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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 142/2013

Jodhpur this the 22nd day of August, 2013.

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judl. Member

Jagdish Singh Tanwar,
s/o Sh. Chhotu Singh Tanwar,
r/o Village Ganwari, Tehsil Neem Ka Thana,
District Sikar (Raj.), retired as
Leading Fireman on 24.07.1990 from
Govt. of India, Department of Atomic Energy,
Heavy Water Plant, Kota.

.....Applicant

(Through Advocate: Mr. Bhawani Singh)

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Expenditure,
Central Pension Account Office,
Trikoort-II, Bikaji Kama Palace,
New Delhi.
2. Pay and Accounts Officer,
Govt. of India,
Department of Atomic Energy,
Heavy Water Plant,
Kota
3. Pay and Accounts Officer,
Central Pension Accounts Office,
Govt. of India,
New Delhi.

.....Respondents

(Through Advocate: Ms. K. Parveen)

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ORDER (Oral)

This application has been filed by the applicant, Jagdish Singh Tanwar, challenging the impugned order dated 24.12.2012 (Ann.A/1) by which his pension was reduced from Rs. 3800/- to Rs. 3500/- per month w.e.f. 01.01.2006.

2. This application was admitted on 16.4.2013. Counsel for the respondents appeared on 9.7.2013 and two weeks' time was granted to him to file reply upto 21.8.2013. On 21.8.2013, no reply was filed and the matter was listed for today. Today also, no reply is filed by the respondents.

3. Necessary facts to decide the controversy between the parties, in brief, are that the applicant is a pensioner who retired from the post of Leading Fireman on 24.7.1990 with the Fire Section of the Government of India, Department of Atomic Energy, Heavy Water Plant, Kota. A PPO No.452219200038 was issued by the Pay and Accounts Officer (Heavy Water Project), Kota which commenced from 25.7.1990. The Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare, New Delhi issued Office Memorandum dated 2.9.2008 whereby as per clause 5.2 the qualifying service was declared as 20 years for the pensionary benefits. After implementation of the Government decision on the recommendations of the Sixth Central Pay Commission regarding revision of pension of Pre-2006 Pensioners/Family Pension etc., another Memorandum dated 14.10.2008 was issued by the same

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Department. As per the above notification, pension equal to 50% of sum of minimum of Pay Band + Grade Pay/Scale was Rs. 3800/- applicable to the applicant.

4. Representations dated 5.10.2009, 1.1.2010 and 20.1.2010 have been made by the applicant to the respondent department for revision of his pension as per the Sixth Pay Commission. The applicant was sanctioned pension of Rs. 3800/- for a period of 2 years as per the Sixth Pay Commission recommendations and a letter dated 22.3.2010 was issued by the Deputy Controller of Accounts, Govt. of India, Department of Atomic Energy, Heavy Water Plant, Kota whereby the applicant was allowed pension of Rs. 3800/- per month. Thereafter, another letter dated 13.4.2012 was issued by respondent No.2 to reduce pension of the applicant from Rs. 3800/- to Rs. 3500/- per month and a revised PPO dated 6.6.2012 was issued for reducing the pension from Rs. 3800/- to Rs. 3500/-.

5. Aggrieved by reduction of pension vide PPO dated 6.6.2012, the applicant preferred appeal before the competent authority on the ground that his pension was revised to Rs. 3800/- on the basis of Sixth Pay Commission recommendations vide order dated 22.3.2010, which has been wrongly reduced to Rs. 3500/- and the same is causing financial hardship to the applicant. Another Office Memorandum dated 28.1.2012 has been issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, New

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Delhi whereby as per clause 5, it has been stated that the pension in no case shall be reduced less than Rs. 3500/-per month.

6. The applicant has challenged legality of the impugned order Ann.A/1 on the ground that Office Memorandum dated 2.9.2008, dated 14.10.2008 and dated 11.2.2008 are discriminatory and illegal for the reason that similarly situated persons have been given the revised pay scale without any deductions after completion of 20 years of service who are post-2006 retirees and in the case of persons who are pre-2006 retirees, their qualifying service was considered to be 33 years. Thus, the above memoranda being violative of Article 14, 16 and 21 of the Constitution of India are liable to be set-aside and accordingly Ann.A/1 is also liable to be quashed. The applicant's pension cannot be reduced only on the ground that he has not served for 33 years and accordingly his pension was reduced relatively as per the service rendered by the applicant.

7. Although no reply has been filed by the respondents, but the counsel appearing for the respondents argued the matter. Counsel for the applicant contended that the Office Memorandum under challenge in this OA has been considered by the Full Bench of the Central Administrative Tribunal at Principal Bench, New Delhi in OA No. 655/2010, Central Government SAG (S-29) Pensioners Association vs. UOI, OA No.3079/2009, Central Government Pensioners Association of Additional/Joint Secretary and Equivalent Officers vs. UOI, OA No. 306/2010, D.L. Vhora and

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others vs. UOI and OA No.507/2010, PPS Gumber and others vs.

UOI wherein the Full Bench in para 30 has held as under:-

"30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set-aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs."

8. The learned counsel for the applicant contended that the Full Bench of this Tribunal at Principal Bench, New Delhi has directed the respondents to revise pension of pre-2006 retirees w.e.f. 1.1.2006 based on the resolution dated 29.8.2008 and in the light of the observations made in the judgment. Therefore, on the same analogy, the notification is bad in respect of calculation of qualifying service as 20 years for the post-2006 retirees and 33 years for pre-2006 retirees.

9. In the present case, the applicant has challenged legality of the orders on the ground of arbitrariness and discrimination. I have perused the judgment of the Full Bench of this Tribunal at Principal Bench. The issue raised before the Full Bench was entirely different from the issue raised in the present OA. In the cases before the Full Bench, the issue was regarding fixing of 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to scale of pay from which they had

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retired, but so far as counting of 33 years as qualifying service for pre-2006 retirees and 20 years qualifying service for post-2006 retirees for the purpose of pension is concerned, it was not the subject matter in issue before the Full Bench. Further, the facts of the case cited by the counsel for the applicant decided by the Full Bench of this Tribunal at Principal Bench, New Delhi are different from the facts of the present case because validity of the Office Memorandum dated 2.9.2008 was not under challenge in the OAs before the Full Bench.

10. In the case of Indian Ex-Servicemen League and others vs. Union of India, (1991) 2 SCC 104, while relying upon the earlier Constitution Bench decision in the case of Krishena Kumar vs. Union of India, (1990) 4 SCC 207 held that decision in D.S.Nakara case has to be read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retirees from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of their pension be different.

11. Although no reason has been mentioned for having different qualifying service for pre-2006 retirees and post-2006 retirees, but the Apex Court in the case of Government of Andhra Pradesh and others vs. N.Subbarayudu and others, (2008) 14 SCC 702 had held that even if no reason is forth-coming for fixation of particular date, it should not be interfered with by the Court unless

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the cut off date leads to some blatantly capricious or outrageous result.

12. In a catena of decision of the Apex Court, it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances and it is well settled principle of law that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The government must be left with some leeway and free play at the joint in this connection.

13. It is also well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or homogeneous group. Hence Article 14 has no application. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for

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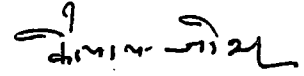
discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment.

14. Yet for another reason, the pre-2006 retirees and post-2006 retirees cannot be extended the same benefit, inasmuch as, the respondents on the basis of recommendations of the Sixth Central Pay Commission has issued two different scales for pre-2006 and post-2006 retirees.

15. If the present matter is seen in the light of the law laid down by the Hon'ble Apex Court, as discussed above, fixation of 33 years qualifying service for pre-2006 retirees and 20 years' qualifying service for post-2006 retirees for the purpose of pension cannot be said to be arbitrary and it is permissible for the Government to fix a cut off date for introducing any new pension/retirement scheme or for discontinuing of any existing scheme. Thus, the challenged made by the applicant in the present OA regarding illegality of the Office memorandum dated 2.9.2008, 14.10.2008 and 11.2.2008 issued by the Government of India, Department of Pension and Pensioners Welfare, New Delhi is not acceptable and the same cannot be said to be illegal or discriminatory. The pension of the applicant was revised to Rs. 3500/- as per the OMs issued by the Government of India.

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16. Consequently, the OA being devoid of merit fails and the same is hereby dismissed with no order as to costs.



(JUSTICE K.C.JOSHI)
Judicial Member

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