

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 438/89 & 199  
 T.A. No. OA 2064/89

DATE OF DECISION 26.10.1990.

Shri R.S. Srinivasan

Petitioner Applicant

Shri V.P. Gupta,

Advocate for the Petitioner(s) Applicant

Union of India through the  
Ministry of Public Grievances &

Respondent

Shri P.H. Ramchandani Pension

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? 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 it needs to be circulated to other Benches of the Tribunal? No

(Judgement of the Bench delivered by  
Hon'ble Mr. P.K. Kartha, V.C.)

The applicant in both these applications, who has crossed the age of 90 years, is aggrieved by the decision of the Government of India in not giving to him the full retirement benefits. In OA-438/89, he has sought for inclusion of the D.A. drawn by him before retirement in the average emoluments and refixing his pension from 1.10.1977 and payment of arrears from 1.10.1977, as per the Supreme Court's judgement dated 17.12.1982 in D.S. Nakara Vs. Union of India, 1983 (2) SCR 165. In OA-2064/89, he has prayed for payment of arrears arising from the reduction from 36 months to 10 months in the calculation of average emoluments for refixing pension from 1.3.1976 to 31.3.1979.

2. The applicant was an officer belonging to the Indian Defence Accounts Service (IDAS). He retired as Deputy Controller of Defence Accounts, Secunderabad on 5.8.1953.

At the time of his retirement, he was drawing a monthly pay of Rs.1100/- in the scale of Rs.600-50-1100 with the D.A. of Rs.73.33. According to the rules then in force, the D.A. of Rs.73.33 was not taken into account for fixing his pension.

3. On 25.5.1979, the Government of India in the Ministry of Finance issued O.M. No.19(4)-EV/79 regarding "treatment of a portion of the Dearness Allowance as pay for the purpose of retirement benefits". According to the said O.M., in respect of Government servants who retired on or after 30.9.1977, the amount of dearness allowance indicated therein shall be treated as pay for the purpose and to the extent specified therein. For the pay range above Rs.300 and upto Rs.2157/-, the amount of dearness pay specified was 27% of pay subject to a minimum of Rs.108/- and a maximum of Rs.243/- (see 1979 SLJ, Journal Section, page 74).

4. On 25.5.1979, the Government of India in the Ministry of Finance issued another O.M. No.19(3)-EV/79 regarding "Liberalisation of the pension formula - introduction of slab system". According to the said O.M., in respect of the Government servants who were in service on 31.3.1979 and retiring from service on or after that date, the amount of pension shall be determined in accordance with the slabs specified therein. The amount of pension arrived at on the basis of the slabs will be related to the maximum qualifying service of 33 years. The maximum pension was restricted to Rs.1500/- p.m. (See 1979 SLJ, Journal Section pages 76-77). OK

5. The applicant's pension was revised in accordance with the liberalised pension formula and he was also given the arrears from 1.4.1979.

6. The question arises whether in terms of the judgement of the Supreme Court in Nakara's case, the applicant is entitled to some more benefits and, in particular, whether he can also claim the benefit of the O.M. dated 25.5.1979, whereby a portion of the dearness allowance is to be treated as pay for the purpose of retirement benefits. After careful consideration, we have come to the conclusion that he is not entitled to the benefit of treating a portion of his dearness allowance as pay for the purpose of his retirement benefits.

7. In Nakara's case, the Supreme Court referred to the O.M dated 25.5.1979 regarding liberalised pension formula and not to the other O.M. of the same date regarding treatment of a portion of dearness allowance as pay for the purpose of retirement benefits. There was no argument on the treatment of a portion of dearness allowance as pay or any observation by the Court on this aspect of the matter. In para.46 of the judgement, the Supreme Court observed that "only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force." In para.48 of the judgement, it has been observed that "In the case of existing pensioners, the pension will have to be recomputed by applying the rule of average emoluments as set out in Rule 34 (of the CCS(Pension) Rules, 1972) and introducing the slab system and the amount worked out within the floor and the ceiling". In para.49 of the judgement, it has been observed that "But we make it abundantly clear that arrears are not required to be made because to that extent, the scheme is prospective."

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8. The applicant has relied upon the judgement dated 31.10.1985 of the Gujarat High Court in Special Civil Application No.4694 of 1985. With respect, the judgement of the Gujarat High Court cannot be said to have laid down the law correctly in view of the observations made by the Supreme Court in Nakara's case, mentioned above.

9. There is, however, another aspect of the matter. The Government of India, Ministry of Finance, had issued O.M. No.F.18(10)-EV/81 dated 21.10.1983 on the "Application of Liberalised Pension Formula to pre-31.3.1979 pensioners - Implementation of the judgement of the Supreme Court". The said O.M. was issued to implement the judgement of the Supreme Court in Nakara's case (See 1984 (1) SLJ, Journal Section 3). The said O.M. stated that the pensioners with average emoluments upto Rs.1000/- may choose either to receive pension based on an ad hoc formula enumerated in para.6 thereof or may receive pension with reference to actual calculations based on service records. For this purpose, each such pensioner was required to exercise an option in the prescribed form, for one of the two alternatives within a period of six months from the date of issue of the O.M. The option once exercised shall be final. Those who failed to exercise the option within the stipulated period, would be deemed to have exercised the option to receive revised pension with reference to actual emoluments and qualifying service based on service and other record. Each pensioner who had been in receipt of pension as on 1.4.1979, was required to apply for <sup>along with the option in the prescribed form,</sup> a recomputation of his pension in the prescribed form, <sup>duly</sup> completed, to the Pension Disbursing authority/Bank/Post Office.

10. From the case files before us, it is not clear as to whether the applicant chose to receive pension based on the ad hoc formula enumerated in the O.M. dated 21.10.1983 or to receive pension with reference to actual calculation based on his service records. During the hearing of the case on 10.9.1990, the learned counsel for the applicant stated that the applicant was receiving originally a sum of Rs.377/- p.m. as pension. From 1.4.1979, he is receiving a sum of Rs.527/- plus ad hoc increase. Having regard to the advanced age of the applicant, we direct the respondents (Controller General of Defence Accounts) to verify from the pension disbursing authority as to how the pension of the applicant was recomputed in terms of the O.M. dated 21.10.83. The pension disbursing authority should be asked to work out the amount of pension payable under the ad hoc formula as well as in accordance with the calculations based on the service records of the applicant, if the same is feasible. If, on such verification, it is found that adoption of either of the two methods is more beneficial to the applicant, he may be given the revised pension which is more beneficial to him from 1.4.1979, as a special case. The respondents shall carry out the above exercise as expeditiously as possible, but in no event later than two months from the date of receipt of this order. OA-438/89 and OA-2064/89 are disposed of with the above directions. There will be no order as to costs.

*D. Chakravorty*  
(D.K. Chakravorty)  
Administrative Member

26/10/1990

*Parmit*  
26/10/90  
(P.K. Kartha)  
Vice-Chairman(Judl.)