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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 527/87.

Shri V.Z.Parab. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Co ram: Hon'ble Vice-Chairman, Shri U.C.Srivastava,  
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Mr.S.Y.Gupte.  
Respondents by Mr.V.S.Masurkar.

JUDGMENT:-

¶ Per Shri U.C.Srivastava, Vice-Chairman ¶ Dated: 25-1991

The applicant who joined the service of Naval Armament Depot, Bombay as Stores Trainee on 18.4.1945 retired as Foreman (AWS) from the office of the Naval Armament Supply Officer, Bombay on 31st May, 1982 has approached this Tribunal praying that it may be declared ~~that~~ a decision of the Government in treating the loss in Pension due to merger of portion of Dearness Allowance (DA) as personal pay for those who retired after 31st March, 1985 by denying this benefit to those who retired between 1.6.82 and 30.3.1985 is discriminatory and violative of Article 14 and and 16 of the Constitution of India. The applicant's basic pay at the time of retirement was Rs.900/- per month and although he has given certain calculations regarding the D.A. and the relief which was granted to him, but the calculations given by him has been stated to be incorrect

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in the counter affidavit and during the course of arguments it was accepted that the calculations given by the applicant to some extent were incorrect, but it was contended that although he has mentioned certain wrong amounts, but the loss of Rs.56/- continued with every further review granted by the Government. He commuted Pension of Rs.188/- as such according to the applicant he was given pension of Rs.377+300 as a relief totalling to Rs.677/-. After the decision was taken by the Government of India to extend benefit of merging 34% of D.A. instead of 27 per cent in pay from 1.6.1962, the applicant opted on 19.4.1983 for the fixation of his pension by merging the extra DA with the expectation that this will increase his pension. His pension was refixed after taking into consideration the 34% Dearness Pay at Rs.593 + Commutation Rs.197 = 396 + relief Rs.225 totalling Rs.621/- against the total of Rs.627/- which he was already getting and thus a loss of Rs.56 \*

2. Even after 1.6.1980 to which a calculation is made on pre-commutation amount <sup>the</sup> loss will be Rs.47/- p.m. The reduction regarding the applicant was effected by the Pay & Accounts Officer w.e.f. 1.3.1984 and amounts for the periods from 1.6.1982 to 28.2.1984 being Rs.1500 was covered by the PAO while making further payments. The Central Government again took a decision in treatment of portion of A.D.A. as on 31st March, 1985 as pay for the purpose of retirement benefits. The new decision according to the applicant results in a loss as compared to the total

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amount of pension + relief on pension admissible on those dates. However, the Government have announced in the same order that the loss will be meted by grant of personal pay to the individual concerned. But the same was made applicable to those Government employees who retired on or before 31st March, 1985, but the concession was not extended to those who retired prior to the date, although the nature of loss suffered in the said category was the same. ~~In the counter affidavit it has been~~

3. In the counter affidavit it has been stated that as a matter of fact the pension benefit of the applicant before pre-commutation was Rs.65/- from 1.12.1982. As per PPO his total pension was Rs.778/- and as per final PPO it became Rs.843/-, under the old formula. In the counter affidavit it has been stated that after commutation the total amount of pension was Rs.519/- and not Rs.677/- as stated by the applicant and subsequently he exercised his option and after this option the total amount was increased and on final pension awarded was Rs.9/-. He was awarded as commutation ~~on~~ Rs.1,129.68 was also paid and arrears was also enhanced from Rs.15,859.50 to Rs.20,955.00. The pension benefit was thus according to the opposite party was Rs.65/- per month from 1.12.1982. From the counter affidavit it appears that under new formula there is a loss of Rs.47/- per month, but it has been stated that applicant had opted for refixing his pension as per b(2) of the Government Order and he should have exercised option after taking into account all the relevant factors of his case. On behalf of the respondents, it has been contended that when the applicant

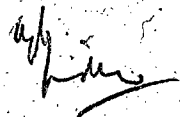
retired from service there was no provision in the pension rules for treating ADA and ad hoc DA up to average index level 568 as dearness pay for calculation of average emoluments for purpose of pension. He, therefore, is not governed by the provisions contained in the department's order dt. 21st June, 1965. A reference was made to Alati v. Union of India in which the High Court took the view that benefit of revised pension of emoluments on the analogy of the Supreme Court Judgment in Nakhara's case was not to be given. The SLP against the said Judgment has already been dismissed by the Supreme Court.

4. Even in the later <sup>decision</sup> also this view has been taken that if any pensioners have been given a particular benefit and thereafter same revision takes place and those who retired after a particular date gets some more benefit then those who <sup>have</sup> retired earlier cannot get that benefit. In this case of the applicant the entire amount was settled, he was paid gratuity and P.F. etc. and he was already receiving pension and getting the benefit which from time to time he was getting, but merely because rules were changed and certain options was taken and certain benefits were given to those who retired after a particular date, the applicant at least in this case cannot claim that benefit. The analogy of Nakhara's case here will not apply and it cannot be said that any discrimination whatsoever has been done and the orders passed will not be violative of Article 14 of the Constitution of India.

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5. We are therefore, of the view that there is no merit in the application, which is liable to be dismissed and the same is accordingly dismissed.



(M.Y. PRIOLKAR)  
MEMBER (A)



(U.C. SRIVASTAVA)  
VICE - CHAIRMAN