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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 770/1988

~~Transfer Application No:~~

DATE OF DECISION: 4.10.96

Vasant Balkrishna Karkhanis Petitioner

Shri P.V. Deshpande Advocate for the Petitioners

Versus

Secretary, Ministry of Personnel  
& Training, Administrative Respondent  
Reforms & Public Grievance and Pension & Ors.


Shri V.G. Rege Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(B.S. Hegde)  
Member (J)

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

O.A. No. 770/1988

Vasant Balkrishna Karkhanis ... Applicant

v/s

Secretary, Ministry of Personnel  
& Training, Administrative  
Reforms & Public Grievance and  
Pension and Others ... Respondents

Coram : Hon'ble Member (J) Shri B.S. Hegde  
Hon'ble Member (A) Shri M.R. Kolhatkar

Appearance :

1. Shri P.V. Deshpande, Advocate for the Applicant
2. Shri V.G. Rege, Advocate for Respondents.

Judgement

Dated: 4.10.94,

(Per: Hon'ble Member (J)  
Shri B.S. Hegde)

In this Original Application, under section 19 of the Administrative Tribunal Act, the Applicant is seeking for the treatment of portion of dearness allowance as 'pay' for the purpose of retirement benefits in view of O.M. dated 30-4-1985.

2. Accordingly, the Applicant has prayed for the reliefs stating that he is entitled to the benefit similar to one extended only to the group of Pensioners covered by order no. 3 dated 30-4-1985 issued by the Government of India, Ministry of Personnel & Training. The Applicant retired as

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Divisional Operating Superintendent (Movement) in Central Railway and has retired on 31-1-1982 after putting in nearly 37½ years of service.

3. The short point for consideration is whether the Applicant is entitled to claim the benefits granted by the Department of Pension vide order dated 30-4-1985 although he has retired in the year 1982. In this connection, he has adduced Office Memoranda of the Government of India from time to time which are given below :-

- (1) F.19(4)/EV/79 dated 25-5-1979 regarding merger of 27% Dearness Allowance upto 272 points living index as part of pay for pensionary benefits.
- (2) F.1(3)EV/82 dated 8-4-1982 and 4-3-1983 for further merger of DA upto 320 points living index for pension of 15.5% in addition to earlier merger of 27%.
- (3) F.1(12)-EV/84 dated 30-4-1985 for further merger of additional Dearness Allowance beyond 320 points living index upto 568 points for treatment of D.A. as part of pay in addition to earlier merger of 27% and 15.5%.

4. According to 1979 orders, persons retiring between 30-9-1977 and 28-2-1978 are eligible to half pensionary benefits and those retiring on or after 28-2-1978 - full pensionary benefits. Similarly, by virtue of order dated 8-4-1982, the persons retiring between 31-1-1982 to 29-6-1982 are eligible to half pensionary benefits and the persons retiring on or after 30-6-1982 - full benefits. In the third order dated 30-4-1985, persons retiring between 31-3-1985 to 30-8-1985 are eligible to half benefit and those retiring on or after 31-8-1985 - full benefit.

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5. The main crux of the argument is the extension of the benefit of 1985 circular. In not extending the said benefit to the Applicant, the Respondent has discriminated one group of persons from another in the matter of extending the benefit.

6. The Respondents in their reply have denied the contention of the Applicant and have stated that the amount of the pensionary benefits have already been sanctioned to the Applicant in accordance with the orders which have been issued by the Government of India from time to time. The Respondents further stated that this is not only the case of the Applicant that the amount of pensionary benefits have been sanctioned according to the said orders but the pension and pensionary benefits have been sanctioned in the case of other Government servants like the Applicant who retired between the period 31-1-1982 and 29-6-1982 and who have exercised option as laid down in para 4(b) of the O.M. dated 8-4-1982. In the circumstances, there appears no cause of action whatsoever for the applicant for filing the present application since the orders have been uniformly applied in the case of all the persons similarly situated like the applicant. Further, the Applicant has not challenged the legality and validity of the orders in question which govern the sanction of the pension and the pensionary benefits to the Applicant. Therefore, he is not entitled to claim any of the reliefs in this behalf. As a matter of fact, the Applicant has been sanctioned pension and the pensionary benefits in terms of the said orders and in accordance with the option exercised by the applicant himself.

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Since the cause of action arose in the year 1982, keeping in view the provisions of section 21, the application is not tenable and the same is required to be dismissed. It is further contended that refixation of pension in terms thereof would arise if there is any loss of pension and the same has to be made good by granting to the Pensioner portion of pension. However, such portion of personal pension is not to be taken for the purpose of granting commuted value of the pension or further relief of pension. It is not the case of the applicant that he has been discriminated than those who similarly situated. The applicant has already been granted benefits which were available under Office Memorandum dt. 31-4-1985 as modified by O.M. dated 21-6-1985 and as such the question of any further relief does not arise. We have heard the rival contention of the parties and heard argument of the learned counsel for the applicant Shri P.V. Deshpande and Shri V.G. Rege for the Respondents.

7. In support of his contention, the learned counsel for the applicant has relied upon the Bangalore Bench Tribunal in (B) Ranga Joshi & Others v/s Union of India and Others 1988 (1)(CAT) 85 relying upon the Supreme Court's judgement in Nakara's case. The Tribunal held that the homogeneous class of pensioners have been classified into separate classes on the ground that they had retired before 30-6-1982 or after that date and that classification has no rational nexus to the object sought to be achieved by the order at all. This classification made by the Government is an impermissible and invalid and

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contravenes Article 14 of the Constitution of India etc. On the other hand, the learned counsel for the Respondents draws our attention that Nakra's case has not been followed by the recent decision of the Supreme Court in Union of India v/s P.N. Menon and Others 1994(2) SLR 335 wherein the Supreme Court has held that "The scheme to merge a part of the dearness allowance for purpose of fixing the dearness pay, was evolved, and was linked with the average of cost of living index fixed at 272, which fell on 30th April 1977. In this background, it cannot be said that the date, 30th September 1977, was picked out in an arbitrary or irrational manner, without proper application of mind. The option given to employees, who retired on or after 30th September, 1977 but not later than 30th April 1979, to exercise an option to get their pension and death-cum-retirement gratuity calculated by excluding the element of dearness pay as indicated in the aforesaid Office Memorandum or to get it included in their pension and death-cum-retirement gratuity was not an exercise to create a class within class. The decision having a nexus with the price index level at 272, which it reached on 30th September, 1977, was just and valid. It has been rightly pointed out that respondents had never been in receipt of dearness pay and as such the Office Memorandum in question could not have been applied to them. Similarly, the encashment of leave was a new scheme introduced which could not have been extended retrospectively to respondents, who had retired before the introduction of the said scheme. Same can be said even in respect of family pension scheme which was earlier contributory, but with effect from 22nd September 1977 the scheme was made non-contri-

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butory. The respondents not being in service on the said date, were not eligible for the said benefit and no question of refunding the amount, which had already been contributed by them, did arise. According to us, the High Court was in error in applying the principle of D.S. Nakara (supra) in the facts and circumstances of the present case."

8. Keeping in view the ratio laid down in the aforesaid decision, we are of the view, that the decision cited by the learned counsel for the Applicant does not stand the scrutiny in view of the latest decision of the Supreme Court cited above, and the Applicant has been paid pensionary benefits in accordance with the 1982 circular and having exercised option given to him at the time of retirement in the year 1982, it is not open to seek any further option by virtue of the Office Memorandum issued by the Govt. of India in 1985. In the circumstances, we are, therefore of the view, that apart from delay in filing this petition, which is admittedly barred by time, even on merits also, the application does not have any substantial grounds to agitate and thus, it cannot be said that the Applicant is in any way discriminated. The classification made has rational nexus with the object sought to be achieved. Hence, the O.A. is dismissed but no order as to costs.

*M.R. Kolhatkar*

(M.R. Kolhatkar)  
Member (A)

*B.S. Hegde*

(B.S. Hegde)  
Member (J)

ssp.