

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1673/88
T.A. No.

199

DATE OF DECISION 24.7.1991Common Cause Society & Another ~~Petitioner~~ ApplicantsApplicants in person Advocate for the Petitioner(s)

Versus

Union of India through Miny. of
Public Grievances & Pensions RespondentShri P. H. Ramchandani Advocate for the Respondent(s)

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

The Hon'ble Mr. B. N. Dhoundiyal, 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? / MC
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P. K. Kartha, Vice-Chairman)

This application has been filed on behalf of pre-1973 pensioners. The relief sought is that the scope and benefit of the judgement of this Tribunal in the case of All India Services Pensioners Association (Rajasthan) Vs. Union of India given on 5.8.1986 insofar as these are related to the question of increasing the ceiling of pension from Rs. 675/- to Rs. 1,000/-, should be extended to all Central Government pensioners who retired before 1.1.1973 to the extent and for the period

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that they have not derived this benefit.

2. The respondents have not filed any counter-affidavit on the ground that the issues raised by the applicants are the subject matter of Civil Appeal No.897/87 filed by the Union of India in the Supreme Court, which was then pending. At the hearings held on 23.11.1989, 22.1.1990, 16.7.1990, 20.11.1990, 27.2.1991 and 14.5.1991, none appeared on behalf of the applicants. The case was listed for further directions on 30.5.1991, when none appeared for the applicants and Shri P.H. Ramchandani, Senior Counsel, appeared for the respondents.

3. The learned counsel for the respondents has placed before us a copy of the order passed by the Supreme Court on 25.4.1991 in Civil Appeal No.897/87, the Union of India Vs. All India Services Pensioners Association & Another. He submitted that in view of the said order passed by the Supreme Court, the applicants before us are not entitled to the relief sought by them.

4. We have gone through the records of the case carefully. The brief facts of the case are that in 1973, the Government of India extended certain pensionary benefits to the Central Government pensioners. These comprise the

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following:-

- (i) Ceiling on pension was increased from Rs.675/- to Rs.1,000/-.
- (ii) Maximum qualifying service for earning pension was enhanced from 60 completed six-monthly periods to 66 completed six-monthly periods.
- (iii) The ceiling limit for death-cum-retirement gratuity was raised from 15 to 16½ times the emoluments; and
- (iv) Formula for determination of family pension was revised.

5. The above benefits were made applicable to only those who retired after 1.1.1973 and those who had retired earlier, remained deprived of these benefits. The matter relating to pre-1973 pensioners was raised by the All India Services Pensioners Association (Rajasthan) in this Tribunal in All India Services Pensioners Association (Rajasthan Vs. Union of India (TA-853/85 arising out of C.W.P.No.2709/85). The said application was disposed of by judgement dated 5.8.1986, reported in 1987 (2) A.T.C., 706.

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6. In the petition filed by the All India Services Pensioners Association (Rajasthan), the following reliefs had been prayed for:-

(i) To declare that Rule 28(6) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, insofar as it tends to restrict pensioners to the retirement benefits to which they were entitled on the date of their retirement and seeks to deny them liberalised pension and gratuity under the amended Notification No.33/12/73/-AIS(II) dated 24.1.1975 (for short referred to as "The notification") with effect from 1.1.1973 as violative of the Fundamental Rights of the petitioners granted to them under the Constitution and all those Members of the All India Services who retired before 1.1.1973;

(ii) To direct the respondent to give the benefits of the liberalised pension and gratuity under the aforesaid notification and pay the arrears from the said date up to 31.3.1979 to all those members of the All India Services who retired before 1.1.1973 and for further direction to pay interest at the rate of 12 per cent per annum on the arrears found due and payable to these pensioners.

7. The Tribunal allowed the petition and held that Rule 28(6) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 insofar as it tends to restrict pensioners to retirement benefits to which they were entitled on the date of their retirement and seeks to deny them liberalised pension under the amended notification dated 24.1.1975, is violative of Article 16 of the Constitution and cannot have the effect of depriving the pensioners who have retired prior to 1.1.1973, the benefit of liberalised pension and gratuity. The Tribunal observed that all the members of the All India Services will be entitled to liberalised pensionary benefits, including gratuity as per the said notification, irrespective of whether they retired prior to 1.1.1973 or thereafter.

8. The Union of India preferred Civil Appeal in the Supreme Court against the aforesaid judgement of the Tribunal. In Union of India Vs. All India Services Pensioners Association, A.I.R. 1988 S.C. 501, the Supreme Court held that the Tribunal was in error in upholding that gratuity was payable in accordance with the notification dated 24.1.1975 to all those members of the All India Services who had retired prior to 1.1.1973.

9. As regards pension payable to those who had retired prior to 1.1.1973, the Supreme Court has rejected the claim of such pensioners in its order dated 25.4.1991 in Civil Appeal No.897/87 (Union of India Vs. All India Services Pensioners Association & Another). The rejection was on the ground that the claim was barred by limitation as the pensioners had sought relief in a legal forum after ten years of the announcement of the benefits.

10. The pensionary benefits which the applicants before us are seeking, were given to the pensioners who retired after 1.1.1973. The present application has been filed after a delay of several years for which no explanation has been given by the petitioners. The petitioners have referred to the decision of the Supreme Court in D.S. Nakara Vs. Union of India, A.I.R. 1983 S.C. 130. In Nakara's case, the question arose whether the liberalisation of pension which was effected in 1979, applies only to those who retired after 1.4.1979 and whether those who had retired prior to that date, remained deprived of these liberalisation benefits. The Supreme Court held that all pensioners governed by the Central Civil Services (Pension) Rules, 1972 and

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Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation, are not admissible.

11. It may be stated that in Nakara's case, the Supreme Court has observed that the judgement will not have any retrospective effect, so as to reopen all past cases. This is clear from paras 46, 48 and 49 of the judgement, in which the Supreme Court has observed as follows:-

"46.....Only the pension will have to be recomputed in the light of the formula indicated in the liberalised pension scheme and effective from the date the revised scheme comes into force."

"48.....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 C.C.S.(Pension) Rules, 1972) and introducing the slab system and the amount worked out within the floor and ceiling."

"49.....But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective."

12. The applicants have stated in the present application that the Government have issued orders implementing the decision of the Supreme Court in Nakara's case and have effected revision of pension of all the pre-1973 pensioners extending to them the benefits accruing to the

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post-1979 pensioners (vide page 5 of the paper-book).

13. The aforesaid revision of pension was effected by the Ministry of Finance's Office Memorandum No.F.18(10)-EV./81 dated 21.10.1983.

14. The pre-1973 pensioners also got the benefit of the revision of pension by virtue of the aforesaid Office Memorandum dated 21.10.1983. The relief sought in the present application is that the pre-1973 pensioners should also be given the benefit of increase of the ceiling of pension from Rs.675/- to Rs.1,000/-. In our view, such a claim is clearly barred by limitation. The applicants have not made out sufficient cause to explain the long delay in seeking redress from an appropriate legal forum.

15. On a careful consideration, we are of the opinion that the applicants before us are not entitled to the relief sought in the present application. The application is, therefore, dismissed. There will be no order as to costs.

B. N. Dholiyal

(B.N. Dholiyal) 24(719)
Administrative Member

Carried
24/7/81

(P.K. Kartha)
Vice-Chairman(Judl.)