

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No. 2501/93, 1344/94
661/94, 1798/94

Decided on: 31/9/94

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R.K. CHHABRA & ORS.

..... APPLICANT(S)

(By Shri K.N.R. Pillai Advocate)

VERSUS

U.O.I. & Ors.

..... RESPONDENTS


(By Shri H.K. Gangwani Advocate)


CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~ ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? *Yes*
2. Whether to be circulated to other Benches of the Tribunal ?


(Dr. A. VEDAVALLI)
Member (J)


(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

New Delhi, dated the 31st January, 1996. (10)

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

O.A. No. 2501/93

1. Shri R.K. Chhabra,
S/o Shri Ganga Bishan,
24, Surya Niketan, Vikas Marg,
Delhi-110092.

2. Shri H.K.L. Handa,
S/o Shri Jhanda Rai Handa,
348, Sector VIII,
Pocket A-III, Rohini,
Delhi-110085.

3. Shri Yoginder Lal Sharma,
S/o Shri S.N. Sharma,
Flat No. 40, Pamath Apartment,
Plot No. 3, Bodella Phase I,
Vikas Puri, New Delhi-110018.

4. Shri H.P. Chaudhary,
S/o late Shri Ram Lal,
SF-153-B, Shastri Nagar,
Ghaziabad (U.P.).

(By Advocate: Shri K.N.R. Pillai) APPLICANTS

VERSUS

1. Union of India through the
Secretary,
Ministry of Railways (Railway Board),
New Delhi.

2. The General Manager,
Northern Railway,
Baroda House, New Delhi. RESPONDENTS
(By Advocate: Shri H.K. Gangwani)

O.A. No. 1344 of 1994

1. Shri A. Ananthan,
S/o late Shri V.S. Ramaswamy Iyer,
C-81, Pocket B, Mayur Vihar phase-II,
Delhi-110091.

2. Shri O.P. Chhabra,
S/o Shri Bhagwan Dass,
R/o M-97, Saket,
New Delhi-110017.

3. Shri V.N. Sharma,
S/o Shri S.P. Sharma,
E-3, Shahee Nagar, Agra, U.P.

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4. Shri O.P. Saini,
S/o Shri Satya pal saihi,
R/o C-81, Pocket B, Mayur Vihar Ph-II,
New Delhi.

5. Shri C.L. Mudgal,
S/o Shri P.N. Mudgal,
R/o 3760, Kuch parmanand,
Daryaganj, Delhi.

6. Shri S.N. Narang,
S/o Shri Girdhar Lal,
R/o No. 3227, Traha Baram Khan,
Kacha Tara Chand,
Daryaganj, New Delhi.

(By Advocate: Shri Pillai)

... APPLICANTS

VERSUS

1. Union of India,
through the Secretary,
Ministry of Railways (Railway Board),
New Delhi.

2. The General Manager,
Central Railway,
Bombay V.T.

(Shri O.P. Kshatriya, Advocate)

... RESPONDENTS

O.A. No. 661 of 1994

1. Shri H.R. Khokhar,
S/o Shri L. Krishan Gopal,
R/o 32, Staff Quarters Tibia College,
Karol Bagh, New Delhi.

2. Shri Madan Lal Sharma,
S/o Shri Mulkh Raj,
R/o A-39, Ashoka Enclave,
Near Peera Garhi Chowk, Rohtak Road,
New Delhi-110044.

3. Shri Kishan Kachuang,
S/o Shri Idan Singh,
R/o No. 22, Chisti Gaman,
Kishanganj, Delhi.

4. Shri Tilak Raj Bhardwaj,
S/o Shri Bodhiraj,
R/o 942, A, FF, HIG, Housing Board Colony,
Sector 29, Faridabad, HARYANA

5. Shri Jagdish Chand,
S/o Pt. Behari Lal,
R/o House No. 11, Arya Nagar,
Ghaziabad.

6. Shri Satya prakash,
S/o Shri Banwari Lal,
R/o 7/51, Sector II,
Rajinder Nagar, Sahibabad-201005.

7. Shri Bansar Lal,
S/o Shri Ram Kishan,
R/o III-H/342, Nehru Nagar,
Ghaziabad.

8. Shri Arjun Dass Rajput,
S/o Shri Kharga Ram,
R/o Block P, House No. 58,
Surya Nagar, Ghaziabad.

9. Shri Daljit Singh,
S/o Shri Gurdit Singh,
WZ-36, Plot No. 36, Vishnu Park,
New Delhi-110018.

10. Shri Mova Singh,
S/o Shri Mool Singh,
R/o 131/5, DCM Railway Colony,
New Delhi.

(By Advocate: Shri Pillai) ... APPLICANTS

VERSUS

1. Union of India through
the Secretary,
Ministry of Railways (Railway Board),
New Delhi.

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

(None appeared)

.... RESPONDENTS

✓ O.A. No. 1798 of 1994

1. Shri Chaman Lal,
S/o Shri Piera Lal,
R/o 534-35/A, Regiment Bazaar,
Ambala Cantt.

2. Shri N.B. Muniyatha,
S/o Shri Baleiah,
R/o 421/12-20, Dayalbagh,
Ambala Cantt.

3. Shri Rambir Vaid,
S/o Shri Girdhari Lal,
R/o B-15, New Vijay Nagar,
Sector 9, Ghaziabad.

4. Shri Brijinderjit Singh
S/o Shri Sujan Singh,
R/o B-8/60, Patel Nagar,
Saharanpur.

5. Shri S.L. Tejpal,
S/o Shri Amar Chand Tejpal,
R/o @-10/94, Raj Nagar,
Ghaziabad.

6. Shri Chaman Lal,
S/o Shri Khairati Lal,
R/o @-7/116, Rajnagar,
Ghaziabad.

7. Shri Om Prakash,
Shri R.L. Prakash,
R/o B-8/60, Patel Nagar,
Saharanpur.

8. Shri Banarasi Dass,
S/o Shri L. Mulkh Raj,
R/o H. No. 92, Line No. 3,
Ghupuri, Ghaziabad.

9. Shri Niranjan Singh,
S/o Shri Minhan Singh,
R/o 44, Om Sharda Colony,
Sunder Nagar, Ambala Cantt.

10. Shri Om Prakash Kalra,
S/o Shri Nandlal Kalra,
R/o, Kalra Bhawan, Chander Nagar,
Moradabad.

11. Shri Raj Narain,
S/o Shri Nathu Ram,
R/o 14-A, MIG Flats,
Dilshad Garden,
Delhi.

12. Shri Daulat Singh Sisodia,
S/o Shri Baloo Singh,
R/o Jha Six, Housing Board,
Bhagat Ki Khothi Extension,
Jodhpur

13. Shri Chandra Singh,
S/o Shri Pratap Singh,
R/o 109, Kusam Bhawan,
Sector-7, Jodhpur.

14. Shri Suraj Karan Sisodia,
S/o Shri Panchoo Singh,
R/o C-31, Panchwati Colony,
Jodhpur.

15. Shri Sohan Singh,
S/o Shri Gurbux Singh Banga,
R/o Vill. Mukhlana,
Distt. Hoshiarpur, Punjab.

... APPLICANTS

(Advocate for all: Shri K.N.R.Pillai)

VERSUS

1. Union of India through
the Secretary,
Ministry of Railways (Railway Board),
New Delhi.

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

.... RESPONDENTS

(By Advocate: Shri H.K. Gangwani for respondents in
O.A. 2501/93 & 1798/94)

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

As these four OAs involve common questions
of law and fact, they are being disposed of by this
common judgment.

2. The applicants in all these OAs are

retired Loco Inspectors, Indian Railways, and have impugned the words " with effect from 1.1.93 " occurring in paragraph 5.5 of Respondents' Circular dated 25.11.92 (Annexure-A1) and have sought a direction that all Loco Inspectors pensioners will be entitled from 1.1.93 to have their pensionary benefits worked out with the add on element of 30% of basic pay, and accordingly their pension and DCRG payable to them be recalculated and paid to them from that date .

3. The undisputed facts are that on the Indian Railways, there is a category of staff in the running cadre as defined in Rule 1507 of Indian Railway Establishment Code Vol III (1987 edition) which includes Drivers, Firemen and Shunters on the loco side and Guards and Brakemen (now Asstt. Guard) on the traffic side. These running staff are entitled to an allowance called Running Allowance for the performance of duties directly connected with the charge of a moving train. This allowance is paid according to the distance covered in kilometers by them in the train in the performance of running duties. The pay scales of these running staff are traditionally considered to be depressed, as a part of their pay is earned through performance of running duties. This pay element is identified as 30% of the basic pay which is reckoned for various purposes for the running staff like payment of HRA, CCA, DA etc. For retirement purposes, 55% of the basic pay is added to the basic pay for running staff. The locomotive Drivers normally progress in the driving cadre as Goods Driver, Passenger Driver and Mail/ Express Drivers. All these categories of Drivers are also eligible for promotion as Loco Inspectors, Power Controllers, Crew Controllers etc. Their promotion

as Loco running Supervisor is subject to their option for such posts. Prior to 1.1.93, drivers on coming over as Loco Supervisors used to get their pay fixation on promotion in the new grade by adding 30% of the basic pay in the grade from which they were promoted, and then all other benefits admissible to the running staff ceased to be admissible to the Loco Supervisors. It was observed that the drivers were very reluctant to come as Loco Supervisors as the total emoluments taken into consideration i.e. basic pay plus Running Allowance drawn by them outweighed the emoluments drawn by them as Loco Supervisors. More-over on retirement the drivers got a weightage of 55% of the basic pay which is not admissible once they are promoted as Loco Supervisors. Though some of the Drivers still used to opt for the post of Loco Supervisors, a number of posts of Loco Supervisors remained unfilled and the local zonal railways, therefore had been filling up part of these posts by non-running categories of staff like the maintenance staff. The railway administration, however, felt that in the interest of the administration and efficiency, it would be desirable to fill up the posts of Loco Inspectors, Crew Controllers and Power Controllers only from out of the locomotive drivers. A scheme, therefore, had to be evolved to attract the loco drivers to join as Loco Inspectors, Crew Controllers and Power Controllers. The Railway Board in fact, appointed a committee of expert officers to consider the issue and make recommendations and resolve the situation. Based on the recommendations of the committee and in agreement with the recognised labour federations of the railways i.e. NFIR and AIRF, a New Scheme was ~~was~~ evolved, which was promulgated vide impugned circular dated 25.11.92 and took

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effect from 1.1.93. In the New Scheme, the posts of Loco Inspectors, Power Controllers, Crew Controllers are necessarily to be filled up from out of the Loco Drivers only and the Loco Inspectors in this scheme have been entitled to running allowance at the rates admissible to Mail/Express train Drivers for performance of duties of training and monitoring of drivers on the foot-plate of the locomotive cab of the moving train, as these duties are considered to be similar to the duties of the drivers. The Loco Inspectors have also been entitled to weightage of 30% of the basic pay for computation of retirement benefits. Since Power Controllers and Crew Controllers do not perform any running duties, they are not entitled to the Running Allowance and the weightage of 30% for retirement benefits. However, the Power Controllers and Crew Controllers drawn from the running side have been entitled to a special pay of Rs.300/- per month. Those of the Loco Supervisors who were drawn from the loco running side prior to the introduction of the New Scheme of 1.1.93 have been given an option to come over to the New Scheme or to stay as they are governed by the old conditions of service.

4. The applicants contend firstly that the duties performed by Loco Inspectors before 1.1.93 and after that date are the same, and as per Hon'ble Supreme Court's ruling in Mewa Ram Kanojia Vs. AIIMS (1989) 2 SCC 235 employees holding the same rank and performing similar functions cannot be denied equality. ^{in retirement benefits} Inter alia it is argued that even if before 1.1.93 Loco Inspectors were drawn from different sources and after 1.1.93 they are to be drawn from only one source namely drivers, the Hon'ble Supreme

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Court in S.C.Railway Vs, AVR Sidhanti -1974(3) SCR 207 have laid down that persons drawn from different sources , once they merge in the same cadre, constitute a single class and cannot be treated differently. Secondly it is argued that the pensioners governed by the same Pension Rules for a single homogeneous class and cannot be divided by an artificial cut off date when a liberalised formula for calculating pension is introduced, and much reliance is placed on the Hon'ble Supreme Court's ruling in D.S.Nakara Vs. UOI -1983(2) SLR 246. Thirdly the respondents' argument that the cut off date was integral to and unseverable from the New Scheme , is sought to be repelled again by quoting extensively from N.S.Nakara's judgment (Supra). Fourthly reliance is placed on Hon'ble Supreme Court's ruling in T.S.Thiruvengadam Vs. Secretary to the Govt of India- JT 1993(I) SC 609 in support of the proposition that if the object of the Scheme of revision of the formula for calculating pension of Loco Inspectors, was to attract drivers to accept promotion as Loco Inspectors and that Loco Inspectors who retired earlier, form a different class from those who retired after that date, Thiruvengadam's judgment(Supra) makes all those Central Govt. employees who were absorbed in P.SUs either before or after the prescribed cut off date, (in that case 16.6.67), eligible to the benefits flowing from the impugned memorandum. Fifthly it is argued that the cut off date of 1.1.93 has no nexus with the object of the liberalisation of the pension formula for Loco Inspectors, and hence the same is arbitrary.

5- On the other hand the respondents argue that

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the revised formula for calculating pension of Loco Inspectors is part of and inseparable from the New Scheme which was introduced w.e.f. 1.1.93, whereby those who have put in 10 months of service under the new Scheme will get the full benefits; those with less than 10 months under the new Scheme will get proportionate benefits and those who retired prior to 1.1.93 will derive no benefits. Reliance has been placed by the respondents on the Hon'ble Supreme Court's decision in UOI Vs. P.N.Menon - 1994(4) SCC 68 where the cut off date of 30.9.77 for treating a portion of DA as pay in respect of Govt. servants who retired after 30.9.77 was upheld and D.S.Nakaras' case distinguished.

6. We have heard Shri Pillai for the applicant, and Shri Kshatriya as well as Shri Gangwani for the respondents at length and have given the matter our very careful consideration.

7. As the applicants have relied mainly on the Hon'ble Supreme Court's judgment dated 17.12.82 in D.S.Nakara's case (Supra), we have to determine how relevant that judgment is in respect of the present OAs before us. On 25.5.79, the Finance Ministry GOI issued O.M.No.F-19(3)-EV-79 whereby the formula for computation of pension was liberalised, but made it applicable to Govt. servants who were in service on 31.3.79 and retired from service on or after that date. The formula introduced a slab system for computation of pension. This liberalised pension formula was applicable to employees governed by the CCS(Pension) Rules, 1972 retiring on or after that date. The pension for service(Army, Navy and Air Force Staff)

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personnel was governed by Defence Ministry's O.M. dated 28.9.79, whereby the liberalised pension formula introduced for the Govt. servants governed by the CCS (Pension) Rules, 1972 was extended to the Armed Service personnel subject to the limitations set out in the OM with a condition that the new rules of pension would be effective from 1.4.79 and would be applicable to all service officers who become/became non-effective from that date. The petitioners in those cases had contended (paragraph 7 of the judgment) that the Hon'ble Supreme Court may consider the *raison detre* for payment of pension. If the pension was paid for past satisfactory service rendered, and to avoid destitution in old age, as well as a social welfare or socio-economic justice measure, the differential treatment for those retiring prior to a certain date and those retiring subsequently, the choice of the date being wholly arbitrary, would be according differential treatment to pensioners who form a class, irrespective of the date of retirement, and therefore would be violative of Article 14. It was also contended that classification based on fortuitious circumstances which was not shown to be related to any rational principle would be equally violative of Article 14.

8. Their Lordships noted (paragraph 39 of Nakara's judgment) that neither impugned memorandum spelt out the *raison detre* for liberalising the pension formula, but going by the UOI's affidavit which stated that the liberalisation of pension was decided by Govt. in view of the persistent demand by the Central Govt. employees represented in the JCM Scheme, the implication was that the preliberalised pension did not provide adequate protection in old age

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and a further liberalisation was necessary as a measure of economic security, when Govt. responded favourably to the demand, it thereby ipso facto conceded that there was a larger available national cake, part of which could be utilised for providing higher security to erstwhile Govt. servants who would retire, and Govt. also took note of the fact that continuous upward movement of the cost of living as a sequel to inflationary inputs and diminishing purchasing power of the rupee necessitated upward revision of pension. If that was the underlying intendment of the liberalisation of pension scheme, could anyone be bold enough to assert that it was good enough only for those who would retire subsequent to the specified date, but those who had retired prior to that date did not suffer the pangs of rising prices and falling purchasing power of the Rupee? Their Lordships also noted the salient features of the pension liberalisation scheme. Whereas earlier the average emoluments of 36 months service preceding the date of retirement provided the measure of pension, the liberalised scheme reduced it to the average of the provisions 10 months emoluments. Secondly the liberalised scheme introduced a slab system for computation of pension, and thereby the pension ceiling of Rs.1000/- p.m. was raised. Their Lordships noted (Paragraph 37 of the judgment) that those who retired prior to the specified date would suffer triple ^{namely} disabilities, namely, proportionately lower average emoluments; absence of slab system; and lower ceiling. It was in this background that their Lordships held (paragraph 39) that while Govt. was perfectly justified in liberalising the pension scheme, there was no justification for arbitrarily selecting the criteria for the benefits of the scheme and dividing the pensioners, all of whom would be retirees, but falling on one or the other side of the specified date.

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9. Unlike in Nakara's case, where the *raison detre* of the liberalisation in the pension Scheme was nowhere mentioned in the two impugned memoranda, but impliedly appears to have been formulated as a measure of economic security and to mitigate the rising cut of living which naturally affected all retirees, whether they fell on this or that side of the specified date, the *raison detre* of the impugned circular dated 25.11.92 is to be found in its first paragraph itself, namely to tackle the problem faced by the Railway Administration in not being able to fill up posts of Loco Running Supervisors.¹ Thus while the basic thrust of the two Memoranda in Nakara's case was to liberalise the existing pension scheme to provide greater economic security and mitigate the sufferings faced by pensioners because of rising prices,^{the} objective of the impugned Circular dated 25.11.92 was to introduce a New Scheme to make the posts of Loco Running Supervisors attractive enough for those who want to come over from the Running Staff side.¹ In the former case, a 48 hr. difference would have a traumatic effect, as pointed out by their Lordships (para 42 of the judgment in Nakara's case) because those who had retired a day before the specified date would be subject to a pensionary ceiling of Rs.8100/- p.a. and pension fixed on 36 months average emoluments, while those retiring on or after the specified date would have a pensionary ceiling of Rs.12,000/- p.a. and pension calculated on 10 months at emoluments which would be higher than if it were averaged on 36 months emoluments. It is for this reason that the Hon'ble Supreme Court had held this cut off date to be arbitrary and unprincipled and to have no rational

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nexus with the object sought to be achieved viz., providing economic security and mitigating rise in prices. No such traumatic effect or multiple disabilities are discernible in the impugned Circular dated 25.11.92 whose basic objective is quite different, namely to attract running staff to join as Loco Supervisors, for which purpose a New Scheme has been announced and it is only one of the components of that Scheme, that w.e.f. 1.1.93 Loco Inspectors would get the add on benefit of 30% of their basic pay for computation of retirement benefits. Even that 30% add on benefit would be admissible in full only when the Loco Inspector completes 10 months of service after 1.1.93 before superannuation, and in respect of those who complete less than 10 months, they would get only proportionate benefits.

10. Thus it is evident that on point of objectives, context, raison detre, sailent features as well as effect, not to mention facts, in the impugned memoranda noticed by the Hon'ble Supreme Court in Nakara's case (Supra) are different and clearly distinguishable from the present case before us. Hence in our view the judgment in Nakara's case (Supra) does not help the applicant.

11. In this connection, we may further note the applicants are seeking relief of deletion of the words "with effect from 1.1.93" in paragraph 5.5 of impugned circular dated 25.11.92, but in atleast two other places (paragraphs 2 and 8.1) it is stated that the New Scheme which this circular announces, would be effective from 1.1.93 and hence mere deletion of the above words from paragraph 5.5 as prayed for may not be adequate. Furthermore, as stated above the Scheme envisages that the 30% add on benefit of basic pay

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for retirement benefits, would be admissible only to those who put in full ten months' service as Loco Inspectors after 1.1.93. Those who put in less than ten months would get only proportionate benefits. If the relief prayed for, of deletion of words "w.e.f. 1.1.93" from paragraph 5.5 of impugned circular dated 25.11.92 were to be allowed, we would arrive at a situation where those who retired before the New Scheme came into effect from 1.1.93 would get the full benefit of 30% add on element; those who came over after 1.1.93 under the New Scheme but retired before completing 10 months would get only prorata benefit of add on element; while those who came over after 1.1.93 under the New Scheme and completed the full 10 months' service under it before superannuation would again qualify for the full benefit of 30% add on element. This itself would create a highly anomalous situation, which besides being dissonant with objectives of the Scheme which has been formulated in consultation with the recognised labour federations vis. NFIR & AIRF (paragraph 1 of impugned Circular dated 25.11.92) would be arbitrary and discriminatory and hence violative of Articles 14 and 16 of the Constitution.

12. We must now examine each of the grounds taken by the applicants in the light of the contents of paragraphs 7, 8, 9 and 10 above.

13. Even if, as contended by the applicants in their first ground and not denied by the respondents in their reply, that the duties performed by the Loco Inspectors before 1.1.93 were not different from those performed by them after 1.1.93, that alone would

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not entitle them to the relief claimed. The applicants who admittedly belonged to the running staff of the railways (para 4.1 of OA No.1344/94) received 30% add on benefit to their basic pay on being posted as Loco Inspectors as per the terms and conditions then prevailing, and retired prior to 1.1.93. At that point of time both running as well as non-running staff were eligible for posting as Loco Inspectors. By the impugned Circular dated 25.11.92 a new Scheme has been formulated effective from 1.1.93, which recognised that the existing terms and conditions were not sufficient to attract running staff as Loco Supervisors. Hence it has been decided by that scheme to fill up the posts of Loco Inspectors exclusively from amongst running staff, who in addition to the 30% add on benefit upon their posting as Loco Inspectors after 1.1.93, would get a further 30% add on benefit to their basic pay on retirement. This is a special incentive for running staff, to seek posting as Loco Inspectors, to bring their emoluments on retirement approximately on par with Drivers who get 55% add on benefit to their basic pay on retirement. Hence the applicants who retired before 1.1.93, are comparing themselves with those who were in service on 1.1.93 and were appointed as Loco Inspectors under the New Scheme, and who retired from there, and who would be entitled to the full 30% add on benefit (which the applicants are claiming) only if they completed the full 10 months under the New Scheme. It is clear that the two sets of persons are not comparable, more so because in that case those, who retired before 1.1.93 with even less than 10 months service as L.Is would also be eligible for the 30% add on benefit similar to those who retired after 10 months' service as L.Is w.e.f. 1.1.93. In that background, neither Kanojia's case (Supra)

nor Sidhant's case (Supra) advance the claims of the applicant. Hence this ground fails.

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14. Coming to the second ground, it is clear that the *raison detre* and facts in Nakara's case relied upon by the applicants are quite different and distinguishable from the present case, and that judgment therefore does not assist the applicants.

15. As regards the third ground, it is apparent that the scheme itself in its entirety comes into effect from 1.1.93. The impugned order introducing the scheme was issued on 25.11.92 and the Scheme was made effective prospectively from 1.1.93, that is the start of the New Year. Hence it cannot be said that the date was arbitrary or "chosen out of a hat". This date of 1.1.93 occurs at more than one place in the O.A., making it clear that all its features would be effective from 1.1.93 and mere deletion of the words "w.e.f. 1.1.93" in para 5.5 of the circular dated 25.11.92 as prayed for by the applicants would not be sufficient to grant their claims, because for instance in paragraph 2 itself it is stated that the decisions communicated herein take effect from 1.1.93. Thus this 30% add on benefit to basic pay is an integral part of the New Scheme particularly as it makes it clear, that the full 30% benefit would be admissible only where a Loco Inspector puts in at least 10 months service under the new scheme and those retiring before putting in 10 months service would be entitled only

to prorata benefit. It may be mentioned here that the applicants in their O.As have not sought quashing of that portion of paragraph 5.5 of the impugned circular dt. 25.11.92 which permits only prorata add on benefits for those who do not complete at least 10 months under the new scheme, and till that portion of paragraph 5.5 is quashed and set aside, no benefits would actually accrue to them.

16. As regards the fourth ground, reference has been made to Thiruvengadam's case (Supra) but in that case the Hon'ble Supreme Court had observed that "the object of bringing into extension the revised terms and conditions in the Memorandum dated 16.6.67 was to protect the pensionary benefits which the Central Govt. servants had earned before their absorption into public undertakings. Restricting the applicability of the revised memorandum only to those who are absorbed after the coming into force of the said memorandum would be defeating the very object and purpose of the Memorandum." In the present case there was no such purpose of protecting the pensionary benefits of any class of retired employees. What has been done by the impugned circular dated 25.11.92 is to give certain incentives to running staff to come over as Loco Inspectors, and one of the incentives also is enhanced pensionary benefits. Hence Thiruvengadam's case (Supra) does not assist the applicants either.

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17. Lastly it has been urged that the cut off date of 1.1.93 has no nexus with the liberalisation of the pension formula for Loco Inspectors. As stated earlier the impugned Circular dated 25.11.92 is not merely a liberalised formula for Loco Inspectors. It is a circular which recognises the difficulty in filling up vacancies in the posts of Loco Supervisors; lays down that hereafter posts of Loco Supervisors will be filled up exclusively from personnel on the running side, and to make their coming over to the Loco Supervisors side attractive, provides certain incentives including a 30% add on benefits to basic pay for calculation of retirement dues to those who comes over as Loco Inspectors after 1.1.93, and put in at least 10 months service as such thereafter. Those who put in less than 10 months service as Loco Inspectors are entitled to only prorata benefit. It is clear that this provision has a rational nexus with the object sought to be achieved namely to make the post of Loco Inspectors attractive for running staff and cannot be said to be arbitrary and hence violative of Articles 14 and 16 of the Constitution.

18. Before parting with this case, we may mention that in UOI Vs. P.N.Menon 1994(4) SCC 68, upon which reliance has been placed by the respondents, the Hon'ble Supreme Court after noticing their judgment in Nakara's case (Supra) has observed as follows:

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"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 scheme in respect of post-date retirement benefits, if implemented with a cut-off, which can be held to be reasonable and rational 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.; and

"No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."

19. Applicants' counsel Shri Pillai has argued that the cut off date in P.N.Menon's case (Supra) of 30.9.77 for treating a portion of DA as pay was decided on the basis of the III Pay Commission's recommendation, that review should be made when the price index crosses 272 and as this crossing took place on 30.9.77, the Hon'ble Supreme Court held that the cut off date was not arbitrary. Hence Shri Pillai contends that the decision in P.N. Menon's case, which was based on the particular facts of the case, was in no way contrary to the earlier decision in Nakar's case.

20. We have already held that the objectives, *raison detre* and effects, not to speak of facts in Nakaras' case are quite different and distinguishable from the present cases before us and hence the Hon'ble Supreme Court's judgment in Nakaras' case does not help the case of the applicants. We have quoted extracts from the judgment in P.N.Memon's case to justify our view that whenever a New Scheme is launched (as in the present case) there has to be a cut off date, and such a cut off date should not be interfered with, unless it has been chosen entirely because of irrational and subjective

(29)

considerations. In the present case no such infirmities are visible, and if as a result of the introduction of such a Scheme, those who participate in it, and subsequently retire after having completed a certain specified period under that Scheme, and are thereby entitled to a certain add on element in their basic pay for purposes of pensionary benefits, those who retired or superannuated before the introduction of the scheme cannot legitimately claim for a similar add on element in regard to their own pensionary benefits.

21. These OAs therefore fail and are dismissed. Let copies of this judgment be placed in all the OAs' case records. No costs.

(DR.A.VEDAVALLI)
MEMBER (J)

(S.R.ADIGE)
MEMBER (A).

/ug/

Prasanna Kumar
2/1/96

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