

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.43 of 1997

New Delhi, this the 12th day of March, 1998.

Hon'ble Mr. N. Sahu, Member(A)

R.D. Aggarwal
S/o Shri B.D. Aggarwal
working as Dy.Chief (Internal Audit)
in the O/o Rural Electrification
Corporation Ltd.,
Scope Complex, Core-4
Lodhi Road, New Delhi and
R/o KL-126, Kavi Nagar,
Ghaziabad(U.P)

...Applicant

(By Advocate : Sh.Vageesh Sharma)

Versus

Union of India: through

1. The Secretary
Ministry of Personnel,
Public Grievances & Pensions,
New Delhi
2. The Controller General of
Defence Accounts,
West Block-V, R.K. Puram,
New Delhi - 110 022
3. The Chief Controller of
Defence Accounts (Personnel)
Allahabad

...Respondents

(By Advocate : None)

ORDER

By. Sh. N. Sahu, Member(A) -

The applicant seeks a direction to the respondents for revision of pension w.e.f. 01.01.1986 along with other connected benefits. The applicant was on deputation in REC Limited from CDA, Central Command, Meerut as a UDC w.e.f. 08.06.1971. He was absorbed in the Corporation from 15.10.1974 as an Accountant. He opted for full commutation of pension. The commuted amount of pension was paid on 10.04.1991. There were some amendments to pension rules w.e.f. 01.01.1986 raising minimum pension to Rs.375/- per

month. He wants this revised rate on the basis of an order passed by the CAT, Jaipur Bench in the case of M.L. Mittal Vs. Union of India - OA-23/92 decided on 18.01.1994.

2. According to the respondents, all those Govt. servants who opted for one time lump-sum terminal benefits equal to 100% of their pension at the time of their permanent absorption in public sector undertakings are not entitled for updating their pension. The applicant opted for full commutation at the time of his permanent absorption in REC Ltd., therefore, the Controller General of Defence Accounts rejected the claim for raising of minimum pension by his order dated 14.03.1996 (Annexure-D to the OA).

3. Prior to 01.01.1986, the minimum pension was Rs.60/- per month. This minimum pension was raised to Rs.375/- per month by the Fourth Pay Commission. In the applicant's case, his pro-rata pension of Rs.92/- was capitalised for the sum of Rs.14,296/- and paid to him. Any further liberalisation of pension/gratuity after permanent absorption cannot be made applicable in his case, according to the respondents. The applicant states that he served for 15 years and 5 months under the Govt. of India till the date of his permanent absorption in the REC Ltd. He is entitled to pro-rata pension and DCRG on this length of service. This pro-rata pension was delayed till he completed 30 years of service or 55 years of age. His

claim is that the minimum pension of Rs.375/- from 01.01.1986 as per the Fourth Pay Commission occurred before his completion of 30 years of service. This revision occurred before the medical board was held on 05.01.1991. It is urged that the applicant is due at Rs.92/- per month from 15.10.1974 to 31.12.1985 and at Rs.375/- per month from 01.01.1986 until the amount is actually paid to the applicant. He also claims interest on the same. (15)

4. The applicant states that instructions in Para 10 of GOI, Ministry of Personnel OM No.2/1/87-PIC-1 dated 16.04.1987 are in the nature of general orders and cannot take place of fundamental rules issued by the Govt. from time to time. He cites GOI decision No.4 under Rule 5 of CCS Commuted Pension Rules 1981. Under this, commutation and pension will commence from 01.01.1986 at the rate of Rs.375/- which is the minimum pension. He cites the judgment of the CAT, Jaipur Bench in Mittal's case and heavily relies on the same. It will be appropriate to state the facts and the decision in Mittal's case in OA No.23/92 decided on 18.01.1994. The applicant in that case joined the Mineral Exploration Corporation Ltd., a PSU on 20.09.1977 and was absorbed on a permanent basis w.e.f. 20.09.1979. His monthly pension was fixed at Rs.257/- per month. He was drawing this monthly pension from 20.09.1979 to 20.08.1990. In that case also he opted for receiving pro-rata gratuity and a lump-sum payment in lieu of his pension. This commutation was done only on 20.08.1990. He was drawing pension at the old rate of

Rs.257/- per month from 01.01.1986 to 20.08.1990. The respondents relied on Para 10(a) of OM dated 16.04.1987 to negative his claim for minimum pension of Rs.375/- p.m. w.e.f. 01.01.1986. Since the applicant was a pensioner on 31.12.1985, it was held by the Jaipur Bench that he would be entitled to revised pension in terms of the revised pension rules applicable w.e.f. 01.01.1986. This decision of the Jaipur Bench was cited by the applicant in support of his contention as the facts in the applicant's case and the Jaipur Bench decision are similar.

5. I have examined the issue at great length because the decisions of the Supreme Court on this subject are available now. I have also noticed another decision of the Calcutta Bench in Gourpada Dey Vs. Union of India - 371 Swamy's CI Digest 1995/2 - OA No.350 of 1994 decided on 20.07.1995. The facts of the case before the Calcutta Bench were that the applicant was in Railway Service from 1947 to 1980. He was on deputation to Food Corporation of India (FCI) where he was absorbed on 21.02.1983. He retired on attaining the age of superannuation on 31.12.1986. For his service in the Railways he received a pension of Rs.724/- per month. He entirely commuted this amount in accordance with Rule 54 of the Railway Service Pension Rules. There was a revision of the basic pension from Rs.724/- to Rs.749/- per month w.e.f. 01.01.1986. Because he had drawn one time lump-sum terminal benefit equivalent to 100% pension, the additional amount of Rs.25/- per month from 01.01.1986 is denied to him. Relying on Para 10(a) of

the OM dated 16.04.1987 (supra.) the option for commutation was given on 10.1.1985 though the commuted value was paid on 15.02.1988. On the ground that the commutation pension was delayed and not drawn on the date the OM was issued, the Tribunal held that the additional amount of pension after 01.01.1986 must be allowed to him till 100% commutation was done by him.

6. Taking a contrary view to the above decisions, I noticed a Division Bench decision of the Madras Bench of CAT in PSU Absorbed, Retired Employees Welfare Association Vs. Union of India and Ors. - 375 Swamy's CL Digest 1994/2 - OA-1765 of 1992 decided on 12.08.1994. The applicants in that case were absorbed in the IAAI. At the time of absorption they had to opt for either receiving the pro-rata monthly pension and DCRG as admissible under the rules or receive pro-rata gratuity and the lump-sum amount in lieu of pension commutation. The commutation was done as per the terms prevailing as on 01.10.1977 which was the date of absorption. Subsequently, there was a liberalised pension formula in 1979. This liberalised pension amount was denied to them. The Madras Bench discussed at length the Apex decisions on the subject. They have cited the decision of Deshraj Bhatnagar & Anr. Vs. Union of India - (1991) SCC (L & S) 495, the relevant portion of which is extracted as under:

"That case pertained to two persons who had opted to join Public Sector Undertaking, viz., Food Corporation of India (FCI). They had been offered two options, viz., Receiving pro-rata monthly pension and Death-cum-Retirement Gratuity as admissible under the Rules and (b) Receiving pro-rata Gratuity and a lumpsum amount in lieu of pension worked out with

reference to commutation tables. They had elected for option (b) and had received a lumpsum payment at the time of their option during 1971-1972. Following the decision of the Supreme Court in D.S. Nakara Vs. Union of India delivered on 17.12.1982 these persons had also claimed the benefit of the liberalised pension formula which had been extended by the Government to pensioners who had retired prior to 01.04.1979. On their plea being rejected, they filed writ petitions before the Supreme Court. The Supreme Court in its judgment referred to above held that persons who commuted the entire amount of their pension formed a different class from pensioners who got only 1/3rd of their pension and drew the rest as a monthly pension. It was pointed out by the Supreme Court that commutation brought certain advantages viz., availability of a lumpsum amount and the risk factor, i.e., the commuted pensioner getting a lumpsum which ordinarily he would have received as a spread over period subject to his continuing to live. Therefore, the writ petitions were dismissed."

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7. The respondents relied on a Single Bench decision in K.K. Anjanayulu Vs. Union of India & Ors - OA No.2466 of 1994 decided on 11.02.1996. Pension was commuted to him on 10.09.1993 at a particular amount. He later on asked for a higher commutation on account of the Fourth Pay Commission report. Having opted for full commuted value the respondents held that he was not entitled to any pension till the date of payment of the commuted amount. The Hon'ble Single Bench held that he was not entitled to the benefit of liberalised pension rules subsequent to the date of his absorption in a public sector undertaking. In D.L. Joshi Vs. Union of India - 370 Swamy's CL Digest 1995/2 - OA No.14 of 1990 decided on 18.07.1995, the question involved was the fixation of a cut off date for treatment of a portion of additional DA as dearness pay for reckoning retiral benefits. The applicant relied on the decision of the Supreme Court

in Nakara's case. This was repelled by the respondents on the basis of other Supreme Court decisions by citing a later Supreme Court decision.

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"The whole matter of implication of Nakara Judgment and the subsequent judgment of the Supreme Court has been dealt with by the Supreme Court in recent judgment of State of Rajasthan Vs. Sevanivritta Karamchhari Hitkari Samiti - 1995 SCC (L & S) 415, para.22 of the judgment reads as below:

".....In Krishnakumar case it has been indicated that in D.S. Nakara's case this Court considered a case where an artificial date was specified classifying the retirees into two different classes even though they were governed by the same rules and were similarly situated. Such classification, where both the groups were governed by the same rules, amounted to deprivation of the benefits of liberlisation of Pension Rules. It was only in that situation it was held in D.S. Nakara's case that specification of the date from which the liberlisation of pension rules were to come into force was arbitrary. This Court, in D.S. Nakara's case clearly indicated that it was not a new scheme but only a revision of the existing scheme and it was not a new retiral benefit but it was a case of upward revision of existing benefit. In D.S. Nakara's case it was pointed out that if it was wholly a new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. The Constitution Bench of Krishnakumar case has upheld different sets of retiral benefits being made applicable to the employees retiring prior to 01.04.1977 and retiring thereafter."

This aspect was also examined in the following Supreme Court decisions:

- (1) UOI & Ors. Vs. L.V. Vishwanathan - 1998(1) ATJ 173.
- (2) Chairman, Rly. Board Vs. C.R. Rangadhamaiah - JT (1997)(7) SC 180.
- (3) Commander Head Quarter, Calcutta & Ors. Vs. Capt. Biplabendra Chandra - JT 1997(10) SC 371.

The decision in Item No.2 above has been considered in Item No.1. Vishwanathan's case (supra) dealt with fixation of pension of those who retired between 01.01.1986 to 30.06.1987. All such employees were given option either to chose pension as per terms prior to 01.01.1986 as per old formula or to chose pension given to those who retired after 30.06.1987 as per new formula. Reversing the order of CAT, Hyderabad Bench, the Supreme Court held that the OM dated 14.04.1987 which was modified with retrospective effect is not pre-judicial. I shall do no better than to cite the operative paragraphs because this will show how the Hon'ble Supreme Court has distinguished its own earlier decision: -

"8. It is contended by the appellants that the changes consequent upon the Fourth Central Pay Commission Report have to be taken as a package. By accepting the revised pay scales with retrospective effect from 1.1.1986 the Central Government Employees got benefits in pay, pension and gratuity from 1.1.1986. When they take these benefits retrospectively from 1.1.1986 they cannot reject a part of that package which is "disadvantageous" to them. In fact, the actual pension which the respondents got is much more than what they would have got had they opted for the old rules prevailing when the old pay scales were in force. In the Office Memorandum of 14.4.1987 there is a specific provision for people like the respondents who have retired after 1.1.1986 but before 30th of June, 1987 (i.e. the period prior to the Office Memorandum) giving them an option either to retain their old pay scales and the old benefits which they were getting or to opt for their new pay scales and get benefits as per the new scheme. So that in those cases where the retrospective operation of the "package" causes any prejudice, the employee can reject it and retain his old benefits.

9. A Constitution Bench of this Court has recently, in the case of Chairman, Railway Board & Ors. Vs. C.R. Rangadhamaiah &

Ors. (JT 1997(7) SC 180), considered as situation where a retrospective effect was given to a reduced percentage of running allowance being taken into account for determining average emoluments for pension of railway employees. The Constitution Bench has held that pension would have to be calculated on the basis on which it was required to be calculated on the date when the person retired. A more restrictive formula for calculation of pension was held as arbitrary and violative of Articles 14 and 16 to the extent that it was made applicable with retrospective effect. In the present case, however, there is a clear nexus between the upward revision in the pay scales and the new formula for calculating pension. Both are given with retrospective effect from 1.1.1986. The Office Memorandum which changes the formula for pension also provides that those who retired after 1.1.1986 but before the issuance of the Office Memorandum would have the option to get their pension determined under the then existing rules on the basis of emoluments they were then getting. The effect is that (1) those who retired prior to 1.1.1986 got old emoluments and pension as per the old formula (2) those who retire after 30.6.1987 get new pay scales and pension as per new formula and (3) those who retire between 1.1.1986 and 30.6.1987 have the option to choose to be with either those in (1) or those in (2) whichever is more advantageous to them.

10. The respondents want to carve out a fourth category. Those who retire between 1.1.1986 and 30.6.1987 should have the new pay scales and also the more liberal old formula for calculating pension as applied to the new pay scales. If this is accepted, those who retire between 1.1.1986 and 30.6.1987 will get higher pension than all those who have retired before 1.1.1986 as also all those who retire after 30.6.1987. There is no justification for conferring such higher benefits only on a small group that retired between 1.1.1986 and 30.6.1987. The Office Memorandum, therefore, rightly gives them the choice, to obviate any prejudice to this small group. The retrospective operation of Office Memorandum, therefore, cannot be considered as prejudicial to this small group as it has made an express provision to prevent any actual prejudice to this group. The ratio of the decision of this Court in *Chairman, Railway Board Vs. Rangadhamaiah* (supra) does not, therefore, apply in the facts and circumstances of the present case."

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The above decision lays down that an option having been exercised once cannot be called into question only to reap a subsequent benefit by a higher pay package. In Chairman, Rly. Board Vs. C.R. Rangadhamaiah (supra) the respondent retired on 18.05.1982. He was found not eligible for pension under existing rules. The revision of rules took place from 01.01.1986. The applicant's claim for pension on the basis of revised rules was rejected. He pleaded before the Hon'ble Supreme Court that this rejection was arbitrary and discriminatory. The Supreme Court held that unlike in D.S. Nakara's case the prescription of date is neither arbitrary nor unreasonable. The retiree cannot stake a claim on the basis of revised rules as he had not been found eligible and he cannot be made eligible retrospectively.

8. There is another case available of the Hon'ble Supreme Court in State of Rajasthan & Ors. Vs. Noor Bano - JT 1997(10) SC 581 wherein it was held that the additional relief under GOI dated 02.12.1989 would not be available to the pre 01.01.1986 pensioners whose consolidated pension is below Rs.300/-. The above decision lays down:

"We, therefore, hold that the additional relief visualised by the Government Order of December 2, 1989 would not be available to those pre-01.09.1986 pensioners whose consolidated pension is below to Rs.300/-, beyond that, reflected in Annexure 'A' or for that in Annexure 'B'. To look into the matter beyond doubt, we observe that the first four categories of Government employees, about whom mention has been made in Annexure 'A' and first five mentioned in Annexure

[Signature]

"B" would not receive, even by notice of the Government Order of December 2, 1989 anything beyond Rs.300/-." (Para 5)

There is no prejudice caused to the applicant. Minimum pension may be raised by the different pay commissions but the right to the said minimum pension can accrue only when the retirement is before a particular date. Always pay packages apply to group of persons before a particular date. The fact that the implementation of the package was delayed would not change the rights of the persons.

9. In view of the above, the decisions of the Jaipur Bench and the Calcutta Bench have to be held to be decided incorrectly. Now that the Supreme Court has laid down the law, I have no hesitation in holding that the Madras Bench and the Hon'ble Single ~~Member~~ of Principal Bench had rendered a correct decision on the subject. I shall, therefore, follow the law laid-down by the Hon'ble Supreme Court which again was summed up in a very recent decision in Commander Head Quarter, Calcutta & Ors. Vs. Captain Biplabendra Chandra - II 1997(1) SC 371. The placitum given the summary in a succinct manner. I shall, therefore, extract the same:

"Pension

Constitution of India - Articles 14, 16 and 136 - Pension - Retirement on 18.5.82 - Retiree not found eligible for pension under existing Rules - Revision of Rules from 1.1.1986 - Claim of pension on basis of revised Rules, on basis of discrimination and arbitrariness - Justification - Held that unlike D.S.Nakara's case prescription of date is neither arbitrary nor unreasonable. The retiree cannot stake

claim on basis of revised Rules as he had not been found eligible and he cannot be made eligible retrospectively."

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10. Once the applicant has exercised his option and as he has been absorbed as early as on 15.10.1974 in the REC Ltd. he earned the right to commutation of the pension on the date of his absorption. Mere delay in the payment of pension does not alter his rights. On completion of formalities, his pro-rata pension of Rs.92/- per month was capitalized for the sum of Rs.14296.80 under CDA(P) Corr.P.O.No. C/DAO/Corr/43191. This amount paid was referable to his date of permanent absorption. No rights to enhanced pension accrued to him on the date of his absorption. As the series of Apex Court's decisions show, different pay revisions conveying different sets of benefits are clearly applicable to a class of people who are covered by it. Employees who were absorbed under a Scheme dated 01.04.1975 laying down terms and conditions of permanent absorption cannot also get benefits under subsequent liberalized pay packages. The Hon'ble Supreme court has clearly ruled against deriving this dual benefit/advantage under two different Schemes. In my view the claim of the applicant cannot be upheld.

11. OA is dismissed. No costs.

(Signature)
(N. Sahu)
Member(A)
12/3/98

/Kant/