CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. Nos. 170/88, 206/88 & 271/88

DATE OF DECISION 30-10-1991.

Prahlad Venibhai Dave & Ors. Petitioners.

Mr. J.R. Nanavati, Mr. S.M. Chrichal Advocate for the Petitioners)

Versus

Union of India & Ors. Respondents

Mr. M.R.Bhatt for Mr.R.P.Bhatt, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

O.A.No. 170/88
Prahlad Venibhai Dave,
Retired Income Tax Officer
4, Kamdurga Society No.1
Ankur Road, Naranpura,
Ahmedabad. ..... Applicant.

Versus.

1. Union of India (Notice to be served through Ministry of Finance, North Block, New Delhi)

2. The Chairman,
Central Board of Direct Taxes
North Block, New Delhi.

3. Chief Commissioner (Adm)
and C.I.T., Gujarat-I,
Ayakar Bhavan, Ahmedabad-9.

4. Zonal Accounts Officer(C.B.D.T.)
Vasupujya Chambers
Near Ayakar Bhavan,
Ahmedabad - 14. ..... Respondents.

O.A.No. 206/88

Mahendraprasad Krishnashanker Vyas
Retired Income Tax Officer Group-B
1A, Shadhana Colony,
Stadium Road,
Ahmedabad-14- ..... Applicant.

Versus.

1. Union of India (Notice to be served through Ministry of Finance, North Block, New Delhi)

2. The Chairman,
Central Board of Direct Taxes
North Block, New Delhi.

3. Chief Commissioner (Adm.)
and C.I.T. Gujarat-I,
Ayakar Bhavan,
Ahmedabad - 9.

4. Zonal Accounts Officer(C.B.D.T.)
Vasupujya Chambers,
Near Ayakar Bhavan,
Ahmedabad - 14. ..... Respondents.

O.A.No. 271/88

Central Government Pensioners
Association (Gujarat) Ahmedabad
through its President Shri Manibhai
D. Naik,
Add: A-2, Siddhgiri, Pritamnagar,
Ellisbridge, Ahmedabad - 6. ..... Applicant.

Versus.

..... 3/-

1. Union of India (Notice to be served through Ministry of Finance, North Block, New Delhi) ... Respondent.

Mr. J.R. Nanavati with Mr S M Chhatre learned counsel for the applicants.

Mr.M.R.Bhatt for Mr.R.P. Bhatt, learned counsel for the Respondents.

COMMON JUDGMENT

O.A.No. 170/1988
O.A.No. 206/1988
O.A.No. 271/1988

Date: 30-10-1991.

Per: Hon'ble Mr.M.M.Singh, Administrative Member.

The sole applicants of the first two applications had superannuated on 30.9.1984 and 31.7.1984 respectively from service in the Income Tax Department of the Government of India. Central Government Pensioners Association (Gujarat) Ahmedabad through its President M.D. Naik is the representative applicant of the third application. Central Government employees who had retired from different departments of the Government of India are stated to be the members of the applicant Association. The applicants of all the three applications are governed by the Central Civil Services (Pension) Rules, 1972 for pensionary benefits. The substance of the common grievance of the applicants of the three applications culled from their respective applications is that the terms of reference of the Fourth Central Pay Commission set up by the Government of India by notification dated 29.7.83, later enlarged to cover interim relief and pensionary benefits also its recommendations should have been implemented from 29.7.1983, the date of the notification and that their implementation from a much later date 1.1.86 deprived the applicants of the benefits of revised pay and

revised pensionary benefits on revised pay though they were in service after the said notification of 29.7.83 but had retired before 1.1.86, the effective date arbitrarily chosen for commencement of the implementation of the recommendations of the Pay Commission. The Relief is therefore prayed to declare entitlement of the applicants to revised pay scales from 29.7.83 and revised pensionary benefits on revised paycales as payable to those who retire after 1.1.86 from 1.1.86.

2. The Union of India through the Secretary, Ministry of Finance, is the first respondent in the first two applications and the only respondent in the third. The Chairman, Board of Direct Taxes, the Chief Commissioner, (Admn.) and CIT, Gujarat, the Zonal Accounts Officer (CBDT), Ahmedabad are the other three respondents in the first two applications in both of which written reply has been filed by the Chief Commissioner of Income Tax (Admn)Ahmedabad. No written reply has been filed in the third application. No rejoinders have been filed. The only one document produced with the first application consists of authorisation dated 27.6.87 issued by the Zonal Accounts Office for revising the applicant's pension from Rs. 793 per month to Rs. 835 per month. The only two documents produced with the second application consist of Ministry of Finance, Department of Expenditure, OM dated 30.4.85 on the subject of treatment of additional dearness allowance as pay for the purpose of retirement benefits and revision of pension order dated 23.7.87 issued by the office of the Accountant General, Ahmedabad revising the applicant's pension from Rs. 727 per month to Rs. 752 per month. The only

four documents produced with the third application consist of Department of Pension & Pen Welfare OM dated 14.4.87 on the subject of revision of provisions regulating pension persuante to Government decisions on the recommendation of the Fourth Central Pay Commission, same Department's OM dated 16.4.87 on the subject of rationalisation of pension structure for pre 1.1.86 pensioners by way of implementation of Government's decision on the recommendations of the Fourth Central Pay Commission, and two statements showing revised initial pay admissible to a person drawing basic pay of Rs.1000 at various indices from Consumer Price Index (CPI) at 512 on 1.10.83, about the time the notification to set up the Fourth Central Pay Commission was issued, to CPI at 608 on 1.1.86 and revised pay in the new scale at the rising CPI points and calculation of pension on the basis of revised pay.

3. The grounds advanced for relief prayed are that by making Central Civil Services (Revised Pay) Rules dated 13.9.86 as amended on 13.3.87 (hereafter revised Pay Rules) effective from 1.1.86, two artificial and arbitrary classifications of a homogeneous class of employees in service on 29.7.83 came to be created. The classifications allegedly consist of those who retired before 1.1.86 and those who retired on 1.1.86 and thereafter. To the latter, the revised Pay Rules are applicable. Their application is denied to the former. This amounts to giving discriminatory treatment to the homogenous class of employees/pensioners entitled to equality of treatment. This is alleged to be violative of Article 14 and 16 of the Constitution of India. The discrimination has allegedly been

10

extended to pensionary benefits also by OM dated 16.4.87 on rationalisation of pension structure of pre 1.1.86 retirees as holders of identical posts should be entitled to identical pensionary benefits including gratuity the grant of which, to quote from OA Nos. 170/88 and 206/88 "does not mean that the revision of payscales is with retrospective effect" as revised pension will be payable from 1.1.86. It is further averred that the Fourth Central Pay Commission though appointed in July 1983 gave its report in June 1986 for which delay the applicant Central Government employees not being responsible, the choice of date 1.1.86 for implementation of the recommendation has caused undeserved prejudice to the employees retiring before 1.1.86. It is further contended that the pensioners who are older have to be given equitable if not better treatment vis-a-vis the younger ones and should never be given detrimental treatment. It is further argued that in view of the decision of the Supreme Court in D.S.Nakara case (AIR 1983 SC, 130) Government should have made provision for payment of arrears to pre 1.1.86 retirees from the date of their retirement upto 31.12.85.

4. We heard learned counsel Mr.J.R.Nanavaty for the applicants in all the three cases. Learned counsel Mr. M.R. Bhatt appeared for the respondents in O.A.206/88 and 170/88. We have taken up these three applications for disposal by this common judgment as all the three applications raise the same issues and learned counsel also the same. No counsel appeared for the Union of India, the only respondent in O.A. 271/88.

5. Applicants' learned counsel submitted that the applicants who retired between 29.7.83, the date of the notification to set up the Fourth Central Pay Commission should have been given the same benefits as those who retired on or after 1.1.86 as not giving these benefits is discriminatory. Why 1.1.86 is chosen as the cut off date is neither clarified nor explained by the respondents and therefore the choice of the date is arbitrary. He relied on para 65 of the judgment in Nakra's case as reported in AIR 1983 SC 130 for the ratio decided and submitted that paras 5 to 9 of the judgment stating the facts of that case are identical with the facts of the cases of the applicants herein. He pressed that the applications therefore deserved to be allowed.

6. Para 5 of Nakara case judgment states the relevant contents of the OM dated 25.5.1979 on the subject of revised pension calculation formula which was made effective from 31.3.79 and 1.4.79. In para 6 is observed that consequently those who retired prior to the specified dates were not to be entitled to the benefit of the revised pension calculation formula. Paras 7 and 8 refer to the relevant contentions in the petitions before the Supreme Court. Para 9 refers to the questions that arose in the facts and the contentions in the petitions, with their central question being, to quote from para 9: "Is this class of pensioners further divisible for the purpose of entitlement and payment of pension into those who retired by certain date and those who retired after that date"? Para 65 is the last para which contains the conclusions and orders. The part of the impugned memoranda "being in service and retiring subsequent to the specified date"

was held to be operating to divide "a homogenous class, the classification being not based on any discernible rational principle and having been found wholly irrelevant to the objects sought to be achieved by grant of liberalised pension and the eligibility criterion devised being thoroughly arbitrary", the impugned memoranda were held to be violative of Article 14 and therefore unconstitutional and were struck down. The Supreme Court directed that the two memoranda should be enforced as read down in the directions of the Court.

7. We first deal with the applicant's contentions regarding 29.7.83, the date of notification setting up the Commission to be held as the date of implementation of the recommendations instead of date 1.1.86 and its pouch contention that not implementing the recommendations from 29.7.83 resulted in arbitrary and artificial classifications of a homogenous class of employees in service on 29.7.83 into two classes, one class consisting of those who retire on 1.1.86 and after and the other of employees who retired before 1.1.86. This contention is pregnant with the implicit contention that the date of notification to set up a commission necessarily involves a legal commitment, undertaking or promise of the Government to implement the report of the Commission retrospectively with effect from that date. This issue in our view falls in the ambit of the interpretation of the language of the original notification and enlargement of the terms of reference of the original notification from time to time by subsequent notifications. To enable us to consider whether any such commitment, undertaking or promise was included in them, copies of these

notifications should have been relied upon and produced by the applicants. But they chose not to do so. The first rule of interpretation is literal construction. If these notifications show that no such intent existed, it cannot be added on to them on considerations for which there may be no legal sanction. Normally, a resolution or notification to appoint a Commission contains a preamble of objects and purposes and the terms of reference of the Commission and the date by which the report is expected. The date is liable to be extended and the last date contained in the notification for completion of the work of the Commission and submission of report to Government also not enforceable in any manner for submission of the report or as the date of implementation of the report when submitted. There is therefore no legal force in the arguments of the applicants that as they are not responsible for the delay the Commission caused in the submission of the report, those who retired before 1.1.86 should not suffer. Prejudice in law is related to a legal right which is distinct from hopes or ethics of a situation which may create no legal prejudice as in the facts herein. The report, when submitted to Government, is processed and decisions in the prerogative of the Government come to be taken. The decision which will necessarily fall in the realm of Government prerogative may even consist of shelving the report submitted or accepting it partly. The prerogative decision is not liable to intervention in the sense that this Tribunal has no jurisdiction and authority in such a matter to direct the Government to take a particular decision and to apply it from a specified date. Such notification

normally does not contain undertaking or promise of the Government to accept the report(s) as and when submitted and, that too, from the date of the notification by which the Commission came to be set up. We may not dwell on this aspect any longer. Suffice it to say that the date of the notification to set up a Commission does not ipso facto legally become the date of the implementation of the recommendations of the Commission. No such view is contained in the Nakra case, the exclusive and the only plank of the applicants. The bunch of the applicants' arguments on these lines are wholly without legal merit. With this outcome, the applicants have to convincingly show that a homogenous class existing on 1.1.86 came to be broken. This date cannot be advanced to 29.7.83 as the date to figure out the existence of a homogenous class as argued for the applicants. The judgment in Nakra case contains no suggestion or direction to advance dates in order to maintain the claim of a homogenous class on that date. The argument appears exciting but such retroactive projection may, if logicaly argued and taken backwards in time, reach to the rights of the first set of persons who become pensioners by passing the baton backwards in a backward relay race, a clearly absurd situation. Now we come to arguments against 1.1.86 as the cut off date. The facts and directions in Nakra's case do not include revision of the payscales of the retirees in the same manner as of those in service for recalculation of their pension in accordance with the revised formula. However, the applicants extend the theory of classification in the Nakra judgment

to cover their case. The question therefore is whether Nakra case decides and holds that all retirees from a class with the serving who will be future retirees for equality to pension in the manner that whenever pays of those in service are so revised as to result in higher amount of pension when those in service well retire, the pay of the retirees be revised and their pensionary benefits recalculated and difference and arrears of difference between the existing pensionary benefits and the recalculated pensionary benefits be paid. Presuming for the sake of argument that the present retirees belong to the same class with the future retirees and the cut off date 1.1.86 results in the further classification of an otherwise homogenous class, the first question that arises is whether Nakra case judgment bars further classification. This question has been answered by the Supreme Court in the case Krishena Kumar Vs. Union of India (JT 1990(3) SC 173) which was decided by a bench of five learned judges of the Supreme Court including Hon'ble Sabyasachi Mukherji, the Hon'ble Chief Justice of India (as he then was). We with respect, quote from para 33 of this judgment: "But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible". Para 15 of the judgment in Nakra's case, namely

> "15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out have a rational nexus to the object sought to be achieved by the statute in question."

lays down the tests of a good classification. Therefore, if these tests are satisfied, further classification even of the retirees will be permissible. But the applicants have first to satisfy us that what they have visualised is a valid homogenous group. Only if they satisfy us about this foundational issue, will we be required to go into the issues of further classification and whether the same is permissible in the facts before us.

9. Obligation of the Government to pay pension begins only when a Government Servant retires. A Government servant retires on the pay in the payscale to which he is entitled. The ratio decidendi in Nakara's case creates no obligation on grounds of belonging to one group that every time payscales are revised - and such revision compulsorily involves higher pensionary benefits on higher payscale on existing rules of calculation of pensionary benefits for future retirees - the payscales of those who have already retired should also be revised for recalculation of their pensionary benefits and future pension and arrears to be paid on that basis. Looking at the same thing in another way, every receipient of pension was once a receipient of salary and every receipient of salary would ripen into a pensioner when he retires. Therefore those still in service but destined to receive pension on their retirement form their own which leaves out retirees. For the latter their past services stand already rendered. For the former, their present service is on. The former therefore do not convert to the latter and vice versa. The property of being in service distinguishes those in

service from the retirees as for the latter this property exhausted itself with their retirement. The objects behind the revision of pay of the former who are still in service can be many, like for examples risen and rising cost of living, wage structure that has come to establish itself in comparative fields of employment, society's changing evaluation of the comparative importance and utility of various groups of employees, compliance of conduct rules requiring that those in service cannot undertake any other vocation or profession to augment their income, and migration from services. From such objectives for those in service, so far as the retirees are concerned, risen and rising cost of living may be the only common objective on a reasonable view. The differences in objectives with regard to those in service and the retirees necessarily arise from the properties of the two, the one serving and the other retired. For the latter, provision of dearness allowance on pension linked to the cost of living already made is expected to mitigate hardship on account of risen and rising cost of living. There is therefore no understandable rational reason for the contention that the two form a homogenous group and for the demand that the payscales on which the retirees retired should be revised every time the same is revised for those in service so that the pensionery benefits of the retirees can be recalculated on the basis of the revised payscales of the posts they formerly held and from which they retired. For these reasons we hold that the applicants' assertion that the retirees and those in service but to retire whom

we may describe as future retirees form a homogenous group which is broken by cut off date 1.1.86 has no basis. No doubt when the later retire, they will enter the same group in which the existing retirees including the applicants are. But as long as they are in service, they form a group from which the retirees are justifiably excluded and vice versa. The cut off date 1.1.86 does not disturb that position of the two exclusive groups.

10. Amount of pension is, according to the present rules, one time calculation made. Simply stated, the monthly average of the salary of ten last months in service reduced to half gives the amount of pension. Only when the basis of calculation of pension comes to be revised the benefit of which revision if not given to the applicants, the applicants may have a grievance which may deserve to be redressed as was done in the Nakara case. For the arguments advanced for the applicants, the facts to which they may be validly applied do not exist. They may perhaps come to exist if the Government decides that the pay scales of a Government Servant will govern his emoluments for the whole of his life.

11. In view of the above, the three applications have no merit. We hereby dismiss the same without any order as to costs.

Sd/-
(R.C.Bhatt)
Judicial Member

Sd/-
(M.M.Singh)
Administrative Member