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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 1981/89

New Delhi: Dated this the 30<sup>th</sup> day of October, 1998

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

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

1. Trans Yamuna Pensioners Association,  
Sreshtha Vihar,  
New Delhi - 092.  
( Represented through its President  
Shri R. S. Maunder, I. A. & A. S. (Retd),  
121, Sreshtha Vihar,  
New Delhi - 092.

2. Shri R. S. Maunder,  
I. A. & AS (Retd.),  
121, Sreshtha Vihar,  
New Delhi ..... Applicants.

(By Advocate: Shri B. S. Mainee )

Versus

Union of India,  
(Service to be effected through)  
Secretary to the Govt. of India,  
Department of Pension and Pensioner's Welfare,  
Ministry of Personnel, Public Grievances &  
Pension,  
North Block,  
New Delhi- 01 ..... Respondents.

(By Advocate: Shri P. H. Ramchandani).

ORDER

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

In this OA, applicants' association had sought the following reliefs:

- a) to call for the record of the case relating to the issue of respondents' Deptt. OM dated 14.4.87 and 16.4.87 and that relating to the disposal of representations dated 18.5.88, 19.5.88 and 20.5.88.
- b) To allow the application.
- c) To direct the respondent that para 5 of the Govt. of India OM dated 16.4.87 in so far as it tends to restrict the benefit based

on addl. recalculated pension to pensioners who retired prior to 1.1.86 be amended retrospectively and the benefits of relief/computation on addl./recalculated pension be extended for all purposes relating to pensionary benefits from 1.1.86.

- d) To direct the respondent to examine and issue necessary instruction as regards recalculation of family pension as per revised percentage and revised limits and also to examine the ambiguity in para 10.14 and 10.15 of Chapter 10 of Part II of the Commissions Report and Govt. orders issued thereon and issue necessary instructions, guidelines or corrigendum. So as to increase the quantum of relief to 204/153/132 per cent of recalculated pension/ family pension at 50/30/20/15/ per cent as the case may be equivalent to 100/75/65 per cent neutralisation of price rise of 204 per cent from CPI 200 to CPI 608.
- e) To direct the respondent to arrange payment of necessary monetary benefits arising out of (c) and (d) above to all the affected pensioners along with interest at market rate per annum thereon from the date of their becoming due to the date of their actual payments.
- f) To grant such and other reliefs as may be

deemed fit in the facts and circumstances of the case and in the interest of justice;

2. It is not denied that during the pendency of this OA, and pursuant to the recommendations of Vth Pay Commission, Deptt. of Personnel & Training had issued OM dated 10.2.98, a copy of which is taken on record, as a result of which the only grievance now surviving is in respect of what is contained in para 6 of the aforesaid OM, namely limiting the admissibility of arrears on account of revision of pension/family pension on notional fixation of pay to the period after 1.1.96.

3. When the case had come up for hearing, we had asked applicants' counsel Shri Mainee on 21.5.98 that in view of the fact that respondents had issued the aforesaid OM dated 10.2.98 during the pendency of the O.A., was it not appropriate for applicants Association to amend their OA specifically to impugn Para 6 of the aforesaid OM, and to make a specific prayer in respect of grant of arrears admissible for the period prior to 1.1.96? Shri Mainee had stated that as applicants had filed this OA as far back as 1989, regardless of the contents of the aforesaid O.M., the grievances of the applicants had to be adjudicated upon, one of which was the grant of arrears of pension and it was therefore not necessary to amend the OA, specifically to impugn aforesaid para 6.

4. We had asked respondents' counsel Shri P.H. Ranchandani to clarify respondent's stand on the claim of the applicants Association for arrears of pension,

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and in this connection respondents had filed an additional affidavit dated 14.7.98, to which applicants Association had also filed its reply on 3.8.98, both of which are taken on record.

5. We have heard both sides.

6. The main thrust of Shri Mainee's arguments as contained in applicants' reply affidavit dated 3.8.98, is that this OA had been filed in 1989, when the representation filed by applicants Association against discriminatory treatment was rejected. This OA had been admitted but an MA for early hearing was rejected, and when the OA finally came up for hearing in 1996/1997, respondents sought an adjournment on the ground that Govt. had suo moto taken decision regarding the relief claimed by applicants. Ultimately respondents had issued O.M. dated 10.2.98 by which the principle of parity in pension between pre and post 1986 retirees had been accepted. The applicants had been fighting for parity right from 1989 and once the principle of parity was accepted by the respondents, applicants became entitled to arrears because they had been before the Tribunal since the last ten years and para 6 of the O.M. dated 10.2.98 could not thwart their claim. It was emphasised that the artificial division of homogenous class of pensioners and the resultant discrimination had come into effect from 1.1.86 itself, pursuant to respondents' decision on the recommendations of IV Pay Commission against which the applicants had represented time and again but without result, upon which they had filed the OA in 1989 within the prescribed time limit. Now the IV Pay

before the Tribunal, would be limited to rupees one crore and would not have any repercussions. Various rulings have been cited by Shri Mainee in support of these assertions including B.Malik and ors. Vs. UOI AIR 1983 Allahabad 209; UOI Vs. B.Malik & Ors SCC1984 (L & S) 354 dismissing UOI's appeal against the judgment in B.Malik's case (supra); Shri V.P.Gautama Vs. UOI SLR 1983(2) 346; All India Services Pensioners Association Vs. UOI ATR 1947 (1) 401; D.S.Nakara Vs. UOI AIR 1983 SC 130; and P.N. Jeevarathinam & Ors. Vs. UOI SC SLJ 1998(1) 235.

7. On the other hand respondents' counsel Shri Ramchandani has invited attention to respondents' affidavit dated 14.7.98 and has stated that in implementation of the V Pay Commission recommendations in regard to parity between pre and post 1986 retirees, Govt. by orders dated 10.2.98 have revised the pension of pre 1986 pensioners/family pensioners based on notional pay fixation on 1.1.86 as recommended by the Commission. It is stated that the Commission had also recommended that its various recommendations may be given effect to from 1.1.96 and Govt. had also accepted this recommendations and had decided to extend the benefit of pension revision of pre 1986 pensioners based on their notional pay as on 1.1.86 w.e.f. 1.1.96. It is emphasised that giving retrospective effect to one of the recommendations of the V Pay Commission which was an expert body and whose terms of reference included an examination of the pension and death cum retirement benefits, would not only involve addl. financial liability but would have wide repercussions on other recommendations, and

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it was the settled position as per law that matters having financial implications had to be finally decided by the Executive. Shri Ramchandani has also cited various rulings including A.K.K.Lal Vs. UOI & another -O A No.1196/96 decided on 29.6.98; Hari Ram Gupta (D) through L.R.Kasturi Devi Vs. State of U.P. -JT 1998(5)SC 127; UOI Vs. BPN Menon JT 1994 (3) SC 26; India Ex League Vs. UOI JT 1991(1) SC 243; All India Reserve Bank Retd. Officers Association Vs. UOI JT 1991 (6)SC 400; K.Kumar Vs. UOI JT 1990(3) SC 173; D.S.Nakara Vs. UOI 1983(2) SLR 246; and Dr. V.Balasubramaniam Vs. UOI & Ors. O A No.729/87 decided on 13.12.90 by CAT Bombay Bench.

8. We have considered the rival contentions carefully.

9. The arrears of pension from 1.1.86 can be granted to applicants only if para 6 of the O.M. dated 10.2.98 is quashed and set aside, but as discussed above, the aforesaid O.M. dated 10.2.98 has not even been impugned by any amendment sought in the O.A. That apart, para 6 of O.M. dated 10.2.98 would be liable to being quashed and set aside only if applicants can successfully establish that it is illegal, arbitrary, discriminatory, malafide or otherwise violative of Articles 14 and 16 of the Constitution.

10. No law, rule or instruction has been shown to establish that the contents of para 6 of the aforesaid O.M. dated 10.2.98 confining the arrears of pension to 1.1.96 offends the same and is therefore illegal. In so far as the contents of this para being arbitrary or unreasonable are concerned, the decision to grant parity between pre and post 1986 retirees

was one of the recommendations of the V Pay Commission which Govt. has accepted. The V Pay Commission had recommended that its recommendations be given effect to from 1.1.96 and its recommendations regarding pension along with its other recommendations have all been put into effect from 1.1.96. The basic grievance of applicant Association was regarding the anomaly between pension of pre and post 1986 pensions. That anomaly has now been removed by issue of OM Dated 10.2.98. Even if that anomaly arose as a result of respondents' decision on the recommendations of the 4th Pay Commission effective from 1.1.86 against which applicants moved this Tribunal in 1989, it does not give them an enforceable legal right to claim arrears from the date the anomaly arose. It is not arbitrary or unreasonable for respondents to fix a cut off date, taking into account the totality of the facts and circumstances of the case including the financial resources available with the Govt. The Hon'ble Supreme Court itself in its order dated 19.9.95 in W.P.No.1026/88 has used the words 'reasonable retrospectively' as noticed in para 6 above, and if respondents by their OM dated 10.2.98 have granted the benefits retrospectively w.e.f. 1.1.96 it cannot be said that this is unreasonable, particularly when the other recommendations of the V Pay Commission have been put into effect from 1.1.96. It is also not discriminatory, because it has been made uniformly applicable from 1.1.96. In fact applicants' contention that the grant of the benefits if confined to themselves alone would involve an additional expenditure of only rupees 1 crore

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and would not have wide repercussions implies that they seek to be treated as a separate group. This would mean that differential treatment is being given to applicants, resulting in the creation of a class within a class, which itself would be discriminatory and violative of Articles 14 and 16 of the Constitution.

11. It is also not applicants' case that this decision dated 10.2.98 is malafide, and in any case no malafides have been alleged against anyone.

12. Nothing has been brought to our notice to establish that this decision dated 10.2.98 is otherwise violative of Articles 14 and 16 of the Constitution.

13. In the light of the above, the DA warrants no interference. It is dismissed. No costs.

*A. Vedavalli*  
(DR. A. VEDAVALLI)  
MEMBER(J)

*S. R. Adige*  
( S. R. ADIGE )  
VICE CHAIRMAN(A).

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