

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

ORIGINAL APPLICATION NO.:- 192 OF 1995

Dated this *Tuesday* the 10th day of April, 2012

CORAM:- HON'BLE JUSTICE A.K.BASHEER, MEMBER (J)
HON'BLE SHRI R.C.JOSHI, MEMBER (A)

Nimgappa Mariappa Kamlapurkar,
Senior Loco Inspector (Retd.),
Safety Loco Driver,
Central Railway, Sholapur Division,
Sholapur.
R/o 220/1, New Dhondiba Basti,
Ramvadi, Sholapur 413 001.

(None)

..... Applicant

Versus

1. Union of India
through the General Manager,
Central Railway, Bombay V.T.
2. The Chief Personnel Officer,
Central Railway, Bombay V.T.
3. The FA & CAO,
Central Railways,
C/o FA & CAO's Office,
Central Railways Bombay V.T.

(By Advocate Shri S.C.Dhawan)

...

Respondents

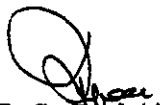
ORDER (ORAL)

Per : Justice A.K.Basheer, Member (J)

When this case is taken up for consideration, neither the applicant nor his counsel is present.

2. We are informed that the applicant has, by his communication dated March 9, informed the Registrar that he does not want to pursue the matter any further. He has made a specific request to "close the case and oblige". The letter sent by the applicant to the Registrar is taken on record.

3. The Original Application is dismissed for non-prosecution. No costs.


(R.C.Joshi)
Member (A)


(Justice A.K.Basheer)
Member (J)

mf

21/3 N. M. Kamlapurkar.
11 Khamitkar V. Apartment
Near Modi Police Chowky
Solapur Dt- 9 Mar 12
500

To,

The Registrar,

CAT Mumbai.

Re- OA No 192/1995

Ref - your No CAT/MUM/JUDL/ 1890
dated 2 Mar 12

- 0 -

Respected Sir,

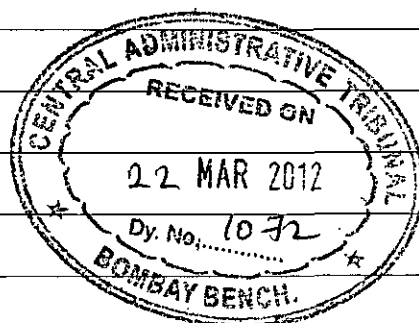
With reference to the above,
I herewith submit, that due to old
age I am not in a position to
attend the Court; moreover I am
not in a position to contact my
advocate Shri Y. R. Singh in absence
of address and nonavailability of
his phone number.

Hence I request the Hon.
CAT Mumbai to close the case
and oblige.

Thanking you
yours faithfully.

N. M. Kamlapurkar

N. M. Kamlapurkar.



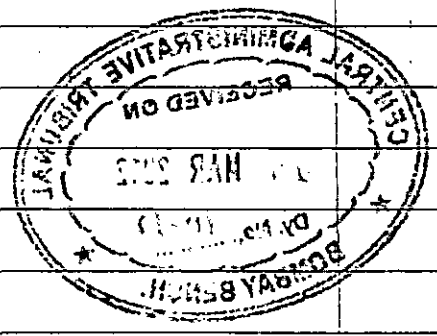
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO. 192 / 95

Shri Nimgappa Mariappa Kamapurkar .. Applicant

-versus-

Union of India & ors. .. Respondents

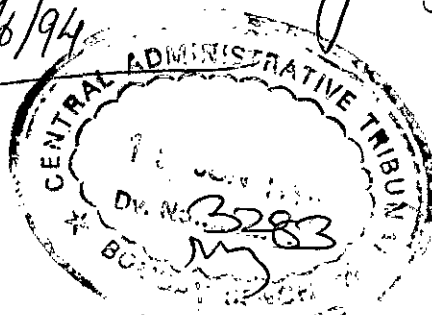
I N D E X

Sr. No.	Exhibit	Description	Page No.	
			From	To
1.		Application	1	17
1A -	4	Impugned order dt 14-10-92	17-A.	
2.	"1" A	Copies of orders dated 1-2-93 and 11-2-93 <i>Permian order</i> collectively. dt 21-5-93	18	23
3.	"2"	Order dt. 16-9-88	24	26
4.	"3"	Letter dt. 15-11-91	27	29
5.	"4"	Copies of Judgment in O.A. 469/92 and O.A. 2106/91 collectively.	30	36
6.	"5"	Letter dated 17.12.85	37	38
7.	"6"	Letter dated 28.11.89	39	
8.	"7"	Letter dated 22.12.89	40	
9.	"8"	Order dt. 1-6-89	41	
10.	"9"	Copy of order dt. 18-12-92	42	
11.	"10"	Copy of representation dt. 12-4-93 <i>13-9-93</i> and legal notice dt. 12-4-93 collectively.	43	45

Bombay

Date 15/6/94

Yusuf Ravikant Singh
Counsel for the applicant



*Amendment corrected
dictated order*
ys ys

ys

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO. / 1994

Shri. Nimgappa Mariappa Kamlapurkar
Retired as Senior Loco Inspector
Safety

Loco Driver

Central Railway Sholapur Division

Sholapur R/o 220/1, New Dhondiba Basti

Ramvadi, Sholapur 413001

.. APPLICANT

-versus-

1. The Union of India
Through The General Manager
Central Railway
Bombay V.T.

2. The Chief Personnel Officer
Central Railway
Bombay V.T.

3. The F.A. & C.A.O
Central Railway
C/o F.A. & C.A.O's Office
Central Railway Bombay V.T.

1. Particulars of the order against which this application is made :

Order No. AC.No. Sur/P/Mech.I/SP4NMK

Dated: 19-10-1992

Passed by D.R.M. Sholapur

Subject in brief :

Recovery of Rs.36,265/- from DCRG towards alleged overpayment due to alleged wrong stepping up of pay granted to the applicant. Reduction of applicants pension from Rs.1380/- to Rs.1287/- without any notice of whatsoever nature.

Copy of order dated 19-10-92 and Pension payment order is Annexed Collectively as Ex.1.

Exh.1.

*Amended in per
Central order -
JS*

JS

2. Jurisdiction:

Applicant submits that the subject matter against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

Applicant submits that the application is within the limitation period.

4. Facts of the case:

4.1 Applicant is a citizen of India. He was appointed by the Central Railway on 20.12.1958.

Applicant was promoted from time to time to Supervisor cadre, Passenger Driver, Loco Supervisor etc. Prior to 2.10.1977 Solapur Division was a part of the South Central Railway. After 2.10.1977 the said Solapur Division was merged with the Central Railway. Applicant retired as Senior Loco Supervisor, Safety on 31.5.1993.

4.2 At the time of retirement applicant had a service of 34 years and 4 months to his credit. At the time of his retirement applicant was in the grade of Rs.2375-3500. On his retirement applicant was paid all his retirement benefits including commuted value of pension, pension, provident fund, earned leave wages, insurance amount etc. However, an amount of Rs. ^{36,265} ~~36,000~~/- being the DCRG vide impugned order dated 19.10.1992 was withheld.

4.3 It was held time and again by various Courts, Tribunals and even by the Hon'ble Supreme

Court that Gratuity amount cannot be withheld for any reason whatsoever. It is also well settled legal position that no recoveries or adjustments can be made from the amount of pension. Applicant submits that pension includes gratuity hence no recoveries or adjustments can be made from even the DCRG amount. This position was upheld by the Full Bench decision of this Hon'ble Tribunal in the case of Vazirchand Vs. Union of India.

4.4 Applicant submits that he belongs to Loco Running Supervisory post and he retired as a Loco Running staff and all the retiral benefits have been wrongly calculated on the reduced pay of Rs. 3,300 whereas applicant even on last month had drawn a pay pocket of Rs.3,600/-. Applicant submits that his relationship with the respondents as master and servant came to an end as soon as his retirement on 31.5.1993. Once the relationship as master and servant has come to an end the respondents have no authority to withhold or recover any amount due to the applicant. At this stage it is pertinent to state that no disciplinary action is initiated or pending against the applicant and his service record is ~~se~~lean and spotless. It is submitted that only the President of India has powers to reduce or recover any amount from the pension of the applicant. Since no disciplinary actions were pending before the President of India there was no occasion for effecting any recovery or reduction from the pension amount of the applicant by the President of India.

4.5 Applicant submits that he was never issued with a show cause notice of whatsoever nature before the respondents have taken a decision to recover and

adjust amount from DCRG as well as reducing his pension from Rs. ¹³⁸⁰~~1,551~~ to Rs. 1,287. The principles of natural justice demands that fair and reasonable opportunity of being heard should be offered before taking any action which will have adverse civil consequence to the applicant.

4.6 Applicant submits that an amount of Rs. ^{36,265}~~36,000~~/- was recovered from his DCRG on account of alleged overpayment due to stepping up of pay granted to him in comparison with his juniors pay.

4.7 Applicant submits that the stepping up of pay on par with his junior was granted by order dated 16.9.1988 issued by the Government of India, Ministry of Railways with the prior approval of the President of India and with concurrence of the Finance Directorate of the Ministry of Railways.

Exh. 2

A copy of the said order dated 16.9.1988 is annexed and marked as Exhibit 2. Applicant was granted the benefit of stepping up of Pay as he fulfilled all the criteria laid down in the said order dated 16.9.1988.

4.8 Applicant believes that the respondents withheld the amount and propose to effect recoveries from the retiral dues of the applicant on the basis and strength of a letter dated 15.11.1991 issued by Chief Personnel Officer, Central Railway, Bombay VT.

Exh. 3

A copy of the said letter dated 15.11.1991 is annexed and marked as Exhibit 3. Applicant submits that the said letter is illegal, unjustified, unwarranted and above all the same is issued by a totally incompetent person. The Chief Personnel Officer of Central Railway



has no legal authority to issue any letter by which the rights and benefits conferred by the President of India, can be altered, amended, modified, added, withdrawn or cancelled. As stated in the earlier paragraphs the benefits of stepping up was granted vide Exhibit 2. The provisions of the said order dated 16.9.1988 is applicable to all Railways throughout India. The action of Chief Personnel Officer of Central Railway in withdrawing or cancelling the benefits conferred by the President of India has no legal validity.

4.9 Without prejudice to the contention that the letter dated 15.11.1991 is illegal, unjustified and unwarranted and is liable to be quashed and set aside, the applicant submits that the provisions of the said letter will in no way affect the right of the applicant to the benefit of stepping up of pay on par with his junior and there is no question of any overpayment and recovery as well as withholding of retiral dues such as pension and gratuity of the applicant on the basis of the said letter.

4.10 Applicant submits that stepping up pay was granted to him on the basis of orders dated 16.9.1988 which has been issued with the sanction of the President of India. The said order was issued since the existing provision for stepping up of pay in comparison with the juniors may not be possible in case of the applicant and other similarly placed persons. Therefore, vide this order dated 16.9.1988 the President was pleased to issue orders directing stepping up of pay of a group of employees in comparison to their junior who are getting more pay and on the basis of the conditions

laid down therein. Since special conditions were laid down in the said letter the entitlement of the applicant ~~came~~ to claim and receive stepping up of pay in comparison with the juniors is to be done strictly in accordance with the conditions laid down in the said order dated 16.9.1988. This further confirms that provisions other than what is contained in the order dated 16.9.1988 need not be made applicable in the case of the applicant. Otherwise there was absolutely no necessity at all for the Government of India to issue the order dated 16.9.1988. Moreover the order dated 16.9.1988 does not say that the provisions contained in the said order is to be fulfilled over and above the existing provisions for stepping up of pay. If the applicant could fulfil the provisions prior to the issuance of order dated 16.9.1988 there was no necessity of issueing the order dated 16.9.1988 by which the applicant was granted stepping up of pay.

4.11 Applicant submits that the Chief Personnel Officer of the Central Railway issued a letter dated 15.11.1991 directing review of stepping up of pay granted to several employees on par with their juniors one Shri P.N. Kareer. A copy of the said letter dated 15.11.1991 is annexed and marked as Exhibit 3. Applicant submits that the said letter dated 15.11.91 is illegal, unjustified, unwarranted and above all the same is issued by ~~xxx~~ a totally incompetent person since stepping up of pay was granted by the orders approved by the President of India. No authority lower than that has got any right or authority to alter, amend modify and/or delete, withdraw or cancel the benefits conferred by the President of India. The provisions contained in

the order dated 16.9.1988 are issued to Railways throughout India. Chief Personnel Officer of Central Railway has no authority to interfere or interpret the said orders in a unilateral manner. Applicant submits that the said wrong interpretation of Chief Personnel Officer by which he is sought to withdraw the stepping up of pay was considered by the Principal Bench of this Hon'ble Tribunal in O.A. No. 416/92 and O.A. No. 2106/91. It was held that the decision of the respondents by which they sought to withdraw the benefit of stepping up of pay granted was on the basis of misinterpretation of the provisions. Both the said original applications were decided in favour of the applicants on 22.12.92 and 24.12.92 respectively. Copies of the said judgment are annexed and marked as Exhibit 4 (collectively).

Exh. 4

4.12 Without prejudice to the contentions and the legal position that the letter dated 15.11.91 no longer holds valid the applicant submit that even otherwise the provisions contained in the said letter dated 15.11.91 are not applicable in the case of the applicant. As already stated the applicant retired from service of the respondents on 31.1.5.93 and his right to claim benefit of stepping up of pay on par with his juniors as he was in the grade of Rs.840-1040 much before 1.1.1986 will remain unaffected. The grade of Rs. 840-1040 was always controlled by the H.Q. This is the same position even as on to day. Even the grade of Rs.700-900 was controlled by the H.Q..

4.13 The contenton of the respondents in the said letter dated 15.11.1991 that the cadre of Loco Supervisors working upto the grade of Rs.550-750(RPS) are decentralised are totally false and contrary to the facts. The applicant denies and disputes the same and puts the respondents to strict proof of it. It may be true that a decision to decentralise cadre of Loco Supervisor Grade Rs.2000-3200 (RPS) was taken long ago. However, the said decision was never implemented or has come into force as the same was a conditional decision. The said decision was taken as per letter dated 17.12.1985, a copy of which is annexed and marked as Exhibit 5. The said letter is issued by the Chief Personnel Officer, Head Quarters Office, Central Railway Bombay V.T. The relevant portion containing the condition for making the said decision operative is as follows:

Exh.5

"The decentralisation will be operative from the date last vacancy in the categories of Ll 'B' / Fl 'B' / LF 'B' / DY.CPCOR / Dr. Instructor, Gr. 700-900 (RS) is filled by this office."

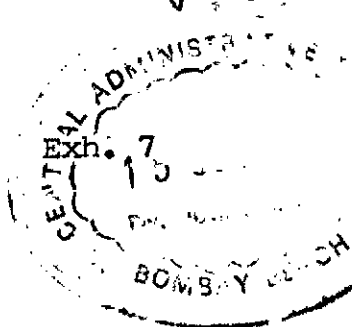
4.14 Applicant submits that the above quoted exercise is still going on and there are many vacancies to be filled in the above categories even as on to day. The position as on 28.11.89 as well as the fact that a contrary decision by competent authority to the effect that no decentralisation was ever effected can be verified and ascertained from the letter dated 28.11.89 by the Chief Personnel Officer, Head Quarters Office, Bombay VT. A copy of the said letter dated 28.11.89 is annexed herewith and marked as Exhibit 6. Hence the

Exh.6

applicant submits that there were no such decentralisation as sought to be established by respondents.

4.15 Assuming without admitting that there was decentralisation of the cadre of Loco Supervisory staff working upto Grade Rs.550-750(RS) in the year 1985 the said decentralisation will not affect the right of the applicant to get the benefit of stepping up of pay. The applicant was in the grade of Rs.840-1040 much before the year 1985. Thus it is crystal clear that the alleged decentralisation in the year 1985 or 1986 has nothing to do with the entitlement of stepping up of pay of the applicant on par with his junior as also for entitlement of full Pension and Gratuity on the basis of his actual last drawn average salary. The question as to whether the Loco Supervisors who were working in the grade Rs.700-900 prior to 1.1.1986 were entitled to stepping up of pay was resolved vide para 2(1) and 2(2) of the letter dated 16.9.88 (Exhibit 2). Hence there is no question of any review of stepping up of pay granted to the applicant. Applicant submits that he is entitled to receive the amount of DCRG as well as pension on the basis of his last 10 months average salary of Rs.3,600 which he actually drew. And there is no question of any recovery on account of alleged overpayment.

4.16 It is also pertinent to state here that the Chief Personnel Officer, H.Q. Office, Personnel Branch, Bombay VT vide his letter dated 22.12.89, a copy of which is annexed herewith and marked as Exhibit 7 clarified and confirmed the position that Loco Supervisors regularly working in Grade 700-900 (RS) prior to 1.1.86 are entitled to stepping up of pay on



par with Shri P.N. Kareer. Therefore, the applicant submits that he was correctly granted the benefit of stepping up. Applicant also submits that Grade Rs.700-900 (RS) & Grade Rs.840-1040(RS) was always controlled by H.Q. and the position is same even as on today. Hence alleged decentralisation has nothing to do with applicant's entitlement of stepping up of pay on par with his junior.

4.17 The applicant submits that Chief Personnel Officer, Central Railway, Bombay VT vide his letter dated 1.6.89 clarified and confirmed that Sr.Loco Supervisor working in the grade Rs.2375-3500 prior to 1.1.1986 are entitled to stepping up with that of Shri P.N. Kareer, Junior Loco Supervisor working in grade of Rs.2000-3200 on Jabalpur Division from the date the anomaly took place after 1.1.1986. The only condition made in the said letter was that the cadre of Loco Supervisors in grade Rs.2375-3500 (RPS) has been controlled by Central Head Quarter. A copy of the said order dated 1.6.89 is annexed and marked as Exhibit 8. Therefore, the applicant submits that he is entitled to the benefit of stepping up of pay on par with his junior.

Exhibit 8

4.18 Applicant submits that he has retired from railway service and non-release of his DCRG amount causes great hardships both physically and mentally to him. He is also aggrieved by the reduction in his pension which is the only source of living for him and his family members and his dependent family members.

4.19 Applicant submits that before unilaterally withdrawing the benefit of stepping up of pay and taking any decision to recover or adjust the amount he was



not issued with a show cause notice. He was not heard and hence the very decision to withdraw the said benefit without notice to the applicant causes great loss and adverse civil consequence, is totally illegal, unjustified and the said decision is liable to be declared as illegal, null and void.

4.20 Applicant submits that he is being discriminated inasmuch as other similarly placed Loco Supervisors who also got the benefit of stepping up of pay and were retired and before the date of applicant's retirement are given full retiral benefits without any deduction, recoveries or adjustment of whatsoever nature and that too immediately after their retirement. Applicant submits that the discrimination is so blatant and arbitrary that the respondents have resorted to pick and choose policy. One Shri J.R. D'Souza who was also Loco Supervisor and recipient of benefit of stepping up of pay who retired on 30.6.92 was paid all his retiral dues including gratuity and pension without resorting to any retrospective refixation and deduction or recoveries. Applicant will cite several other examples at the time of hearing.

4.21 Applicant further submits that most of the Loco Supervisory Staff (about 25 in number) who received the benefit of stepping up of pay had approached this Hon'ble Tribunal by filing O.A. No. 1103/92, N.K. Singh and 24 Ors. V. Union of India and Ors. and sought the intervention of this Hon'ble Tribunal. Accordingly by order dated 18.12.92 the respondents were restrained from implementing the orders including the order dated 15.11.91. The said order was confirmed on 31.5.1993 till the final decision of O.A. 1103/92. A copy of


Exh. 9

the said order dated 18.12.92 is annexed and marked as Exhibit 9.

4.22 Applicant submits that despite a stay order from this Hon'ble Tribunal the respondents made applicable the provisions of order dated 15.11.91 and recovered or adjusted an amount of Rs. 43,892/- from the DCRG amount of one Shri Z.T. Lohar who was applicant No.23 in O.A. 1103/92. On filing a Contempt Petition by the said Shri Z.T. Lohar the respondents have refunded the entire amount of Rs. 43,892/- and the said contempt petition was withdrawn on 31.5.93. Applicant submits that the respondents in fact committed gross contempt of this Hon'ble Tribunal and deliberately and wilfully violated its order dated 18.12.92 passed in OA No.1103/92, hence they are liable to be proceeded against for contempt of this Hon'ble Tribunal. Applicant, reserves his right to take contempt proceedings against the respondents.

4.23 The applicant submits that he has not been paid DCRG amounting to Rs. 36,265/-. He is entitled to interest @ market rate of 18% p.a. The delay in releasing the amount of DCRG is not attributable to the applicant. The respondents are solely responsible for the same. Applicant retired on ³¹⁻⁵⁻⁹³~~31.1.91~~. He vacated the railway quarter on ³⁰⁻⁹⁻⁹³~~27.1.92~~. Though more than 30 months have elapsed the respondents have not taken any action for releasing the amount of gratuity. Applicant has fulfilled all formalities from his part for the release of the said DCRG amount. Since the respondents are solely responsible for the delay the applicant is entitled to interest at market rate on the entire amount of DCRG.

5. GROUNDS:

- a) Applicant submits that he is entitled to receive Rs. ¹³⁸⁰1551/- as his monthly pension which he was receiving upto May 1993. No reduction from the pension can be effected by the respondents without a showcause notice to the applicant. Respondents have no authority to reduce the pension once sanctioned. As no disciplinary proceedings are pending or were initiated there is no question of President of India also order reduction in pension.
- b) Applicant is entitled to receive Rs. 36,265 as DCRG which has been illegally withheld by the respondents without any valid and legal reasons. As it was held that pension includes gratuity no deductions or recovery from DCRG amount can be effected by the respondents. Applicant will rely on a decision reported in SLJ 1992(2) CAT page 464, Ram Briksh Singh Vs. Union of India which is decided on 30.1.92 wherein it was held that pension/DCRG cannot be cut after retirement without orders of President. Applicant will also rely on SLJ 1991(2) page 229 R.S. Sri-dharan and Ors. Vs. Union of India wherein it was decided that over payment even due to wrong fixation cannot be recovered after a long period. Applicant will also rely on SLJ 1992(2) CAT page 564 M. Moideen Koya Vs. Union of India decided on 30.9.91 wherein it was decided that over payments on account of re-fixation of pay cannot be recovered without notice to the affected parties. It was also
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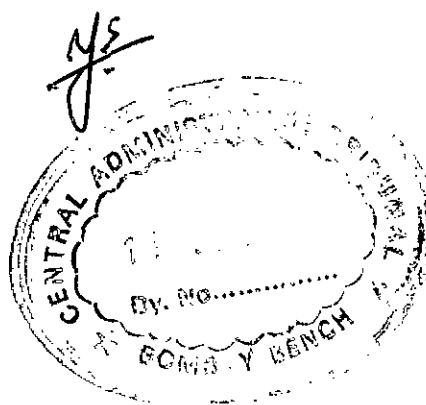
held that no recovery even on account of erroneous fixation of pay can be made without notice. Even where no notice is required for correcting administrative error no recovery could be made since the applicant was not at fault. Applicant will also rely on the decisions in the case of Vazirchand vs. Union of India and U.M.Goyal vs. Union of India 1992(2) SLJ 180 as well as other cases in support of his contentions.

c) Applicant submit that since DCRG amount is withheld and not paid for over a period of more than 12 months he is entitled to interest at the market rate of Rs.18% p.a. Even as per the Railway Board's letter dated 14-9-1984 interest @ 10% p.a. is payable for the withheld payment of DCRG beyond the period of one year.

d) As the order dated 15.11.91 was issued contrary to the existing rules of the Railways no recoveries could be effected from the DCRG and pension cannot be reduced.

6. DETAILS OF REMEDIES EXHAUSTED:

Applicant submits that he is a retired railway servant and he has no statutory remedy available. Applicant preferred representation dt. 14-5-93 and legal notice dated 13-9-93. Copies of which are annexed and marked as Ex.11. The applicant thus exhausted all the possible



remedies available to him by approaching the respondents as well as through representations. However, the respondents have not acted upon the representations and hence this application.

7. MATTERS NOT PREVIOUSLY FILED :

Applicant further declares that he has not filed any proceedings before any other court touching the subject matter of this application and that no such proceedings are pending before any court or any other authority or any other Bench of this Tribunal, nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT :

In view of the above facts and circumstances the applicant prays for the following reliefs :

- (a) It may be declared that the applicant is entitled to receive Rs.1380 as balance monthly pension + dearness relief as admissible.
- b) Order dated: 19-10-92 may be quashed and set aside and order dated: 15-11-91 may be quashed and set aside.
- c) It may be declared that no damage rent could be recovered from the applicant except under the provisions of Public Premises (Eviction of unauthorised occupants) Act, 1971 and the respondents may be directed not to recover/charge damage rent from the applicant.
- d) Respondents may be directed to release the ~~MARK~~ DCRG amount of Rs.36,265/- along with 18%

*Amended as per
court's order
J.S.*

interest from the date of retirement i.e.,
31.5.1993 till the actual date of payment;

- e) Any other further reliefs may be granted.
- f) Cost of this application may be provided for.

9. INTERIM RELIEF:

Pending the hearing and final disposal of this Original Application the applicant prays for the following interim reliefs:

- a) The respondents may be directed to release the amount of Rs.36,265/- along with interest @ 18% p.a.
- b) That the respondents may be directed not to give effect to the order dated ¹⁻²⁻⁹³~~19.10.92~~ and ~~may~~ may be directed to State Bank of India, Station Road, Solapur to continue ~~paying~~ paying pension to the applicant @ Rs.1551/- per month.

10. Particulars of I.P.O./D.D.:

IPO / DD No. : 808 ~~358294~~
Date : 15/6/94 890482

Amount : For Rs. 50/- (Rupees fifty only)

11. List of Annexures:

As per Index sheet.

Bombay

Dated: this 15th day of June 1994

Ammya
APPLICANT,

N/S

VERIFICATION

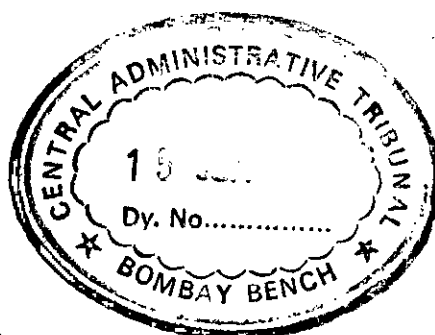
I, Nimgappa Mariappa Mamlapurkar, the applicant abovenamed do hereby verify the contents of the above paragraphs and state that the same are true to the best of my knowledge and belief and that I have not suppressed any material facts.

Nimgappa
APPLICANT

PLACE: BOMBAY

DATE : THIS 15th DAY OF JUNE 1994

Yusuf Ravikant Singh
Yusuf Ravikant Singh
Advocate for the applicant



YS