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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 974/91 DECIDED ON : September 23 1992

N. Sreedharan ... Applicant

Vs.

Union of India ... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri S. Raghavan, Counsel for the Applicant

Shri N. S. Mehta, Sr. Central Government Standing Counsel for the Respondents

JUDGMENT (ORAL)

Hon'ble Shri P. C. Jain, Member (A) :

The applicant, an officer of senior time scale of the P & T Accounts and Finance Service (Class I), was permanently absorbed in the Cochin Shipyard Ltd., a Public Sector Undertaking, w.e.f. 20.3.1974, by order dated 19.6.1974 (Annexure-C to the OA). Inter alia, he was given the following option :-

"(v) The officer will exercise an option within six months of his absorption for either of the alternatives indicated below :-

(a) Receiving the pro-rata monthly pension and D.C.R. Gratuity as admissible under clauses (ii), (iii) and (iv) above under the Government of India Rules.

or

(b) Receiving the pro-rata gratuity and lump sum amount in lieu of pension worked out with reference to commutation table obtaining on the date from which pension will be admissible and payable under option orders."

Sub-paras (ii), (iii) and (iv) referred to in clause (a) above are not relevant for the issue before us and as such these are not being extracted here. However, we may extract

as below sub-para (vi) of the aforesaid order which is very relevant :-

> "(vi) The Government of India would have no liability for family pension in respect of Shri N. Sreedharan after his permanent absorption in the Cochin Shipyard Ltd., Any further liberalisation of pension/ gratuity rules decided upon by Government of India in respect of officers of the Central Civil Service after the permanent absorption of Shri Sreedharan in Cochin Shipyard Ltd. would also not be extended to him."

2. It is common ground between the parties that the applicant gave his option for the alternative as in clause (b) above and accordingly, pro-rata gratuity and lump sum amount in lieu of pro-rata pension by commuting the entire amount was also paid to and received by him. His grievance in this application is that while in pursuance of the judgment of the Supreme Court in the case of D. S. Nakara & Others vs. Union of India, by office memorandum dated 22.10.1983, the benefits of libralisation sanctioned from time to time were granted to those who had exercised option for the alternative in clause (a) above, extension of such benefits has been dis-allowed to the applicant including those who had opted for the alternative in clause (b) above. Para 5. of the O.M. dated 22.10.1983, which is relevant in this context, is as below :-

> "5. Central Government employees, who got themselves absorbed under Central public sector undertakings/autonomous bodies prior to 1.4.79 and have received/or opted to receive commuted value for 1/3rd of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension, are not entitled to any benefit under these orders as they were not Central Government pensioners as on 1.4.79. In case where only a portion of pension has been commuted, the pension will have to be enhanced in accordance with these orders with effect from 1.4.1979."

It is contended on the basis of the above provisions that an arbitrary and unreasonable distinction has been made among

the Central Government servants who were absorbed in Central public sector undertakings inasmuch as those who opted for full commutation of the pension have been deprived of the liberalisation benefits from time to time but the other category who opted for pro-rata monthly pension after commuting 1/3rd of the pension have been allowed such benefits. For this purpose, the learned counsel for the applicant has placed reliance on the judgment of the Supreme Court in the case of The Scheduled Caste and Weaker Section Welfare Association (Regd.) & Anr. vs. State of Karnataka & Ors. : JT 1991 (2) SC 184.

3. On the basis of the above main contentions the applicant has prayed for the following reliefs :-

> "(i) That opportunity be given to the applicant to exercise a revised option by him in favour of the alternative at para v(a) of the Government of India (Sanchar Mantralaya) letter No. 9-20/70-SPA-II dated 19.6.74;
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> (ii) That the pensionary benefits be re-computed for the period from 20.3.74 taking into account the liberalisation effected from time to time and the arrears, as due, be paid to/excess paid, if any, recovered from the applicant;
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> (iii) Alternatively, extend the liberalisation benefits as per GOI OM No.F.1(3)-EV/83 dated 22.10.83 and Memo No.34/2/86-P&PW dated 5.3.87 to the applicant."

4. The case of the respondents, briefly stated, is that the O.A. is barred by limitation and that it is completely devoid of merits inasmuch as the Supreme Court in writ petition No. 1068 of 1987 - Welfare Association of Absorbed Central Government Employees in Public Sector Enterprises vs. Union of India and Others, a copy of which has been annexed as Annexure R-2 to the counter affidavit, and in the case of Des Raj Bhatnagar & Anr. vs. Union of India along with Civil Appeal No. 1124 of 1985 between S. K. Nanda vs.

Union of India : (1991) 2 SCC 266, has already held that Central Government employees opting for permanent absorption in public sector undertakings and availing benefit of commutation of full amount of their original pension are not entitled to the benefit of liberalisation in pension rules available to Central Government pensioners and that such a course of action is not violative of the provisions of Articles 14 and 16 of the Constitution.

5. We have perused the material on record and also heard the learned counsel for the parties. Before we consider the rival contentions, it is necessary to point out that this O.A. was filed on 10.4.1991 but the relief prayed for is from 1974, or in the alternative, benefits of O.M. dated 22.10.1983 and O.M. dated 5.3.1987 are sought. In accordance with the provisions of Section 21(2) of the Administrative Tribunals Act, 1985, the Tribunal has no jurisdiction in a matter in respect of which the cause of action has accrued prior to three years of coming into effect of the Act ibid, i.e., prior to 1.11.1982. This proposition of law has been upheld in a number of judgments. Further, this O.A. is hopelessly barred by limitation from whatever angle one might look at it. In respect of the relief sought for from 1974, the applicant should have approached the competent civil court within a period of three years as per the limitation laid down in the Schedule to the Limitation Act, 1963, which was three years. No such action is shown to have been taken. Again, with reference to para 5 of O.M. dated 22.10.1983, already referred to above, the applicant should have approached the Tribunal within six months of 1.11.1985 in accordance with the provisions of sub-section (2) of section 21 of the Act ibid. However, no such action was taken. The material placed on record by the applicant

himself shows that his representation was rejected by letter dated 3.2.1984. Even on this basis, he should have approached the Tribunal by 30.4.1986.

6. Another matter which needs to be mentioned right at this stage is that prima facie the applicant, on his permanent absorption in a public sector undertaking and on opting for full commutation of his pro-rata pension for service rendered by him under the Government, ceases to be an employee of the Union of India as also ceases to be a pensioner of the Union of India. The jurisdiction of the Tribunal has not been extended to the employees of the Cochin Shipyard Ltd. in accordance with the provisions of section 14 of the Administrative Tribunals Act, 1985, and in this view of the matter, it can be stated that the Tribunal may not have the jurisdiction in this case. However, on both these grounds of limitation and jurisdiction we are not inclined to reject this O.A. for the simple reason that by an order passed by a Bench of this Tribunal on 5.9.1991 this O.A. was admitted for adjudication.

7. Coming to the merits of the rival contentions of the parties, the learned counsel for the applicant, as already stated, has placed reliance on the judgment of the Supreme Court in the case of The Scheduled Caste and Weaker Section Welfare Association (supra). Our attention was particularly drawn to a part of paras 15 and 16 of the judgment in that case. With reference to para 15, it was stated by the learned counsel for the applicant that the rule of natural justice operates in areas not covered by any law validly made. There is no doubt about the proposition of law as has been held by the Supreme Court in a number of cases that the principles of natural justice supplement the statutory

provisions and do not supplant them. Thus, if there is a requirement of applicability of principles of natural justice on the facts and in the circumstances of a particular case, it will have to be seen as to which principle of natural justice is applicable to that case. With reference to para 16 of the judgment in the said case, out attention was drawn to the following observations in that para :-

> "...In this view of the matter it is to be held that when a notification is made rescinding the earlier notifications without hearing the affected parties, it is clear violation of the principle of natural justice. Such action in exercise of the implied power to rescind cannot then be said to have been exercised subject to the like conditions within the scope of Section 21 of the General Clauses Act...."

This proposition of law is also unexceptionable. What is, however, to be seen is that whether the respondents have changed the terms and conditions of his absorption in the Cochin Shipyard Ltd. to his detriment without giving an opportunity to him of showing cause. We have no hesitation in saying that the facts of the case would not warrant any such conclusion. As already stated above, the applicant was given a clear-cut option which he exercised and in pursuance of which he got a huge lump sum amount. There cannot be any dispute that while there may be a case for not classifying the pensioners of the Union of India into further sub-classifications, two types of employees cannot be treated equal if they are not equally placed. The provisions of Article 14 of the Constitution forbids class legislation, but it does not forbid reasonable classification. However, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia and (2) it should have a rational nexus with the objective (i.e.

sought to be achieved. A Central Govt. employee who is permanently absorbed in a public sector undertaking and if in accordance with the provisions of the scheme, he opts to continue to draw 2/3rd of his pension, there can be no doubt that he continues to be a pensioner of the Union of India. The same cannot, however, be said in case of a Central Govt. employee who on permanent absorption in a public sector undertaking chooses to sever his connection with his previous employer by opting to take full payment in one lump sum. Accordingly, the employee in the second category forms a separate class. Article 14 of the Constitution cannot be read to mean that the above two classes of people are required to be treated equally. If it were to be done, it would itself amount to violation of the provisions of Article 14.

8. Learned sr. standing counsel for the respondents has cited and relied upon the judgments of the Supreme Court in the cases of Welfare Association of Absorbed Central Govt. Employees in Public Enterprises (supra) and in the case of Des Raj Bhatnagar (supra). In the first case the Supreme Court held as below :-

> "The petitioners are persons who have, at the time of retirement from government service and entering into the public sector, taken the advantage of commuting the entire pension. They certainly belong to a class different from those whose case was before this Court at the instance of Common Cause in Writ Petitions Nos. 2958-61 of 1983. Commutation does bring certain advantages to the commutee and the class of government officers whom the petitioner seeks to represent have derived such benefits. We do not think there is any basis in the allegation that by not extending the benefit of the decision of this Court referred to above, to the category represented by the petitioner there is any infringement of Article 14 of the Constitution. We accordingly dismiss the petition. No costs."

In the case of Des Raj Bhatnagar (supra), the judgment in the above case was referred to and the view taken in that case was reiterated. It was further held that persons who had not only got 1/3rd of their pension commuted but also exercised the option of getting entire pension commuted and in lieu thereof got a lump sum, cannot fall in the category of Central Government pensioners for the purposes of getting benefit of liberalised pension rules which can be made applicable only to Central Government pensioners. The contention of the petitioners therein that the liberalised pension rules which give benefit to those pensioners who have got their 1/3rd pension commuted should be granted to the petitioners by awarding lump sum after increasing their pension and calculating such amount in proportion to the increased pension, was also considered, but their Lordships of the Supreme Court held that there was no force in this contention as the petitioners form a different class altogether and were not entitled to claim any benefit granted to Central Government pensioners. After the judgment of the Supreme Court in the aforesaid two cases, nothing is really left for further discussion. However, the learned counsel for the applicant strongly urged that neither of the above two cited judgments have considered the contention that by orders contained in para 5 of the O.M. dated 22.10.1983, the earlier condition mentioned in sub-para (vi) of the letter dated 19.6.1974 has been partially amended resulting in denial to him and others equally placed with him while granting certain benefits to others who had opted for payment as per clause (a). This contention should not hold us any further. When it has already been held beyond any shadow of doubt that the two categories do not form the same class, the question of comparision of benefits available

to the two categories does not arise. Those who opted for the benefits as per clause (a) continued to be Civil pensioners while those who opted for the benefits under clause (b) ceased to be Civil pensioners. It is inherent in such a situation that benefits which become available to one category of Civil pensioners would need to be given to that category while the other category is not entitled to the same.

9. In the light of the foregoing discussion, we are of the considered view that the O.A. is devoid of merit and the same is accordingly dismissed leaving the parties to bear their own costs.

(P. C. Jain)
Member (A)

(T. S. Oberoi)
Member (J)

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