

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 213/1989.

DATE OF DECISION: 12.4.1991.

Arun Kumar Gupta

....

Applicants.

v/s.

Chairman, Railway Board,
and Others

....

Respondents.

CORAM: Hon'ble Mr. G. Sreedharan Nair, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri Sanjay Parikh, counsel for the applicant.
Shri O.N. Moolri, counsel for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair copy of the judgement? No.
4. Whether to be circulated to all Benches of the Tribunal or not? No.

Clerk
(P.C. JAIN)
Member (A)

(G. SREEDHARAN NAIR)
V.C. (J)

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(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

The applicant herein retired as Guard Grade-C from the Kota Division of Western Railway on 31.8.1980 (the date of retirement mentioned by him as 31.1.1980 in para 4. I of the O.A. does not appear to be correct). He is aggrieved that the respondents have denied to him 30 per cent of the Basic Pay in the nature of pay representing the element of running allowance, though such a benefit has been given to those members of the running staff who retired on or after 1.8.1981. Hence this application under Section 19 of the Administrative Tribunals Act, 1985, in which the applicant has prayed as below: -

- (a) Strike down the order dated 20.1.1988 and Railway Board's orders dated 17.7.81 and 5.6.84 fixing an arbitrary cut-off date w.e.f. 1.8.81 for payment of 30% of the basic pay representing the pay element in the running allowance;
- (b) to refix the pension of the applicant retrospectively w.e.f. 1.8.81 by giving him the benefit of Dearness Pay and pay plus 30% of the basic pay as running allowance.
- (c) award interest at the rate of 12% on the lump sum payment being awarded to the applicant; and

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(d) pass such further order(s) as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case. "

2. The respondents have contested this application by filing a reply and the applicant has filed a rejoinder thereto. We have perused the material on record and also heard the learned counsel for the parties.

3. The material on record shows that his pension has been calculated as below: -

Pay on the basis of average of preceding 10 months	=	Rs.530.00
55% of pay as Running Allowance	=	Rs.291.50
27% of pay as Dearness Pay	=	Rs.143.10
		<hr/>
Total	=	<u>Rs.964.60</u>

50 Per cent of the above has been sanctioned to him as pension. In addition, he would be entitled to relief on pension sanctioned from time to time to pensioners along with increase in the Dearness Allowance sanctioned by the Government. ~~As~~ per the rejoinder, his claim is that his pension should have been sanctioned as below: -

Basic Pay	=	Rs.530.00
55% of pay as Running Allowance	=	Rs.291.50
27% of pay as Dearness Pay	=	<u>Rs.143.10</u>
		<hr/>
Total	=	Rs.964.60
Plus 30% of Rs.964.60	=	<u>Rs.289.38</u>
		<hr/>
Grand total	=	<u>Rs.1253.98</u>

Pension calculation:

50% of Rs.1,000	Rs.500.00
45% of the balance	<u>Rs.108.00</u>
Total	<u>Rs.608.00</u>

4. During the oral submissions, learned counsel for the applicant conceded that the calculations as given in the rejoinder and as reproduced above are not correct

and he, therefore, does not press for the same. However, he urged that the benefit allowed to those members of running staff who retired on or after 1.8.1981 vide the Railway Board letter No.E(P&A)IL-82/RS-7, dated 5.6.84 have been denied to him and that the applicant's pension should be recalculated by allowing the same with effect from the date of his retirement. It is stated in order dated 5.6.84 that on receipt of references from various quarters, the question as to how D.P. receipt should be calculated for the purpose of retirement benefits in the case of running staff, after the introduction of the revised Running Allowance Rules w.e.f. 1.8.1981 has been re-examined by the Board and it has been decided that Board's letter of even number dated 9.12.1982 and 15.12.1982 should be treated as cancelled, and that while calculation of D.P. for retirement benefits in the case of running staff retiring upto 31.7.81 would be governed by the instructions contained in Board's letter No.PC-III/75/RA/1, dated 21.7.1980, D.P. for the purpose of calculation of retirement benefits in the case of running staff retiring on or after 1.8.1981 shall be calculated on pay plus 30% thereof. It was clarified that in the case of running staff retiring on or after 1.8.81, the emoluments would consist of basic pay plus 55% thereof as component of Running Allowance as a retirement benefit plus D.P. at the appropriate percentage calculated on Basic Pay plus 30% thereof. From the replies sent to the applicant in response to his representations, it appears that before 1.8.81, the D.P. was calculated on actual pay without taking any percentage of pay on account of Running Allowance into account. Thus, the question which falls for determination is whether the applicant is

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entitled to D.P. on pay plus 30% thereof, or only on pay. In the case of those members of running staff, who have retired on or after 1.8.81, D.P. is calculated on pay plus 30% of pay as element of Running Allowance. The applicant has already been allowed the benefit of 55% of pay as element of Running Allowance while calculating his Average Emoluments on the basis of orders which were applicable to those who retired on or after 1.4.79. According to the applicant, denial of the above benefit to him amounts to discrimination and the cut-off date of 1.8.1981 adopted by the respondents is arbitrary. In this regard, he has relied on the judgment of the Hon'ble Supreme Court in the case of D.S. NAKARA Vs. UNION OF INDIA (1983) 2 SCR 165. The respondents have stated in their reply that this judgment is not applicable to the case of the applicant.

5. In D.S. Nakara's case (supra), it was held that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. There should be "causal connection between the basis of classification and the object of the statute". It was also held that "A discriminatory action is liable to be struck down unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory." In the case before us, it is not disputed that the applicant belonged to the

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category of 'running staff' and that the orders issued in the letter dated 5.6.84 concern only the running staff of the Railways. However, it has to be seen whether the decision of the respondents to apply those orders only to those members of the staff who retired on or after 1.8.1981 has any rational basis and whether the basis ~~has~~ ^{is} any rational nexus to the object to be achieved. Learned counsel for the respondents urged that the "cut-off" date is rational inasmuch as it is directly linked up with the decision of the respondents on the recommendations of the Running Allowance Committee, which submitted its report in April, 1980 and the orders of the Railway Board on this report were issued in their letter No. E(P&A) II/80/RS-10, dated 17.7.81. The applicant has filed a copy of these orders as Annexure 'B' to the O.A. A perusal of these orders shows that the ~~various~~ ^{running} allowances which were being taken into account for various purposes, e.g., retirement benefits, leave salary, PTO & Privilege Passes, Medical Attendance etc., were gone into by the said Committee and the Railway Board's orders on its recommendations were announced. If the decisions on the admissibility and calculation of these allowances underwent changes as a result of the above process, it is natural that the benefits flowing therefrom have to be considered as a whole and not in piecemeal. It is in this context that the benefit of D.P. and Basic Pay plus 30% ^{as} running allowance has to be seen. The orders were made effective from a prospective date and, as such, no prejudice can be said to have been caused to those who were entitled to running allowance etc. under the earlier dispensation. There is also a casual connection between the classification and the objective of the orders issued. Thus, neither the cut-off date of 1.8.81 nor the classification among the pensioners of the running

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staff on the basis of that cut-off date can be said to be arbitrary.

6. In the case of KRISHENA KUMAR v. UNION OF INDIA AND OTHERS (Judgements Today - 1990 (3) S.C. 173), the petitioners, inter-alia, had argued that the option given to the P.F. employees to switch over to the pension scheme with effect from a specified cut-off date was bad as violative of Article 14 of the Constitution for the same reasons for which in Nakara's case (supra), notifications ^{were} read down. It was found that in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option as the specified date had been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. Their Lordships of the Supreme Court observed that this also appears to have been substantiated by what has been stated by the successive Pay Commissions. As in the case before us, there is a definite nexus inasmuch as the cut-off date is directly related to the decision on the recommendations of the Running Allowance Committee (in Nakara's case, the benefits allowed to the civilian and defence officers in the impugned notification were not in pursuance of recommendations of any Commission or Committee), it cannot be said to be arbitrary. As some element of discrimination is inherent in any classification in the broad sense of the term, a statute or order having statutory force does not become ipso-facto discriminatory if the classification fulfils the two-fold criteria of reasonableness and of nexus with the object sought to be achieved. In the case before us, for reasons already mentioned, we cannot hold the action of the respondents as discriminatory either.

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7. In view of the foregoing discussion, we find that the application is devoid of merit and the same is accordingly dismissed, leaving the parties to bear their own costs.

(See 1241/1991
(P.C. JAIN)
Member(A)

See 1241/1991
(G. SREEDHARAN NAIR)
V.C. (J)

12.4.1991.