

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 784/88
 T.A. No.

198

DATE OF DECISION 20.3.92.

Shri R.C.Ravalani Petitioner

Applicant in person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr.A.I.Bhatkar for Mr.M.I.Sethna Advocate for the Respondent(s)

CORAM

The Hon'ble Ms. Usha Savara, Member (A)

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 ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

b. Lawrence

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA. NO. 784/88

Shri R.C.Ravalani

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Ms.Usha Savara

Appearance

Applicant in person

Mr. A. I. Bhatkar (for Mr. M. I. Sethna)
Advocate
for the Respondents

Judgement

Dated: 2c. 3. '92

(PER: Usha Savara, Member (A))

This O.A. has been filed praying for grant of interest for period of 15 months at 12% or any rate deemed justifiable by the Tribunal on the amount of gratuity paid late i.e. on Rs.9373/- in terms of Rule 68, sub rule 1 of CCS(Pension) Rules, 1972. It is also prayed that sub-rule 5 of Rule 68 of CCS(Pension) Rules 1972 and Para 5 of G.I.Deptt. of P&PW, O.M.No. 7/20/89-P&PW(F) dated 22.01.1991 be declared discriminatory and hence violative of Article 14 & 16 of the Constitution. The unconstitutional part be removed, while retaining the beneficial part.

2. Succinctly put, the applicant took voluntary retirement from service on 31.3.1985. He was sanctioned revised pensionary benefits on 8.8.1986 after lot of efforts, and this was communicated to him on 3.9.1986. The difference of gratuity - Rs.9373/- was credited to his account only on 17.10.1986. It is contended by the applicant that the respondents are liable to pay interest

for this inordinate delay in terms of CCS(Pension) Rules 1972 - Rule 68(1). The applicant requested for the same vide application dated 28.12.1987 and reminder dated 28.3.1988, but has received no reply. The Govt. of India has issued fresh orders for grant of interest on delayed payment of gratuity and arrears of gratuity on 22.1.1991 whereby if the payment on account of arrears of gratuity is delayed beyond a period of 3 months from the date of orders revising emoluments due to liberalisation in rules, then interest may be allowed for the delay beyond the period of 3 months of the date of issue of the said orders. These orders are effective from the date of issue, i.e. 22.01.1991. The applicant, admittedly, is not eligible for payment of interest for the period of delay, as he had retired prior to the issue of the said O.M. and his case had already been settled as far as payment of gratuity was concerned. Those pensioners who had retired prior to the date of the O.M. but who had not been paid arrears of gratuity on that date were eligible for the payment of interest. It is the case of the applicant that the said O.M. has laid down eligibility criteria, which are discriminatory, creating a micro-classification in the class of pensioners who have retired prior to issue of O.M. and is, accordingly, violative of Articles 14 and 16 of the Constitution. Reliance is placed on the case of D.S.Nakara vs. U.C.I. (1983) 1 S.C.C. 305. It was held that the pensioners for the purpose of pension benefits form a homogeneous class, which cannot be divided by arbitrarily fixing an eligibility criterion unrelated to the purpose of division. The date of retirement cannot form a valid criterion for classification, for if that be the criterion, those who retire at the end of every month shall form a class by themselves. This is too microscopic classification to be upheld for any valid purpose.

Therefore, the applicant prays for relief of grant of interest, as the Govt. O.M. has to be quashed as violative of the Articles 14 & 16 of the Constitution.

3. The O.M. issued by Deptt. of Pension and pensioner's Welfare on 22.1.1991 is only an administrative instruction. These instructions are contrary to the statutory provisions of Rule 68, sub-rule 5, and are therefore illegal and void, unless the Govt. deletes the provisions of sub-rule 5 of Rule 68. Reliance is placed on the case of P.Ramkrishnaiah vs. U.O.I. (1989) 10 ATC 378, ^{in which} it was held that administrative instructions cannot override statutory Rules.

4. The respondents have filed their submissions through the learned counsel Mr.M.I.Sethna. It is submitted that no claim of interest in respect of delayed gratuity is admissible. No interest is payable on difference of gratuity authorized under PPO No. C/Fys/Corr/3098/86 in terms of Para 68(5) of the CCS(Pension) Rules, 1972. The applicant is claiming interest on the difference of gratuity, which is squarely covered by Para 68(5) of the CCS(Pension) Rules.

5. I have heard both the applicant, and the learned counsel for the respondents. The applicant is challenging the order dated 22.01.1991 by which the pensioners have been divided into two classes: those who have retired prior to issue of the said O.M. and whose cases for payment of arrears of gratuity have been settled, and those, who also have retired prior to issue of O.M. but whose cases for payment of arrears of gratuity are not settled. He is relying upon the judgment of the Hon'ble Supreme Court in the case of D.S.Nakara. However, it is an accepted fact that gratuity is something different from the other pensionary benefits like pension and family pension, which are continuing ones. The pensioners have a continuing right to receive pension, but the same

cannot be said with regard to gratuity, which is a one-time payment. We may refer to the judgment of the Hon'ble Supreme Court in "State Govt. Pensioners' Association & Others vs. State of Andhra Pradesh 1986 SCC (L&S) 676. It was held that provision for payment of gratuity on stopped up basis prospectively from a specified date of retirement is not unconstitutional. Even if that part of the notification which provides for enforcement with effect from the specified date is struck down, it will operate only prospectively with effect from the date of the issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date and received gratuity on the then prevailing basis. It was also held that such a notification does not offend Article 14 of the Constitution. This judgement has taken into consideration the decision in D.S.Nakara's case before arriving at the above conclusion.

6. In the circumstances, the O.M. dated 22.01.1991 is not unconstitutional or discriminatory, and is, therefore, not violative of Articles 14 & 16 of the Constitution of India. Since the applicant's case has already been settled on 17.10.1986, he is not entitled to the concession offered by the O.M. and his claim for interest is rejected. The application is disposed of in these terms and there is no order as to costs.

U. Savara
20.3.92
(MS. USHA SAVARA)
MEMBER (A)