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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH AT LUCKNOW

Dated the 7th day of October, 1988

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN
THE HON'BLE MR. AJAY JOHRI .. MEMBER (A)

O.A. NO. 567 OF 1987(L)

S.K.LALL .. Applicant

-vs.-

UNION OF INDIA .. Respondent.

Application coming on for hearing to-day,
Hon'ble Vice Chairman made the following:

ORDER

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 (Act).

2. Shri S.K.Lall, the applicant before us, who commenced his career on 15-12-1948 in the Income Tax Department as an Income Tax Officer, secured all promotions legitimately due to him and has retired from service on 31-7-1979 as Commissioner of Income Tax.

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3. When the applicant retired from service, he was drawing a substantive pay of Rs.2,750/- in the then time scale of Rs.2,500 - 2,750/- in addition to other emoluments admissible under the Rules and Orders regulating them. On his retirement from service, his basic pension had been fixed at Rs.1,210/- per month, with which he has no grievance. His grievance is confined only to the fixation of Graded Dearness Relief (Pension Relief) (DAR) sanctioned to the pensioners by Government in its Office Memorandum No.19(4)-EV/79, dated 25-5-1979 (Annexure-B). In terms of this Memorandum, the applicant was sanctioned Rs.100/- p.m. as DAR. Since this fixation was disadvantageous, the applicant and several others similarly affected moved the Government to modify the same and make it applicable even to those that had retired in between 30-4-1979 and 30-1-1982 and thus extend him a higher DAR of Rs.200/- p.m. On their representations, Government by its Order No.38/9/86-P & PW, dated 8-8-1986 (Annexure-D) accepted the same, however with a rider that financial benefits shall be extended from 1-4-1986, which has been further modified to be effective from 1-1-1986.

4. The applicant's grievance is limited to the rider attached in this order, namely, that the financial benefits of the enhanced Pension Relief of Rs.200/- per month, as against Rs.100/-, he was earlier allowed, should be paid only from 1-4-1986, later modified as from 1-1-1986.

In other words, the applicant claims that on the very terms of the orders made by Government on 25-5-1979 and 8-8-1986, which should be read as really one order, the enhanced Pension Relief of Re.200/- p.m. should be made available to him from 1-8-1979 to 31-12-1985. The repeated representations made in that behalf by the applicant before Government, was rejected by Government on 21-5-1987 (Annexure-G). Hence, this application.

5. In their reply, the respondents have asserted that financial benefits are conventionally extended prospectively and not retrospectively and on that principle, the rider attached was legal and valid.

6. Shri S.K.Lall, applicant in person, contends that the rider attached by Government in its Order dated 8-8-1986 really defeating the very principle accepted by it, is arbitrary, irrational and is violative of Articles 14 and 16 of the Constitution. In support of his contention, Shri Lall strongly relies on the ruling of the Supreme Court, in D.S. NAKARA & ORS. -vs.- UNION OF INDIA 1983(1) S.L.J., 1317.

7. Shri V.K.Chaudhari, learned Counsel for the respondents, refuting the contention of Shri Lall, sought to support the order of Government. In support of his contention, Shri Chaudhari strongly relies on the ruling of the Supreme Court, in ALL INDIA PENSIONERS ASSOCIATION vs. UNION OF INDIA 1986(3) S.L.J., 4667.

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8. In its order dated 25-5-1979, Government evolved and laid down guidelines for treatment of a portion of the Dearness Allowance as pay, for purposes of retirement benefits. Clause-4 of this order, which is relevant for our purpose, reads thus:

"4. Persons who retired on or after 30th September, 1987 but not later than the 30th April, 1979 will have an option to choose either of the two alternatives below:

a) to have their pension and DCR Gratuity calculated on their pay excluding the element of Dearness Pay as indicated in para 2 above in accordance with the rules in force on 30-9-1977, and get graded relief on pension to the full extent admissible from time to time;

OR

b) to have their pension and DCR Gratuity recalculated after taking into account the element of dearness pay. In such cases, the first four instalments of graded relief sanctioned upto the average index level 272 will not be admissible; these pensioners will be entitled only to the instalments of graded relief sanctioned beyond the average index level 272.

The option will have to be exercised by 31-12-79. The option once exercised will be final. In cases where the retired Government servant has died before exercising an option the Head of Office will, on an application made to him, calculate the pension and death-cum-retirement gratuity on the existing basis as well as on the basis of merged portion of dearness allowance, and allow the more advantageous of the two to the persons entitled to receive the balance under CCS (Pension) Rules, 1972. Those fail to exercise the option or make an application (in the case of death of a pensioner) within the stipulated period will be governed by para 4(b) above."

As this clause did not give relief to the applicant and others, who had retired from 30-4-1979 to 30-1-1982, they

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represented to Government to extend the benefits of that order for those who had retired during the said period also. On an examination of those representations, Government in its order dated 8-8-1986 very rightly accepted the same. Paras 2 and 3 of this order which are relevant, read thus:

"2. The Govt. have been receiving representations from Officers who retired after 30-4-1979 and who have not been permitted to exercise option as mentioned in foregoing paragraph stating that they have been placed at a disadvantage compared to the officers who retired on or after 30-9-1977 but not later than 30-4-1979 in as much as they were neither allowed to exercise option nor granted the graded relief upto average index level 272. According to them the officers in receipt of pay Rs.2158/- and above were either entitled to reduced rates of dearness allowance, by way of adjustment, or no dearness allowance at all with reference to index level 272, but they were allowed only graded relief (Dearness relief) sanctioned beyond the average index level 272. The Government has reconsidered the matter and keeping in view the hardship caused to such officers, the President is pleased to decide that Government Servants drawing pay of Rs.2,518 or above who retired after 30-4-1979 but not later than 30-1-1982, may be allowed an option on the lines of paragraph 4 of the Ministry of Finance O.M. No.19(4)-E/79 dated 25-5-1979. The option may also be exercised by those Government servants drawing pay of Rs.2,158 or above who retired between 31-1-1982 and 30-5-1985 and who had opted for paragraph 4(a) of the Ministry of Finance O.M. No. F.1(3)E/82 dated 8-4-1982. The option will have to be exercised within a period of six months from the date of issue of these orders. The option once exercised shall be final. These persons who fail to exercise an option within the stipulated period will continue to receive pension and

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and graded relief in accordance with the existing orders.

3. Where the option is in favour of para 4(a) of the O.M. dated 25-5-1979, the pension OCRG and graded relief will be revised. The revision will be from 1-4-1986."

On the principle accepted here, the applicant has no grievance and his grievance is limited to the last sentence occurring in para-3 to the effect, "The revision will be from 1-4-1986" later modified from 1-1-1986.

9. The two orders made by Government, which should be read as one order, really accept the claim of the applicant and others similarly situated pensioners, makes this position crystal clear. But, Government having rightly accepted their claim, had somewhat niggardly denied the same by adding a rider that the benefit of revision will be effective only from 1-4-1986, which is later modified as from 1-1-1986. We need hardly say that there is no logic or reason for the same. In a way, the rider sets at naught what is rightly accepted by Government and is self-contradictory.

10. In its later order, Government was remedying the injustice occasioned to those who had retired from 30-4-1979 to 30-1-1982. When so doing, it cannot deny the financial benefits flowing from the same, which is only logical and is consequential. Even otherwise, the benefit given was a drop in the ocean and should have

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been extended to all without any rider. The rider imposed by Government is irrational, arbitrary and is even unjust.

11. In Nakara's case, the Supreme Court dealing with the scheme of extending Liberalised Pension Rules, which came into force from 1-4-1979 only to those who had retired on and from that date had exhaustively examined the legal position and had ruled that picking a date for extension of reliefs to pensioners was violative of Articles 14 and 16 of the Constitution. We are of the view that on the very principles enunciated in Nakara's case, the rider added by Government is violative of Article 14 of the Constitution and is liable to be struck down and appropriate directions issued to Government.

12. In All India Pensioners Associations' case, the Supreme Court did not depart from the principles enunciated in Nakara's case and ruled that it did not apply to cases of "one time payment" like death-cum-retirement gratuity. But, that is not the position in the present case. On the other hand, the claim of the applicant is for a component of monthly pension that accrues and becomes payable every month and is not a "one time payment". Hence, the ratio in The All India Pensioners Associations' case does not bear on the point .

13. In his application, Shri Lall had claimed interest on the delayed payments. But at the hearing,

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Sri Lall did not rightly press the same. We, therefore, reject the claim of the applicant for payment of interest.

14. On the foregoing discussions, we hold that the last sentence occurring in para-3 of the order dated 8-8-1986, namely, "The revision will be from 1-4-1986" is liable to be struck down and appropriate direction issued to Government in that behalf. On this conclusion, we can only direct Government to extend the benefit of our order to the applicant only and not others who are not before us. But, we do hope and trust that Government itself will extend this benefit to all others who are similarly situated, avoiding all unnecessary litigation before Courts and Tribunals.

15. In the light of our above discussion, we make the following orders and directions :

(i) We strike down the last sentence of para-3 of the Order dated 8-8-1986 of Government (Annexure-0), which reads thus:

"The revision will be from 1-4-1986" later modified to 1-1-1986.

(ii) We direct the respondents to make available the difference of arrears of Pension Relief at the Rs.100 per month, to the applicant, from 1-8-1979 to 31-12-1985 with all such expedition

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as is possible in the circumstances of the case and in any event, on or before 31-12-1988 and regulate the payments thereafter on that basis.

16. Application is allowed. But, in the circumstances of the case, we direct the parties to bear their own costs.

17. Let this order be communicated to all the parties within ten days from to-day.

3/3/84
(AJAY JOHRI)

MEMBER(A).

M.S. Puttaswamy
(K.S.PUTTASWAMY)
VICE CHAIRMAN.

7/10/1984

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