CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1964 OF 2001

New Delhi, this the 15th day of July, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

Shri V.B.Dureja
R/o C-34 New Multan Nagar
Delhi-110056. ....Applicant

(By Shri Shyam Babu, Advocate)

Versus

1. Union of India
through its Secretary
Ministry of Personnel, Public Grievances
& Pensions
(Department of Pension & Pensioners Welfare)
Lok Nayak Bhawan, Khan Market
New Delhi.

2. Director of Accounts (Postal)
Delhi Circle
Delhi-110054.

3. Chief Postmaster General
Delhi Circle
Meghdoot Bhavan
Jhandewalan
New Delhi. .....Respondents

(By Advocate : Shri R.N.Singh)

ORDER (ORAL)

JUSTICE V.S. AGGARWAL :-

Applicant (V.B.Dureja) retired as Senior Postmaster on 31.5.1986. The basic pay of the applicant at the time of retirement was Rs.3050/- fixed from 1.1.1986 in the pay scale of Rs.2000-3500. Since the applicant had drawn basic pay of Rs.3050/- from 1.1.1986 to 31.5.1986, the average emoluments for the purpose of pension were calculated on basis of Rs.3050/- for the said period and at the basic pay in the pre-revised scale of Rs.650-1200 from 1.8.1985 to

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31.12.1985. The pension of the applicant was fixed at Rs.1412/- per month from 1.6.1986 and Rs.4259/- with effect from 1.1.1996 in accordance with the Fifth Central Pay Commission.

2. Office Memorandum dated 10.2.1998 was issued stating that all employees retiring prior to 1.1.1986 irrespective of date of their retirement would be entitled to get their pay fixed in the corresponding scale as recommended by the Fourth Central Pay Commission and the basic pay was notionally fixed as on 1.1.1986 would be treated as their average emoluments and 50% of such basic pay will be calculated as pension.

3. By virtue of the present application, the applicant seeks a direction that he should be equated with those who retired prior to 1.1.1986 and his pension may be fixed at Rs.1525/- from 1.6.1986 and Rs.4595/- from 1.1.1996. In the alternative, the applicant should be permitted to get his pay fixed on 1.1.1996 in the corresponding scale of Rs.7500-12000 as recommended by the Fifth Central Pay Commission.

4. Applicant contends that as a result of the Office Memorandum of 10.2.1998, the employees who retired before 1.1.1986 and were drawing the same basic pay as the applicant in the pre revised pay

scale of Rs.650-1200 would get a pension of Rs.1525/- as against Rs.1412/- admissible to the applicant and Rs.4595/- from 1.1.1996 as against Rs.4250/- allowed to him. The applicant's grievance is that in this process, he is being discriminated and consequently, the abovesaid reliefs are being claimed.

5. The application has been contested. It has been pointed that the Fifth Central Pay Commission had recommended complete parity upto the Fourth Central Pay Commission level by notionally fixing the pay of pre 1986 retirees like serving employees on 1.1.1986, fixing their pension and then consolidating their pension so fixed by the formula indicated in the Office Memorandum of 27.10.1997. The Fifth Central Pay Commission had recommended modified parity with respect to the pensioners who retired after 1.1.1986 by consolidating their pension and if such consolidated pension falls short of 50% of the minimum of the revised scale of pay as on 1.1.1996 of the scale of pay of the post held by them at the time of retirement, the same was to be stepped up to that extent. The applicant was a post 1986 pensioner. His pension has correctly been consolidated as per the extant orders. The pension continued to be commuted on basis of the last 10 months average emoluments subject to the condition that it is not less than 50% of the minimum of the scale from which the Government

servant retires. It is denied that the respondents have adopted any arbitrary criteria in Office Memorandum of 10.2.1998. It is also denied that the classification challenged by the applicant is arbitrary.

6. At the outset, the learned counsel for the applicant relied upon a well-known judgement in the case of **D.S.Nakara and Others v. Union of India,** (1983) 1 SCC 305 wherein the Supreme Court had held that the Central Government servants on retirement from service are entitled to receive pension under the Central Civil Services (Pension) Rules, 1972. Under the earlier pension scheme, the pension was related to the average emoluments during 36 months just preceding retirement. On 25.5.1979, the Government of India had issued an Office Memorandum whereby the formula for computation of pension was liberalised. It was made applicable to Government servants who were in service on 31.3.1979 and retired from service on or after that specified date. The liberalised pension formula introduced for the Government servants governed by the 1972 Rules was extended to the Armed Forces personnel subject to limitation set out in the Office Memorandum with a condition that new rules of pension would be effective from 1.4.1979. As a result, the pensioners who retired prior to the specified date had to earn pension on the average emoluments of 36 months' salary

and they suffered triple jeopardy. The matter had come up for consideration before the Supreme Court and that Court held that the pension is neither a bounty not a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is payment for the past service rendered. It is a social welfare measure. The principle of equality before law was mentioned in the following words:-

> "13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi case, AIR 1978 SC 597 in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in E.P.Royappa v. State of T.N., AIR 1974 SC 555, it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p.38, para 85)
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> > "From a positive point of view, equality is antithetic to arbitrariness. In fact equality and abitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

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Thereupon, the Supreme Court held that the said distinction drawn was not correct and in para 17, the Supreme Court further held:-

> "17. The basic contention as hereinbefore noticed is that the pensioners for the purpose of receiving pension form a class and there is no criterion on which classification of pensioners retiring prior to specified date and retiring subsequent to that date can provide a rational principle correlated to object, viz., object underlying payment of pensions. In reply to this contention set out in para 19 of the petition, Mr. S.N. Mathur, Director, Ministry of Finance in para 17 of his affidavit-in-opposition on behalf of the respondents has averred as under:-
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> The contentions in paras 18 and 19 that all pensioners form one class is not correct and the petitioners have not shown how they form one class. Classification of pensioners on the basis of their date of retirement is a valid classification for the purpose of pensionary benefits.
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> These averments would show at a glance that the State action is sought to be sustained on the doctrine of classification and the criterion on which the classification is sought to be sustained is the date of retirement of the government servant which entitled him to pension. Thus according to the respondents, pensioners who retire from Central Government service and are governed by the relevant pension rules all do not form a class but pensioners who retire prior to a certain date and those who retire subsequent to a certain date form distinct and separate classes. It may be made clear that the date of retirement of each individual pensioner is not suggested as a criterion for classification as that would lead to an absurd result, because in that event every pensioner relevant to his date of retirement will form a class unto himself. What is suggested is that when a pension scheme undergoes a revision and is enforced effective from a certain date, the date so specified becomes a sort of a rubicon and those who retire prior to that date form one class and those who retire on a subsequent date form a distinct and separate class and no one can cross the rubicon. And the learned Attorney-General contended that this differentiation is grounded on a rational principle and it has a direct correlation to the object sought to be achieved by liberalised pension formula."

7. It is on the strength of the same that the learned counsel for the applicant contended vehemently that the applicant cannot be discriminated or his pension so fixed should be less than that of pre 1.1.1986 employees.

8. At this stage, we deem it necessary to refer to some of the other decisions of the Supreme Court on the subject. In the case of **Indian Ex-services League & others** v. **Union of India**, (1991) 2 SCC 104, in May, 1979, the Government of India had issued an Office Memorandum whereby the formula for computation of pension was liberalised but made applicable only to civil servants who were in service on 31.3.1979 and retired from service on or after that date. It introduced a slab system, raised the ceiling and provided for a better average of emoluments for computation of pension and the liberalised scheme was made applicable to employees governed by the Central Civil Services (Pension) Rules, 1972, retiring on or after the specified date. The same question again came up for consideration. The Supreme Court held that the decision in the case of Nakara (supra) has to read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement. The findings are:-

"12. The liberalised pension scheme in

the context of which the decision was rendered in Nakara, (1983) 1 SCC 305) provided for computation of pension according to a more liberal formula under which "average emoluments" were determined with reference to the last ten month' salary instead of 36 months' salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to retiree subsequent to that date but also to earlier exiting retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed a on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in Nakara and no more."

Similarly, in the case of **Union of India v. P.N.Menon and Others**, (1994) 4 SCC 68, the same controversy cropped up and the concerned High Court referred to Nakara's case (supra). The judgement was set aside and it was held:-

"20. The scheme to merge a part of the dearness allowance for purpose of fixing the dearness pay, was evolved, and was linked with

the average of cost of living index fixed at 272, which fell on 30-4-1977. In this background, it cannot be said that the date, 30-9-1977, was picked out in an arbitrary or irrational manner, without proper application of mind. The option given to employees, who retired on or after 30-09-1977, but not later than 30-04-1979, to exercise an option to get their pension and death-cum-retirement gratuity calculated by excluding the element of dearness pay as indicated in the aforesaid office memorandum or to get it included in their pension and death-cum-retirement gratuity, was not an exercise to create a class within class. The decision having a nexus with the price index level at 272, which it reached on 30-09-1977, was just and valid. It has been rightly pointed out that respondents had never been in receipt of dearness pay and as such the office memorandum in question could not have been applied to them. Similarly, the encashment of leave was a new scheme introduced which could not have been extended retrospectively to respondents, who had retired before the introduction of the said scheme. Same can be said even in respect of family pension scheme which was earlier contributory, but with effect from 22-09-1977 the scheme was made non-contributory. The respondents not being in service on the said date, were not eligible for the said benefit and no question of refunding the amount, which had already been contributed by them, did arise. According to us, the High Court was in error in applying the principle of D.S. Nakara in the facts and circumstances of the present case."

More recently, in the case of **Tamil Nadu Electricity Board** v. **R.Veerasamy and others**, (1999) 3 SCC 414, the question for consideration was whether the Electricity Board was bound to extend benefit of pension scheme introduced from 1.7.1986 to all employees who already stood retired before the said date and had availed of the benefit of Contributory Provident Fund Scheme? The Supreme Court repelled what is being urged before us giving the following

findings:-

> "....Moreover, the appellant-Board had given well-founded reasons for introducing the pension scheme from 1-7-1986 including financial constraints, a valid ground. We are of the view that the retired employees (respondents), who had retired from service before 1-7-1986 and those who were in employment on the said date, cannot be treated alike as they do not belong to one class. The workmen, who had retired after receiving all the benefits available under the Contributory Provident Fund Scheme, cease to be employees of the appellant-Board w.e.f. the date of their retirement. They form a separate class."

9. Reverting back to the facts of the present case, at the outset we may draw the necessary inference. Certain cut off date is necessary to be fixed from which the benefit of a particular pension scheme has to be given. If there are two categories of pensioners and a cut off date which is logical and reasonable has been fixed, the court will not interfere. In that case Nakara's case (supra) would not be applicable.

10. Herein the distinction has clearly been drawn and spelt out. There were two categories of employees. This differentiation came into play because the recommendations of the Fourth Central Pay Commission were made applicable from 1.1.1986 and the recommendations of the Fifth Central Pay Commission from 1.1.1996. Certain employees who had superannuated/retired before 1.1.1986 were also

considered after a separate formula had been made applicable to them. That necessarily does not imply that there is a discrimination or the same formula should be made applicable to such employees who retired after 1.1.1986. Two categories of pensioners therefore, in terms of what is being urged is not correct. It was only a reasonable classification that had been done. The additional affidavit of the respondents indicatess that the Fifth Central Pay Commission had made certain recommendations relating to parity in pension when the pensioners were holding similar posts. The recommendations of the Pay Commission had been accepted with the object of notionally fixing the pay and thereafter the pension in respect of pre 1986 retirees as on 1.1.1986. Thus there is no ground to hold that two different categories of pensioners which is dicriminatory have been created.

11. Resultantly, the present application being without any merit must fail and is accordingly dismissed. No cots.

Announced.

(S.K. NAIK)
MEMBER (A)

(V.S. AGGARWAL)
CHAIRMAN

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