

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 516 of 2005

Date of order : 15.9.06.

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Abu Mohammed, S/o Late Mahmood Ahmad, resident of
Mohalla – Mubaraqu Lane, Dahiyawan, District- Saran.

....Applicant

By Advocate : Shri J.K. Karn

Vs.

1. The Union of India through the D.G. Cum Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Bihar Circle, Patna.
3. The Director of Postal Services (Hq.) O/o the Chief PMG, Bihar Circle, Patna.
4. The Sr. Superintendent of Post Offices, Saran Division, Saran.

....Respondents

By Advocate : Shri S.K. Tiwary

O R D E R

By Sadhna Srivastava, M (J):-

The applicant is claiming pension and pensionary benefits on the basis of recommendation and acceptance by the Central Government of the report of 5th Central Pay Commission.



2. The facts are that the applicant while holding the post of Post Master at Marhowrah Head Post Office in Saran Postal Division, Chapra retired on 31.12.1995. Therefore, based on the decision of Full Bench of Tribunal dated 15.10.1999 in the case of Venkatram Rajagopalan and another vs. UOI reported in F.B. Judgments (1997-2001) page 50, he claims pensionary benefits and pension made available to the employees by the Vth Pay Commission.

2. I have heard learned counsel for the parties and perused the records.

3. The point for consideration is whether a person who retires 31st December of the year is entitled to revision of scales of pay for which the Government decides to fix 1st day of Jan of the next year for implementing the same i.e, where the cut off date is fixed as 1st day of January of next year. In this regard the Hon'ble Supreme Court, in the case of UOI vs. P.N. Menon and others , 1994 (27) ATC 515, has observed as follows:-

Para 14:- According to us, for the reasons disclosed on behalf of the appellant- Union of



India for fixing 30.9.1997 as the cut-off date, which date was fixed when the price index level was 272, cannot be held to be arbitrary. The decision to merge a part of the dearness allowance with pay, when the price index level was 272, appears to have been taken on basis of the recommendation of the Third Pay Commission. As such it cannot be held that the cut off date has been selected in an arbitrary manner. Not only in matters of revising the pensionary benefits but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."

4. A photo copy of the judgment in civil Appeal No. 129 of 2003, State of Punjab & Others vs. Amamat Goyal & Others dated August 11, 2005 has also been brought on



record, which deals with the question of cut-off date for extending the benefits, other than pension, to the employees by the Government on the basis of reports of successive Pay Commissions. Following the famous judgment of D.S. Nakara , 1983 (1) SCC 305, Their Lordships of the Hon'ble Supreme Court held that the classification of pensioners into two groups by providing a cut-off date for pensionary benefits and pensions was founded on intelligible differentia. It was observed by the Hon'ble Supreme Court in this connection as follows:-

“ However, it must be noted that even in cases of pension, subsequent judgments of this court have considerably watered down the rigid view taken in D.S. Nakara (Supra) as we shall see later in T.N. Electricity Board v. R. Veerasamy and Ors (“Veerasamy”). In any event, this is not a case of continuing benefit like pension; it is a one time benefit like gratuity.”

5. In the aforesaid judgment the Hon'ble Supreme Court has set aside the Full Bench Judgment of the Tribunal dated 21.9.2001 in the case of Sh. Baburao Shankar Dhuri and Others etc.etc. vs. UOI & Others, Full Bench Judgments (1997-2001) page 58, wherein the decision of Government to

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provide DCRG to employees retiring on or after 1.4.1995 was held to be discriminatory. Their Lordships of Supreme Court set aside the aforesaid Full Bench of Tribunal as well as other judgments of various High Courts by which enhanced gratuity was allowed to employees retiring before the cut-off date i.e. 1.4.1995 holding that such an action on the part of Government can neither be characterized as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution.

6. In view of the above proposition of law laid down by the Apex Court, there is no room for doubt that the payment of pension and pensionary benefits are governed by different principles. As and when the pay of employee is revised by merger of Dearness Allowance in basic pay, the Central or State Government by reason of financial constraints or otherwise can fix a cut-off date for payment of retiral benefits other than pension. As regards pension, so far the Government has taken a liberal view in revising the pension in accordance with revised pay scale. By memo No. F No. 45/86/97-P&PW (A)-Part III, Government of India,



Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners' & Welfare, new Delhi dated 10.2.1998, Government has, inter-alia, while accepting the recommendation of Vth Central Pay Commission, allowed the revision of pension to all the pre 1986 retirees at 50% of the basic pay of the revised scale of pay subject to certain conditions.

7. The applicant has claimed re-fixation of pension and pensionary benefits. However, it has not been disclosed by the applicant anywhere as to what is his grievance. Re-fixation can be claimed only after there is fixation. It has not been disclosed as to when fixation was done and how the applicant is aggrieved with that fixation. In any case, what has been discussed above, it makes the picture clear. The applicant will be entitled for revision of pension based on the above quoted orders of the Government. The applicant will not be entitled for higher gratuity and other benefits based on the revised scales of pay implemented with effect from 1.1.1996. My understanding is that a Co-ordinate Bench of



this Tribunal in the case of Narendra Prasad vs. UOI , OA No. 701 of 2003 dated 20.5.2005, has also allowed the revised pension to the applicant of that case.

8. In the above circumstances, the OA is partly allowed. The respondents shall fix , if not already fixed, the revised pension of the applicant, in accordance with the order of Government dated 10.2.1998 quoted above, within two months of receipt of copy of this order. The applicant is not entitled to any other relief. There shall, however, be no order as to the costs.



[Sadhna Srivastava] M [J]

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