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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1528/87
T.A. No.

199

DATE OF DECISION 01.05.1992

Shri P.S. Doraswami

~~Applicant~~ Applicant

None

Advocate for the ~~Applicant~~ Applicant

Versus

Secy., Miny. of Health & F.W.
& Others

Respondent

Smt. Raj Kumari Chopra

Advocate for the Respondent(s)

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

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? NO
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, Vice-Chairman)

We have gone through the records of the case carefully and have heard the learned counsel for the respondents. This case had remained on Board from 27.10.1989 and had appeared in the list of ready cases for final hearing for several days. On 22.4.1992, when the case was taken up for hearing, none appeared for the applicant.

2. The applicant has prayed for a declaration that the period of service rendered by him from 15.1.1921 to 12.5.1924 be reckoned as "qualifying service" for the purpose of pension,

that the respondents be directed to pay him a sum of Rs.58.85 per month from 1.4.1979 to 31.12.1985 and to treat the revised pension of Rs.625.50 as the "existing pension" from 1.1.1986 for purposes of further revision in terms of the orders issued under the Government of India, Ministry of Pensions O.M. dated 16.4.1987 on the recommendation of the Fourth Pay Commission.

3. This application had been originally filed in the Bangalore Bench of the Tribunal as OA-751/57 which was represented before this Bench after the Bangalore Bench held in its order dated 4.9.1987 that it should be heard and adjudicated upon by this Bench.

4. The facts of the case in brief are that the applicant entered Government of India service in QMG's Branch on 15.1.1921 in the Army Headquarters and worked there till 12.2.1924. On 13.5.1924, he entered service as substantive permanent in Government of India, Department of Education, Health & Lands, Simla/Delhi. He retired from that Department as Under Secretary and on retirement, he was granted a superannuation pension of Rs.6,800/- per annum w.e.f. 30.7.1953 under Articles 458 and 474-A of the Civil Service Regulations.

5. According to the applicant, his pension qualifying service ranges from 15.1.1921 to 29.7.1953 totalling 32 years,

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six months and 15 days, including the period of three years, three months and 27 days. This includes the period from 15.1.1921 to 12.5.1924 which has not been reckoned as "qualifying service" by the respondents. He claims that his average emoluments for the ten months preceding retirement, were Rs.1300/- per month. Under the slab formula adopted under the liberalised pension scheme, his pension should be refixed at Rs. 625.50 per month w.e.f. 1.4.1979. This amount would then become the existing pension for the purpose of further liberalisation from 1.1.1986 announced by the Government of India in the Ministry of Pension O.M. dated 16.4.1987.

6. The respondents have stated in their counter-affidavit that on the date of the retirement of the applicant, only half of the temporary service followed by the permanent service was eligible to be reckoned as "qualifying service". Further, full temporary service followed by permanent service, became countable for pensionary purposes only w.e.f. 22.4.1960. He was, therefore, entitled to have only half the temporary service counted towards "qualifying service", but he failed to get it done as he resigned from the previous service which entailed forfeiture of the past service. He was, therefore, allowed retirement benefits based on the actual qualifying service of 29 years.

7. In accordance with the instructions contained in the Ministry of Finance O.M. dated 22.10.1983, the pension admissible to the applicant under the slab formula, worked out to Rs.559/- per month, whereas he was already in receipt of monthly pension of Rs.567/-. Consequently, revision of pension in his case was not beneficial to him.

8. The respondents have also raised the preliminary objection that the application is hopelessly barred by limitation.

9. We have carefully considered the matter. After the decision of the Supreme Court in D.S. Nakara Vs. Union of India, A.I.R. 1983 S.C. 130, the Government of India, Ministry of Finance, had issued their O.M. dated 22.10.1983 on the application of liberalised pension formula to pre-31.3.1979 pensioners. The said O.M. was issued to implement the judgement of the Supreme Court in Nakara's case. The said O.M. stated that the pensioners with average emoluments upto Rs.1,000/-, 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. Those who failed to exercise the option within the stipulated period, would be deemed to have exercised

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the option to receive revised pension with reference to actual emoluments and qualifying service based on service and other records. In the instant case, the applicant sought revision of his pension and furnished relevant particulars to the respondents. On verification, they came to the conclusion that the revised pension in his case worked out to less than the original pension and as such, he was informed that the revision was not beneficial to him.

10. In our opinion, the applicant is not entitled to pensionary benefits which were subsequently conferred under the Central Civil Services (Pension) Rules introduced from 1.6.1972. In Nakara's case, the Supreme Court has observed that "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". It was further observed that in the case of the existing pensioners, the pension will have to be recomputed by applying the rules 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. The Supreme Court made clear that the arrears are not required to be made because to that extent, the

scheme was prospective. The pension of the applicant was fixed under the provisions of the Civil Service Regulations as they existed at the time of his retirement. He cannot, therefore, seek the benefit of the pensionary benefits conferred after his retirement except to the extent given by the Government. The pre-1973 pensioners also got the benefit of the revision of pension by virtue of the Office Memorandum dated 22.10.83. The prayer sought in the present application has been made after a lapse of several years. In our view, the claim is also clearly barred by limitation.

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

Subhash
(I.K. Rasgotra) 1/5/82
Administrative Member

Q.E.W.
(P.K. Kartha)
Vice-Chairman (Judl.)