

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT Sittings : INDORE



Original Application No.201/00741/2018

Jabalpur, this Thursday, the 02nd day of July, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Anant Narayan Bhatt,
S/o Late Mohanlal Bhatt
Age 86 years 35/7
Mitra Niwas Road Opp.
Riddhi Shiddhi Apartment
Near Geeta Mandir Ratlam 457001

-Applicant

(Applicant present in person)

V e r s u s

Union of India & Others
Represented by
1. Executive Director (PC)
Ministry of Railway Room No.507 (A)
Railway Board Rail Bhawan Raisina Road
New Delhi 110001

2. General Manager Western Railway
Headquarter Office Churchgate Mumbai 400020

3. Financial Adviser & Chief Account Officer
Western Railway Head Quarter Office
Churchgate Mumbai 400020

- Respondents

(By Advocate –Shri P.R. Bhatnagar)

(Date of reserving the order:-17.03.2020)



O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application has been filed whereby the applicant is challenging the order issued by respondents Nos.2 and 3 on 26.02.2018 (Annexure A/1) and 21.05.2018 (Annexure A/2) whereby the respondents have denied the pay scale of Rs.7500-12000/-, also denied grade pay of Rs.4800 and also pay scale of Rs.9300-39800/- with Grade Pay of Rs.4800/-.

2. The applicant has prayed for the following reliefs:-

“8.1 The letters issued by Respondents on 26-02-2018 and 21-05-2018 (Ann. A/1 & A/2) may kindly be quashed.

8.2 Respondents may kindly be directed to revise pension as per VIIth pay commission of the applicant on the basis of old PPOs issued from 1991 to 2015.

8.3 The Respondents may kindly be directed not to withdraw pay scale of Rs.7500-12000/- & Rs.9300-34800/- and also Grade Pay Rs.4800/- already granted in year 2009 should not be withdraw after 10 years.

8.4 Any other relief/reliefs as deemed fit in the interest of justice may kindly be allowed.

8.5 Cost of the O.A. may kindly be allowed.”



3. From the pleadings the facts are that the applicant was promoted as Personnel Officer on 29.12.1989 in the pay scale of Rs.2000-3500/- and retired after attaining the age of superannuation on 31.05.1991. At the time of retirement before V Pay Commission the pension of the applicant was fixed as Rs.1018/- in pay scale of Rs.2000-3500/-. Copy of PPO is annexed as Annexure A/3. On the basis of V pay Commission the pension of the applicant was fixed and revised as Rs.3750/- 50% in pay scale of Rs.7500-250-12000/-. Copy of PPO dated 17.07.1999 is annexed as Annexure A/5. On implementation of VI Pay Commission the pension of the applicant was revised and fixed Rs.8475/- in the pay scale of Rs.9300-34800/- with grade pay of Rs.4800/-. This revision of old pay scale Rs.7500-12000/-. Copy of PPO dated 02.04.2009 is annexed as Annexure A/6.

4. The administration revised the pension of the applicant as Rs.9375/-in pay scale of Rs.9300-34800/- with grade pay of Rs.4800/- on replacement of old pay scale of Vth Pay Commission Rs.7500-12000/-w.e.f.24.09.2012. Copy of PPO dated 28.06.2013 is annexed as Annexure A/7. Again the pension



of the applicant revised to Rs.9375/- in pay scale of Rs.7500-12000/- / 9300-34800/- with grade pay of Rs.4800/- revised. This revision taken place on account of judgment and effective from 01.01.2006. Copy of PPO issued on 13.10.2015 is annexed as Annexure A/8. This PPO revised on the basis of Railway Board's letter No.F(E)111/PN/1/12 dated 08.09.2008 and letter dated 11.02.2013 the copy of which are annexed as Annexure A/8. The applicant had given option to opt to come to new pay scale at the time of revision of pension on the basis of implementation of report of VI Pay Commission. The respondents in contravention of clear rules not implemented the orders of VII Pay Commission. As per Annexure A/1 & A/2 respondents Nos.2 and 3 have replied to the applicant that Assistant Officer who retired prior to V and VI Pay Commission are not entitled for any benefit.

5. The respondents have filed their reply to the Original Application. The replying respondents have submitted that letters Annexure A/1 and A/2 are issued as per Rules. It has been submitted by the respondents that the applicant was retired on 31.05.1991 and as per records, the last pay of the applicant was



Rs.2060/- in pay scale of Rs.2000-3500/-. This last pay of Rs.2060/- does not fall in the pay scale of Rs.2375-3500/-. The Railway Board's order Annexure A/4, is made effective with effect from 30.07.1993 whereas the applicant retired on 31.05.1991, which is much prior of the effective date of Railway Board's order. Thus Annexure A/4 is not applicable in the applicant's case. While revising the pension as per V Pay Commission as on 01.01.2006 the corresponding pay scale has been mentioned as R.7500-12000/- due to incorrect interpretation of rules as the concordance table to that effect was either not available or not adhered to. However, revised pension was granted but no order for recovery of the amount has been ordered. Similarly while revising the pension as per VI Pay Commission w.e.f. 01.01.2006, the corresponding pay scale of Rs.9300-34800/- of Grade Pay of Rs.4800/- with reference to V Pay Commission pay scale of Rs.7500-12000/- was reckoned and revised pension @ Rs.9375/- was granted w.e.f.01.01.2006. However, no order for recovery of the amount has been ordered. Now the applicant is already getting basic pension of Rs.24094



(Rs.9375 x 2.57 multiplying factor) under the VII Pay Commission. It has been specifically submitted by replying respondents that in the VI Pay Commission there was no provision of exercising of option to come to new pay scale. The applicant had only applied for revision of pension as per VI Pay Commission. It has been further submitted by the respondents that as per ready reckoner Table issued by Department of Pension and Pensioners Welfare as Table No.25 and Table No.28 which are annexed as Annexure R/1 according to which the corresponding pay scale are as follows:-

01.01.1986 to 31.12.1995 IV Pay Commission Scale
Rs.2000-3500/-.

01.01.1996 to 31.12.2005 Vth Pay Commission Scale –
Rs.6500-10500/-

01.01.2006 to 31.12.2015 6th CPC Scale Rs9300-34800/-
Grade Pay Rs.4200/-.

6. It has been specifically submitted by the replying respondents that the applicant had retired in the pay scale of Rs.2000-3200/- his pension under VII Pay Commission is to be revised as per the above corresponding scale by taking into



account, the basic last pay of Rs.2060/- which was actually drawn by him at the time of retirement. So the effective date of Table-28 is 30.07.1993 and it is not applicable to the case of the applicant because he had already retired on 31.05.1991. The pay of the applicant was not re-fixed in the pay scale of Rs.2375-3500/- and there is no documentary evidence available regarding re-fixation of pay of Rs.2000-3500/- to Rs.2375-3500/- for the railway servant who retired prior to 30.07.1993. The applicant retired from Railway service as Group-B officer in the pay scale of Rs.2000-3500/- on 31.05.1991 and his pension was fixed at Rs.1018/- vide PPO dated 07.06.1991. Moreover, the concordance table does not specify any group of posts i.e. A, B, C or D rather it indicate the corresponding scale against each old scale of pay. The pension of the applicant was revised on the basis of concordance table No.25 wherein the Grade Pay of Rs.4200/- and the same is substantiated in the orders issued for revision of pension vide Department of Pension and Pensioners Welfare office memorandum dated 14.10.2008 and 28.01.2013. The copies of which are annexed as Annexure R/2 and R/3. Copy



of calculation sheet as per 7th CPC and concordance Table No.25 and 28 are annexed as Annexure R/4 and R/5. The concordance table No.28 issued vide Board's letter No.2016/F(E)III/1(1)/7 dated 11.07.2017 is applicable to those employees who had retired during the period from 01.01.1996 to 31.12.2005 in the scale of Rs.7500-12000/- whereas the applicant had already retired on 31.05.1991. The pension revised under V and VI Pay Commission has not been withdrawn. Even the VII Pay Commission PPO does not result in any reduction of pension to the disadvantage of the applicant as the existing pension of Rs.24094/- being paid with a multiplying factor of 2.57 as per the recommendations of the VII Pay Commission has been retained even though revised PPO is issued with last pay of Rs.2060/- in the pay scale of Rs.2000-3500/- and grade pay of Rs.4200/-.

7. The applicant has filed rejoinder to the reply filed by the respondents. The applicant has reiterated its earlier stand taken in the Original Application. It has been submitted by the applicant that downwards revision of pension and withdrawal of Grade Pay of Rs.4800/- after 23 years is contrary to law enunciated by



Hon'ble Apex Court in Civil Appeal No.11527/2014 decided on

18.12.2014 in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) etc.*** and DoPT circular dated 07.03.2016.

The applicant reaffirms and reiterated the contents of Annexure A/4. It has been submitted by the applicant that the circular dated 06.11.1995 issued by Railway Board was on the basis of verdicts pronounced by CAT DLI in O.A. No.731/1987 decided on 30.07.1993. It has been specifically submitted by the applicant that the existing officer and Railway administration of Railway Board are frequently issuing various circulars regarding allotment of pay scale and grade pay to Group 'B' officer at their whims have confused staff of Respondent Nos.2 and 3 resulted that certain Group 'B' retired officers have been granted lower pay scale and grade pay of Rs.4200/- lowest of Group 'C' subordinates. The applicant has been granted lower scale and grade pay of Rs.4200/- lowest than Group 'C' and withdrawn higher pay scale of Rs.7500-12000/- Grade Pay of Rs.4800/-. It has been specifically submitted by the applicant that one officer Mr. N.P. Shukla retired Assistant Operating Manager was also



granted pay scale of Rs.6500-10500/- and grade pay of Rs.4200/- on 22.01.2018 which is clear from Annexure A/13. After representation his pension revised and granted pay scale of Rs.7450-11500/- lower than Group 'C' subordinate and granted grade pay of Rs.4600/-. A copy of which is annexed at Annexure A/14. Another officer -Shri K.P. Sharma has been granted pay scale of Rs.7500-12000/- and Grade Pay of Rs.4800/- on 22.12.2017 which is annexed at Annexure A/15. The respondent-Railway and all division have followed different criteria in allotment of pay scale and grade pay to retired Group 'B' Officers which clearly shows that double dealing and discrimination among the Group 'B' officers created who are situated in similar status by the respondents. The existing officers and dealing staff Railway Administration are frequently issuing various circulars at their whims and have confused the staff of respondents Nos.2 and 3 that they are so confused that they have granted certain staff grade pay of Rs.4200/- (like the applicant) on representation the grade pay of certain staff was revised and have been extended to Grade Pay of Rs.4600/- to Group 'B' Officers. They have granted



certain staff with Grade Pay of Rs.4800/- . The existing staff group 'B' officers have been allotted Grade Pay of Rs.5400/- . This action of the respondents is discriminative and creating double dealing among the same grade group 'B' officers. The applicant is getting very less pension after implementation of VII pay commission in comparison to staff who placed in similar situation. The respondents have created artificial several classes in Group 'B' retiree officers. It is a discrimination between same category of old pre-year 2006 and past year 2006 and new Group 'B' officers the same is in violation of Article 14 and 15 of the Constitution of India. The applicant has relied upon the judgment of CAT DLI in the case of *Anil Kumar vs. Union of India and others* in O.A. No.4013/2016 decided on 21.03.2018 (Annexure R/16). Regarding Annexure R/3 and R/4 it has been submitted by the applicant that it is not relevant in case of the applicant because the case of the applicant is based on the factual position Rules and Regulation which were in existence at the time of revision of pension. So in the present case Table no.28 (Annexure A/10) is only applicable in the case of the applicant. The reduction of



pension of the applicant after 25 years is high headedness of the respondents Nos.2 and 3.

8. Heard the learned counsel for both the parties and have perused the pleadings and documents on record.

9. It is an admitted fact from the pleadings that applicant was promoted as Personnel Officer on 29.12.1989 in the pay scale of Rs.2000-3500/- and retired on 31.05.1991. Copy of PPO dated 17.07.1999 is annexed as Annexure A/5 and on implementation of VI Pay Commission the pension of the applicant was revised and fixed Rs.8475/- in the pay scale of Rs.9300-34800/- with grade pay of Rs.4800/-. The revision of pay scale has taken place on account of judgment and effective from 01.01.2006. This PPO revised on the basis of Railway Board's letter No. F(E)111/PN/1/12 dated 08.09.2008 and letter dated 11.02.2013 the copy of which are annexed as Annexure A/8. The contention of the applicant is that the respondents in contravention of clear rules not implemented the orders of VII Pay Commission and the stand taken by respondent to the fact that the applicant stood retired prior to V Pay Commission and the applicant is not



entitled for any benefit. The respondents have clearly taken stand that the Railway Board's order Annexure A/4, is made effective with effect from 30.07.1993 whereas the applicant retired on 31.05.1991, which is much prior of the effective date of Railway Board's order. Thus Annexure A/4 is not applicable in the applicant's case. The applicant has argued on the line of arbitrariness and also relied upon the judgment passed by Hon'ble Apex Court in the matters of *Rafiq Masih* (supra) and DoPT circular dated 07.03.2016. The specific stand taken by the applicant is that the Railway Board are frequently issuing various circulars regarding allotment of pay scale and grade pay to Group 'B' officer at their whims and have confused staff of Respondent Nos.2 and 3, resulted that certain Group 'B' retired officers have been granted lower pay scale and grade pay of Rs.4200/- lowest of Group 'C' subordinates. So the respondent-Railways and all division have followed different criteria in allotment of pay scale and grade pay to retired Group 'B' Officers which clearly shows that double dealing and discrimination among the Group 'B' officers has been created who are situated in similar status by the



respondents and some of the employees have been granted certain staff grade pay of Rs.4200/- (like the applicant). On representation the grade pay of certain staff was revised and have been extended to Grade Pay of Rs.4600/- to Group 'B' Officers. They have granted certain staff with Grade Pay of Rs.4800/-. The existing staff group 'B' officers have been allotted Grade Pay of Rs.5400/-. So, the action of the respondents is discriminative and creating double dealing among the same grade group 'B' officers. Resultantly the applicant is getting very less pension after implementation of VII pay commission in comparison to staff who placed in similar situation. So, the respondents have created artificial several classes in Group 'B' retiree officers and it has discriminated between same category of old pre-year 2006 and past year 2006 and new Group 'B' officers and the same is in violation of Article 14 and 15 of the Constitution of India. The applicant has relied upon the judgment of CAT DLI in the case of Anil Kumar vs. Union of India and others in O.A. No.4013/2016 decided on 21.03.2018 (Annexure R/16).



10. The applicant has also relied upon the judgment passed by CAT Principal Bench New Delhi in O.A. No.731/1987 decided on 30.07.1993 whereby the classification maintained in the Railways in the category of Assistant Officers who are promoted from the lower post to the gazette post of Assistant Officers as belonging to Group B and directed recruited Assistant officers as belonging to junior scale of Group A and fixation of pay on that basis and creation of promotional avenue both regular and officiating, on that basis as arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India. The Principal Bench in O.A. No.731/1987 has clearly held that if inequals are being treated as even less than equals, is violative of Article 14 of Constitution of India. The relevant portion of which is as under:-

“24. We are not persuaded to accept these as valid grounds. It cannot be denied that the scale of Rs.2000-3500/- is inferior to that of Rs.2375-3500/-. Thus, when a person in Group C services in the pay scale of Rs.2375-3500/- is promoted to a Group B Post, in fact the promotion. Thus, the supervisory Authority functions in a pay scale lower than that the persons he supervises. Pay scales from one of the crucial determinants to determine the services hierarchy and it hardly needs reiteration that for proper supervision, control, discipline, maintenance of morale etc. the supervisory authority should be placed in



pay scale higher than that of those whom they are supervising. If they are placed in a pay scale equal to or less than that it will imply that unequals are being treated as even less than equals, which itself is violative of Article 14 of the Constitution. Merely because the anomaly is continuing since well before the Fourth Pay Commission does not make it any the less anomalous or violative of Article 14. None of the other Group B services of the Government of India appear to have raised this issued in any application before the Tribunal. Therefore, the apprehension that granting of a somewhat higher pay scale to Group B services in the Railways would have repercussions on all the Group B posts, does not appear to be well founded. As relief in this form was not asked in the application, we consider it just and proper to grant relief only from the date of the judgment.

25. In the result, we direct the respondents to accord to the Group B services of the India Railways a scale of pay higher than the existing scale of Rs.2375-3500/- drawn by Group C services with effect from the date of this judgment. The prescription of the higher scale shall be done within four months from the date of receipt of the judgment and arrears due from today shall be paid within a further period of four months.”

11. The applicant has also relied upon the judgment passed by Hon'ble Apex Court in the matters of All Manipur Pensioners' Association By its Secretary vs. State of Manipur and others in Civil Appeal No.10857 of 2016 decided on 11.07.2019 whereby the Hon'ble Apex Court while relying upon the judgment in the matter of **D.S. Nakara and others vs. Union of India** 1983 (1)



SLJ 131 (SC), Hon'ble Apex Court has held that if State considered it necessary to liberalise the pension scheme, then there is no rational principle behind financial constraint, for granting these benefits only to those who retired on or after 1.1.1996 and denying it to those who retired before 1.1.1996. This cutoff date is arbitrary and it hit by Article 14 and 16 of the Constitution of India. In the instant case, the main matter for determining the question in issue is that whether the Annexure A/4 is applicable to applicant, due to the fact that the clear stand taken by the respondent-department is that the applicant stood retired as on 31.05.1991 and Annexure A/4 is not applicable to the applicant meaning thereby that the respondent-department has fixed the cutoff date for implementation Annexure A/4. Learned counsel for the applicant has specifically argued his case on the line of law settled by Hon'ble Apex Court in the matter of **D.S. Nakara** (supra). From the reply given by the respondent-department it is only the stand of the respondent that Annexure A/4 is not applicable due to the fact that the applicant had already retired much before that date. The similar issue regarding the cut

off date has been settled by the Hon'ble Apex Court in the matter of *All Manipur Pensioners' Association by its Secretary* (supra).



The relevant paragraphs of this judgment are as under:-

“7. The short question which is posed for consideration before this Court is, whether in the facts and circumstances of the case, the decision of this Court in the case of D.S. Nakara (supra) shall be applicable or not, and in the facts and circumstances of the case and solely on the ground of financial constraint, the State Government would be justified in creating two classes of pensioners, viz., pre1996 retirees and post1996 retirees for the purpose of payment of revised pension and whether such a classification is arbitrary, unreasonable and violative of Article 14 of the Constitution of India or not?

7.1 At the outset, it is required to be noted that in the present case, the State Government has justified the cutoff date for payment of revised pension solely on the ground of financial constraint. On no other ground, the State tried to justify the classification. In the backdrop of the aforesaid facts, the aforesaid question posed for consideration before this Court is required to be considered.

7.2 It is not in dispute that the State Government has adopted the Central Civil Services (Pension) Rules, to be applicable to the State of Manipur. The State has also come out with the Manipur Civil Services (Pension) Rules, 1977. It is also not in dispute that subject to completing the qualifying service the government servants retired in accordance with the pension rules are entitled to pension. Therefore, as such, all the pensioners form only one homogeneous class. Therefore, it can be said that all the pensioners form only one class as a whole. Keeping in mind the increase in the cost of living, the State Government increased the quantum of pension and even pay for its employees. The State Government also enhanced the scales of pension/quantum of pension with effect from 1.1.1996 keeping in mind the increase in the cost of living. However, the State Government provided the cut-off date for the purpose of grant of benefit of revised pension with effect from 1.1.1996 to those who retired post1996 and denied the revision in pension to those who retired pre1996. The aforesaid classification between these pensioners who retired pre1996 and



post 1996 for the purpose of grant of benefit of revision in pension is the subject matter of this appeal. As observed hereinabove, the aforesaid classification is sought to be justified by the State Government solely on the ground of financial constraint.

7.3 At the outset, it is required to be noted that in the case of D.S.Nakara (*supra*), such a classification is held to be arbitrary, unreasonable, irrational and violative of Article 14 of the Constitution of India. In paragraphs 42 and 65, this Court in the case of D.S. Nakara (*supra*) has observed and held as under:

"42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One



retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.

65. That is the end of the journey. With the expanding horizons of socioeconomic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in impugned memoranda, Exs. P1 & P2, violates Article 14 and is unconstitutional and is struck down. Both the

memoranda shall be enforced and implemented as read down as under:



In other words, in Ex. P1, the words:

“that in respect of the government servants who were in service on March 31, 1979 and retiring from service on or after that date”

and in Ex. P2, the words:

“the new rates of pension are effective from April 1, 1979 and will be applicable to all service officers who became/become non-effective on or after that date”

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and 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 is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.”

7.4 While the aforesaid decision of this Court in the case of D.S. Nakara (*supra*) was relied upon by the appellant herein and as such which came to be considered and followed by the learned Single Judge, the Division Bench considering some of the observations made in the cases of Hari Ram Gupta (*supra*); R. Veerasamy (*supra*); Amar Nath Goyal(*supra*) and P.N. Menon (*supra*), has observed and held that the decision of this Court in the case of D.S. Nakara (*supra*) is one of the limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement. However, by not following the decision of this Court in the case of D.S. Nakara (*supra*), considering some of the observations made by this



*Court in the aforesaid decisions, namely P.N.Menon(*supra*) and other decisions, the Division Bench of the High Court has not at all considered the distinguishable facts in the aforesaid decisions.*

7.5 *In the case of P.N. Menon(*supra*), the controversy was altogether different one. The factual position that needs to be highlighted insofar as P.N. Menon (*supra*) is concerned, is that the retired employees had never been in receipt of "dearness pay" when they retired from service and therefore the O.M. in question could not have been applied to them. This is how this Court examined the matter. This Court also noticed that prior to the O.M. in question, the pension scheme was contributory and only with effect from 22.9.1977, the pension scheme was made non contributory. Since the respondent employees in the first cited case were not in service at the time of introducing the same they were held not eligible for the said benefit. Therefore, the said decision shall not be applicable to the facts of the case on hand, more particularly while considering and/or applying the decision of this Court in the case of D.S. Nakara (*supra*).*

7.6 *In the case of Amrit Lal Gandhi (*supra*), pension was introduced for the first time for the University teachers based on the resolution passed by the Senate and Syndicate of Jodhpur University. The same was approved by the State Government with effect from 1.1.1990. Therefore, the controversy was not between one set of pensioners alleging discriminatory treatment as against another set of pensioners. There were no pensioners to begin with. The retirees were entitled to provident fund under the existing provident fund scheme. The question of discrimination between one set of pensioners from another set of pensioners did not arise in the said decision. With the aforesaid facts, this Court observed that financial viability is a relevant issue.*

7.7 *Similarly, the decision of this Court in the case of Indian Ex Services League (*supra*) also shall not be applicable to the facts of the case on hand. The facts in this case and the facts in the case of D.S. Nakara (*supra*) are clearly distinguishable. In the case of Indian ExServices League (*supra*), the dispute was with respect to PF retirees and Pension retirees and to that it was held that PF retirees and Pension retirees constitute different classes and therefore this Court distinguished the decision of this Court in the case of D.S. Nakara (*supra*). Therefore, the aforesaid decision shall not be applicable to the facts of the case on hand at all.*



7.8 Similarly, the decisions of this Court in the cases of Hari Ram Gupta (*supra*) and Kallakkurichi Taluk Retired Officials Association, Tamil Nadu (*supra*) also shall not be applicable to the facts of the case on hand.

7.9 In view of the above, we are satisfied that none of the judgments, relied upon by the learned Senior Advocate for the respondent – State, has any bearing to the controversy in hand. The Division Bench of the High Court has clearly erred in not appreciating and/or considering the distinguishable facts in the cases of Hari Ram Gupta (*supra*); R. Veerasamy (*supra*); Amar Nath Goyal (*supra*); P.N. Menon (*supra*) and Amrit Lal Gandhi (*supra*).

8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz., one who retired pre1996 and another who retired post1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. *Article 14* of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that *Article 16* of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cutoff date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension.



As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cutoff date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.1 As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre1996 or post1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cutoff date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cutoff date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.

9. In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely covered by the decision of this Court in the case of D.S. Nakara (*supra*). The decision of this Court in the case of D.S. Nakara (*supra*) shall be applicable with full force to the facts of the case on hand. The Division Bench of the High Court has clearly erred in not following the decision of this Court in the case of D.S. Nakara (*supra*) and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the learned



Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement, viz. pre1996 retirees shall be entitled to revision in pension at par with those pensioners who retired post1996. The arrears be paid to the respective pensioners within a period of three months from today.

10. The instant appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs. ”

12. So, in view of the clear cut law settled by the Hon'ble Apex Court in the matters of **D.S. Nakara** (supra) which has been further relied upon by the Hon'ble Apex Court in the matters of **All Manipur Pensioners' Association by its Secretary** (supra), we are of the view that the applicant is entitled to revise pension as per 7th Pay Commission of applicant on the basis of old PPOs issued from 1991 to 2015 and further in view of the law settled by the Hon'ble Apex Court in the matter of **Rafiq Mashi** (supra) no recovery is to be recovered from the applicant.

13. Resultantly Annexure A/1 and A/2 is quashed and set aside. Respondents are directed to revise the pension as per 7th Pay Commission of the applicant on the basis of old PPO issued from 1991 to 2015 and also respondents are directed not to withdraw pay scale of Rs.7500-12000 & Rs.9300-34800/- and also Grade

Pay Rs.4800/- already granted in year 2009 should not be withdrawn after 10 years.

14. Accordingly, O.A. is allowed. No order as to costs.



(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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