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Date of Decision: 2-5-1990.

Harish Chand	...	<u>Applicant.</u>
versus		
Union of India and others	...	<u>Respondents.</u>

P R E S E N T :

The Hon'ble Shri B.C.Mathur, Vice Chairman(A)

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman(J).

For the applicant- Shri L.K.Gaur, Advocate.

For the respondents- None appears.

Date of hearing - 30.4.90

Date of Order - 2.5.1990.

ORDER:

G.Sreedharan Nair, Vice Chairman :

The applicant retired as Senior Store-keeper on 31.1.1978 when he was drawing a salary of Rs. 488.00. His pension was fixed at Rs. 202.00 per mensem. After the issue of the O.M. dated 22.10.1983 announcing the Liberalised Pension Formula, the applicant opted for the same.

2. The grievance of the applicant relates to the provision in the Office Memorandum issued by the Ministry of Finance on 25.5.1979. According to the said Office Memorandum, a Government servant who retired on or after 30.9.1979 and whose pay is in the range between Rs. 300-2157.00, an amount of 25% of the pay will be treated as dearness pay for the purpose of granting pension. It was further provided that in the case of those who retired after 28.2.1978, they will be entitled to the full dearness pay, but in the case of those who retired between 30.9.1977 and 28.2.1978, they will be entitled only to the half of the dearness pay. According to the applicant, the discrimination between those who retired between 30.9.1977 and 28.2.1978, and those who retired after 28.2.1978 is violative of Articles 14 and 16 of the



of the Constitution of India. It is stated that the cut-off date 28.2.1978 is without any rational basis. The applicant alleges that the representations submitted by him against the same, and requesting revision of his pension, were not allowed, and hence the application. It is prayed that the relevant clause in the Office Memorandum be declared as ultra vires and a direction issued to the respondents for refixation of his pension.

3. In the reply filed on behalf of the respondents, it is stated that the instructions contained in the Office Memorandum dated 25.5.1979 relate to a policy matter, and the applicant having taken advantage of the same, cannot now assail it.

4. After hearing counsel and on examination of the Office Memorandum in the light of the pleadings, we are of the view that the applicant is to succeed.

5. According to the Office Memorandum dated 25.5.1979, the following amounts were treated as dearness pay in relation to pay in the different pay ranges, for the purpose of retirement benefits :

<u>Pay range</u>	<u>Amount of Dearness pay.</u>
(i) Upto Rs. 300/-	36% of pay
(ii) Above Rs. 300 and upto Rs. 2157/-	27% of pay subject to a minimum of Rs. 108/- and a maximum of Rs. 243.00.
(iii) Above Rs. 2157/- and upto Rs. 2399/-	Amount by which pay falls short of Rs. 2400/-

6. The applicant falls within category (ii) above. As such 27% of the pay had to be treated as dearness pay.

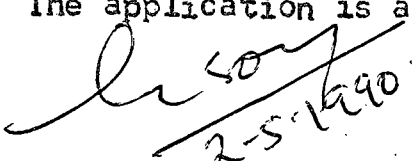
7. By a subsequent clause in the Office Memorandum, in the case of persons who retired between 30.9.1977 and 28.2.1978, one-half of the dearness pay alone was allowed to be added to the average emoluments for the purpose of arriving at the ultimate average emoluments, while in the case of those who retired after 28.2.1978, the full dearness pay was allowed to be reckoned. Thus, regarding pensioners as the applicant, who had retired between 30.9.1977 and 28.2.1978 actually only 13½% of the pay is taken into account, while in the case of post-28.2.1978 pensioner the entire 27% of the pay is added. The applicant has categorically alleged in the application (vide para 6(v)) that the " cut-off date " 28.2.1978 laid down in the Office Memorandum is without any basis and that there is no intelligible differentia to distinguish between a person who retired between 30.9.1977 and 28.2.1978 and the post-28.2.1978 pensioners. Besides, there is also the averment that the differentiation has no nexus with the object sought to be achieved, and as such the relevant provision is violative of Articles 14 and 16 of the Constitution of India. It is significant that in the reply filed on behalf of the respondents these averments are not controverted. Nor have the respondents produced any material to establish that the differentiation has any rationale. From a reading of the Office Memorandum we are not able to find any indication to support the differentiation, or to hold that the date 28.2.1978 was fixed on any reasonable basis.

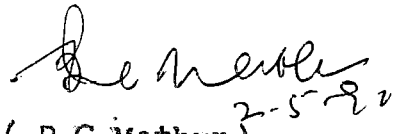
8. Counsel of the applicant invited our attention to the decision of the Jodhpur Bench of this Tribunal in Charan Singh v. Union of India, (1988 (1) SLR 40). The decision is

directly in point. In that case, the classification of railway servants on the basis of retirement during the period 1.12.1968 to 1.12.1969 was held as not founded on any rational basis and also wholly unrelated to the object underlining the addition of dearness pay to the pay of the railway servants for the purpose of granting increased pensionary benefits. This proposition was laid down following the ratio decidendi in D.S. Nakara's case.

9. In the result, it is hereby declared that the particular clause in the Office Memorandum dated 25.5.1979 that restricts the addition of dearness pay to one-half, in respect of persons who retired between 30.9.1977 and 28.2.1978 is illegal, being violative of Article 14 of the Constitution of India. The pension of the applicant shall be refixed taking into account the entire 27% of the dearness pay. This shall be done forthwith and the resultant benefit, if any, allowed to the applicant from this date. It is made clear that the applicant shall not be entitled to any arrears in view of this order.

10. The application is allowed as above.


(G.Sreedharan Nair)
Vice Chairman(J)


(B.C.Mathur)
Vice Chairman(A).

S.P.Singh
2.5.90.