

CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI

\*\*\*\*\*

Registration (O.A.) No. 909 of 1987

L.T. Khemani .... Applicant.

Versus

Union of India & another ,.... Respondents.

\*\*\*\*\*

For the Applicant .... Shri R.N. Gupta, Advocate

For the Respondents .... None

Hon'ble Justice A. Banerji, Chairman (J).  
Hon'ble A. Johri, Member (A).

(Delivered by Hon. A. Johri, A.M.)

The applicant in this application, filed under Section 19 of the Administrative Tribunals Act, 1985, is a retired Government Pensioner. He had superannuated on 13.3.1971. On liberalisation of the Pension Rules in 1979 and their applicability being allowed to all those pensioners, who had retired before the liberalisation, consequent to the Supreme Court's decision in D.S. Nakra v. Union of India (AIR 1983 S.C. 130), the Government of India issued an OM dated 22.10.1983 giving options to the pensioners to either opt for an ad hoc scheme or the basis of actual calculations for computation of pension and its refixation. These options, once exercised, were to be final. The applicant, who was about seventy years old in 1983 and was keeping indifferent health, opted for the ad hoc formula. His pension was accordingly fixed on this basis. The applicant later found, after having made this option and the acceptance of the recommendation on the Pension Formula made by the 4th Pay

-: 2 :-

Commission, that the pension by ad hoc formula is about Rs.84/- per month (p.m.); ~~which~~ lesser than that arrived at by actual calculations. He, therefore, represented to the Department of Personnel, Public Grievances & Pensions, for permitting him to revise the option. His case was also referred by the Supreme Court Legal Aids Committee to the Department of Personnel. When there was no response on these representations the applicant filed this application praying for a direction to be issued to the respondents to recompute his pension on the basis of actual calculations with effect from 1.4.1979 and again with effect from 1.1.1986 instead of the computation already allowed on the ad hoc formula and pay him interest at the rate of 10 percent per annum on the arrears so arrived at.

2. In this case inspite of notices having been issued to the respondents no one entered appearance on their behalf. By order of this Tribunal dated 6.4.1988 the respondents were given further time upto 23.5.1988 and on that date this Tribunal had also ordered that if no one appeared the case was to be proceeded ex parte. We have accordingly heard the case ex parte. On behalf of the applicant, Sri R.N. Gupta, the learned counsel appearing on his behalf, contended that the applicant had in 1983 opted for the ad hoc formula as he fell to the bait placed by the respondents in view of their apprehending delays in making actual calculations and the failing health of the applicant. It was contended that the scheme promulgated by OM of 22.10.1983 was

-: 3 :-

illegal and in fact it ran contrary to the judgment given in Nakra's case. It was also contended by the learned counsel that by their OM of 22.10.1983 the respondents have unnecessarily created two classifications amongst the pensioners. These classifications hit Article 14 of the Constitution. According to him, the respondents should have given a fresh option at least when the 4th Pay Commission gave its recommendations in respect of Pensioners. We have seen the paper book and connected documents.

3. The main question before us is whether an option once exercised under a specific condition that option once exercised shall be final can be changed subsequently when the optee finds that the option that was exercised by him has given ~~given~~ him lesser benefits than those which he would have got had he opted for the other alternative.

4. The Government of India, Ministry of Finance's OM No. F1(3)-EV/83 of 22.10.1983 is in respect of the Application of Liberalised Pension Formula to pre 31.3.1979 pensioners. Paras 6 & 7 of this OM read as follows :

"6. The decisions contained in the foregoing paras will require recomputation of pension in a large number of cases including some where pension was sanctioned more than three decades ago. Recomputation of pension in accordance with the new formula on the basis of actual emoluments and qualifying service is a time consuming process. In addition, it will require locating

-- 4 --

old records for the past periods. As the Ministries, Departments and Offices of the Central Government including the Offices of the Accountants General have been reorganised several times during this period, it is likely that the service records in a large number of cases may not be readily available. Accordingly, revision of pension on actual calculations with reference to service records may involve difficulties and result in considerable delay in settlement of the claims. With a view to quicken the process of refixation of pension and calculation and authorisation of arrear payment, it has been decided to offer to the pensioners concerned revised pension, calculated on the basis of ad hoc formulas developed on certain assumptions. Accordingly, in respect of pensioners whose revised pension is to be worked out on average emoluments upto Rs.1000, ready reckoners showing the rate of existing pension and the revised pension with reference to different dates of retirement are enclosed. The formula for different dates takes into account the following factors :-

- (i) Pensioners who retired between 1.3.76 to 30.3.79. Benefit of the slab system has been given.
- (ii) Pensioners who retired between 1.1.73 to 29.2.76. Benefit of slab system after increasing the average emoluments already determined by an amount approximately equal to one increment, in lieu of 10 months average emoluments being taken into account instead of 36 months.
- (iii) Pensioners who retired between 17.4.50 to 31.12.72. Pension with the above benefits with a ceiling of 30 years qualifying service.

7. It has further been decided that the

13

-: 5 :-

pensioners with average emoluments upto Rs.1000 .....pension with reference to actual calculations based on service records. For this purpose each such pensioner is 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 the issue of this O.M. The option once exercised shall be final. Those who fail to exercise their option within the stipulated period will be deemed to have exercised the option to receive revised pension with reference to actual emoluments and qualifying service based on service and other records."

5. This OM has clearly spelt out the reasons why the scheme of 'ad hoc formula' was introduced. The Government, in view of the lapse of time between the retirement of employees and the year of introduction of the scheme and the fact of reorganisation of various offices, apprehended that the service records in a large number of cases may not become readily available, and felt that this may involve difficulties in calculation of the pensions and consequential delay in settlement of claims, offered the options to the pensioners. There was clear exposition of the position and the desire of the Government to quicken the process of pension refixation and payment of arrears was also made explicit in OM. It was, thereafter, for the optee to weigh the pros and cons of the two options and take a decision that suited him.

6. The applicant has, on his own showing, said in para 10 of his application that by exercising the

38

-: 6 :-

option his pension was fixed at Rs.304/- p.m. whereas the same would have been Rs.335/- p.m. on actual calculations. So he suffered a loss of 10 percent in the amount of pension ever since 1.4.1979. When an option is given and the reasons why the option is being given are elaborated, the optee has to take a decision on the basis of his circumstances and after weighing the options. The applicant exercised the option in full knowledge of the fact that the ad hoc scheme is going to give him a disadvantage but he took a decision in its favour because of his ill health. He evidently did not want to wait for refixation of his pension on actual calculations as he presumably feared such a course of action may result in the refixation not being done in his life time. It can, therefore, not be said that the Government acted in any way prejudicial to the applicant's interest or cajoled him to give the option for ad hoc scheme. It was the applicant's own decision. A plea that the applicant was compelled to do so has been made at the Bar. We are not convinced that this was the position. A person cannot, after exercising an option in full knowledge of the immediate outcome of the same and taking a chance of consolidating whatever he is getting at a point of time, turn round and question the validity of an order on the grounds of discrimination because he now stands to lose by that option.

7. We also reject the plea of violation of Article 14 of the Constitution. The benefit has been given to all pensioners. The asking of the option cannot be construed to mean classification in violation of

-: 7 :-

Article 14. The situation was factual. Due to passage of time and reorganisation of various Ministries the likelihood of the records not being available existed and, therefore, a quicker process of refixation was available if a person wanted to have arrears etc. quickly, though may be, it was to slight disadvantage to him. In any such situation one has to take a decision and the applicant took the same. The classification had a nexus with the object to be achieved. The object was an opportunity to have quick refixation and payment of arrears. The principle of equity in Article 14 does not take away from the Government the power of classifying persons for legitimate purposes. Also every classification produces some inequality and mere production of inequality is not enough. The applicant got the same. The applicant could complain if the benefits were not extended to him. The choosing of the method was his own doing. A retired employee is sensitive to delay in drawing monetary benefits to avoid posthumous satisfaction of the pecuniary expectation. In the above circumstances the plea taken that at the time of making the decision the pensioner was aged and not able to exercise his mental faculty properly, because of his ailments and infirmity, cannot sustain itself. Nothing prevented him from taking advice from his colleagues.

9. In advancing his contention that he should be allowed to revise the option, the applicant has relied on the case of Smt. Poonamal and others v. Union of India and others (1985 SCC(L&S) 802). The applicant's plea is that in Smt. Poonamal's case the Hon'ble Supreme

32

16

-: 8 :-

Court allowed family pension to widows of pensioners, who had not opted for the scheme, when in 1977 the family pension scheme was made non-contributory. We do not agree to this contention. This case is easily distinguishable. In Smt. Poonamal's case the option was subject to the employee making contribution. This contribution was done away with in 1977. So even without making of the contribution by their husbands the widows became entitled to family pension. The applicant had already been extended the benefit of the revisions ordered in 1979 in respect of fixation of pension, i.e. the 10 months' average etc. instead of 36 months' pay. He was not denied the benefit. What was offered to him was only the option in respect of the method of its application. So no parallel can be drawn with this case.

10. Another case on which the learned counsel has relied is the case of Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another (1986 S.C.C. (L&S) 429). In this case the company rules provided for termination of services of permanent employees without assigning any reasons. The Hon'ble Supreme Court had held that such a term in the contract was unconscionable and arbitrary and opposed to public policy and was void and unconstitutional to the extent it conferred such right of termination to the Corporation. It was contended before us that the applicant was not placed on equal footing with the respondents in his bargaining power so he could not bargain on the method of refixation. We fail to see

3V

17

-: 9 :-

how reliance on this case helps the applicant. It was not a case of any conditions of contract. It was pure and simple acceptance of one of the two alternatives. It was not an arbitrary action on the part of respondents forcing the applicant to accept a particular option. The choice was that of the applicant. This contention is, therefore, also liable to be rejected.

11. Pension is a valuable property and right in the hands of the retired employee. It is no longer a bounty to be distributed by the Government. The applicant has not been denied the pension. It is an unfortunate accident of service that he made a wrong option and thereby suffered a loss in his pensionary emoluments which further got aggravated due to reliefs granted on percentage basis by the 4th Pay Commission. In the above view the applicant's plea that because of this loss suffered by him, he should be allowed to revise his option and be paid arrears with interest does not sustain itself, and is liable to be rejected. We do not find any merit in these prayers.

12. In conclusion, therefore, we reject the application. In rejecting the same we will not like to bar the respondents from taking any action that they may like to take on such matters, if they chose to do so. We order the parties to bear their own costs.

*3/AR/STEN*  
MEMBER (A).

*AB*  
CHAIRMAN (J).

Dated: November 28, 1988.