(9)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 729/87
~~T.A. No.~~ 198

DATE OF DECISION 13.2.1990

Dr.V.Balasubramanian Petitioner

Applicant in person Advocate for the Petitioner(s)

Versus

Union of India and others. Respondents

Mr.R.C.Kotiankar for Mr.M.I.Sethna Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

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

13/2

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

(10)

OA.No. 729/87

Dr.V.Balasubramanian ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri G.Sreedharan Nair
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Applicant in person

Mr.R.C.Kotiankar
(for Mr.M.I.Sethna)
Advocate
for the Respondents

JUDGMENT Dated: 13.2.1990

(PER: M.Y.Priolkar, Member (A)

The Fourth Central Pay Commission which was constituted by the Ministry of Finance Resolution dated 29th July 1983, submitted Part I of its Report dealing with salary, allowances, etc. on 30.6.1986 and Part II dealing with pensionary benefits on 12.12.1986. On the basis of this Pay Commission's recommendations, Government of India made wide ranging improvements in the prevailing pay and pension structure including death-cum-retirement benefits of its employees, with effect from 1.1.1986. The main benefits granted were increased pay scales for all posts, calculation of pension at the flat rate of 50% of ten months' average emoluments instead of the earlier slab formula, raising the ceiling on gratuity from Rs.50,000 to Rs. one lakh and encashment of leave for 240 instead of the earlier 180 days.

2. The applicant in this case retired on 27th September 1985 as the Senior Vice President, Income Tax Apellate Tribunal, Bombay. His grievance is that he is not being paid the higher

.. 2/-

amounts of monthly pension, gratuity and leave encashment to which he claims he is entitled after 1.1.1986 on the basis of Government orders on the Pay Commission's recommendations.

3. For higher pension, the applicant argues that, firstly, the "effective date", viz. 1.1.1986 was arbitrarily fixed and this should have been July 1983, i.e. when the Commission was appointed, and,secondly, taking now for pension calculation of an employee the salary as on the date of retirement after 1.1.1986, though the major part of service like the pre-1986 retirees was in the old scale common to both, is discriminatory against the pre 1.1.1986 retirees.

4. The Pay Commission itself had recommended that Part II (dealing with pensionary benefits) of its Report submitted on 12.12.1986 be given effect from 1.1.1986. This recommendation was accepted by Government. Merely because the Pay Commission was constituted on 29th July 1983, it does not create any vested right in employees to demand implementation of its Report from that date. Though adoption of such date would have met the grievance of employees like the applicant, who had retired after July 1983, hundreds of other employees who would have retired just before that date could have the grievance that the appointment of the Pay Commission itself had been delayed - a point made by the applicant himself - thus depriving them of the benefits of its recommendations. Evidently, there has to be a cut-off date in such matters and we do not find anything arbitrary or unreasonable in Government's decision to fix 1.1.1986 as the effective date, which was the recommendation of the Pay Commission itself.

5. The second contention of the applicant is that even if the effective date is fixed as 1.1.1986, any computation of pension will be discrimatory and illegal unless the pension

amount worked out for the applicant is the same as that received by any other person who retired on or after 1.1.1986 from the same post and after putting in the same number of years of service as the applicant. For this proposition, the applicant relies primarily on the Supreme Court decision in the case of D.S.Nakara v. Union of India (AIR 1983 SC 130) and also those in M.L.Jain v. Union of India (1988(4) SLR 495) and B.Prabhakara Rao v. State of A.P. (AIR 1986 SC 210).

6. The main pensionary benefit granted on the basis of Fourth Pay Commission's recommendations was calculation of pension by adopting a flat rate of 50% of average emoluments instead of the earlier slab formula of 50% of the first Rs.1000, 45% of the next Rs.500 and 40% of the rest of the average emoluments. The principle enunciated in the case of D.S.Nakara v. Union of India (AIR 1983 SC 130) has already been extended to the applicant by allowing him additional amount of pension on account of difference between the pension calculated under the slab formula in force at the time of his retirement and the pension becoming admissible under the 50% formula from 1.1.1986. However, what the applicant claims is that his pension should be calculated with reference to the notional pay in the revised scale which he would have drawn had he continued in service after 1.1.1986.

7. Under Rules 33 and 34 of Central Civil Services Pension Rules which were in force at the time the Fourth Pay Commission was appointed and which continue to be in force even after 1.1.1986, the expression "emoluments" means pay as defined in Rule 9 (21) of the fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death, while average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last ten months of his service. For those retiring

.. 4/-

after 1.1.1986, the average emoluments will thus be calculated on their pay in the revised scales, whereas the applicant's average emoluments for the prupose of pension have been calculated on the basis of pay in the pre-revised scales. This, according to the applicant, is discriminatory and contrary to the Supreme Court's decision in D.S.Nakara's case, that all pensioners form a homogeneous class for the purpose of pension benefits. This decision was in the context of Govt. of India, Ministry of Finance O.M. dated 25.5.1979 whereby the formula for computation of pension was liberalised but made applicable to Government servants who were in service on 31st March 1979 and retired from service on or after that specified date. The liberalised pension scheme related ~~to~~ the pension amount to average emoluments of last ten months' service instead of 36 months, which was the position earlier. Coupled with it, a slab system was introduced and the ceiling was also raised. The Supreme Court held that all pensioners governed by the 1972 Rules and Army Pension regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement but arrears of pension prior to the specified date as per fresh computation will not be admissible.

8. After the Fourth Central Pay Commission, there was further liberalisation in the pension formula by adopting a flat percentage rate of 50% instead of the earlier slab system and further raising the ceiling, but there was no re-definition of average emoluments. The applicant took us almost through the entire judgment of the Supreme Court in D.S.Nakara's case to press the point that there is implicit support in the judgment to his claim that his average emoluments should be calculated with reference to the notional pay in the revised scale which he would have drawn, had he continued in service till 1.1.1986. We are, however, unable to find any such

(14)

suggestion, implied or otherwise, in the judgment. In fact, there is an explicit contrary statement in that judgment. In para 61 of the judgment, while dealing with the apprehension regarding fresh commutation benefit, the Supreme Court has observed as under :-

> "The date of retirement of each employee remains as it is. The average emoluments have to be worked out keeping in view the emoluments drawn by him before retirement but in accordance with the principles of the liberalised pension scheme. The two features which make the liberalised pension scheme more attractive is the redefining of average emoluments in Rule 34, and introduction of slab system simultanelusly raising the ceiling. Within these parameters, the pension will have to be recomputed with effect from the date from which the liberalised pension scheme came into force, i.e. March 31, 1979".

Based on this principle enunciated by the Supreme Court, the pension of all employees who retired prior to 1.1.1986, including the applicant, was recomputed giving them the benefit of the fixed percentage of 50% as also the higher ceiling. There was no question of notionally fixing the pay of the applicant in the revised scale and recomputing the average emoluments as there was no such recemmendation by the Pay Commission nor any amendment by Government of Rules 34 and 35 defining emoluments and average emoluments nor any direction in the Supreme Court judgment in D.S.Nakara's case that average emoulments have to be worked out otherwise than keeping in view the emoluments drawn by him before retirement. We, accordingly, reject the applicant's contention of discrimination against him for not basing his average emoluments on notionaly pay in the revised scales. Evidently, the applicant having retired before 1.1.1986, cannot be treated as equal to one who was in service as on that date, and was, therefore, entitled to benefits of revised pay scales with effect from 1.1.1986 and on retirement after date, have his average emoluments computed on the basis of such revised pay.

.. 6/-

(15)

We are, therefore, of the view that non-computation of the applicant's pension with reference to the notional emoluments not actually drawn by him is not violative of any fundamental right or any other legal right of the applicant.

9. The applicant also argued before us that the intention of the Pay Commission and even of the Government was that the average emoluments have to be worked out on the basis of the notional pay in the revised pay scales, but it was the Pay and Accounts Officer who had failed to correctly interpret the Pay Commission's recommendations as well as the Government's orders in this regard. We think this is plainly unfair to that worthy functionary. Both the Commission and the Government were well aware of the prevailing method of computation of pension related to average emoluments and, if they wanted any change therein, they would have said so clearly and categorically in their Report and orders thereon, respectively. In the absence of any amendments to Rules 34 and 35 of the Pension Rules, the Pay and Accounts Officer had no option other than taking the applicant's actual emoluments preceding the retirement for recomputation of his pension, giving him the benefits of 50% of average emoluments instead of the earlier slab system, which he has admittedly done.

10. In the case of M.L.Jain v. Union of India (1988 (4) SLR 495), which was also relied upon by the applicant, the Supreme Court found that the letter of the Ministry of Law and Justice dated 18.12.1987 giving liberty to different State Governments to appoint different dates for the grant of revised pension to retired High Court Judges was constitutionally impermissible as offending Article 14 of the Constitution, as it is tantamount to denial of equal treatment to persons belonging to the same class without any rational basis. No rational basis was also discernible in the Pay and Accounts Officer according differential treatment to the petitioner

.. 7/-

(16)

vis-a-vis other judges of the same High Court who had put in lesser number of years of service but were held entitled to pension at much higher rates. We do not see how this judgment where the entitlement to higher pension was accepted in the light of the changed provisions of law has any relevance to the applicant's claim before us.

11. The third Supreme Court judgment on which reliance was placed by the applicant in support of his contention of discriminatory treatment was of B.Prabhakara Rao and others v. State of Andhra Pradesh (AIR 1986 SC 210) in which, following the decision in D.S.Nakara's case, it was held that the division of Government employees into two classes, those who had already attained the age of 55 on 28.2.1983 and those who attained the age of 55 between 28.2.1983 and 23.8.1984 on the one hand, and the rest on the other, and denying the benefit of the higher age of superannuation to the former class is as arbitrary as the division of Government employees entitled to pension in the past and in the future into two classes, that is, those that had retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only. This judgment will also be of no help to the applicant, since we have already held earlier that following the principle enunciated in D.S.Nakara's case, the applicant's pension has been correctly recomputed with effect from 1.1.1986 in accordance with the new pension rules.

12. As regards enhanced gratuity claimed by the applicant, the position is well settled with the judgments of the Supreme Court in (i) SLP No. 14179-80 of 1985, State Government Pensioners' Association and others v. State of Andhra Pradesh and (ii) Writ Petition Civil No. 3531-3534 of 1983 N.L.Abhyankar v. Union of India. In both these judgments, claims for revised

.. 8/-

(17)

gratuity in similar circumstances were rejected mainly on the ground that gratuity paid is a one time payment, and persons who retired in 1950, 1960 and 1970 etc. also earned, saved and lived as in those years cannot rely on Article 14 for increase in the ceiling on gratuity. We agree with the respondents that the same thing holds good for leave encashment also as the leave salary for the period of leave encashment is determined with reference to the actual pay and allowances drawn at the time of retirement and not on the notional pay and allowances, as a result of subsequent revision of pay and allowances prospectively. The applicant, however, contends that his claim in this regard is based on the constitution of the Pay Commission in 1983 to redress the grievances and relieve the current miseries of the Government servants, i.e. those who were in service in 1983 and the fact that the crucial effective date cannot be arbitrarily fixed. We have already rejected this contention and held earlier that the mere constitution of the Commission on a particular date does not create any vested right in the employees to demand implementation of the Commission's report with effect from that date, and there is nothing arbitrary or discriminatory in the Government's decision to fix 1.1.1986 as the effective date, which was the recommendation of the Pay Commission itself.

13. In the result, the application fails and is dismissed, with no order as to costs.

13.2.1990

(M.Y.PRIOLKAR)
Member (A)

(~~G.SREEDHARAN NAIR~~)
~~Vice Chairman~~