

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.471/99

DATE OF DECISION:

Friday this the 18th Day of August, 2000

Shri V. Narayanaswamy & Anr. Applicants.

(Applicant No.1 in person and Represents Applicant No.2)

Versus

Shri Union of India & Ors. Respondents

(By Shri.R.R.Shetty, Advocate) .

CORAM

Hon'ble Shri B.N.Bahadur, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(3) Library.

Yes BNS

(B.N. Bahadur)
Member (A)

sj*

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MUMBAI BENCH

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CORAM:

HON'BLE SHRI B.N.BAHADUR, MEMBER (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

1. Shri V. Narayanaswamy,
(last employed as Accounts Officer
with Controller of Defence Accounts
(Officers) Pune,
retired from service earlier to
1-04-1987)
B/10, Kanhaiya Classics,
Narangi Baug Road,
Pune-411001.
Maharashtra.
2. Defence Accounts Pensioners' Association
Pune affiliated to All India Pensioners
Association,
Chennai representing all Defence
Accounts Officers of the Defence Accounts
Dept.
retired prior to 1.4.1987 including
Applicant No.1 appearing on behalf of the
associating vide resolution dated 12.4.1999
of the said association .

..... Applicants

(Applicant No.1 in person and also represents Applicant No.2)

vs.

1. Union of India through
Controller General of Defence Accounts
West Block V,
R.K.Puram,
New Delhi 110 066.
2. Secretary, Ministry of Finance
Department of Expenditure
North Block
New Delhi 110 001.
3. Additional Secretary,
Ministry of Pension,
Lok Nayak Sadan,
Khan Market,
New Delhi 110 001.

..... Respondents.

(By Shri R.K.Shetty, Advocate)

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O R D E R

[Per: B.N.Bahadur, Member (A)]

The Applicant in this O.A. seeks the modifications in the Orders of the Ministry of Finance, dated 22.9.1992, and 21.6.1993 (Annex 2 and 3) so as to make the provisions of these orders applicable in respect of such Audit/Accounts Officers of Defence Accounts Department also, who retired before 1.4.1987 and were on effective pension list as on 1.1.1996. Allied reliefs/ technical reliefs to further the above basic prayer are also sought in the O.A.

2. The case was argued by Applicant Shri V. Narayanaswamy in person, and also on behalf of Applicant No.2.

3. The case of the Applicants is as follows. The Respondents have issued Orders (Annexure II and III) which he claims O.Ms. are seeking inter alia, to bring parity and pension between persons who retired before 1987 and those who retired later. Through the orders at Annexure II a promotional grade was created in the scale of Rs.2200 - 4000 for those Audits/Accounts Officers in I.A & A.D. who were in the scale of Rs.2375-3500. The orders were made effective from 1.4.1992, with the benefit of fixation of pay on notional basis in the higher grade being allowed retrospectively from 1.4.1987. Through another O.M. issued Annexure III, Officers who had retired between 1.4.1987 and 31.3.1992 were also allowed the promotional grade and benefit of notional pay fixation. The details regarding benefits accorded under the rules to the various employees according to the relevant dates of their years of service, date of retirement etc. have been described in detail in the application. The applicants are aggrieved in that these benefits have not been

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made applicable to similarly placed Officers who retired prior to 1.4.1987. This in short is the gist of the facts and the grievance of the Applicants, although the O.A. contains detailed and long accounts of facts and contentions.

4. Shri Narayanaswamy, who appeared before us strenuously argued the point as to how and why the benefit asked for should be made available to the Applicants on consideration of equity and justice, and how discrimination is caused to applicants in view of the creation of two sets of pensioners, through the impugned orders. The cases of those officers who had retired prior to 1.4.1987 were exactly identical, he argued. Shri Narayanaswamy further made the point that representations have been made in detail to the Govt. and the stand of the Govt. in not agreeing to re-open the cases of applicants was not justifiable. He cited the case of V. Kasturi (1998 (8) SCC 30 para 22), and argued that point that this case is totally applicable to the present case of the Applicants.

5. The Respondents have filed a written statement resisting the claims of applicants, and describing the facts. Respondents state that the Applicants are those Audits and Accounts Officer who were in the scale of Rs.2375-3500/- prior to 1.4.1987. They are seeking extension of the benefit of creation of promotional avenue, in the scale of Rs.2200 - 4000/- under the 4th Pay Commission. Such extension of benefits beyond what is envisaged in the Policy Decision of Govt. issued vide the two impugned OMs. would impose a huge financial burden on the Union Govt., and that the decision regarding cut off date was a conscious decision which could not be changed by judicial determination.

6. The further part of the written statement, comments on the facts/contentions in the Application, parawise, and elaborates on the details of the orders issued. It also makes

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the contention that Tribunals are not expected to assess policy and make changes therein and have *limited* jurisdiction as per the law settled in this regard.

7. Learned Counsel for the Respondent Shri R.K.Shetty argued the case before us, at some length and reiterated the points made in the written statement of Respondents. Learned Counsel stated that change in the cut off date would mean creation of financial liabilities of a very high magnitude to the Govt., not only in the Respondents' Department but would also have an escalating effect in the other Offices in various Ministries of the Govt. of India. Learned Counsel reiterated the point regarding the limitation of Tribunals and Courts in reviewing policy decisions of Govt. He relied on the case decided by the Hon'ble Supreme Court in the matter of *Mallikarjuna vs. State of A.P.* AIR 1990 SCC 1251. He also cited a number of other cases in support of his contentions and arguments which have been carefully seen, and are dealt with in later paragraphs.

8. The question before us is in a narrow compass. A certain benefit has been provided by introduction of a promotional grade to Audit/Accounts Officers in IA&AD and other organised Accounts Cadres except Railway Accounts Cadre. The promotional grade is Rs.2200 - 4000/-, and restricted to 18% of the sanctioned strength of the respective Cadres. These orders were issued on 23.9.1992, and given effect from 1.4.1992. It was also mentioned in this very order that no arrears of pay will be admissible for the period prior 1.4.1992. This O.M. is followed by another O.M. which is the second impugned order (dated 21.6.1993) (Annexure III). What this second O.M. does is to consider the cases of those Audit/Accounts Officers who had retired between 1.4.1987 and 31.3.1992. It has been decided through this O.M.

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to allow notional fixation to such officers who retired between 1.4.1987 and 31.3.1992 subject to conditions laid down in the earlier O.M. It is further ordered that their pay be fixed on notional basis and such fixation will count for fixing revised pension, which will be payable from 1.4.1992. The central fact is that a certain date viz. 1.4.1987 has been fixed by Govt. through this decision. This date is like a cut off date, as it were, and the question that boils down for our decision is whether the Applicants have made out a case where these benefits can be said to be entitled to those retiring before 1.4.1987.

9. The above question really is a question of law and in so far as the benefits as sought from this Tribunal i.e. by a process of judicial determination, the legal aspect of this entitlement will be the focus of our attention. Learned Counsel for Applicants has cited the case of *Kasturi* and sought support of the ratio arrived at in para 22 of the judgement. This paragraph reads as follows:

22. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensions cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class or pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of *Nakara* case would cover this category of cases. "

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10. On the other hand learned Counsel for Respondents has cited a number of cases as mentioned earlier. In the case of *Tamil Nadu Electricity Board vs. R. Veeraswamy and Ors.* [1990 (1) SC SLJ 451] it has been decided by the Supreme Court that retirees who retired prior to the date of introduction of the pension scheme cannot claim pension retrospectively and that giving prospective effect was not an arbitrary act (emphasis ours.) Similarly, in the case of *State of Punjab vs. J.L. Gupta & Ors.* [2000 SCC L&S 437] referred to by Respondents is a case where it was decided by Govt. that Dearness Allowance/Adhoc Dearness Allowance upto a specific consumer price level index would be treated as Dearness Pay and Pensionary Benefit. In other words, the cut off date was decided for the benefit to be given. It was held that the benefit of such notification was not available prior to the date of Notification. Another case quoted by the Learned Counsel for Respondents was the case of *State of Andhra Pradesh vs. V.C. Subbarayudu* [(1998 (1) AISLJ 5)]. The point was sought to be made was that the Courts cannot interfere in a matter of policy decided by the Govt. Learned Counsel for Respondent also cited the case of *Mallikarjun Rao vs. State of A.P.* (AIR 1990 SC 1251) regarding limitation of Courts and Tribunal.

11. It will be relevant here to quote para 4 in the judgement of the Hon'ble Supreme Court made in the case of *State of Punjab vs. J.L. Gupta*. Para 4 considers the totality of the situation of Case Law and reads as under:

"4. In *Boota Singh* case it has also been held that the benefit conferred by the notification dated 9.7.1985 can be claimed by those who retire after the date stipulated in the notification and those who have retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old
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rules, i.e. the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implications and the specific date for the conferment of additional benefits cannot be considered arbitrary. It was further held that : (SCC p.735 para 8).

"In the case of Indian Ex-Services League v. Union of India this Court distinguished the decision in Nakara case and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. We need not cite other subsequent decisions which have also distinguished Nakara case. The latest decision is in the case of K.L. Rahtee v. Union of India where this Court, after referring to various judgments of this Court, has held that Nakara case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. The respondents are not entitled to claim benefits which became available at a much later date to retiring employees by reason of changes in the rules relating to pensionary benefits."

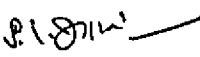
12. The basic ratio decided of the above cases is that no right can accrue to retirees on the principle that benefit accorded to a retiree from a date consciously decided by Govt. Policy cannot necessarily accrue to those of similar rank who retired earlier as a matter of right. The case here is similar. A certain benefit which results in an enhanced pension is provided to those who retired post 1.4.1987 (fixation of notional pay etc. is a methodology to the above end). Now, here the point made by the Applicant is that such benefit must be available to those who retired earlier in the light of the decisions of the Apex Court of V. Kasturi cited above. Shri Narayanaswamy, while arguing the case had drawn specific focus to paragraph 22 to come to the conclusion of Kasturi's case. It is obvious that paragraph 22

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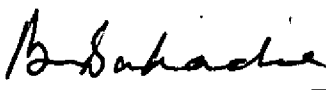
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cannot be read in isolation and the judgement will have to be seen as a whole. In fact, the judgement will have to be read in totality of the case law in different judgements of the apex court cited above, to ascertain which decision/s were relevant in the present case. It must also be noted here that *Kasturi's* case relates to employee/s of the State Bank of India. That is a case of an Officer who stood to benefit because of a reduction in the number of years required to become entitled to pension. It is not really the case of a cut-off date. The other cases cited on the other hand, and discussed above, are relevant to the aspect of cut off date and here in the case before us also the question is squarely one of cut off date. In view of the above position we are not convinced that a case has been made out for our interference in this matter. Hence the relief sought cannot be provided to the Applicant.

13. In the consequence this O.A. is hereby dismissed with no orders as to costs.


(S.L. Jain)
Member (J)

sj*


(B.N. Bahadur),
Member (A) . 18/8/2000