought to be achieved is not violative of Article 14. This view has been held in a number of cases by the Supreme Court of India. The following back-

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ground is mentioned to prove the point of respondent

(2) In the Department of Personnel & Administrative Reforms O.M. dated 1.6.1982 orders were issued merging a part of dearness allowance in pay for various purposes including pension and gratuity. These orders were effective in the case of Government servants who retired on or after the 31st January, 1982. Actually, therefore, Dearness pay came to be treated as emoluments for calculation of pension from 31.1.1982, only. These orders inter-alia provided that in the case of persons who retired on or after 31st January, 1982 but within ten months of the said date the average emoluments would be calculated as follows:

- | | | |
|----|--|---|
| 10 | In the case of persons who retired between 31.1.1982 to 29.6.1982. | Half dearness pay proportionate to the pay equal to such average emoluments shall be added to the average emoluments. |
| 11 | In the case of those who retired after 29.6.1982. | Full dearness pay appropriate to the pay equal to such average emoluments shall be added to the average emoluments. |

(3) Pension is computed with reference to average emoluments drawn during ten months preceding retirement. In the absence of the special provisions referred to above the benefit of dearness pay to the persons retiring between 31.1.1982 and 29.10.1982 would have been far less as compared to that allowed by these provisions as follows:

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Date of retirement	Extent of benefit of dearness pay which would have reflected in the average calculations for computation of pension in the absence of the above-mentioned provisions.	Extent of benefit of dearness pay allowed as a result of the above-mentioned provisions.
31.1.1982	Negligible ($1/30 \times 1/10$)	5/10th
28.2.1982	1/10th	5/10th
31.3.1982	2/10th	5/10th
30.4.1982	3/10th	5/10th
31.5.1982	4/10th	5/10th
30.6.1982	5/10th	5/10th
31.7.1982	6/10th	10/10th
31.8.1982	7/10th	10/10th
30.9.1982	8/10th	10/10th
31.10.1982	9/10th	10/10th
31.11.1982 onwards	10/10th	10/10th

(4) The decision to allow benefit of 50% dearness pay upto 29.6.1982, and 100% thereafter was based on the law of average. As stated above, the average emoluments for pension are calculated over ten months period. The first half of the period ending 29.6.1982 was placed in 50% category and the second half occurring after 29.6.1982 was placed in the 100% category with a view to giving an even benefit. This was like rounding of the fraction of B.P. to the next higher 0.5 fraction. The selection of the date of 29.6.1982 for this purpose was, therefore, not arbitrary.

(5) The special provisions mentioned above were not adopted in an arbitrary manner. Similar procedure had been followed in 1953, in 1969 and in 1977 while merging a part

of dearness allowance in pay for retirement benefit purposes. The special provisions for counting 50% of dearness pay during the first half of the period reckoned for average calculation and full dearness pay during the subsequent period were adopted in 1953 on the recommendation of Gadgil Committee and later at the time of merger of a portion of dearness allowance in 1969 at the specific instance of the Staff Side of the National Council (Joint Consultative Machinery). The same provisions were repeated in 1977 and in 1982 while merging a part of dearness allowance in pay to fall in line with the express wishes of the Staff Side on earlier occasions in 1969.

7. (1) As regards para 3.C(b) is concerned, it is submitted that the averment of the applicant that the option given in O.M. dated 8.8.1986 was discriminatory is denied. To appreciate the point of view of the respondent applicant the following background is mentioned.

(2) Prior to 30-9-1977 only pay was treated as emoluments for computation of pension. No part of dearness allowance was treated as emoluments for this purpose. The pay scales and the resultant pension were linked to average CPI 200. The pensioners were accordingly allowed dearness relief on pension for price rise beyond average CPI 200.

(3) Orders were issued in 1979 treating dearness allowance upto average CPI 272 as dearness pay and for taking the same into account in addition to pay for computation of pension. These orders were effective from 30-9-77. The treatment of a portion of a dearness allowance as pay for pensionary purposes did not benefit all the retiring employees. The employees who retired between 30-9-1977 to 30-4-1979 were given option:

- (1) either to have their pension calculated without taking into account the dearness pay and draw full dearness relief on pension beyond average CPI 200;
- 11) or to have their pension calculated after taking into account dearness pay and draw reduced dearness relief on pension beyond CPI 200.

(4) However, this option was not allowed to those who retired during the period from 1.5.1979 to 29.1.1982. The orders treating a portion of dearness allowance as dearness pay provided that the pay plus dearness pay shall not exceed Rs.2,700/-. Therefore, employees drawing pay in Senior pay ranges who retired between 1.5.1979 and 29.1.1982 without the facility of option were put to a double disadvantage in as much as they did not derive pay benefit from dearness pay and at the same time their dearness relief on pension was depressed and allowed only beyond CPI 272. Considering this anomaly these categories of employees were allowed a fresh option under O.M. dated 8.8.1986 to have their pension re-calculated without treatment of any portion of dearness allowance as pay and to draw full dearness relief on pension beyond average CPI 200.

(5) Similarly orders were issued in 1982 treating dearness allowance upto average CPI 320 as dearness pay for pensionary purposes. These were effective from 30-1-1982. These orders provided two options namely,-

- (1) either to have pension calculated with DP upto CPI 272 and draw dearness relief on pension beyond CPI 272 or
- (11) to avail of dearness pay upto CPI 320 for pensionary purposes and to draw further reduced dearness

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~~with~~ relief on pension beyond CPI 320.

(6) Unlike in the case of treatment of dearness allowance at CPI 272 from 30.9.77 the dearness allowance treated as dearness pay at CPI 320 was available at all levels of officers including those drawing pay at the highest rate.

(7) These orders did not provide any option not to treat any portion of dearness allowance as dearness pay for pensionary purposes and to draw full dearness relief beyond CPI 200 on pension. Since the officers in senior pay ranges who had opted to have their pension calculated with dearness pay upto CPI 272 only under these orders were placed in similar position as the officers referred to in sub-paragraph (3) above, they were also allowed the benefit of fresh option under O.M. dated 8.8.1986. In the case of officers who had opted or deemed to have opted for treatment of dearness allowance upto CPI 320 for pension there was no need to give them fresh option as dearness pay was admissible in their case upto highest pay range.

8. As regards para 3.D, it is submitted that the rationale for treating only half dearness pay for those who retired between 31.1.1982 to 29.6.82 has already been explained in the comments against para 3.C(a). Similarly, as mentioned in the comments against para 3.C(b) the orders dated 1.6.82 had clearly provided an option to the Govt. servants either to have their pension calculated after treating only dearness pay upto CPI 272 or to have their pension calculated after treating dearness allowance upto CPI 320 as pay and have reduced dearness relief on pension beyond CPI 320. If the applicant had felt that he would stand to lose by opting in favour of treatment of dearness

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allowance as pay upto CPI 320 he could have opted out of it in which case he would have drawn full dearness relief beyond CPI 272. The loss in dearness relief on his pension in his case was, therefore, on account of his own doing.

9. As regards sub-para (a) of para 3.E, the submissions in the reply of Respondent No.2 may kindly be referred to.

10. As regards ~~in~~ sub-para (b) of para 3.E, the reply of Respondent No.3 may kindly be referred to.

11. As regards para 3.F(a) & (b) are concerned, these are matters of record. The rationale behind issue of orders dated 8.8.1986 has already been explained in the comments against para 3.C(b).

12. As regards para 3.G(a) & (b), these are matters of record and need no comments.

13. As regards para 3.H, it is submitted that the Government orders are very clear. Moreover they had provided due options. It is for the employees to choose which option would be beneficial to them. Corrective action has been taken in the O.M. dated 8.8.86 where options had not been provided in the past. The time for exercise of option under OM dated 8.8.86 was extended only to help the pensioners on the considerations that the earlier orders would not have received wide publicity and to help them avail of these options in process of rationalisation of their pension from 1.1.86 in implementation of the Government's decisions on the recommendations of the Fourth Central Pay Commission.

14. With regard to para 4(a), it is submitted that the rationale behind allowing only 50% of dearness pay in the case of those who retired between 31.1.1982 and 29.6.1982 has been adequately explained in the comments against para 3.C(a).

...contd/-

15. With regard to para 4(b), it is submitted that the Government had duly provided for an option to the employees either to opt for merger of dearness allowance upto CPI 320 in pay for retirement purposes or to continue to have their pension computed after merger of dearness allowance upto CPI 272 only. The option rested with the employees themselves.
16. With regard to para 4(c), it is submitted that the averment of the applicant is denied.
17. With regard to para 4(d), it is submitted that the averment of the applicant is not accepted.
18. As regards para 4(e) & (f), no comments are called for.
19. As regards para 4(g), it is submitted that the averment of the applicant is not accepted, for the reasons explained in detail against para 3C(a) and para 3C(b). The action taken by the respondent is perfectly in order.
20. As regards paragraphs 4 & 5, no comments are called for as these are formal.
21. As regards para 6, sub para 1 to 7 of Annexure 'A' are concerned, comments of Respondent No.2 and Respondent No.3 may kindly be perused.
22. As regards sub-para 8 of para 6 at Annexure 'A', it is admitted.
23. As regards sub-para 9 & 10 of para 6 at Annexure 'A' reply of respondent No.2 may kindly be referred to.
24. As regards sub-para 11 of para 6 as at Annexure 'A' this is admitted as fact.

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25. As regards sub-para 12 of para 6 as at Annexure 'A', submission made in para 3.C(a) may kindly be referred to.
26. As regards sub-para 13 & 14 of para 6 as at Annexure 'A', reply of respondent No.2 may be referred to.
27. As regards sub-para 15 of para 6 as at Annexure 'A', it is submitted that the date of exercise of option under the O.M. dated 8.8.1986 was extended upto 31.12.87 vide O.M. dated 3.6.87 only to those who were covered by the O.M. dated 8.8.1986. It is not correct to say that the option was reopened to all pensioners as contended by the applicant.
28. As regards sub-para 16 and 17 of para 6 is concerned, submissions of respondent No.2 may be referred to.
29. As regards sub-para 18 is concerned, the reply of respondent No.2 may please be referred to.
30. As regards para 19 of para 6, it is submitted that the reasons for rejection of the application representation was based on consideration which have been explained in detail in the comments against para 3.C(a) & (b).
31. With regard to sub-para 20 of para 6, averment of the applicant is denied.
32. With regard to sub-para 21, of para 6, it is submitted that the rationale for treating only half dearness pay for the period from 31-1-1982 to 29-6-1982 is already explained in the comments against para 3.C(a).
33. With regards to sub-para 22 of para 6, the averment of the applicant is denied. The points made by the applicant were gone into in all their aspects before the representations were rejected.
34. As regards sub-para 23 of para 6, it is submitted that there is no violation of Article 14 or 16 or 19 of the

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Constitution in the action taken by the answering respondent

35. As regards sub-para 24 of para 6, no comments are required.

36. With regard to para 7 of the application, the averments are denied.

37. With regard to para 8, the answering respondent has no comments to offer.

38. As regards para 9 of the application, it is submitted that the reliefs sought by the applicant are not admissible in view of the submission already made.

39. As regards paras 10,11,12 and 13, no comments are required as they are formal.

PRAYER

In view of submissions made herein above, it is respectfully prayed that the application be dismissed with costs as being misconceived, frivolous and without any cause of action.

Hariharan
DEPONENT.

VERIFICATION

I, Smt. C.R.V. Hariharan, w/o Sh. Hariharan, do hereby verify the contents of this reply and submit that whatever is stated herein is true to my knowledge, belief and information as derived from official records.

Hariharan
DEPONENT.

New Delhi.

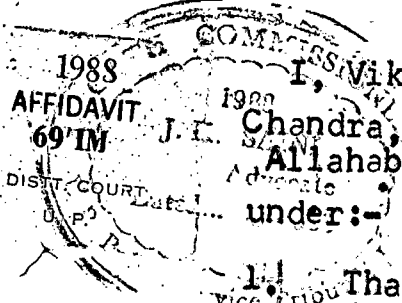
Date: 22.11.88.

CA No 2 (A150)

In the Central Administrative Tribunal, Allahabad Bench
at Lucknow
Between

Narendra Behari Lal ... Petitioner.
And
The Union of India & others ... Respondents.

Counter affidavit on behalf of Respondent No. 2



I, Vikram Chandra, aged about 40 years, son of shri Girish Chandra, resident of Ram Monohar Lohia A.G. Officer's Colony Allahabad, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is posted as present as Senior Deputy Accountant General in the office of Accountant General (A&R) II U.P. Allahabad and has been authorised to file this short counter affidavit on behalf of opposite parties.

2. That the deponent has read and understood the contents of the writ petition and its Annexures filed by the petitioner and is well conversant with the facts deposed to here in under in reply their of.

3. That the contents of paras 1, 2, 3 (i), 3(ii), 3(iii) A to (iii) B of the application need no comments as these are matter of records or rules.

4. That in reply to the contents of para 3(c) of the application it is submitted that the main work of this office is to issue pension payment authority to pensioner on the basis of relevant rules and orders issued by Govt. of India and Govt. of U.P. The petitioner is challenging the validity of G.O. issued by Govt. of India under Art. 14 & 16 of Constitution of India. This office has no role to play it is Govt. of India who issue the orders and direction for payment of pension etc. However as per information of this office a portion of dearness allowances was treated as addl. dearness pay w.e.f. 31.1.82. Since the amount of pension is computed on the average emolument for the last 10 months admissible, Govt. servants retiring during the first 5 months after 31.1.82 were given the benefit of adding only half of the addl. dearness pay with their pay for the computation of pension while those retiring thereafter were given the benefit of full addl. dearness pay.

The benefit of Govt. of India O.M. dated 8.4.82 was extended in the case of All India service officers also vide Govt. of India No. 1.

Vikram Chandra

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25011/11-82-AIS(II) dated 1.6.82. The option were to be exercised within 6 months from the date of issue of above order. Since such option in case of a number of officers including the petitioner was not received in this office, State Govt. was requested in this office letter No. A.G.U.P. -II/PR-I/ AIS/3(1) 2099 dated 25.1.83 to forward such options if received by Govt. and also that in whose case such option were not received within stipulated time, they will be deemed to be governed by para 4(b) i.e. by taking the element of additional dearness pay for determining their pension/ True copy of the letter dated 25.1.83 is being annexed herewith as Annexure No. C-1 to this affidavit.

5. That in reply to the contents of para 3 D of the application it is submitted that the petitioner has stated that the Govt. of India order dated 1.6.82 was brought to his notice on 28.2.83 but in this connection it is stated that Govt. of India in their subsequent O.M. No. F.I. (3)-EV/82 dated 4.3.83 further revised the element of additional dearness pay to be treated as pay for the computation of pensionary benefit from 31.1.82. The benefit of this O.M. was extended to the All India Service officers vide GL order No. 25011/11/82-AIS(ii) dated 10.5.83 and for this purpose All India service officers who retired on or after 31.1.82 but within 10 months from that date were required to exercise fresh option by 31.3.84 to get their pension determined by taking into account the ~~the~~ element of addl. dearness pay or without taking the element of addl. dearness pay. The petitioner exercised his option for merger of additional dearness pay with his basic pay for computation of pension in his letter dated 8.11.83. Thus his pension was determined according to his option given in writing keeping in view the comparative advantages and disadvantages. A true copy of the option given by the petitioner on 8.11.83 is being annexed herewith as Annexure No. C-2 to this affidavit.

6. That in reply to the contents of para 3 E & F of the application it is submitted that according to Govt. of India O.M. dated 25.5.79 persons who retired on or after 30.9.77 but not later than 30.4.79 were allowed an option to have their pension calculated on their pay excluding the element of dearness pay and get graded relief on pension to the full extent admissible from time to time. On receiving representations from the officers who retired after 30.4.79 and who had not been permitted to exercise option on the lines permitted to persons who retired on or after 30.9.77 but not later than 30.4.79, that they have been put to a disadvantageous position as compared to the officers who retired on or after 30.9.77 but not later than 30.4.79 in as much as they

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Pikram Shanth

were neither allowed on option nor granted the graded relief upto average index level 272 because the officers who were in receipt of pay of Rs.2158/- and above were either entitled to reduced rates of dearness allowance by way of marginal adjustment or to no dearness allowance at all with reference to average index level 272 but they were allowed only graded relief (Dearness relief) sanctioned beyond the average Index level 272, Govt. of India O.M. dated 8.8.86 allowed the benefits of option to those Govt. servants who retired after 30.4.79 but not later than 30.1.82 and were in receipt of pay of Rs. 2158/- above to get their pension recalculated on their pay excluding the element of dearness pay and get the graded relief (dearness relief) with their pension to the full extent sanctioned from time to time.

The benefit of such option was also given to Govt. servant drawing pay Rs. 2158/- or above who retired between 31.1.82 and 30.5.85 and had got their pension calculated on their pay plus dearness pay excluding the amount of additional dearness pay in accordance with the provisions of para 4(a) of Govt. of India O.M. dated 8.4.82.

The option is, however, not applicable in the case of the petitioner.

7. That the contents of para 3-g of the application need no comments.

8. That the allegation of para 3 h of the application need no comments from the answering respondent.

9. That the contents of para 4(a) and (b) are not admitted as stated and in reply it is submitted that Rs. 185/- is half of the element of dearness pay plus add. dearness pay taken in to computation of pension is correct as per G.O. dated 1.6.82 and 10.5.83 and according to his option dated 8.11.83. In the Govt. of India o.m. dated 8.8.86 the persons who retired on or after 31.1.82 and had got their pension calculated according to para 4(a) i.e. on their emoluments excluding the element of additional dearness pay. Since the pension of petitioner was calculated according to his option under Para 4(b) the benefit of option for recalculation of pension in terms of O.M. dated 8.8.86 was not made admissible to him, Govt. of India is rule making authority. This office has to act according to order of Govt. of India. True copy of OM dated 8.8.86 is enclosed herewith as annexure C-3 to this affidavit.

10. That the contents of para 4 (c) of the application need no answer reply from answering respondent.

11. That the contents of para 4(d) of the application are not correct as stated hence denied and in reply that it is

Vikram Shukla

(A103)

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submitted that ~~denied~~ when the benefit of option to choose the more advantageous position was allowed by the Govt. of India it was for the petitioner to choose whatever was more beneficial to him. His pension was calculated according to his option dated 8.11.83.

12. That in reply to the contents of para 4 (E & F) of the application need no comments.

13. That in reply to the contents of para 4(g) of the application it is submitted that the office of the deponent is empowered to calculate pension and issue authority for pension in the case of retired All India service officers according to rules framed and orders issued from time to time by Govt. of India. The pension of the petitioner has correctly been calculated and authorised by this office according to rules and orders and also according to the option of the pensioner dated 8.11.83

14. That the contents of para numbered as 4 regarding jurisdiction 5, 6, 7, 8 and 8 of the application need no further comments.

15. That in view of the facts stated above the application is not entitled to the relief claimed in para 9 of the application.

16. That the contents of para 10 to 13 of the application need no comments.

Vikram Chaudhri
Deponent.

Lucknow

Dated:- July 8, 1988

Verification

I, above named deponent do hereby verify that the contents of paragraph if this affidavit are true to my personal knowledge and those of paragraph are believed to be true on the basis of official record and information and those of paragraph are believed to be true on the basis of legal advice. Signed and verified on day of July 1988 at Lucknow.

Vikram Chaudhri identify the deponent who has signed before me.

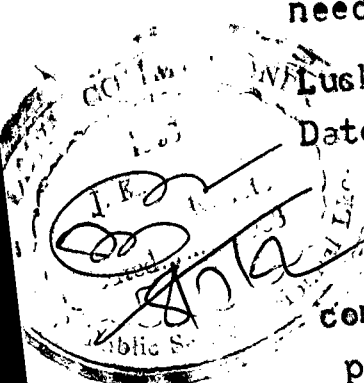
(V.K. Chaudhri)
Advocate.

Jeetendra Kumar

Com.

M. P. Prasad

Date: 4/10/88



6920

9-200

deponent

Signature

Witness

(A104)

Copy of D.O. letter No. A.G.U.P.-III/ P.A.-I/
AIS/3(1)/2099 Dated 25-1-83 from Dy. A.G.(Pen) O/o
the A.G.U.P.-III Allahabad addressed to Shri R.C. Saxena
Joint Secretary Govt. of U.P. Lucknow.

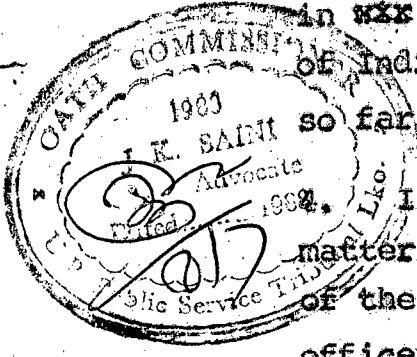
=====

Please refer to Govt. of India, Ministry of Home Affairs
Department of Personnel and Administrative Reforms. New
Delhi letter No. 25011/11/82-AIS(II) Dated the 1st June, 1982
allowing ~~the~~ merger of a per ion of additional dearness
allowance with pay with effect from January 31, 1982 for
the purpose of retirement benefits of All India Services
Officers.

2. Paragraph 6 of the aforesaid order provides that officers
who retired/retire on or after January 31, 1982 will have an
option to choose either of the two specified these
within the period prescribed in paragraph 7 thereof.

3. All India Service Officers mentioned in the annexure
have retired on or after January 31, 1982. We are not
aware whether these officers have exercised their option
in ~~xxx~~ writing in terms of para graphs ~~xx~~ 6 and 7 of the Govt.
of India letter referred to above as such options have
so far been received in this Office.

I shall be grateful if you would kindly look into the
matter and arrange to send to this office immediately opti
of the officers mentioned in the annexure and also of other
officers covered by the Govt. of India order dated 1-6-82,
if such options have been received by the Govt. within the
stipulated period, they will be deemed to be governed by
para 6(b) of the Government of India order
Dt. 1st June 1982 pension cases of these and other
officers will be finalised accordingly on receipt of
to that letter from the Government.



Vibha Saini

Yours sincerely

Sd/-
D.A.G. (Pension)

(A105) 461

Annexure.

List of All India Services officers who retired on or after January 31, 1932.

1. Sri Narendra Bahari Lal, IAS.	1.2.32.
2. " Subhash chandra Mukherji, IPS	1.3.32.
3. " K.P. Bahadur, IAS	1.3.82
4. " Tribhuvan Prasad, IAS	1.5.82
5. " Radhey Krishna Gupta IAS	1.4.32
6. " Balwant Singh, IAS	1.2.82
7. " Mohan chandra Joshi, IAS	1.3.82
8. " Bimla Kant Misra, IAS	1.7.32
9. " Mahendra singh, IPS	1.2.32
10. " Binod Bahari Lal Gupta, IPS	1.3.82
11. " M.V.S. Dhesi, IAS	1.7.32
12. S. Hamshad Ahmed, IAS	1.10.82.
13. " T.G.K. Charlu, IAS	1.2.32
14. " B.N. Chaturvedi, IPS	1.6.32
15. " Ramesh chandra Jan IAS	1.3.82
16. " Rajindra Verma, IAS	1.10.82.
17. " Samarendra Nath Ghosh, IPS (Granted extension in service upto 31.12.82.)	1.10.82
18. " Ram Dulare Pande, IPS (Granted extension in service upto 23.2.33).	1.12.82.
19. " K.B. Singhal, IPS	1.3.32
20. " G.S. Sial, IPS	1.3.82.
21. " M.C. Sharma, IPS	1.9.82.
22. " Jai Narain Tewari IAS	1.1.32.



Vikram

Tel: 84554

Registered

143

Narendra Behari Lal
I. A. S. (Retd.)

C-361, Sector-6
Indira Nagar,
LUCKNOW-226016

Date Nov. 8, 1983

538 To,
739 HS

Accountant General III-U.P.
Pension Audit Department
P.A. - Section
Allahabad-211001

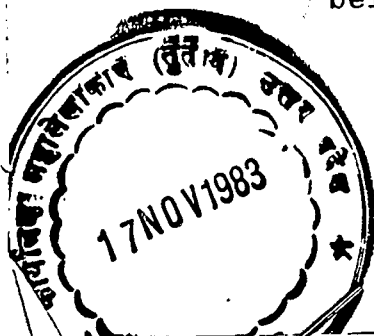
Subject: Exercise of option for merger of a portion of additional dearness allowance with pay with effect from Jan. 31, 1982 for purposes of retirement benefits - All India Services (DCRB) Rules 1955 - Rule 2(1).

Sir,

With reference to para 2 of Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms no. 25011/11/82-AIS(II), dated May 10, 1983 ^(Recd from U.P. Govt on 6.11.83) I wish to exercise my option for merger of additional dearness allowance with my basic pay in super time scale of IAS for computation of pension and relief. This option may kindly be noted and PPO amended.

Particulars of service and pension are noted below:

1. Name : Narendra Behari Lal
2. Service : Indian Administrative Service (U.P. Cadre)
3. Date of Retirement: 31 January, 1982
4. PPO No. : LKN/19098
5. GPO no. : LKN/28469



For ready reference a copy of relevant letter of A.G. sanctioning pension is enclosed.

Thanking you,

Yours faithfully,

(Narendra Behari Lal)

Vikram Chandra

Annexure C-3

Annexure - I
(Para 4.3)

Copy of the Department of Pension & Pensioner's Welfare O.M. NO.38/6/86-P&PW dated 12th March, 1986 to all Ministries/Departments etc.

Subject: Discontinuance of the reduction of the pension equivalent of the gratuity from the pension of pre-1938 entrants -

The undersigned is directed to say that on the introduction of the liberalised Pension Rules, 1950 with effect from the 17th April, 1950, the pre-1938 entrants, (i.e. Government servants who were in permanent pensionable service on the 30th September, 1938), were allowed the following options in terms of Ministry of Finance O.M.No. F.3(16)-Est.(Spl)50, dated the 2nd January, 1951 extracted below :-

- "2(a) coming on the new pension scheme; or
(b) continuing under the rules in force on the 16th April, 1950; or
(c) drawing pension, including additional pension, under the rules in force on the 16th April, 1950 reduced by the pension equivalent of the gratuity admissible under the new pension scheme and receiving in lieu of this reduction the death-cum-retirement gratuity as provided under this scheme."

2. Representations have been received from the aged pensioners who had exercised the third option at 2(c) above seeking discontinuance of the reduction of the pension equivalent of the gratuity (PEG) from their pension as (i) they had drawn reduced amount of pension for a period of about 20 years' or more and (ii) they were low paid pensioners facing hardship in their old age. Further, under the liberalised slab-formula for computing pension introduced with effect from the 1st April, 1979, pension admissible to the employees has been increased for the first slab of Rs.1000 to 50%, for the next slab of Rs.500 to 45% and to 40% thereafter of the emoluments in addition to the facility of death-cum-retirement gratuity. Taking into consideration these and all other relevant factors, the President is pleased to decide, purely as an *ex-gratia* measure, that the reduction of pension by the PEG may be discontinued from the pre-1938 entrants drawing pension under option at 2(c) above; effective from the pension for the month of March, 1986 payable in April, 1986. These orders will be applicable to all 2(c) optees of the pre-1938 entrants whether or not their pension was revised while implementing the Supreme Court judgement in Nakara case, in accordance with para 9 of the Ministry of Finance (Department of Expenditure) O.M. No.F.1(3)-EV/83 dated the 22nd October, 1983 and their clarificatory O.M.No.F.1(3)-EV/83, dated the 9th March, 1984.

3. The president is further pleased to decide, again as an *ex-gratia* measure, that recovery of overpayment due to non-reduction of the PEG as contemplated in the Ministry of Finance (Department of Expenditure) O.M. referred to in the preceding paragraph may also be discontinued from the pension for the month of March, 1986. Past cases otherwise settled shall also not be reopened.

4. These pensioners after the discontinuance of the reduction of the PEG from their pension will be entitled to receive dearness relief on the full amount of their pension as per existing instructions/ceilings prescribed.

5. In cases where the pensioner was alive on 1st March 1986 and dies subsequently his/her legal heir(s) is/are also entitled to life time arrears with effect from 1st March, 1980 till the date of pensioner's death. For this purpose, legal heir(s) may apply to the Pension Sanctioning Authority (Or the Head of Office from where the pensioner retired) through the Pension Disbursing Authority.

6. The respective Pension Sanctioning Authority may take *suo moto* action for revision of pension in terms of this Office Memorandum. They will move the Accounts Officer, who originally issued the pension Payment Order (PPO), to issue an authority letter for arranging the payment of pension at the revised rate by the Pension Disbursing Authority. They may also review representations received from the pensioners in this regard.

7. The decision contained in the foregoing paragraphs will also apply to Railway pensioners, pensioners governed by all India Services Rules, 1958 and civilians paid from Defence Services Estimates.

8. In their application to the pensioners' retired from Indian Audit and Accounts Department, these orders have been issued after consultation with the Comptroller and Auditor General of India.

Annexure - II
(Para 4.3)

Copy of the Department of Pension & Pensioner's Welfare O.M. No.38/9/86-P&PW dated 8th August, 1986 to all Ministries/Departments etc.

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

The undersigned is directed to say that according to orders issued vide Ministry of Finance, Department of Expenditure O.M.NO.19(4)-EV/79 dated 25th May, 1979, persons who retired on or after 30.9.1977 but not later than 30.4.1979

were allowed an option to choose either of the two alternatives below :-

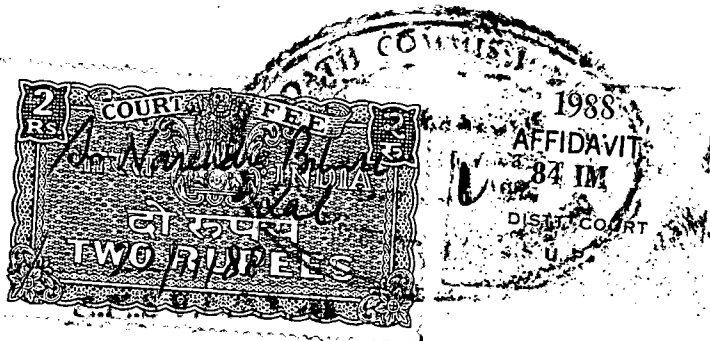
- a) to have their pension and DCR Gratuity calculated on their pay excluding the element of Dearness Pay as

Vibram Chauhan

A158

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
AT LUCKNOW.

Petition No. 20/88 (1).
=====



Narendra Behari Lal

.... Petitioner

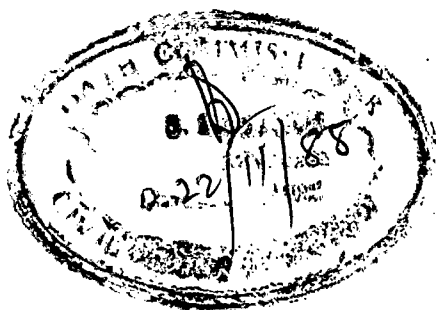
Versus

Union of India & others

.... Respondents

REJOINDER AFFIDAVIT OF PETITIONER TO COUNTER AFFIDAVIT
DATED: 8-7-1988 FILED ON 26-10-1988 BY RESPONDENT NO. 2
ACCOUNTANT GENERAL U.P.

I, Narendra Behari Lal, petitioner, aged about 65 years, son of late Sri Marmohan Lal, Resident of C-361, Indira Nagar, Lucknow, do hereby solemnly affirm and state on oath as under:-



1. That the deponent has read and understood the contents of the Counter affidavit dated: 8-7-1988 and its Annexures filed by Respondent no. 2 and is well conversant with the facts deposed to hereinafter..

2. That paras nos. 1,2,3,7,8,10,12,14,15 and 16 need no comments.

3. That the position stated in para 4 that the main work of accountant general is only to issue pension payment authority on basis of relevant rules and orders of Govt. of India/ that A.G. has no role to play for the Govt. of India issues orders and direction, is not wholly accepted. The A.G. has

Narendra Behari Lal

Contd.2/-

...(2)...

statutory obligation and administrative competence to point out and advise G.O.I. as implementing authority cases where serious and inequitous anomalies occur in implementation. It is submitted that in the present case the Accountant General failed on successive representations of the deponent to apprise G.O.I. of patent injustice caused to him and seek instructions of G.O.I. and repeatedly rejected them on the arbitrary ground that the pension case having become final the respondent could not re-open it.

(b). That the rationale also given in para 4 for including only half of additional dearness allowance as dearness pay in case of officers retiring on or after 31-1-1982 & before 30-6-1982 and in full in case of those retiring on or after 30-6-1982 is vague in as much as cause for the differential amounts has not been explicitly explained.

(c). That even the stated rationale for reduced amount of additional dearness allowance merged that it is based on ten months average emoluments does not stand because as per duty salary payment authorities letter No. G.A.-6/IAS(P)/3205-22/82 dated: 16-2-1982 and even No. 23-8-1982 (given as Annexures A & B the A.G., himself authorised payments of under mentioned.

Narendra Behari

File

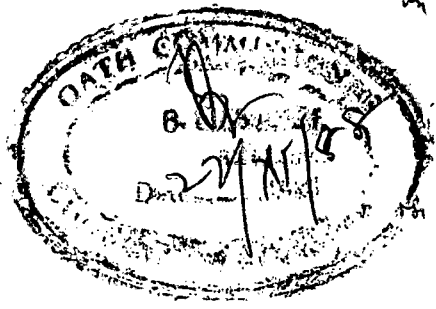
....(3)....

dearness and additional dearness allowances to the petitioner/deponent.

	<u>From 1-2-81</u>	<u>From 1-8-1981</u>	<u>From 1-1-1982</u>
DA	243	243	900
Addl. D.A.	<u>357</u>	507	-
Adhoc D.A.	-	-	-

TOTAL	600	750	1500

It is submitted that those who retired on or after 30-6-1982 were similarly placed with regard to salary and allowances as the petitioner and as such allowing one half of D.A (half of Rs 370) as dearness pay to him unconstitutionally differentiates the petitioner from later retirees. All the retirees constituted one and the same homogenous class. To artificially divide this homogenous class into different compartments simply on the basis of date of retirement would attract the equality clause enshrined in Article 14 of the constitution of India and has been held by the Hon'ble Supreme Court of India in the case of Dr. Nakara Vs. Union of India (UPSC 1983 Page 263 SC).



4. (a). That regarding contents of para 5,6, and 9 it is not denied that the petitioner did exercise an option in favour of merger of dearness allowance as dearness pay.

(b). That all other facts and arguments are denied as being inequitable, unlawful and unconstitutional.

Naren Behari

Contd.....4/-

A112

....(5)...

prior retirees S/s P.C. Saxena and H.K. Mehrotra who retired on 30-11-1981 and 31-12-1981 respectively were fixed at Rs 2539/- that is @ Rs 161/- lesser rate.

6. That similarly the respondent A.G. has also not controverted that Sri M.V.S. Dhesi also of I.A.S. cadre who retired on 30-6-1982 had his initial pension with merger of 74/ more than the petitioner. It is further stated that on 1-1-1986 Sri Dhesi's consolidated pension works out to:



- i) Original pension after merger of dearness pay on 1-7-1982 Rs 1373 .00
- ii). 50% of average emoluments i.e. revised pension w.e.f. 1-7-82 Rs 1560 .00
- iii). Additional pension w.e.f. 1-1-1986 Rs 187 .00
- iv). Partly consolidated pension under para 4 (i) (C) read with column 4 of Annexure (i) of G.O.I. OM of 16-4-1987. Rs 2335 .00
- v). Consolidated pension (3+4) Rs 2522 .00

which is Rs 144/- more than petitioner's Rs 2378/-.

6. That all the retirees constitute one and the same homogenous class and that to artificially divide this homogenous class into different sub-classes simply on the basis of date of retirement would attract the equality clause enshrined in Art. 14 of the Constitution of India as has been held by the Hon'ble Supreme Court in the case of D.S. Nakara Vs. Union of India (UPSC 1983

Page 263 SC).
Lucknow

Navendu Behani

Dated: Nov. 22, 1988

DEPONENT

I, the abovenamed deponent do hereby verify that the contents of paragraphs nos. 1,2,3,4,5, of this affidavit are true to my personal knowledge and records and those of para no. 6 are believed to be true on basis of legal advise.

Verified and signed on this 22th day of November, 1988 at Lucknow.

Navendu Behani

Lucknow
Dated: 22nd Nov. 1988

DEPONENT

I identify the deponent who has signed before me.

Nirad Kumar
Advocate

कार्यालय महालेखाकार (तृतीय) उत्तर प्रदेश
(गजेटेड ऑडिट विभाग)
(जी० ए० ६ अनुभाग)

A113

इलाहाबाद - 21/00/ (पो०बा०सं०-113)

पत्रांक: सी०ए००६/आई०ए०एस०(पी)/3205-22/4390

दिनांक: 16-2-82

सेवा में,

श्री नरेन्द्र बिहारी लाल,
आई०ए०एस०(सेवानिवृत्त)
भूतपूर्व चकबंदी आयुक्त, उत्तर प्रदेश,
सी-361 राम सागर मिश्र नगर,
(इन्दिरा नगर), लखनऊ।

महोदय,

इस कार्यालय के वेतन प्राधिकार पत्र संख्या: जी०ए००६/आई०ए०एस०(पी)/3205-22/905 दिनांक 3-6-81 के अनुक्रम में नीचे दी गई तारीखों से निम्नलिखित मासिक दरों पर वेतन तथा भत्ते आहरण हेतु प्राधिकृत किया जा रहा है जोकि पूर्व आहरित धन तथा सामान्य कटौतियों के समायोजन के उपरान्त देय होगा।

दिनांक: 1-2-81 से दिनांक: 1-2-82 से

मूल वेतन	2000=00	सेवा निवृत्ति
स्थानापन्न वेतन	750=00	/
महंगाई भत्ता	243=00	शून्य
अतिरिक्त महंगाई भत्ता	357=00	
योग	3350=00	शून्य

2- इसके अतिरिक्त उ०प्र०शासन के शासनादेश संख्या: 9447/11-1-28/1(13)/80 दिनांक: 29-1-82 के अनुपालन में इस सम्बन्ध में पूर्व आहरित धन के समायोजन एवं आयकर आदि कटौतियों से प्रसिद्धित नीचे दी गई मासिक दर से दिनांक: 1-2-82 को देय 180 दिनों के अम्पॉर्णित अर्जित अवकाश के बदले 180 दिनों के अर्जित अवकाश नगदीकरण प्राधिकृत किया जाता है :-

अर्जित अवकाश के अम्पॉर्ण की तिथि 1-2-82

विवरण तथा मासिक दर	रकम
अवकाश वेतन	2750 =00
महंगाई भत्ता	243=00

Navendra Kishan

Annex B

कार्यालय महालेखाकार (वृत्तीय), उत्तर प्रदेश
(गजेटेड ऑडिट विभाग बकास 1)
(जी० ए० 6 अनुभाग)
इलाहाबाद-211001 (पोस्ट बाक्स सं०-113)

स्था० आ० पु० (त०)-9
M.S.O. (T)-9.

[दिखिये स्था० आ० पु० (त०) का पैरा 162 और 184 (1)]
[See paragraphs 162 and 184(1), M.S.O. (T)]

वेतन/छुट्टी वेतन पर्ची
PAY/LEAVE SALARY SLIP

..... का कार्यालय

Office of the

तारीख

23-12-1982

सं० ७९६/३५६६ एस्/जी/३२०५-२२/१८२५
श्री. ए. ए. एस्/जी/३२०५-२२/१८२५
जन. सरकारी सेवा में २२-६-८६

..... को सूचित किया जाता है कि वह अन्वेषण सेवका तत्सर्वीय

(राजपद का पद)) अधीन दी गई तारीखों से निम्नलिखित मासिक दरों पर वेतन/

छुट्टी वेतन और भत्ते लेने का हकदार है जो पूर्व ३१-१२-८२ तक लगा सामान्य
के तहत के अनुसार है।

(Gazette page) he is entitled to draw pay/leave salary and allowances at the monthly rates shown below from the dates specified.

व्योरे Particulars	किस तारीख से From 1	किस तारीख से From 2	किस तारीख से From 3	किस तारीख से From 4
मूल वेतन Substantive pay	1.8.81	1.1.82	1.2.82	वर्तमान वेतन पर
स्थानापन्न वेतन Officiating pay	2000.00	2000.00	संका	इस कार्यालय के
विशेष वेतन Special pay	750.00	750.00	निवृत्ति	प्रतिपादित पर
छुट्टी वेतन Leave Salary			/	सं० जी. ए. ए. / अ. ए. ए. एस्/जी/
महंगाई भत्ता Dearness Allowance	243.00	900.00	/	3205-22/4390- 91 दिनांक 16.2.82
मकान किराया भत्ता House Rent Allowance	अतिरिक्त महंगाई भत्ता 507.00		शून्य	के आधिकारिक संज्ञापन के
नगर प्रतिकर भत्ता City Compensatory Allowance	तदनुसार भत्ता	600.00	/	माना जाय
जोड़ Total	3500.00	4250.00	शून्य	

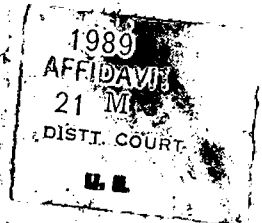
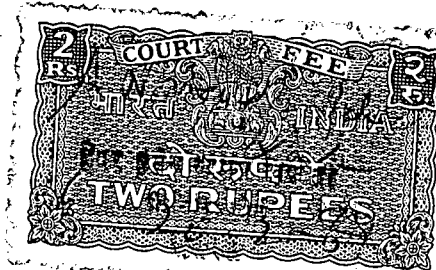
(कु० पु० उ०)
(P.T.O.)

२२/१२/८२
Narendra Bahariy

A115
R.A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, AT LUCKNOW.
...

Application No. 20/88 (L).
=====



27/4/89
marg
FIXED FOR 23/4/89

Narendra Bahari Lal

.... Applicant

Versus

Union of India & others

.... Respondents

REJOINDER AFFIDAVIT OF PETITIONER TO COUNTER REPLY

DATED: 22-11-1988 FILED ON BEHALF OF RESPONDENT NO. 1,

UNION OF INDIA

I, Narendra Bahari Lal, aged about 65 years, son of late Sri Manmohan Lal, Resident of C-361, Indira Nagar, Lucknow, do hereby solemnly affirm and state on oath as under:-

1. That the deponent who is the applicant in the abovenoted application has read and understood the contents of the Counter reply dated: 22-11-1988 filed by the respondent no. 1 and is well conversant with submissions and facts deposed to hereinafter.

2. That paras nos. 1,2,3,4 and 5 do not need any comments.

Contd.....2/-

...(2)...

Am6

3. That assertions made in para 6 to the effect that orders contained in impugned letter No. 25011/11/82-AIS(II) dated: 1-6-1982 (Annexure IV of petition) are not violative of articles 14 & 16 of the Constitution is not admitted that it is asserted that:

(a). The stated back ground setting forth the basis and rationale for allowing only half of dearness allowance as dearness pay to be merged and considered for pensionary benefits was not clear in the impugned letter dated: 1-6-1982, nor does it find place in the summary four line rejection of applicant's representation by respondent no.1, impugned order dated: 23-12-1987 (Annexure I of application). All basis and reasons, now being advanced are an after thought to justify past and present unjustified acts.

(b). The Classification of pensioners retiring prior to 31-1-1982 and after 29-6-1982 creates classes and sub-classes based on arbitrary criterion of dates of retirement, thus splitting the one and the same homogenous class of pensioners, which action has been held violative of articles 14 and 16 by Supreme Court in D.S. Nakara V/s. Union of India (U.P.S.C. 1983 Page 263 SC).

Contd.....3/-

[Signature]

... (3) ...

A17

(e). The stated rationale for treating only half the amount of dearness allowance in case of applicant as being based on average of ten months emolument does not stand as respondent no. 2 ^hAccountant General, U.P. by duty salary authority letter no. GA-6/IA-S (P)/3205-22/4390 dated: 16-2-1982 and even number dated: 23-8-1982 authorised payment of D.A. & additional D.A. @ (i) Rs 243 and 357 from 1-2-1981 (ii) Rs 243 and 507 from 1-8-81 and (iii) Rs 900 and 600 from 1-1-1982. As such the average of ten months prior to 31-1-1982 (date of retirement) would be much higher than Rs 185/-.

(d). The impugned order dated: 1-6-1982 did not spell out precisely consequences of the two options offered in para 6 and also provided that failure to exercise the option would automatically be deemed to be the same ^hand which the applicant later opted for. It has been a rule that when options are offered more beneficial ones are considered operative.

(e). Reference to previously adopted procedures in 1953, 1969 and 1977, Gadgil committee recommendations, and x being at the specific instance of staff side of National Council (of JCM) in this para are not in the knowledge of the applicant for he was not in service, then. They, however, even if correct,

Contd.....4/-

..(4)...

cannot override Constitutional provisions which in D.S. Nakara's case have been ^{interpreted} ~~interpreted~~ and settled by Supreme Court only in 1983.

4. That averments in para 7 regarding discrimination in impugned ~~the~~ letter of 8-8-1986 in extending option merger of D.A. upto 320 points to those who could not do so earlier or who were deemed to have so opted are not accepted for;

(a). It suffers from same defect of creating sub-classification based on mere fact of having opted or having been deemed to have so opted.

(b). In either case read with para 4 of Govt. of India's latest order dated: 16-4-1987 (extracts at app^u 3 of Annexure-A to application) this denial of fresh option to applicant ~~had~~ has led to the result that those who like applicant ^{who} retired between 31-1-1982 and 29-6-1982 got pension on 1-1-1986: (i) @ Rs 161/- and less than those who retired before 31-1-1982 and (ii) @ Rs 144/- less than their Counter parts who retired after 29-6-1982.

(c). The position stated in preceding sub-para shows a casual and callous ⁱⁿ ~~as~~ approach to a minority of pensioners sandwiched between two arbitrarily ^{chosen} ~~chosen~~

Contd.5/-

A-119

...(5)...

dates.

(d). Averments in sub-para (7) of para 7 are denied for option to those retired after 31-1-1982 and had opted for no merger was allowed by impugned order of 8-8-1986, thus creating a sub-class even amongst the same class of pensioners like the applicant i.e. of those retiring after 31-1-1982, thus violating the spirit of Art. 14 and 16.

5. That in reply to para 8 of the Counter reply it is admitted that the applicant did opt for merger of dearness allowance upto CPI 320. It is contended under para (6) (b) of impugned order of 1-6-1982 would ultimately have been automatically deemed. This would have resulted in loss in either way. Hence asking for option ab initio was redundant.

6. That no further comments are necessary in reply to para 9 of the Counter affidavit.

7. That in reply to para 10 of the C.A. it is stated that respondent no. 3 U.P. ^u Govt. has neither appeared before this Hon'ble Tribunal nor filed a written statement in this application.

8. That in reply to paras 11 and 13 regarding impugned orders of 8-8-1986 have already

Contd.6/-

... (6) ...

A/2C

been given in para 5 above. The respondent no. 1 has admitted that its orders do not receive wide publicity. In fact pensioners have no means to know the decisions and orders of Govt of India.

9. That the [✓]overments in para 14 of the Counter affidavit have been already covered in para 4 above.

10. That [✓]in reply to para 15 has been given in para 5 above.

11. That [✓]in reply to para 21 of the Counter affidavit it is submitted that respondent no. 3 U.P. Govt. has neither appeared nor filed any C.A./
Written Statement_s

12. That in reply to para 33 of the Counter affidavit it is contended that impugned order dated: 23-12-1987 rejecting applicant's representations is a [✓]summary order which disclosing no reasons or rationale whatsoever for rejection. It is also stated that all the submissions now being made by the opposite party are after thought and a belated effort to justify rejection of deponent's representations.

13. That the contents of the remaining paras of the Counter affidavit are not accepted as they are based on arbitrary and ~~and~~ discriminatory considerations.

Lucknow [✓]
Dated: 20th February, 1989

Narendra Behari Lal
DEPONENT
Contd.7/-

...(7)...

A121

VERIFICATION

I, the abovenamed deponent do hereby verify that the contents of paras nos. 1 to 13 of this Rejoinder affidavit are true to my personal knowledge.

Signed and verified on this ²⁰th day of February, 1989 within the Court's Campus at Lucknow.

Lucknow

Narendra Behari Lal

Dated: 20th February, 1989

DEPONENT

I identify the deponent who has signed before me.

ADVOCATE

Solemnly affirmed before me on

at A.M./P.M. by the deponent who is

Identified by Sri

Advocate, Hon'ble High Court of Judicature

at Allahabad, Lucknow Bench, Lucknow.

I have satisfied my self by examining the deponent that he understands the contents of this affidavit which have been read over and explained by me.

214
3-257-14
Narendra Behari Lal
N. Kumar Acharya

(C 307)

REGISTERED

97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

23-A, Thornhill Road, Allahabad- 211 001

97

97 & 98
③

No. CAT/ALD/JUD/ 97-98

Dated/- 22-6-11

In re

Registration No. (cf) 198

APPLICANT(S).

Versus

RESPONDENT(S).

97

To

Ne

Please take notice that the applicant above
named has presented an application, a copy whereof is
enclosed herewith which has been registered in this
Tribunal, and the Tribunal has fixed.....
day of..... 1981 for.....
.....
.....

If no appearance is made on your behalf, you pleader
or by some one 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..... day of..... 1981.

98

FOR (DEPUTY REGISTRAR)

as

(304)

CAT/J/6
BY REGD. A/D POST

Desp. No. 97-98

Jud-J

Dt: 16.6.88

16.6.88
A/123

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, *11.4.88*

Faridkot House,
Copernicus Marg,
NEW DELHI-I

THIS, the 11.4 day of June
One Thousand Nine Hundred and Eighty 1988

REGN. NO: OA 20/1986-88

BETWEEN

M. B. Lal

APPLICANT (S)

AND

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 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2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136

(202)

ब अदालत श्रीमान

Central Adm Tribunal

वादी (मुद्दई)

Unknown Bench, Lucknow - महोदय

प्रतिवादी (मुद्दाबलेह)

का वकालतनामा

Application Registration No. 20/80

12/11

Shri Narendra Behari Lal

Applicant-

versus

Union of India and others

Respondent-

वादी (मुद्दई)

बनाम

प्रतिवादी (मुद्दाबलेह)

नं० मुकद्दमा 20/80 सन्-१६

पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री Radhika

Barman, Advocate,

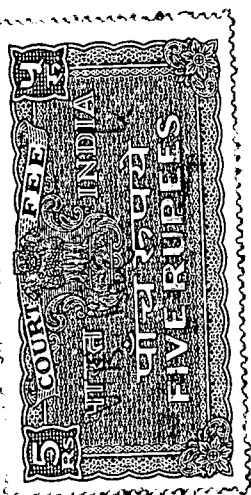
एडवोकेट महोदय वकील

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

हस्ताक्षर

साक्षी (गवाह) साक्षी (गवाह)

दिनांक महीना सन्



नाम अदालत

नं० मुकद्दमा

नाम फरीकन

Accepted

Radhika

Advocate

Radhika

Radhika

filed on 29.4.88.
J.K. Soni (C293)

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

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Registration No. OA-20 of 1988 (K)

APPLICANT (s) Nagendra Behari Lal

RESPONDENT(s) U.O. 289 & others

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
(b) Is the application in paper book form ?	Yes
(c) Have six complete sets of the application been filed ?	Yes (5 sets)
3. (a) Is the appeal in time ?	Yes
(b) If not, by how many days it is beyond time ?	N.A.
(c) Has sufficient case for not making the application in time, been filed ?	N.A.
4. Has the document of authorisation/Vakalat-nama been filed ?	No, In Person
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-	Yes D.D. No. 07/82/P. 636862 @ 6.4.88 for Rs 50/- Conf
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	Unattested Copy is filed.
7. (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 ?	No