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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A. No. 1339/98

New Delhi: this the 22nd day of September, 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

1. A.P. Chopra, C/o 30, Surya Niketan, Vikas Marg,
Extn. Delhi-92.

2. V.K. Raizada,

3. N.N. Kansal

C/o Indian Railway Welfare Organisation,
Railway Complex, Shivaji Bridge, Behind
Central Market, New Delhi-110001.

..... Applicants.

(In person)

Versus

Union of India through

1. Secretary to
Govt. of India,
Ministry of Finance, (Dept. of Expenditure),
New Delhi.

2. Secretary to the Govt. of India,
Ministry of Personnel,
Public Grievances & Pension
(Dept. of Pension & Pensioners' Welfare),
New Delhi.

3. Secretary, Railway Board,
Ministry of Railways,
New Delhi.

4. Financial Commissioner,
Railway Board & Ex-Officio

Secretary to the Govt. of India,,
New Delhi

..... Respondents

(By Advocate: Shri H.K. Gangwani)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicants who retired on superannuation
from Indian Railways between 16.9.93 and 31.3.95
seeks a direction to respondents to issue orders

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to raise the maximum limit of gratuity to Rs.3.5 lakhs from 16.9.93.

2. Their case is that on 27.9.93 Govt. had sanctioned interim relief of Rs.100/- p.m. to all Govt. servants w.e.f. 16.9.93 (annexure-VI). Subsequently it was decided vide orders dated 19.10.93 (annexure-VII) that 20% of basic pay would be treated as D.A. which would count as emoluments for the purpose of DCRG. These instructions which were circulated by Railway Ministry vide their order dated 25.11.93 (annexure-VIII) were given effect to retrospectively w.e.f. 16.9.93. Applicants contend that although 20% of basic pay was to be treated as D.A. and counted as emoluments towards gratuity w.e.f. 16.9.93, there was no corresponding increase in the DCRG ceiling of Rs.1 lakh. Subsequently in July, 1995 Govt. decided that DA would be linked with the All India Consumer Price Index 120.66 and those who retired/died on or after 1.4.95 and were drawing basic pay above Rs.6000/- p.m. would be entitled to DA @ 63% of basic pay subject to a maximum of Rs.4380/- . While issuing these orders Govt. also raised the DCRG ceiling from Rs.1 lakh to Rs.2.5 lakh w.e.f. 1.4.95, although the orders themselves were issued on 14.7.95. Applicants contend that when DA rates of 16.9.93 were being treated as pay for purposes of gratuity, the maximum limit of gratuity should have also been raised from 16.9.93. Thus the orders of 14.7.95 should have been given retrospective effect to, not from 1.4.95 but from 16.9.93 itself.

3. Applicants further contend that meanwhile in the background of the 5th Pay Commission's recommendations, the DCRG ceiling has been further raised even further from Rs.2.5 lakhs to Rs.3.5 lakhs w.e.f. 1.1.96. They therefore pray that the DCRG ceiling be raised to Rs.3.5 lakhs w.e.f. 16.9.93, as otherwise those who retired between 16.9.93 and 31.3.95/1.1.96 such as themselves would lose heavily which is unfair, inequitable and discriminatory.

4. Respondents in their reply challenge the OA. They state that the order dated 14.7.95 extending the benefits to Central Govt. employees who retired on or after 1.4.95 inter alia raising the DCRG Ceiling from Rs.1 lakh to Rs.2.5 lakhs, and then further revising it to Rs.3.5 lakhs w.e.f. 1.1.96, vide order dated 27.10.97, were issued on the basis of the 5th Pay Commission's recommendations contained in its interim report and its final report which was accepted by GOI. It is submitted that the Pay Commission had itself stipulated the cut off date of 1.4.95 and while it had in para 133.88 of its report recommended for removal of ceiling on all kinds of gratuities, Govt. accepted the recommendations to the extent of raising the ceiling from Rs.2.5 lakhs to Rs.3.5 lakhs w.e.f. 1.1.96. Respondents aver that a cut off date has to be fixed as and when any scheme is framed for persons who are to superannuate or have superannuated, and due to various constraints it is not possible to extend the same benefits to one and all, irrespective of the dates of superannuation. Respondents further assert that it is the prerogative of Govt. to accept fully or partly any or all the recommendations

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of the Pay Commission. Various rulings have also been referred to by respondents in their reply.

5. Applicants have filed written arguments by way of rejoinder. Their basic contention is that 16.9.93 is the crucial date and anybody in service on this date was given relief in (a) enhancement of emoluments either by way of interim relief (for those retiring prior to 1.1.96) or increase in pay scales and (b) increase in pension. However, in matters of gratuity employees who retired from 16.9.93 to 31.3.95 formed one class (to which applicants belonged) and for this class 20% of basic pay was treated as DA for purpose of gratuity and this class of people did get higher amount of gratuity, but within this very class there was a sub-class of people who were denied this benefit of 20% basic pay being considered for gratuity because they were hit by the DCRG ceiling of Rs.11 lakh. It is asserted that such a situation did not arise for those who retired on and from 1.4.95 onwards as the maximum limit was also raised. Applicants in their written arguments, while summarising the ratio of the rulings relied upon by respondents in their reply urge that those rulings themselves lay down that courts can interfere where Govt. decisions are arbitrary, capricious, malafide, contrary to statutory rights or results in discrimination, and state that in the case of those who retired between 16.9.93 and 31.3.95/1.1.96 the non-raising of the DCRG ceiling to Rs.3.5 lakh has been patently discriminatory.

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6. We have heard applicant Shri Chopra who argued in person and Shri H.K. Gangwani for respondents. We have given the matter our careful consideration.

7. As submitted by respondents in their reply, the Hon'ble Supreme Court in UOI Vs. P.N. Menon & Ors. (1994)27 ATC 515, wherein their earlier judgment in D.S.Nakra's case was also a subject of consideration, has observed inter alia

"Whenever the Govt. or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised benefits, if implemented with the cut-off-date, which can be held to be reasonable and rationale in the light of Article 14 of the Constitution need not be held to be invalid.

Whenever a revision takes place, a cut-off-date becomes imperative, because the benefit has to be allowed within the financial resources available with the Govt.

It is submitted that the law is fairly well settled that the choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances."

8. From this it is clear that applicants can succeed in the OA, only if they can establish that the date 1.4.95 when the DCRG ceiling was raised from

Rs.1 lakh to Rs.2.5 lakh, and 1.1.96 when it was raised from Rs.2.5 lakh to Rs.3.5 lakh was capricious or whimsical. The date 1.4.95 was the cut off date suggested by the 5th Pay Commission themselves, and corresponds to the start of financial year, while 1.1.96 is the date from which the various recommendations of the 5th Pay Commission were made applicable by GOI and corresponds with the start of the new year. The 5th Pay Commission was an extremely high level body presided over by a retired Judge of the Hon'ble Supreme Court. Clearly therefore the dates 1.4.95 and 1.1.96 cannot be said to have been selected capriciously or whimsically.

9. A similar controversy arose in regard to OM dated 14.7.95 whereby DA limited to an All India CPI 1201.66 as on 1.7.93 was treated as DA for the purpose of reckoning emoluments for grant of retiral benefits under CCS(Pension) Rules in the case of Central Govt. employees who retired or died on or after 1.4.95, in regard to which OA No. 962/CH/95 Narender Singh Kohli & Ors. Vs. UOI & Ors. and other OAs were filed in CAT, Chandigarh Bench. All those OAs were dismissed by common order dated 25.7.97. In that order it was held that policy decisions taken by Govt. should not be interferred with, unless the same was shown to be capricious, malafide, or contrary to any statutory rights, and a date chosen on the basis of the recommendation of a Pay Commission could not be said to suffer from such infirmities.

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Interference would be warranted only in cases where they had been denied certain benefits which had been extended to persons falling within their category (emphasis supplied), that is those who retired between 1.7.93 and 1.4.95, but as that was not the case, the claim of being subject to hostile discrimination failed. In this connection, it was also noted that Govt. while taking a policy decision could not disregard the totality of the surrounding circumstances, including the availability of financial resources.

10. The wisdom of determining the cut off date as 1.4.95 for payment of enhanced gratuity was specifically impugned in OA No.2630/96 Shri G. S. Chaman Vs. UOI & Ors, which after hearing both sides was likewise disposed of by CAT PB by its order dated 12.9.97 without granting the relief prayed for.

11. In yet another case bearing OA No.1196/98 Shri A.K. Kanji Lal Vs. UOI & Ors., the applicants' prayer for extension of the benefits of the 5th Pay Commission to persons like him who retired before 1.1.96 was rejected by CAT PB order dated 29.6.98 on the ground inter alia that for the implementation of any decision of the Pay Commission some cut off date was necessary, and if applicants' prayer was accepted, there was nothing to stop others who had retired before applicants, from advancing similar claim leading to a flow of litigation.

12. Applicants have not shown us any materials to establish that the aforementioned orders have been stayed, modified or set aside. In our view

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the reasoning adopted in them is fully applicable to the facts and circumstances of the present case, and we as a coordinate Division Bench are bound by them.

13. The OA therefore is dismissed. No costs.

Kuldeep Singh
(KULDIP SINGH)
MEMBER(J)

Anil Singh
VICE-S. R. ADIGE
VICE-CHAIRMAN (A)

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