IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 184/91
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DATE OF DECISION 28.4.92

PS Vasavan Pillai
Applicant (s)

(Applicant in person)
Advocate for the Applicant (s)

Versus

Union of India rep. by Secretary
Deptt.of Pension & Pensioner's Welfare, Ministry of Personnel, Public Grievance & Pensions, New Delhi and others.
Respondent (s)

~~Mr V Krishnakumar, ACGSC~~
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV Krishnan, Administrative Member

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1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

The applicant retired voluntarily on 2.5.87 (FN) from the post of Senior Auditor in the Indian Audit and Accounts Department, from the Office of the Accountant General, Trivandrum. He had completed 22 years of service at the time of his retirement. His basic pay then was Rs 1900. As he had sought retirement voluntarily, 5 years' additional service was granted to him under Rule 48(8) of the Central Civil Service (Pension) Rules 1972, Rules, for short. The last pay drawn was Rs 1900 and the average emoluments was also Rs 1900. According to him, the Govt. of India, Department of Personnel OM dated 14.4.87 (Decision No.2 under Rule 49 of the Pension Rules) at Annexure IV, declares that pension will be calculated at 50 % of average emoluments in all cases. His pension should, therefore, have been fixed at Rs 950/-. Instead, it is fixed at Rs 778/- only,

under clause (b) of Rule 49(2), whereunder, 50% of the average emoluments was multiplied by a factor 27/33. Admittedly, 27 stands for the years of qualifying service he had on retirement and 33 represents, the qualifying service for which full pension is given.

2 The applicant - who argued his case personally- is aggrieved by this method of calculation of his pension under Clause (b) of Sub-Rule 2 of Rule 49 for reasons mentioned in para 5 of his application viz (i) wrong interpretation of Rule 49(2)(b) or (ii) there is discrimination and Rule 49(2)(b) is invalid. Hence he seeks the following reliefs:

> "(a) The calculation of pension for the applicant made under Clause (b) of Sub Rule (2) of Rule 49 of CCS(Pension) Rules 1972 may be declared as wrong and the applicant's pension may be fixed at Rs 950/- per mensum with effect from 2.5.1987 with the benefit of arrears.
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> (b) Alternatively, if the interpretation given to Clause (b) Sub (2) of Rule 49 of the CCS (Pension) Rules, 1972 and the calculation of pension made on that interpretation are found to be correct, the said Clause may be declared void and the applicant's pension fixed at Rs 950/- being half of the average emolument, per mensum with effect from 2.5.1987 with the benefit of arrears."

Notwithstanding that an earlier application was rejected as he had not challenged the relevant Rules, by the Annexure A XVIII judgment, this application was wherein he had challenged the Rules admitted and hence is being disposed of on merits.

3 Respondents have filed a reply stating that the applicant is not entitled to any relief as his pension has been correctly computed under Rule 49(2)(b) and the Rules are not unconstitutional.

4 The first ground raised is as follows:

> "(a)(i) The applicants pension has been calculated under Clause (b) of Sub Rule(2) of Rule 49

of the Central Civil Service (Pension) Rules, 1972. This Clasue has been wrongly interpreted and the wrong interpretation is applied for calculating the pension of the applicant.

(ii) The said clause merely stipulates that the pension of those retiring before 33 years should be proportionate to the amount of pension receivable on completion of 33 years or more. This proportion can be achieved on the basis of emoluments alone because the emolument of a person with say, 22 years of service will naturally be less than that of another with 33 years. So if both are given half of the respective emoluments as pension, the former's pension will be proportionately less than the latter's. While the proportion mentioned in the Clasue can be achieved on the basis of emoluments, no further reduction from that proportionate amount is called for.

(iii) Clasue (b) of Sub (2) of Rule 49 of CCS (Pension) Rules does not stipulate that half of the average emoluments of a person with less than 33 years of service should be furhter reduced by X/33 where 'X' is the qualifying service."

5. I have considered this argument and I find it has no force and is against principles of interpretation. Rule 49, to the extent it is relevant, reads as follows:-

"(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service."

"2(a) In the case of Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem."

(b) In the case of a Govt. servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than rupees three hundred and seventy five.

If, as contended by the applicant, Rule 49 itself provides that 50% of the average emoluments has to be given irrespective of qualifying service, there was no need to have two clauses (a) (b) under Sub Rule (2) of Rule 49, to regulate respectively

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pension payable (i) to persons who have rendered qualifying service of 33 years or more and (ii) to persons who have rendered qualifying service of less than 33 years. Therefore, there is no mistake in interpreting Rule 49 by the respondents.

6. It is also clear that when clause (b) of Rule 49(2) refers to the pension being proportionate to the pension admissible under clause (a), it only means that the pension will bear the same proportion to the full pension - i.e., 50% of the average emoluments - as the actual qualifying service rendered bears to the length of qualifying service (i.e., 33 years) for which alone full pension has to be paid.

7. The Govt. of India's decision No.2 below Rule 49 (Annexure-IV) is a direction as to how pension should be calculated under Rule 49(2)(a), i.e., full pension after rendering 33 years of qualifying service. It specifically refers to clause (a) of Rule 49(2). It substitutes the earlier slab formula given under this clause with the new formula, i.e., 50% of average emoluments. This is applicable only if the qualifying service is as stipulated in Rule 49(2)(a), i.e., 33 years or more. If the qualifying service is less than 33 years, the pension based on 50% of average emoluments will also be proportionate to the reduced qualifying service. These provisions have since been incorporated in the Rule 49 itself, the amended provisions having been reproduced in para 5 supra.

8. There is no force in the plea of discrimination. The applicant heavily relies on the decision of the Supreme Court in Nakara's case 1983(2) SCR 246(SC). The applicant has miserably misconstrued Nakara's case. Prior to the amendment of Rule 49 in pursuance of the Annexure-IV instruction, a slab formula was in existence. The slab

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formula for giving full pension for those who have retired after 33 years of qualifying service was made applicable only to those who retired on or after 1.4.79. The Supreme Court found this provision to be discriminatory for, pensioners as a class, were being divided into two groups viz. those who retired prior to 1.4.79 and those retired on 1.4.79 and thereafter, for getting pension on the basis of the revised slab formula. This stipulation was, therefore, struck down by the Supreme Court as being arbitrary and it was directed that, from 1.4.79, the pension of all pensioners, irrespective of when they retired should be calculated on the slab formula basis.

9. Rule 49 as it now stands, can be examined to see if it is discriminatory. The classification made by Rule 49, is not on the basis of the date of retirement, which alone will be arbitrary. The classification is based on the length of qualifying service rendered at the time of retirement. On the length of qualifying service rendered at the time of retirement, three classes are identified for which different quanta of retirement benefits are specified. The first is a case of persons who retired before rendering qualifying service of ten years. They are not entitled to pension. Instead, they are paid a lump sum gratuity as provided in Rule 49(1) extracted above. The second is a class of pensioners who retired after rendering a qualifying service of 33 years or more. They are entitled to full pension at 50% of the average emoluments as provided in Rule 49(2)(a). The third is a class of persons who retired after rendering ten years qualifying service or more but less than 33 years of qualifying service. Rule 49 (2)(b) provides that their pension will be proportionate to the full pension specified in Rule 49(2)(a). There is no discrimination because the length of service has a rational nexus with the quantum of pension, for, it stands to reason,

that if one serves the Government for a longer period, one should become entitled to a larger pension than another who has served the govt. for a shorter period, other things being equal.

10. The law laid down in Nakara's case will also apply to the implementation of the amendments made in Rule 49. Its effect will be that the new method of calculation of pension specified in clasue (a) and clause (b) of Rule 49(2) will be available to all pensioners irrespective when they retired. If some pensioners had retired before this provision was amended, the rule in Nakara's case will entitle them to refixation of pension after such amendment.

11. It has also to be appreciated that if the length of qualifying service is a relevant criterion and yet, pension is paid at 50% of average emoluments irrespective of length of service, there will be discrimination. For, giving the applicant 50% of his average emoluments of Rs.1900 as pension, as claimed by him when he has a qualifying service of only 27 years, including a bonus of 5 years, and, giving the same amount to another who has the same average emoluments (i.e., Rs.1900), but has rendered 35 years of qualifying service will be discriminatory. It is for this reason that Rule 49(2)(b) provides for a proportionate pension.

12. In the circumstnace, I find that Rule 49(2)(b) does not violate any provision of the Constitution relating equality of treatment.

13. For the aforesaid reasons, I do not find any merit in this application which is dismissed. There will be no order as to costs.

28/4/82

(N.V. Krishnan)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. / T. A. No. RA 73/92 in OA 184/91 199

DATE OF DECISION 1-6-92

Mr. Vasavan Pillai — Applicant (s)

In person — Advocate for the Applicant (s)

Versus

U.O.I. Deptt. of Pension and others. — Respondent (s)

Mr. Krishnakumar — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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JUDGEMENT

N.V.Krishnan, AM

This application was filed seeking a review of the order dated 28.4.92 passed by me in OA 184/91. I have perused the application for review and I am satisfied that it can be disposed of without hearing the counsel.

2. A perusal of the application shows that the applicant is, as a matter of fact, aggrieved by the decision and he has sought to point out that the decision rendered is not quite correct. He has not pointed out any error apparent on the face of the records to justify a review. The grounds urged are more appropriate for an appeal against the order.

3. I find,no ground has been raised for a review of the original order and hence this application is dismissed.

1.6.92

(N.V.Krishnan)
Administrative Member
1.6.1992