

## FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ~~LUCKNOW~~ BENCH

OA/TA/RA/CP/MA/PT ..25.7.....of 20.1990.

R.S. Srivastava.....Applicant(S)

Versus

Union of India &amp; others.....Respondent(S)

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Certified that the file is complete in all respects.

B C file sealed out &amp; destroy.

Signature of S.O.

Signature of Deal. Hand

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCI NOW.

INDEX SHEET

CAUSE TITLE C.A. 251 of 1990 (C)

Name of the parties

Smt. S. S. Dinkar Applicant.

Versus.

Ministry of India Respondents.

Part A.B.C.

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(1)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

Date of  
Date of file

20/2/90

Registration No. 257 of 1989-90 (L)

SAC  
2/18

APPLICANT(s) Shri R. S. Srivastav

RESPONDENT(s) U.O.A.

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*
3. a) Is the appeal in time ? *yes*  
b) If not, by how many days it is beyond time? *no*  
c) Has sufficient cause for not making the application in time, been filed? *yes*
4. Has the document of authorisation/ Vakalatnama been filed ? *yes. In progress*
5. Is the application accompanied by B.O./Postal Order for Rs.50/- *yes*
6. Has the certified copy/copies of the order(s) against which the application is made been filed? *yes*
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 ? *yes*  
c) Are the documents referred to in (a) above neatly typed in double space ? *yes*
8. Has the index of documents been filed and paging done properly ? *yes*
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application? *yes*
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal? *No*

R2

Particulars to be ExaminedEndorsement as to result of examination

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

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

a) Identical with the Original ? *yes*

b) Defective ? *x*

c) Wanting in Annexures *x*

Nos. \_\_\_\_\_ pages Nos. \_\_\_\_\_ ?

13. Have the file size envelopes bearing full addresses of the respondents been filed ? *~ A.*

14. Are the given address the registered address ? *yes*

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

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

17. Are the facts of the case mentioned in item no. 6 of the application ? *yes*

a) Concise ? *yes*

b) Under distinct heads ? *yes*

c) Numbered consecutively ? *yes*

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

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

19. Whether all the remedies have been exhausted. *yes*

dinesh/R  
Sh

(1)

(A3)

O.A.NO.257/90

30.8.90

Hon'ble Mr. D.K.Agrawal, J.M.

Hon'ble Mr. K.Obayya, A.M.

Heard the applicant in person.

Admit \* in regard to relief NO. 2 The Applicant may amend relief No. 1 suitable as advised.

Issue notice to opposite parties to file counter within 8 weeks, rejoinder may be filed within 2 weeks thereafter.

Put up before D.R.on 22.10.1990 for completion of pleadings.

Sd/

A.M.

Sd/

J.A.M.

Sd/

Notices Issued  
For  
10-9-90

(2)

Applicant is present. Respondent failed to file counter issue notice again to file counter by 14.11.90

Notice issued  
24.10.90

(3)

11.11.90  
D.R.

Both the parties are present today,

Plaintiff has

not filed a. A.

Applicant to complete the pleadings ~~acc~~  
~~ding to provide~~  
in compliance with order of the

(2)

(5)

(All) 25/7/90 in

30.1.91

Both the parties are absent.  
Court has been closed  
by the O.P.  
Now application to  
file Rejoinder by 20.2.91

(3)

4/91

Hon. Mr. A. B. Geethi AM  
Hon. Mr. S. M. Basra. PM

(7)

20.2.91

D.R.

None for applicant. D.R. Both the parties are  
changing counsel for respondent absent today. Return  
is fixed. Case is adjourned as has not been filed  
to 31.5.91 for hearing if

2

AM

1

AM

the today applicant  
to file rejoinder  
by 26/2/91.

(10)

(1) 31.5.91

No. Sittings Adj to 10.9.91

2

Later on applicant

has been filed by the  
applicant to day at

(2) 10.9.91

No. Sittings adj to 20.11.91

2

2.00 P.M

AM  
29/2/91  
SO.

20.11.91

Hon. Justice V.C. Srivastava - v.  
Hon. Mr. A. B. Geethi - PM

(10)

26.2.91

D.R.

Both the parties  
are absent today.  
C.A./R.A. have been  
exchanged in this  
case. Now this case  
is listed before the  
Hon. Bench, on 29/3/91  
for final hearing.

~~2.00 P.M.~~  
~~20.11.91~~

2.00 P.M.  
20.11.91

The file has been  
read today i.e. 26/11/91  
from A.M.

Recd

29/2/91

26/11/91

(P.S.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
CIRCUIT BENCH : LUCKNOW

Registration O.A.No.257 of 1990(L)

R.S.Srivastava .... Applicant  
Vs.  
Union of India & Others .... Respondents

Hon'ble Mr.Justice U.C.Srivastava,V.C.  
Hon'ble Mr.A.B.Gorthi, Member(A )

(By Hon.Mr.Justice U.C.Srivastava,V.C.)

The applicant held the post of Audit Officer in the Office of the Accountant General(Audit)-I, U.P., Allahabad, and he retired from the said post on 31.10.1986, Earlier the applicant remained on foreign service in U.P. Housing and Development Board, Lucknow from 7.8.1982 to 31.10.1986, where he was drawing deputation allowance @ Rs.100/- per month from 7.9.82 to 31.12.85 and from 1.1.86 to 6.9.86 @ 5% of the basic pay i.e. Rs. 3125/-.

The applicant has filed an application before this Tribunal claiming 20% of the basic pay as deputation allowance from 7.9.82 to 31.12.85 and 10% of basic pay as deputation allowance from 1.1.86 to 6.9.86, and the matter is still pending.

2. The present grievance of the applicant is that prior to 1.1.86 the deputation allowance was added into the emoluments for calculating the pension. But from 1.1.86 the Government changed its policy and notifications were issued by which this benefit has been snatched away, though the benefit which has been given to the Doctors prior to 1.1.1986 i.e. non practising allowance is still continues with basic pay for calculating the pensionary benefits. This declaration has been made by the O.M.No. 2/1/87-PIC II, dated 14.4.1987. Note 7 of the said O.M. which is challenged

(fr)

this application reads here as under:-

"The pay drawn by a Government servant while in foreign service will not count for retiral benefits but the pay which he would have been drawn in his parent department would count for purpose of computing emoluments."

The applicant contents that this ~~can be~~ arbitrary and violative to the Article 14 of the Constitution of India and there is no rational behind this cut off ~~date~~ and this cut off ~~date~~ which has only created two classes without giving any reason, resulting in benefit to one class and denial of benefits to another.

3. The respondents have apposed this application and pleaded that the non-practicing allowance with deputation is granted to Doctors for aggrieved ~~not to indulge~~ in private practice and the non-practising allowance is included in the basic pay. Regarding the policy it has stated and contended that earlier this policy itself creating two classes, one who get on certain deputation and the others who could not get any deputation post. With the result even in the same cadre and same service one gets higher pension but the others have to get lower pension, even though at the time of retirement they were in the same pay scale or holding the same post in the parent department.

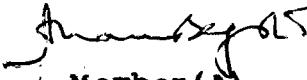
4. The contention which has been raised on behalf of the Central Government cannot be rejected. Obviously it is true that the government itself allowed this practice but later on/it was found ~~not~~ <sup>when</sup> equitable, a decision was taken to reverse the earlier policy.

5. The earlier policy created two classes one of the favour ~~and~~ and the other of non favoured class, favoured by those who succeeded in getting deputation posts. However,

47

the others who should not get any deputation posts during their service period normally ~~was~~ unfavoured to this. It appears as the cut off date which has been put <sup>on</sup> some date or the other was to be put, and it was decided that with effect from a particular date a person should not get benefit. No one can claim a deputation post by rights. It is the choice of the employer to give deputation post or not to give deputation post, and as such it cannot be said that any discrimination has been done, and the policy decision is arbitrary or it will result in inequity or creation of two classes which was earlier unknown. Since long the government has adopted its policy and has been given this benefit to many others, and those who were in service from 1.1.1986 could get various deputation or were holding deputation posts, they will get benefit of deputation ~~on~~ their pension also were all of sudden deprived of the same.

6. Accordingly we are dismissing this application, but with a recommendation that the Government should re-consider its decision regarding those who were in service from 1.1.1986 ~~and have~~ <sup>who</sup> already held the deputation post at that time and there was no doubt in their mind that the benefit of the same would also not be given to them.

  
Member (A)

  
Vice-Chairman.

8th November, 1991, Lucknow.

( sph)

Date of Circ  
Date of Rec

20/8/90

211

FORM - I

Sgt 20/8

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL ACT, 1985.

Title of the case : Non-inclusion of Deputation Allowance for the purposes of retiral benefits with effect from 1.1.1986 vis-a-vis, Non-practising Allowance.

I N D E X

Serial No.	Description of documents relied upon	Page Nos.
1.	Application	1 to 12
2.	Copy of letter No. 38/4/90 P&PW/A dated 27.2.1990 (Annexure 1)	13
3.	Copy of D.P. & P.W. OM No. 2/1/87-PIC-II dated 14.4.1987 (Annexure 2)	14 - 16
4.	Copy of D.P. & P.W. Notification No. 2/18/87-P&PW(PIC) dated 20.7.1988 (Annexure 3)	16 - 18
5.	Copy of M.F. OM No. 20014/15/86 E IV/E II(B) dated 5.10.1988(Ann. 4)	18
6.	Copy of Representation of Applicant dated 5.2.1990 (Annexure 5)	19 - 23

LUCKNOW:

Date: August 20, 1990

*Ressamting*  
SIGNATURE OF THE APPLICANT

30.8.90

*Ressamting*

For use in Tribunal office

Date of filing

OR

Date of receipt  
by post

Registration No. : 257/90C

Signature  
For REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CIRCUIT BENCH, LUCKNOW.

R.S. Srivastava, son of late Shri Lachchu  
Ram, aged about 62 years, resident of  
4/553, H.I.G. Sai Sadan, Vikas Nagar,  
Kursi Road, LUCKNOW.

.. Applicant

Versus

1. (i) Union of India through the  
Secretary, Government of India,  
Department of Pension and Pens-  
ioner's Welfare, New Delhi.

(ii) Union of India through the  
Secretary, Ministry of Finance,  
Department of Expenditure,  
Government of India, New Delhi.

2. The Accountant General (Audit)-I,  
U.P., Allahabad.

3. Pay and Accounts Officer, Office  
of the Accountant General (Accounts)-  
I, Allahabad.

.. Respondents.

Details of Application

1. Particulars of orders against which the application  
is made :-

APL

(1) Letter No. 38/4/90-P&PW/A dated 27.2.1990 of Government of India, Department of Pension and Pensioner's Welfare, New Delhi, addressed to the Applicant, rejecting the claim of inclusion of Deputation Allowance for retired benefits with effect from 1.1.1986 vis-a-vis Non-practising Allowance. A copy of the said letter dated 27.2.1990 is being filed as Annexure No.1.

(2) Note 7 under rule 33 of CCS Pension Rules.

#### 2. 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 Tribunal.

#### 3. Limitation

The Applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985

#### 4. Facts of the case:

4.1. That the Applicant held the post of Audit Officer in the Office of the Accountant General (Audit)-I, U.P., Allahabad. The old scale of the post was Rs.840-1200 and the scale was later revised to Rs.2375-3500 with effect from 1.1.1986, consequent on the recommendation of IVth Central Pay Commission.

4.2. That the Applicant retired on superannuation from the above post on 31.10.1986.

R. G. M. H. N.

4.3. That the Applicant remained on foreign service with U.P. Housing & Development Board, Lucknow

(P.T.O.)

from 7.9.1982 to 31.10.1986.

4.4. That the Applicant drew deputation allowance on foreign service from 7.9.1982 to 31.12.1985 @ Rs.100.00 per month and from 1.1.1986 to 6.9.1986 @ 5% of the basic pay of Rs.3125.00

4.5. That the Applicant has filed an application in the Central Administrative Tribunal, Circuit Bench, Lucknow, claiming 20% of basic pay as deputation allowance from 7.9.1982 to 31.12.1985 and 10% of basic pay as deputation allowance from 1.1.1986 to 6.9.1986. The said application was registered as O.A.86(L)/1989. The said application is pending for final hearing.

4.6. That prior to 1.1.1986 the deputation allowance and non-practising allowance both were included in emoluments for the purpose of retiral benefits as they were included in the term pay on which emoluments were based.

4.7. Fundamental Rule 120 lays down that a Government servant in foreign service may not elect to withhold contributions and to forfeit the right to count as duty in Government service the time spent in foreign employment. The contributions paid on his behalf maintains his claim to pension or to pension and leave salary, as the case may be, in accordance with the rules of the service of which he is a member. Neither he nor the foreign employer has any right of property in a contribution paid and no claim for refund can be entertained.

R.S.G. (Signature)

4.8. That as per the conditions of deputation on foreign service contained in letter No. Sr.DAG(A)/21-134/855 dated 23.9.1982 from A.C. U.P. I, Allahabad, addressed to Housing Commissioner, U.P., Lucknow, the U.P. Housing and Development Board, U.P., Lucknow, have paid pension contribution to Respondents 2 and 3 on the maximum of scale of Audit Officer, Rs.2375-3500, for the period from 1.1.1986 to 31.10.1986. That the pay of the Applicant was Rs.3125.00 with effect from 1.1.1986 and Rs.3200.00 from 1.9.1986. The deputation allowance was drawn @ 5% of basic pay as per the revised rules of Government of India. The amount of deputation allowance @ 5% on basic pay of Rs.3125.00 comes to Rs.156.00 and on basic pay @ Rs.3200.00 comes to Rs.160.00. These amounts when added to basic pay of Rs.3125.00 and Rs.3200.00 would come to Rs.3281.00 and Rs.3360.00 respectively. When the employer has paid contribution for pension on Rs.3500.00, the amount which exceeds Rs.3281.00 and Rs.3360.00, and as such the Applicant has become entitled to the pension to be calculated on the basis of emoluments of Rs.3281.00 from 1.1.1986 and Rs.3360.00 from 1.9.1986 respectively, but the elements of deputation allowance was not included in the emoluments while arriving at figures of pension and pensionary benefits because the emoluments with effect from 1.1.1986 were to be reckoned only on basic pay vide Department of Pension and Pensioner's Welfare O.M. No. 2/1/87-PIC II dated 14.4.1987, a copy of which is being filed as Annexure No.2 to this application. The question of inclusion of deputation allowance into the term 'basic pay' arose when Government of India issued orders in their D.P.&P.W. Notification No.2/18/87-P&PW(PIC) dated

R.S. Sonwane

(A12)

20.7.1988 for inclusion of non-practising allowance into the term 'basic pay'. The Applicant will suffer immensely if the deputation allowance is not included in 'Basic Pay' for the purposes of computing emoluments and thereby arriving at figures of pension and other pensionary benefits. A copy of the said notification dated 20.7.1988 is being filed as Annexure No.3 to this application.

4.9. That the principle of fairplay and equity also enjoins that the whole category of special pay viz. deputation allowance, special duty allowance and non-practising allowance, should have been considered for inclusion in the term of Basic Pay and thus inclusion of non-practising allowance only in Basic Pay was unjustified and illegal.

4.10. That the note 7 under rule 33 of C.C.S. Pension Rules, 1972 states that "the pay drawn by a Government servant while in foreign service will not count for retiral benefits but the pay which he would have been drawn in his parent department would count for purpose of computing emoluments.

4.11. That the above note 7 under rule 33 of C.C.S. Pension Rules, 1972 differentiating between those ~~on foreign service & those~~ <sup>on deputation to Government departments</sup> for purpose of counting deputation allowance a component of pay for retiral benefits was wholly illegal and irrational and violative of Articles 14 and 16 of the Constitution of India. Those drawing deputation allowance in Government departments were benefitted and those drawing deputation allowance on foreign service were deprived of the benefits of counting deputation allowance for retiral

R.S.Singh

(A10)

benefits as note 7 under the above said rule allowed only the pay admissible to deputationist in his parent department to be counted for retiral benefits. The note 7 of rule 33 of C.C.S. Pension Rules, 1972, was therefore wholly illegal and not sustainable in the eye of law. Dividing the homogenous class of deputationists into two classes resulting in benefit to one class and denial ~~to~~ of benefits to another definitely attracts drown of Article 14 of Constitution of India and is liable to be struck down.

4.12. That immediately when it came to the knowledge of the Applicant that Government of India had issued orders to include the non-practising allowance into 'basic pay' under rule 33 of Pension Rules, he wrote to Government of India in ~~XXXX~~ February 1990 to include the deputation allowance also into the term 'Basic Pay', but the prayer of the Applicant was rejected vide orders, contained in letter No.38/4/90-P&PW/A of Department of Pension and Pensioner' Welfare dated 27.2.1990. A copy of the said order is being filed as Annexure No.1.

4.13. That the Government of India, Ministry of Finance, in their O.R. No.20014/15/86/E-IV/E.II(B) dated 5.10.1988, in pursuant to the judgment of Central Administrative Tribunal, issued orders that special (duty) allowance shall also be treated in the same manner as special pay was being treated prior to 1.1.1986 for the purpose of computation of retirement benefits. Deputation Allowance prior to 1.1.1986 was also included in the

R.S.Srinivas

(P&amp;W)

term 'pay' for the purposes of computation of retirement benefits. A copy of the said orders dated 5.10.1988 is being filed as Annexure No.4.

4.14. That the Fourth Central Pay Commission Report recommendations regarding pension stated as under :

"For the purposes of retirement benefits should be basic pay in the revised pay structure".

Accepting the above recommendations, the Government of India, Department of Pension and Pension Welfare, in their O.M. ~~dated~~ No.2/1/87/PIC-II dated 14.4.1987 issued orders for revision of provisions regulating pension in pursuance of Fourth Central Pay Commission.

Para 4.1 of the said memo reads as under :-

Emoluments : 4.1. The term 'Emoluments for purposes of calculating various retirement and death benefits shall mean basic pay as defined in F.R. 9(21)(a)(i), which the Government servant was receiving immediately before his retirement or on date of death. Similarly the term 'average emoluments' shall be determined with reference to emoluments drawn by a Government servant during the last ten months of his service.

A copy of the said orders dated 14.4.1987 is being filed as Annexure No.2. The Government of India amended the pension rules 1972 vide Department of Pension and Pension Welfare Notification No.2/18/87-P&PW/(PIC) dated 20.7.88 and included Non-Practising Allowance into the definition of Emoluments.

R.S Srinivas

Amended Rules 33 reads as under :

33. Emoluments : The expression 'emoluments' means

(AIS)

( 8 )

basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death and will also include non-practising allowance granted to medical Officers in lieu of private practice".

A copy of the said orders dated 20.7.1988 is being annexed as Annexure 3.

4.15. That prior to 1.1.1986 the emoluments for the purpose of retiral benefits were being computed on the basis of 'pay' which also included special duty allowance, deputation allowance and also the non-practising allowance. The IVth Central Pay Commission recommended that the basic pay only should be considered for purpose of computing the emoluments. Accepting the above recommendations the Government of India, vide their O.M. dated 14.4.1987, issued orders that only 'basic pay' shall be taken into consideration for purpose of 'Emoluments' with effect from 1.1.1986. Thus neither the deputation allowance was included in emoluments nor non-practising allowance with effect from 1.1.1986. Issuance of orders dated 20.7.1988 by Government of India, to include non-practising allowance also in the term 'Basic Pay' under Rule 33 of C.C.S. Pension Rules, 1972 with effect from 1.1.1986 was not only ~~xxx~~ violative of Article 14 and 16 of Constitution of India, but also resulted in undue benefits given to doctors by misuse of powers and denial of benefits to those drawing deputation allowance with effect from 1.1.1986. The doctors will be getting more pension as compared to those getting deputation allowance and this will be wholly illegal and irrational and capricious on

R. S. Somandur

the part of Government of India. It also suffers from vice of favouritism and unfettered discretion. It is further to mention that prior to 1.1.1986 both deputation allowance and non-practising allowance were being included in pay on the basis of which emoluments for purpose of computation of retiral benefits were being calculated. Inclusion of non-practising allowance into the term 'Basic Pay' and ignoring the deputation allowance to be included in the term 'Basic Pay' would result in the increased emoluments for purpose of retiral benefits to those drawing Non-Practising Allowance and decreased emoluments to those drawing Deputation Allowance while both the allowances were at the same par prior to 1.1.1986. The act of Government of India would thus be wholly unjustified, illegal and irrational. A copy of the O.M. dated 20.7.1988 is being filed as Annexure 3.

4.16. That the cause of action arose on 27.2.90 when final order for rejection of the representation of the Applicant for inclusion of deputation allowance in the term 'Basic Pay' under rule 33 of C.C.S. Pension Rules 1972 were passed by Government of India, Department of Pension and Pensioner's Welfare, New Delhi, on 27.2.1990, vide their letter No.38/4/90-P&PW/A dated 27.2.1990 (Annexure 1). The copy of the representation of the Applicant is being filed as Annexure 5 to this application.

#### 5. Grounds

That being aggrieved by the rejection of the representation by Department of Pension and Pensioner's

R.Somaling

(APG)

Welfare, vide their letter dated 27.2.1990, the Applicant had no other efficacious and effective remedy except to invoke the jurisdiction of this Hon'ble Tribunal for enforcement of his legal and constitutional rights, inter-alia, on the following grounds :

(i) Because note 7 of rule 33 of C.C.S. Pension Rules 1972 was illegal and violative of Article 14 and 16 of the Constitution of India.

(ii) Because the decision of the Government of India to include non-practising allowance as basic pay for retiral benefits and not including deputation allowance as basic pay for purpose of retiral benefit was wholly arbitrary, illegal and irrational because both the allowances fell under the category of special pay as described in Fundamental Rules.

(iii) Because the doctors drawing non-practising allowance would be put to an advantageous position as compared to those who had been on deputation and drew deputation allowance. The doctors would get an enhanced pension whereas the Government servants who remained on ~~deputation~~ ~~deputation~~ would not get an enhanced pension.

(iv) Because the action of Government of India does not conform to the principle of fairplay and equity.

(v) Because the action of Government of India in including non-practising allowance into Basic Pay for purpose of Retiral Benefits and excluding the deputation allowance, was violative of Article 14 and 16 of Constitution of India.

R. G. M. D.

**6. Details of remedies exhausted :**

The Applicant declares that he has availed of all the remedies available to him under the relevant service rules etc.

The Applicant had written a detailed letter dated 5.2.1990 to the Secretary, Government of India, Department of Pension and Pensioner's Welfare, New Delhi, claiming that the action of Government of India to include the non-practising allowance admissible to Doctors for retiral benefits with effect from 1.1.1986 and amending rule 33 and not including the deputation allowance for retiral benefits was arbitrary as both the allowances fall in the category of special pay (Annexure 5)

The said representation was rejected by the above Department of Government of India vide their letter dated 27.2.1990 (Annexure 1).

**7. Matters not previously filed or pending with any other court :**

The Applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this Application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

**8. Reliefs sought :**

The Hon'ble Tribunal may be pleased to :

*R. Goswami*

*Relief (1) may be (i)*

*substituted as under (1) Note 7 of rule 33 of C.C.S. Pension Rules 1972 being discriminatory & ultra vires of the equality clause enshrined in Article 14 of Constitution of India, may be struck down.*

(P.M.)

Rules, 1972 as null and void.

(ii) direct the Respondent No.1 to include the deputation allowance also in the term 'Basic Pay' as has been done for non-practising allowance of doctors for the purpose of computing 'Emoluments' under rule 33 of C.C.S. Pension Rules, 1972 with effect from 1.1.1986.

(iii) consequently to direct the Respondents No.2 and 3 to revise the pension and pensionary benefits of the applicant.

9. Interim order, if any, prayed for :

No interim order prayed for.

10. The Application is being submitted personally and is to be heard at Lucknow.

11. Particulars of Postal Order :

Postal order no: 802 468547 dated 18/8/90  
of New Hyderabad Post office Lucknow for Rs 50/-

12. List of enclosures :

As per Index and one Postal Order as detailed in para 11.

VERIFICATION

I, R.S. Srivastava, s/o late Shri Lachchu Ram, aged about 62 years, resident of 4/553 HIG, Sai Sadan, Vikasnagar, Kursi Road, Lucknow, do hereby ~~do~~ verify that contents of para 1 to 16 are true to my personal knowledge and that I have not suppressed any material facts.

R.S. Srivastava

Lucknow:  
Dated: August 20, 1990.

SIGNATURE OF THE APPLICANT

LA/NS/ 6/90  
R.S. Srivastava, Address  
Union of India's Secretary, Respondents  
No. 38/4/90-P&PW/A  
Department of Pension and Pensioners' Welfare

- 13 (20)

\*\*\*\*  
New Delhi, Dated the 23rd Feb. 1990.

To

27 Feb, 1990

Annexure 1

Shri R.S. Srivastava,  
4/553, H I G Sai Sadan,  
Vikasnagar, Kussi Road,  
Opposite Police Out post,  
Lucknow.

Subject: Non-inclusion of deputation allowance  
for computing Retirement benefits  
with effect from 1.1.1986-

\*\*\*\*

Sir,

Please refer to your letter dated the  
5th February, 1990 on the above subject.

2. In respect of Government servants who  
retire/die in harness on or after 1st January, 1986  
only basic pay as defined in FR 9(21)(a)(i) which  
the Government servant was receiving immediately  
before his retirement or on the date of his death  
is treated as emoluments for purposes of calculating  
various retirement and death benefits. That being the  
position the special deputation allowances drawn by  
you from 1.1.1986 cannot be counted for pensionary  
benefits. The Supreme Court judgement in Nakara's  
case is hardly relevant to the issue.

Yours faithfully,

*C. A. Nedungadi*  
(C. A. Nedungadi)  
Deputy Officer

*Altsted*

*Abraham*

in the Central Administration [redacted]  
Circuit Bench, Lucknow  
O.A.N.O. - (6) of 1990  
R.S. Srivastava --- Applicant  
versus  
Lokay of India & others. --- Respondents

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(A21)

PENSION, D.C.R.G.

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delay should be adequately explained, while making the reference, and in the meanwhile the retired officer seeking permission for taking up the commercial employment should also be advised properly that his case is under consideration and he should await Government's decision on his request. The intention of the above provision does not appear to have been appreciated in the proper light and some Ministries/Departments have assumed that once an intimation has been sent to the retired pensioner seeking permission for taking up a commercial employment that his case is under consideration, the time-limit of 60 days laid down in the Rule 10 (4) of the Central Civil Services (Pension) Rules, 1972, will not be applicable at all.

2. Rule 10 (4) of the C.C.S. (Pension) Rules, 1972, envisages a statutory limit of 60 days within which the decision on the request made by a retired pensioner for taking up a commercial employment should be communicated to him and if Government does not refuse the grant of permission and communicate the refusal to the pensioner within the period of 60 days, Government shall be deemed to have granted the permission applied for. As the statutory rule casts a duty on Government to take a decision on the application of the pensioner within a period of 60 days, consideration of such an application cannot be extended beyond that period merely by writing to the petitioner that he should wait the decision of the Government in the matter, even after the expiry of the prescribed time-limit. As executive instructions cannot go beyond the specific provisions of the statutory rule, it is clarified for the guidance of all Administrative Ministries/Departments that requests for grant of permission to take up commercial employment should be processed expeditiously at every stage and the final decision should invariably be communicated to the applicant within a period of 60 days of the date of receipt of his application or the receipt of the additional information needed from him, if his original application did not contain all the information necessary for processing his case.

3. The provisions of this Department O.M., dated the 19th March, 1987, referred to in para. 1 above, may, therefore, be read in the light of the clarification contained in this O.M.

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D.P. & P.W., O.M. No. 2/1/87-PIC-II,  
dated 14-4-1987

Annexure 2

Revision of provisions regulating Pension in pursuance of  
Government decisions on recommendations of the  
Fourth Central Pay Commission

The undersigned is directed to state that in pursuance of Government decisions on the recommendations of the Fourth Central Pay Commission announced in this Department's Resolution No. 2/13/87-PIC, dated 3.1987, the President is pleased to introduce the following

Alleged

Radhika Haman

Advocate, High Court and  
Services Tribunals,  
C - 4 Sector - A - 14  
Mahanagar, Lucknow

In the Central Administrative Tribunal  
current Bench Lucknow

CANADA NO. (L) of 1990

Union of India & Others... Petitioners

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PENSION, D.C.R.G.

modifications in the rules regulating Pension, Death-cum-Retirement Gratuity and Family Pension under the C.C.S. (Pension) Rules, 1972 (hereafter referred to as Pension Rules).

2. These orders apply to Central Government employees governed by the C.C.S. (Pension) Rules, 1972. Separate orders will be issued by the Ministry of Defence, Ministry of Railways and the A.I.S. Division of the Department of Personnel and Training in respect of Armed Forces Personnel, Railway Employees and the Officers of All India Services respectively.

**Date of Effect**

3.1 The revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1-1-1986. Separate orders have been issued in respect of employees who retired/died before 1-1-1986.

3.2 Where pension has been provisionally sanctioned in cases occurring on or after 1-1-1986, the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned under the pre-revised orders and if it happens to be more beneficial than the pension becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioner in view of Rule 70 of the C.C.S. (Pension) Rules, 1972.

## Emoluments

4.1 The terms 'Emoluments' for purposes of calculating various retirement and death benefits shall mean basic pay as defined in F.R. 9 (21) (a) (i), which the Government servant was receiving immediately before his retirement or on the date of his death. Similarly the term 'Average Emoluments' shall be determined with reference to emoluments drawn by a Government servant during the last ten months of his service.

6. Subhika Haman  
A. State, High Court

## Services Tribunals.

Services Tribunals, Pension

## Pension

C - 4 Sector - A 1,  
A. hangar, LUCKNOW, 5.1 The Service Gratuity for qualifying service less than 10 years shall be calculated at uniform rate of half month's emoluments for every completed six monthly period of service instead of at the rates specified in the Table below sub-rule (1) of Rule 49 of the Pension Rules.

5.2 Pension shall be calculated at 50 per cent of average emoluments in all cases instead of under the slab formula given in clause (a) of sub-rule (2) of Rule 49 of the Pension Rules and shall be subject to a minimum of Rs. 375 p.m. and maximum of Rs. 4,500 p.m. The provisions of other clauses of sub-rule (2) and those of sub-rules (3) and (4) of Rule 49 of the Pension Rules shall continue to apply except that reference to

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In the Central Administrative Tribunal  
Central Bench Lucknow  
C.A. No. (L) of 1990  
R.S. Srivastava - - - - - Appellant  
versus  
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PENSION

to the counting of service of teachers rendered by them in Aided, recognised schools in Delhi and outside Delhi prior to coming over to Delhi Administration for pensionary benefits may be settled accordingly.

(ii) In regard to the clarification regarding interest to be charged from the employees who joined Government service be deposited without interest in the employees G.P.F. Accounts and the share of the employer towards C.P.F. with 6% simple interest it is clarified that this is to be regulated with the instructions contained in Department of Pension and Pensioners' Welfare, O.M. No. 28/10/84-Pension Unit, Vol. I, dated 12-9-1985 (*published in Swamysnews as Sl. No. 203 of October, 1985*) which means that interest *at 6%* will be charged on the entire amount.

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D.P. & P.W., Notfn. No. 2/18/87-P&PW (PIC).  
dated 20-7-1988

Annexe 3

Amendment to the Central Civil Services (Pension) Rules, 1972

S.O. No. 2388. - In exercise of the powers conferred by proviso to Article 309 read with clause (5) of Article 148 of the Constitution, and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Pension) Rules, 1972, namely:—

1. (1) These rules may be called the Central Civil Services (Pension) Third Amendment Rules, 1988.

(2) They shall come into force on the date of publication in the Official Gazette (6th August, 1988).

2. In the Central Civil Services (Pension) Rules, 1972,

(1) in Rule 3, in sub-rule (1)–

(a) in clause (c) for the figures and words "21 years" and "24 years" the figures and words "25 years" shall be substituted;

(b) in clause (f) the words and figures "and includes 'Family Pension, 1950' admissible under Rule 55" shall be omitted;

(c) for sub-clause (ii) of clause (j), the following sub-clause shall be substituted, namely:—

"(ii) retirement gratuity/death gratuity payable under sub-rule (1) of Rule 50; and";

(2) for Rule 33, the following rules shall be substituted, namely:—

“33. Emoluments. The expression “emoluments” means basic pay as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the

High Court and  
Services Tribunals,  
4 Sector - A - 1,  
Amanagar, LUCKNOW.

In the Central Administrative Tribunals  
 circuit Bench, Lucknow  
 O.A.N.O. --- (6) of 1990  
 R.S. Srivastava --- Applicant  
 versus  
 Union of India & Others. --- Respondents

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 4721

PENSION 365

date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice."

(3) in Rule 38, in sub-rule (2) in clause (a), for the words "seven hundred and fifty rupees", the words "two thousand and two hundred rupees" shall be substituted;

(4) in Rule 49—

(a) for sub-rule (1) including Table thereunder, the following sub-rule shall be substituted, namely:—

"(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service";

(b) in sub-rule (2) for clause (a) including Table thereunder the following clause shall be substituted, namely:—

"(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem".

(5) in Rule 50—

(a) in sub-rule (1), for clause (b), the following clause shall be substituted, namely:—

"(b) If a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-rule (1) of Rule 51 at the rates given in the Table below, namely:—

Length of qualifying service	Rate of death gratuity
(i) less than 1 year;	2 times of emoluments.
(ii) one year or more but less than 5 years;	6 times of emoluments.
(iii) 5 years or more but less than 20 years;	12 times of emoluments.
(iv) 20 years or more	half of emoluments for every completed six monthly period of qualifying service subject to a maximum of 33 times of emoluments.

Abhishek

N. Ramani

Central Administrative Tribunals,  
 Sector - A - 1,  
 Janagar, LUCKNOW

In the Central Administrative Tribunal  
Circuit Bench, Lucknow  
O.A.N.O. - (6) of 1990  
R.S. Srivastava - - - - - Applicant  
versus  
Union of India & Others - - - Respondents

- 18  
A75

PENSION

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5. As laid down in the Ministry of Finance, O.M., dated 29-11-1969, the *ex gratia* pension is not admissible to (a) those who were dismissed/ removed from service and (b) those who resigned from service.

6. Arrears of *ex gratia* pension will be payable w.e.f., 1-7-1986. Life-time arrears of *ex gratia* pension will also be admissible in respect of C.P.F. beneficiaries who were alive on 1-7-1986 and died subsequently to that date, for the period from 1-7-1986 to the date of death.

7. The periodical certificates such as life certificate, non-employment certificate, etc., prescribed for drawal of pension will also be required to be produced by the recipient of the *ex gratia* pension to the appropriate disbursing authorities.

8. These orders apply to all civilian Central Government employees including civilians paid from Defence Services Estimates but will not apply to Railway employees. Separate orders will be issued by the Ministry of Railways (Railway Board) for the railway employees.

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M.F., O.M. No. 20014/15/86-E. IV/E. II (B),  
dated 5-10-1988

Amendment 4

Special (Duty) Allowance shall be treated as Special pay for  
retirement benefits to those officials retired prior to 1-1-1986

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/83-E. IV, dated the 14th December, 1983 (*published in Swamys-newS as Sl. No. 15 of January, 1984*) and to say that pursuant to a judgment of the Central Administrative Tribunal, the President is pleased to decide that Special (Duty) Allowance as admissible under the abovementioned orders, may be treated in the same manner as Special Pay was being treated prior to 1-1-1986, for the purpose of computation of retirement benefits.

2. These orders shall be applicable only to those employees who have retired prior to 1-1-1986, since Special Pay does not count for retirement benefits with effect from 1-1-1986.

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D.P.T., Notfn. No. 25013/10/87-Est. (A),  
dated 7-10-1988

Amendment to the Fundamental Rule 56

S.O. 1420.—In exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution, and in consultation with the Comptroller and Auditor-General of India in so far as

Alte d  
Naresh Kumar  
Resd  
Lok Vibhag,  
Sector - A - 1,  
E. Bunglow, LUCKN.,

REGISTERED

In the Central Administrative Tribunal  
Circuit Bench Lucknow

C.A.No: .. /L/90 - 19 -

R.S.Soniastava - Appellant

Union of India - Respondent

From

R S Soniastava

4/ 553 H I G. Sar Seelan  
Vikasnagar Kursi Road, Amroha 5-  
opposite Police out post,  
LUCKNOW

To

The Secretary  
Govt. of India Department of  
Pension & Public Welfare - NEW DELHI

Subj - Non-inclusion of deputation allowance  
for computing Retirement Benefits w.e.f 11.86.

Sir,

I am to invite a reference to your  
notification NO: 2/18/87 - P&PW (P.I.C) dated  
20.7.88 which has changed the term  
'Emoluments' in rule 33 of Central Govt.  
Services Pension Rule 1972. The notification  
reads as under:-

The expression Emoluments means  
basic pay as defined in Rule 9(2)(a)(i)  
of the Fundamental Rules which a Govt servant  
was receiving immediately before his  
retirement or on the date of his death &  
will also include non-pensioning allowance  
granted to Medical officer in lieu of  
private practice.

In this connection your attention  
is invited to OM NO 20014 / 15 - 86 E 14  
E II / (B) dated 5.10.88 issued by Govt.  
of India Ministry of Finance (D.E.) It  
has been stated therein that pursuant to  
judgement of Central Administrative  
Tribunal the President is pleased to order  
the following

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to decide that special (duty) allowance as admissible under the above mentioned orders may be treated in the same manner as special pay was being treated prior to 11.86 for the purpose of compilation of Retirement benefits. The said order has further mentioned that these orders shall be applicable only to those employees who have retired prior to 11.86 since special pay does not count for Retirement w.e.f. 11.86.

It is thus clear that the deputation Duty Allowance which was treated as special pay has to be counted for compilation of Retirement Benefits prior to 11.86 & it is not to be counted for Retirement Benefits w.e.f. 11.86 as the term 'Emoluments under rule 33 of C.R. Pension Rules' meant only the basic pay.

As already stated above the term 'basic pay' will also include now the Non-practising allowance granted to Medical Officers in lieu of portable practice w.e.f. dated 20.7.88.

In the pension case of D.S. Nakara the Supreme Court have held as under:-

Classification of pension in  
the two memoranda dated 21.8.79 & 28.9.79  
for the purpose of 11.86  
for non-practising  
Medical Officers  
Pension

on the basis of date of retirement specified in these memoranda is an arbitrary action which violates the guarantee of Article 14 - the choice of date in two memoranda

is arbitrary, eligibility criteria is unrelated to the object sought to be achieved and has the pernicious tendency of dividing the otherwise homogenous class.

In view of the decision of Supreme Court cited above no cut off date could be prescribed for any formula which seeks to give benefit to some pensioners and does not give any benefit to other pensioners

The Govt of India were requested to have considered twice before inclusion of Non-franchising allowance as 'Emoluments' in CCS Pension Rules No 33 after 1.1.86 and should also have included the Deputation Allowance (which is treated as special pay for all intents & purposes) also in the term 'Emoluments' after 1.1.86. Non-inclusion of Deputation Allowance has resulted in hostile discrimination and violation of Article 14 of the Constitution.

Pensioners who were on deputation or foreign service and drawing deputation Allowance prior to 1.1.86 were thus entitled to include Deputation Allowance for computation of Retirement Benefits whereas this benefit was to be denied to those who retired after 31.12.85

*Aliquet  
Implementation*

The inclusion of non-franchising allowances into the term 'Emoluments' vide order dated 20.7.88 cited above and non-inclusion of deputation allowance in the term 'Emoluments' after 11.86, is wholly arbitrary, unfair, and invidious as the two terms fall into 'category of special pay'.

I am writing this letter because my legal and constitutional rights have been adversely affected. I was class II gazetted Govt servant in one of the offices of Govt. of India and retired on 31.10.86. Before retirement I drew deputation allowance on foreign service. My pensionary benefit will be enhanced consequent of inclusion of deputation allowance in term 'Emoluments' w.e.f 11.86.

If you not be out of point to mention that for purposes of EPF (Central) Services Rules 1960 the deputation duty allowance is treated as 'Emoluments' whether in Govt. departments or on foreign service vide Rule 2 (b) ibid.

Therefore through this letter

I request you kindly to examine the issue in correct and right

perspective and arrange to issue

the order for inclusion of

deputation allowance in the term -

Attested  
M. D. M. A.

Emoluments for propose of computing  
Retirement Benefits wif 1.1.86 as  
has been done in case of non  
practising allowance. -23-  
(A 20)

I shall feel obliged if an  
early action is taken in the matter  
and decision taken is intimated  
to the undersigned

yours faithfully

5.2.90

R S Somantry  
(R S Somantry)

Copy forwarded to the Secretary,  
Ministry of Finance Department of  
Exp. Govt. of India New Delhi for  
information and early action.

R S Somantry  
(R S Somantry)

Attested

M. S. Somantry

20-2-1990  
A.P. LDC

In the Central Administrative Tribunal at Allahabad

Circuit Bench Lucknow.

Counter Affidavit on Behalf of All Respondents

In

O.A. No. 257 of 1990 (L)

R.S.Srivastava      ...      ....      Applicant

Versus

Union of India & others ..      ....      Respondent

I, K.C.Agrawal, aged about 54 yrs. son of  
Late. Radha Raman, Deputy Accountant General (Admn)  
office of the Accountant General (A&E) U.P., Allahabad  
do hereby solemnly affirm and state as under:-

1. That the deponent has read the application filed by Sri R.S.Srivastava and has understood the contents thereof.
2. That the deponent is competent to swear this affidavit on behalf of All Respondent and is well conversant with the facts of the case deposed hereinafter.
3. That the contents of paras 1 to 3 of the application need no comments.
4. That the contents of paras 4.1 to 4.5 are admitted. It is, however, stated that said O.A. is still pending adjudication.
5. That the contents of para 4.6 are admitted to the extent that prior to 1.1.1986, the deputation allowance was counted towards pensionary benefits in case of Government

K.C.Agrawal

servants who are sent on deputation to State Government.

But the deputation allowance was not counted towards pensionary benefit in the present case as the petitioner was on Foreign Service with U.P. Housing and Development Board Lucknow and not on deputation to State Government. His pay and allowances were not drawn from the Consolidated fund of the State. The U.P. Housing and Development Board is an autonomous body and is not owned by the State Government. Note 7 below Rule 33 of Swamy's Pension Compilation states that "Pay drawn by a Government Servant while on foreign service shall not be treated as emoluments, but the pay which he would have drawn under the Government had he not been on foreign service shall alone be treated as emoluments."

It is, however, admitted that non-practising allowance granted to medical officer was included in their emoluments ~~as~~ for the purpose of retirement benefit. The petitioner has failed to distinguish between "non-practising allowance and deputation allowance". It is submitted that non-practising allowance is granted to medical officers in lieu of private practice while in the case of persons sent on deputation, deputation allowance is a sort of Special pay which is granted to the Government servant when he is transferred on a temporary basis to other departments and State Government provided the transfer is outside the normal field of deployment. (Annexure R-1).

*L. Chaudhary*

(A33)

6. That the contents of para 4.7 are admitted.

7. That in reply to para 4.8 it is stated that

Notification No.2/1B/87-P&PW(PIC) dated 20.7.1988 (Annexure 3

of the application) had come into force with effect from the date of publication in the Official Gazette i.e. 6th Aug. 1988.

The amendment incorporated vide the said Notification is not applicable to the present case as the petitioner had retired on 31.10.1986(A.N.).

8. That the contents of para 4.9 are misconceived. It is clarified that deputation allowance is not the same as non-practising allowance. The medical doctors are allowed private practice and when they are deployed on jobs where private practice is not allowed, they are compensated by granting non-practising allowance. Thus non practising allowance was included in the basic pay. Non inclusion of deputation allowance in the emoluments is therefore, not violative of Article 14 & 16 of the Constitution of India. It is also stated that prior to 1.1.1986, pay as defined under F.R.9(21) was treated as emoluments, it included basic pay, personal pay, special pay, which included deputation duty allowance also. The rules have been amended w.e.f.1.1.1986 in implementation of the recommendations of the Fourth Central Pay Commission to the effect that only basic pay under R.R.9(21)(a)(1) and the non-practising allowance admissible to doctors is taken into account for determination of emoluments for pension.

9. That the contents of para 4.10 need no comments.

W. C. Rao was,

ASU

10. That the contents of para 4.11 are misconceived.

In accordance with the Note 7 below Rule 33 of the C.C.S(Pension) Rules 1972, pay drawn by a Government servant while on foreign service is not treated as emoluments. The Pay which he would have drawn under Govt. had he not been on foreign service alone is treated as emoluments. Since the applicant retired while on foreign service, the pay drawn by him on foreign service cannot be taken into account for determination of his pension. As far as the general question of counting deputation duty allowance is concerned, the position is that prior to 1.1.1986 pay as defined under F.R. 9(21) was treated as emoluments. It included basic pay, personal pay, special pay, which included deputation duty allowance also. The rules have been ~~and~~ amended w.e.f. 1.1.1986 in implementation of the recommendations of the Fourth Central Pay Commission to the effect that only basic pay under FR9(21)(a)(1) and the non-practising allowance admissible to doctors is taken into account for determination of emoluments for pension. In this connection a reference is invited to paragraph 5.21 of the report of the Fourth Central Pay Commission part (II). It has been observed by the Pay Commission that since pension confers a long term benefit of Government employees, it should be related to basic pay. Government have accepted this recommendation inter-alia keeping in view that since seniority principles are not observed in deputing Government employees to ex-cadre posts carrying the benefit of deputation duty allowance, reckoning of deputation duty allowance or other

L. cap. wale

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emoluments in the nature of special pay ad a result thereof would confer un-intended and fortuitous benefit on such a person entitling him to more pension than what would be admissible to his senior who has not been deputed to ex-cadre post.

11. That the contents of para 4.12 are admitted.
12. That in reply to para 4.13 it is stated that the orders of the Ministry of Finance referred to in the answering paragraph were made applicable only to those employees who had retired prior to 1.1.1986, since special pay did not count for retirement benefits w.e.f.1.1.1986 (Annexura R-2).
13. That the contents of para 4.14 need no comments. However, it is re-iterated that non-practising allowance is granted to medical officers in lieu of private practice and that it is quite different from deputation(duty) allowance.
14. That the contents of para 4.15 need no comment. However it is submitted that inclusion of non practising allowance in the basic pay of medical officer was a policy decision of the Government of India.
15. That the contents of para 4.16 are admitted.
16. That comments on various sub paras of para 5 of the application are furnished below:-

5(i) Submission made in para 5 aove are re-iterated.

5(ii) Contents denied. Non practising allowance is not the same as deputation allowance

b. confidential

as indicated in para 8 above.

5(iii) Doctors form a distinct class and comparison of the applicant with them cannot be made.

5(iv) Contents denied. Contents of para 8 are re-iterated.

5(v) Contents denied. Submission made in para 8 above are re-iterated.

17. That the contents of paras 6 and 7 of the application need no comments.

18. That in view of the submission made in the above paragraphs, the relief sought for in para 8 of the application are not admissible. The application lacks merit and is liable to be dismissed with costs.

19. That the contents of paras 9 to 12 need no comments.

*K. C. Agrawal*  
Deponent के० सी० अग्रवाल ।

(K. C. AGRAWAL)  
उप महालेखाकार (प्रश्ना ३)

Deputy Accountant General / r. )  
कार्यालय प्रशान्त महालेखाकार (प्रश्ना ३)  
Office of the Principal A. C. (

VERIFICATION

उ० प्र०, इल  
U. P., Allah...

I, the above named deponent do hereby verify that the contents of paras 1 to 19 are true to the best of my knowledge and those of paras are based on records and legal advice. No part of it is false and nothing material has been concealed.

concealed. So help me God.

Signed and verified

2<sup>nd</sup> day of Jan 1990

at Allahabad. *[Signature]*

Allahabad, *[Signature]*  
Dated: 2.1.91

K. C. Agrawal -

DEPONENT

(कौं सी. अग्रवाल )

(K. C. AGRAWAL)

(उप महालेखाकरण कामन)

I identify ~~Depositey Deponent~~ *[Signature]* (Signed)

जायोग्य प्रवास मामोरी कर्तव्य कामन

before me. Office of the Principal A. G. (A & E)

मुख्य मामोरी

U. P., Allahabad

J. C. *[Signature]*  
Advocate.

2/1/91  
K. C. Agrawal  
Deponent

Solemnly affirmed before me on 2.1.91

by the deponent *[Signature]* K. C. Agrawal

at 10 A.M./P.M. who is identified

by Shri *[Signature]*

I have fully satisfied that he understands the  
contents of this affidavit which has been  
explained by me to him.

(A3d)

## APPENDIX—5

[ See F.R. 9 (25) ]

Annexure R-1

### DEPUTATION (DUTY) ALLOWANCE

#### I

##### Transfer of Central Government Employees to other Government Departments, Companies, Corporations, etc.

###### A. Terms applicable to all cases of deputations

[G.I., M.F., O.M. No. F. 1 (11)-E. III (B)/75, dated the 7th November, 1975.]

A need has been felt for some time past of consolidating at one place, the instructions/orders issued from time to time and still in force on the subject. Accordingly, it has been decided to bring out the salient features of the existing instructions on the subject in this Office Memorandum. This may please be brought to the notice of all Administrative Authorities in or under the Ministry of Home Affairs, etc., for information, guidance and compliance.

###### Deputation (duty) allowance.

2. The term 'deputation (duty) allowance' should be deemed to be 'Special Pay' as defined in the Fundamental Rules.

###### Principles of Admissibility.

3.1 For the purposes of drawing deputation (duty) allowance, the term 'deputation' will cover only appointments made by transfer on a temporary basis to other departments and State Governments provided the transfer is outside the normal field of deployment and is in the public interest.

3.2 The question whether the transfer is outside the normal field of deployment or not will be decided by the authority which controls the service or post from which the employee is transferred.

3.3 The temporary transfer of employees on foreign service to bodies (whether incorporated or not) wholly or substantially owned or controlled by the Government and also to organisations, e.g., Municipalities, Universities, etc., shall also be treated as 'deputation' for the purpose of fixing deputation (duty) allowance.

3.4 Appointments of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis, will not be regarded as 'deputation'.

3.5 Permanent appointments made by transfer will also not be treated as 'deputation'.

*[Handwritten signature]*

(PFT)

In the Central Administrative Tribunal  
Circuit Bench Lucknow — —  
DATE: (L) of 1990

R.S. Srivastava — — Applicant  
versus  
Lokayukta Indra Bihari — — Respondent

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13 —

PENSION

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5. As laid down in the Ministry of Finance, O.M., dated 29-11-1969, the *ex gratia* pension is not admissible to (a) those who were dismissed/removed from service and (b) those who resigned from service.

6. Arrears of *ex gratia* pension will be payable w.e.f., 1-7-1986. Life-time arrears of *ex gratia* pension will also be admissible in respect of C.P.F. beneficiaries who were alive on 1-7-1986 and died subsequently to that date, for the period from 1-7-1986 to the date of death.

7. The periodical certificates such as life certificate, non-employment certificate, etc., prescribed for drawal of pension will also be required to be produced by the recipient of the *ex gratia* pension to the appropriate disbursing authorities.

8. These orders apply to all civilian Central Government employees including civilians paid from Defence Services Estimates but will not apply to Railway employees. Separate orders will be issued by the Ministry of Railways (Railway Board) for the railway employees.

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M.F., O.M. No. 20014/15/86-E, IV/E, II (B),  
dated 5-10-1988

Amendment - 2 - 2

→ Special (Duty) Allowance shall be treated as Special pay for retirement benefits to those officials retired prior to 1-1-1986

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/83-E, IV, dated the 14th December, 1983 (*published in Swamay News as Sl. No. 15 of January, 1984*) and to say that pursuant to a judgment of the Central Administrative Tribunal, the President is pleased to decide that Special (Duty) Allowance as admissible under the abovementioned orders, may be treated in the same manner as Special Pay was being treated prior to 1-1-1986, for the purpose of computation of retirement benefits.

2. These orders shall be applicable only to those employees who have retired prior to 1-1-1986, since Special Pay does not count for retirement benefits with effect from 1-1-1986.

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D.P.T., Notfn. No. 25013/10/87-Est. (A),  
dated 7-10-1988

Amendment to the Fundamental Rule 56

S.O. 1420.—In exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution, and in consultation with the Comptroller and Auditor-General of India in so far as

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CIRCUIT BENCH

LUCKNOW:

O.A. No. 257/1990 (L)

R.S. Srivastava .. .. Applicant  
Versus  
Union of India and others .. .. Respondents.

Rejoinder of the applicant in reply to counter affidavit filed by respondents.

The applicant named above most respectfully states as under:

1. That the applicant has read and understood the contents of counter affidavit filed on behalf of respondents and is well acquainted with the facts and circumstances of the case and replies given hereinafter:
2. That the contents of para 1 to 4 of the counter affidavit need no comments.
3. That in reply to contents of para 5 of the counter affidavit it is stated that U.P. Housing and Development Board was established under the U.P. Avas Vikas Parishad Adhiniyam 1965 an Act of U.P. Government. It has been laid down in this Adhiniyam ✓ that the Board (U.P. Housing and Development Board) shall be deemed to be a local authority. Under article 12 of the Constitution of India the 'State' includes all local and other authorities. Supreme Court has also held that expression 'other authorities' is wide enough to include all authorities created by the Constitution or Statute and on whom powers are conferred by law. The U.P. Housing and Development Board ( Avas Vikas Parishad) had powers to frame and execute housing and improvement schemes and other projects under Section 15 of the Avas Vikas Adhiniyam 1965. Since the U.P. Housing and Development Board, will be deemed to be an 'State' under Article 12 of the Constitution and the deputation of the applicant to the U.P. Housing and Development Board will be deemed to be deputation to the State. The drawal of deputation allowance from the fund other than consolidated fund of State should not have been a bar to include

*R. S. Srivastava*

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the same in pay for retiral benefits prior to 1.1.86. Note 7 below rule 33 has itself been challenged by the applicant in para 4.11 of the original application being violative of Article 14 and 16 of the Constitution.

It is admitted that both deputation allowance and non-practising allowance are drawn under different conditions but it is submitted that they both face under the category 'pay' for calculating retiral benefits in respect of the Doctors drawing N.P.A. and in respect of employees drawing Deputation Allowance, prior to 1.1.86.

4. That the contents of para 6 of the counter affidavit need no comments.

5. That the contents of para 7 of the counter affidavit are denied. However, it is stated that the O.M. No.2/1/87PIC.II dated 14.4.87 was issued by Govt. of India Pen. and Pen. Welfare for revision of provisions regulating pension in pursuance of Government decisions on recommendations of the Fourth Central Pay Commission. The provisions of para 3.1, 4.1 and 4.2 and 12 are given below:

Para 3.1. The revised provisions as per these orders shall apply to Govt. servants who retire/die in harness on or after 1.1.86. Separate orders have been issued in respect of employees who retired /died before 1.1.86.

#### Emoluments

4.1. The terms 'Emoluments' for purposes of calculating various retirement and death benefits shall mean basic pay as defined in FR 21(a)(1) which the Govt. servant was receiving immediately before his retirement or on the date of his death. Similarly the term 'Average emoluments' shall be determined with reference to emoluments drawn by a Govt. servant during the last 10 months of his service.

4.2. The term pay in these orders means the pay in the revised scales promulgated under the CCS (Revised Pay) Rules 1986.

12. Formal amendments to CCS (Pension) Rules 1972 in terms of the decisions contained in this order will issue in due course.

Provisions of CCS (Pension) Rules 1972 which are not specifically modified by these orders, will remain unaffected.

R.S. Somayaji

APR 21

The O.M. No. 7(15)-E-III/87 dated 18.9.87 was issued by Ministry of Finance for revised rates of non-practising allowance to Medical posts consequent on Fourth C.P.C. recommendations. Para 2 & 4 of the said O.M. read as under:

PARA.2. The President has accordingly been pleased to decide that the revised rates of Non-practising allowance for medical posts other than posts included in the Central Health Service in the revised scale of pay would be as indicated below and would be effective from the date an employee draws pay in the revised scale applicable to him in accordance with the CCS (Revised Pay) Rules 1986.

PARA .4. The non-practising allowance will be treated as "Pay" for all service matters. In other words, the N.P.A. will be taken into account for computing D.A., entitlement of TA/DA and other allowances as well as for calculation of retirement benefits.

The Government of India's decisions No.1, 2 & 3 below rule 33 of CCS Pension Rules 1972 read as under:

(1) Meaning of term ' emoluments' effective from 1.1.86  
The term ' emoluments for purpose of calculating various retirement and death benefits shall mean basic pay as defined in FR 9(21)(a)(i), which the Govt. servant was receiving immediately before his retirement or on the date of his death. Similarly ' Average emoluments shall be determined with reference to emoluments drawn by a Govt. servant during the last ten months of his service.

(2) The term pay in these orders means the pay in the revised scales promulgated under CCS (Revised pay) Rules 1986.

(3) These orders shall apply to Govt. servants who retire/ die in harness on or after 1.1.86. Correction slip for amendment of provisions of Decision (1) below rule 33, consequent on inclusion of N.P.A. as pay, was issued as No. 10 by M/s Muthuswamy in Swamy's pension complication in september 1987 which reads as under:

PAGE 72 RULE : 33

Insert the following at the end of Decision (1) below this Rule:-

Exception: The N.P.A. in the revised pay scales for medical posts will be treated as 'pay' for all service matters. In other words the N.P.A. will be taken into account for computing DA, entitlement of TA/DA and other allowances as well as for calculations of retirement benefits.

R. S Srinivas

F.W.B

The Department of P & P.W. issued notification no.2/18/87/P&PW(PIC) dated 20.7.88 for amendment of CCS (Pension) Rules 1972.

For rule 33 the following rule was substituted:

" 33 Emoluments" - The expression 'Emoluments' means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Govt. servant was receiving immediately before his retirement or on the date of his death and will also include non-practising allowance granted to Medical officer in lieu of private practice.

This amendment came into force on the date of publication in the official gazette ( 6th August 1988 )

It will be obvious from O.Ms cited above that -

(i) Those employees who opted for Revised Pay Rules 1986, will be entitled to retirement benefits from 1.1.86 based on basic pay fixed in accordance with above rules with effect from 1.1.86.

(ii) Those doctors who opt for Revised Pay Rules 1986 will also be entitled for retirement benefits after inclusion of N.P.A. in their basic pay and treating the basic pay for purpose of calculation of retirement benefits w.e.f. the date they opt for revised pay Rules 1986 either w.e.f. 1.1.86 or from subsequent dates.

Enforcement of amendment of rule 33 of CCS Pension Rules w.e.f. 6.8.88 would snatch away the rights of doctors, for inclusion of N.P.A. in their basic pay, who retired between 1.1.86 to 5.8.88, though those rights were conferred on them by O.M. dated 18.9.87 w.e.f. 1.1.86 or subsequent dates from which they opted for revised pay rules 1986 prescribing a cut off date for conferring benefits of retirement for doctors would be opposed to law laid down by Hon'ble Supreme Court of India in DS Nakara and others Vs. Union of India LLG Services 1983 page 17 and in R.L. Marwaha Vs. Union of India and others (1987) 4 ATC 584. Though the applicant had retired w.e.f. 31.10.1986 the Deputation Allowance if allowed to be included in basic pay, the applicant will be entitled to the benefit w.e.f. 1.1.86 and not from 6.8.88 as per the law laid-down by Supreme Court in above cited two cases. Therefore the contention of respondents that the said notification will not be applicable to the applicant is misconceived and does not hold good.

6. That the contents of para 8 of the counter affidavit are misleading and do not reflect the correct position. The position as regards deputation allowance and N.P.A. has not been clarified vis-a-vis amendment of the rule for inclusion of N.P.A. into basic

F.S.M.B

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pay for retirement benefits. The position is that prior to 1.1.86 the pay as defined in FR 9(21) was treated as emoluments. It included basic pay, personal pay, special pay which included deputation duty allowance also and also N.P.A. The IVth Central Pay Commission vide their recommendations in para 5.21 included as para 30 in IV central pay Commission Report of Muthuswamy had stated that "The pay for purpose of retirement benefits should be the basic pay in the revised pay structure". The commission further recommended that N.P.A. to doctors should be sanctioned minimum of Rs.125.00 and maximum of Rs. 750.00 p.m. The Commission no where had recommended that the N.P.A. should be treated as basic pay for purpose of retirement benefits. The govt. of India revised the monetary limit of Rs.125/- to 600.00 and Rs. 750.00 to Rs.900.00 vide their orders dated 18.9.87. They also issued orders to the extent that the N.P.A. would be treated as basic pay for purpose of retirement benefits. The sanction for inclusion of N.P.A. in basic pay was wholly arbitrary illegal, irrational and discriminatory in view of the fact that the Commission had not recommended this concession to be given to doctors. The Special pay, personal pay and Deputation allowance which fell into category of pay alongwith N.P.A. prior to 1.1.86 would also require the attention of Govt. of India and by adopting policy of pick and choose, the Govt. of India have violated provisions of Article 14 & 16 of the Constitution of India by allowing N.P.A. to be included in basic pay for purpose of retirement benefits and excluding special pay and deputation allowance for counting as basic pay. The doctors who were at par with other employees would be at a better footing and would enjoy higher pension in comparison to other employees which would not have been admissible to them if they retired before 1.1.86 because other employees drawing special pay and deputation allowance were also entitled for benefit of inclusion of special pay and deputation allowance to pay for purpose of calculation of emoluments. It is wholly incorrect to say that the N.P.A. was treated as Basic pay on the recommendations of IVth Central Pay Commission. Such recommendations were never made by PAY Commission. The recommendations made by Pay Commission are contained in Annexure RA.1. There is no indication for inclusion of N.P.A. into basic pay for purpose of Retirement benefits.

7. That the contents of para 9 of the counter affidavit need no comments.

R. S. Somayaji

R.W.B

8. That the contents of para 10 of counter affidavit are not admitted as stated. The applicant had challenged the validity of note 7 of rule 33 of CCS Pension Rules 1972 on the ground that classification of deputationist into two classes viz. those deputed to Govt. departments and those sent on foreign service for purpose of counting deputation allowance as pay for retirement benefits was arbitrary. Those deputed to Govt. departments were entitled for inclusion of deputation allowance as pay for retiral benefit whereas for those on foreign service the deputation allowance did not count as pay for retiral benefits. Deputationists formed one homogenous class and their artificial classification into different class as above was violative of Art. 14 and 16 of the Constitution. The IVth Pay Commission (Central) had never recommended that N.P.A. should be included in basic pay for retiral benefits. They had only recommended that basic pay should only be taken for purpose of retirement benefits. The Govt. of India had acted arbitrarily in ordering that N.P.A. should be included in basic pay for retiral benefits. The favour was shown to one particular class of doctors and rest of the employees drawing special pay/deputation allowance were discarded. This resulted in hostile discrimination. However, it is stressed that those on foreign service also draw the deputation allowance and non-inclusion of the same into pay for purpose of computing retiral benefits would be violative of Art. 14 of the Constitution of India and note 7 of rule 33 of CCS Pension Rules 1972 is liable to be declared invalid and unconstitutional as it resulted in treating equals as unequals.

9. That the contents of para 11 need no comments.

10. That the contents of para 12 of the counter affidavit are admitted. However, it is submitted that the grievance to the applicant was caused because N.P.A. was ordered to be treated as basic pay for retiral benefits w.e.f 1.1.86 but no orders were issued for inclusion of deputation allowance as basic pay for retiral benefits.

11. That the contents of para 13 of the counter-affidavit need no comments.

12. That the contents of para 14 need no comments. However, it is submitted that even the policy decisions of Govt. of India are open to judicial review if they are arbitrary, illegal, capricious and were taken in colourful exercise of powers vested to them. The policy decision of Govt. of India for inclusion of N.P.A. in basic

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pay and leaving apart special pay and deputation allowance (when the special pay, N.P.A. and deputation allowance were included in pay for purpose of retiral benefits prior to 1.1.86 was wholly capricious and arbitrary resulting in undue favour to Doctors.

13. That the contents of para 15 need no comments.

14. that in reply to para 16 of the counter affidavit it is stated tht in view of submissions made in paras 1 to 13 all grounds mentioned in para 5 of the application are justified and tenable in law. Submissions made in paras 5, 6, and 8 above cover the replies to comments given in para 16 of counter affidavit.

15. That the contents of para 17 need no comments.

16. That in reply to para 18 of counter affidavit it is stated that in view of submissions made above all the reliefs claimed by the applicant are admissible and the application is likely to succeed.

17. That the contents of para 19 need no comments.

*R.S.Srivastava*

SIG. OF THE APPLICANT

Lucknow:

February 20, 1991

## Verification

I, R.S.Srivastava, son of late Shri Lachchu Ram, aged about 63 years, resident of 4/553 Vikas Nagar, Kursi Road, Lucknow, do hereby verify that the contents of paras 1 to 17 of the Rejoinder are true to my personal knowledge and belief and that I have not suppressed any material fact.

Lucknow:

February 20, 1991

*R.S.Srivastava*

SIGNATURE OF APPLICANT

Amrit PA  
A.M.D

## FOURTH CENTRAL PAY COMMISSION REPORT PART I JUNE 1986

### (IV) Non-Practising Allowance

17.25. Medical Officers, who are in the whole time employment of the central government, are not permitted private practice at present instead they are entitled to non-practising allowance (NPA). The Railway doctors are permitted restricted private practice among family members and dependent relatives of railway employees or passengers who fall ill while travelling and outsiders who may be admitted to railway hospitals. They are entitled to NPA at reduced rates. Different amounts of NPA are admissible for medical officers of Central Health Service, Railway Medical Service, Indian Ordnance Factories Health Service and for practitioners of Indigenous System of Medicine (ISM). Even within a service, there are different pay classifications for entitlement of NPA. The amount of NPA ranges from Rs. 75/- per month to Rs. 600/- per month. NPA is not granted to non-clinical posts of ISM in the research councils and to some ISM physicians working in UT. It is also not admissible for doctors holding purely administrative posts.

17.26. Suggestions have been received from engineers, architects, accountants, lawyers for granting NPA to them. Requests have also been received from para-medical and nursing staff for grant of NPA to them. We are not in favour of granting NPA to them.

17.27. Since ISM physicians in the central government are already getting NPA, we recommend that ISM physicians in UT may also be given NPA.

17.28. We recommend that payment of NPA may be extended to all other medical officers, for whom a degree in medical science is prescribed as essential qualification.

17.29. We recommend that the rates of NPA may be revised as follows:

S. No.	Proposed Scale (Rs.)	Pay range in the proposed scale	Proposed rate of NPA (Rs. P.M.)
1.	1400-2300 (Medical officers of	All	125

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD

CIRCUIT BENCH, LUCKNOW

MP. NO.

OF 1991 (L)

On behalf of

Union of India..... Applicant

In

O.A. No 257 of 1990 (L)

R.S. Srivastava .....Petitioner

Versus

Union of India & Others.....Respondents'

To,

The Hon'ble Vice Chairman and his Companions Members

of the aforesaid Tribunal.

The humble application of the applicant most respectfully sheweth:-

1. That certain aspects of the case stated in the Rejoinder -

have been clarified in the accompanying Supplementary Counter-Affidavit.

2. That for the facts and circumstances given in the accompanying supplementary counter-affidavit it is expedient in the interest of justice that the same may be taken on record and considered.

The application lacks merit and deserves to be dismissed with costs.

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may be pleased to take this supplementary counter-affidavit on record and dismiss the petition with cost.

  
(Dr Dinesh Chandra)  
Counsel for Applicant/  
Respondents

*Filed today*  
*21/10/91*

PLA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD

CIRCUIT BENCH LUCKNOW

SUPPLEMENTARY COUNTER AFFIDAVIT TO REJOINDER AFFIDAVIT

In

O.A. No 257 of 1990(L)

1991  
AFFIDAVIT  
35 M  
DISAL COURT  
U. B.

R S Srivastava.....Applicant

Versus

Union of India and Others.....Respondent

I,.....K. C. Agrawal.....aged about 57 years  
son of Late Radha Raman, Sr. Deputy Accountant  
General (Admn), Office of the Principal  
Accountant General (A & E), U.P., Allahabad...

do hereby solemnly affirm and state as under :-

X  
1. That the deponent is well acquainted with the facts of the  
case deposed hereinafter.

2. That the deponent has read the rejoinder-affidavit filed  
by the applicant alongwith all connected papers and is now  
in a position to reply the same.

3. That the respondent is ~~being~~ filing this supplementary

Deputy Accountant General (Admn.)  
कार्यालय प्रान्तीकार (प्रान्तीकार) counter-affidavit to clarify certain aspects which have been  
Office of the Principal A. G. (A & E) I

उपर्युक्त प्रान्तीकार (प्रान्तीकार)  
U.P., Allahabad  
stated in the rejoinder affidavit and they are necessary in  
the interest of justice.

4. That the respondent is confining the reply in this supplementary counter-affidavit to clarify the position without going in

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details of rejoinder-affidavit.

5. That in reply to the contents of para 3 of the rejoinder-affidavit it is clarified that the U P Housing and Development Board is not a State Govt Department. It is an autonomous body. As such, pay drawn by the petitioner, who was on foreign service with the U P Housing and Development Board Lucknow, shall not be treated as emoluments for pension but the pay which he would have drawn had he not been on foreign service shall alone be treated as emoluments. The petitioner retired on 31.10.86 (A.N.), and as such the rules prior to 1.1.86 is not applicable in the present case. The rules have been amended w.e.f 1.1.1986 in implementation of the recommendations of the fourth Central Pay Commission to the effect that only basic pay under R.R. 9(21) (a) (1) is taken into account for the determination of emoluments for pension. It has already been stated in the counter-affidavit that the applicant was not on deputation in any Government Deptt. but he was on foreign service in U P Housing and Development Board, Lucknow which is an autonomous body. The applicant has tried to prove that being on deputation or on foreign service is one and same thing by misinterpreting the facts.

(कै० सी० अग्रवाल )

(K. C. AGRAWAL)

अप० रप्त महालेखाकार (प्रधान)

Mr. Deputy Accountant General (Admn.)

कार्यालय प्रधान : राजस्व (प्र०) १८६६

Office of the Principal A. G. (A & E) I

उ० प्र०, इलाहाबाद

U. P., Allahabad

no comments.

(X, 6)

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7. That the contents of para 5 of the rejoinder-affidavit relate to O.M. No 2/1/87 P/C II dt 14.4.87 whereas para 7 of the counter-affidavit (of which para 5 of the rejoinder affidavit is the reply) relates to Notification No 2/18/87 - P and P.W(P.I.C) dated 20.7.1988 (Annexure 3 of the application). Thus the contents of para 5 of the rejoinder-affidavit are not relevant. However, contents of para 7 of the counter-affidavit are reiterated.

8. That the contents of paras 6 to 11 and 13 to 17 of the rejoinder-affidavit need no comments. Submissions made in the counter-affidavit are, however, re-iterated in this regard.

9. That in reply to the contents of para 12 of the rejoinder-affidavit it is stated that the policy is based on the fact that since seniority principles are not observed in deputing Govt. employees to Ex. cadre posts carrying the benefit of deputation duty allowance, reckoning of deputation duty allowance or other emoluments in the nature of special pay as a result thereof

would confer unintended and fortuitous benefit on such a person person entitling him to more pension than what would be admissible

(के० सी० अग्रवाल )  
(K. C. AGRAWAL)  
कृष्ण महालेखाकार ( शास्त्र )  
Sh. Deputy Accountant General (Admrr)  
योग्य प्रधान सचिव ( अधिकारी )  
Office of the Principal A. G. (A & E) I  
उत्तर प्रदेश  
U. P., Allahabad.

10. That the applicant could not make out any case for interference by the Hon'ble Tribunal and the application deserves to be dismissed with costs.

Lucknow

Dated: 9-10-91

(के० अग्रवाल )  
(K. C. AGRAWAL)  
कृष्ण महालेखाकार ( शास्त्र )  
Sh. Deputy Accountant General (Admrr)  
कार्यालय प्रधान सचिव ( अधिकारी )  
Office of the Principal A. G. (A & E) I

AS

: 4 :

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 to 4 are true to the best of my knowledge and those of paras 5 to 10 are based on records and legal advice. No part of it is false and nothing material has been concealed. So help me God.

Signed and verified ..... 9th day of ..... oct ..... 1991

at Lucknow.

Y K. C. Agrawal

प्रिमोसिप्ट अग्रवाल

(K. C. AGRAWAL)

प्रिमोसिप महालेखाकार (प्रशासन)

St. Deputy Accountant General (Admn.)

गोप्यानुसुन्धान विभाग देपोनेंट, अग्रवाल

Office of the Principal A. G. (A & E)-I

signed द्वारा अग्रवाल

U. P., Allahabad.

J. C. 9/  
Advocate

C- No. 35 M

1.05 PM K. C. Agrawal  
D. Chandra  
RECD

Received  
9/10/91

अदालत शीमान

[वादो अपोलान्ट]

## प्रतिवादी [रेस्पारेंस]

### Geological distribution in Turkey

Critical Bench: 2-1-111 का

महोदय

## वकालतनामा

टिकट

## बादी (अपीलान्ट)

R. S. Sunsthan vs. M. J. बनाम. र. व. प्रतिवादी (रेस्पाइट)

नं० मुकद्दमा० ८०. २५७ सन् १९९८ पेशी की ता० १६ अ०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री रामेश्वर मान

Adh. Com. Govt. S. T. and C. ..... वकील  
महोदय  
एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी और से डिगरी जारी करावे और रूपया लसूब करें या सुलहनामा व इकावाल दावा तथा अपील निगरानी हमारी और से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रूपया जमा करे या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होमा मैं यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपवे पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

“नाम अदलत”  
कुकुहमा नं०<sup>०</sup>  
नाम फरीकेन”

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Entzündl.

## हस्ताक्षर (Handwritten signature)

साक्षी (गवाह) ... ... ... ... ... ... साक्षी (गवाह) ... ... ... ... ... ...

दिवांक ... ... ... ... ... ... ... ... महीना — — — — — सन ११ ई०

स्वीकृत