

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 5/10/87

APPLICATION NO 29 /87(F)

W.P. NO _____

Applicant
Shri S.H. Kerlahalli

v/s The Secy, GOI, Dept of Forests
& Wild Life

To

1. Shri S.H. Kerlahalli
641, 7th Main, 14th Cross
J.P. Nagar III Phase
Bangalore - 560 078
2. The Secretary
Govt. of India
Department of Forests
& Wild Life
Bikaner House
New Delhi
3. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel, High Court Bldgs, Bangalore - 560 001
Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~
~~INTERIM ORDER~~ passed by this Tribunal in the above said
application on 5-10-87.

Hai
SECTION OFFICER
(JUDICIAL)

Encl : as above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THE 5th DAY OF OCTOBER 1987

Shri

Present : Honourable Ch. Ramakrishna Rao - Member (J)

Honourable Shri P.Srinivasan - Member (A)

APPLICATION No. 29/87

S.H. Korlahalli I.F.S. (Retd.) - Applicant
641, 7th Main, 14th Cross,
J.P. Nagar, Phase III
Bangalore 560 078

v

1. Secretary to the Government of India - Respondent
Department of Forests & Wild Life
Bikaner House, New Delhi

(Sri M.S. Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing before
this Tribunal and Hon'ble Shri Ch. Ramakrishna Rao,
Member (J) to-day made the following

O R D E R

This is an application filed under section 19 of the
Administrative Tribunals Act, 1985.

2. The facts giving rise to the application lie in a
narrow compass. The applicant was retired from the Indian
Forest Service of the Karnataka cadre. In the matter of
retirement benefits he was governed by the provisions of
the All India Services (Death Cum Retirement Benefits)
Rules ('AIS DCRB'). In terms of Rule 22.B(5) of the
AIS DCRB in force prior to 22.9.1977, retiring officers
were required to pay two months pay, or Rs.5000/- whichever
was less, for getting the benefit of Family Pension Scheme
('FPS'). Notification No. 25011-42/77-AIS(II) dated
25.1.78 issued by Ministry of Home Affairs stated that

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that the Ministry of Finance had issued orders discontinuing the deduction of two months' emoluments or Rs.5000/- whichever was less, from the DCR Gratuity payable to retiring officers as their contribution to FPS and that these provisions be extended to the members of AIS with retrospective effect from 22.9.1977.

3. The applicant is aggrieved on two counts:

(i) the notification dated 25.1.78 is arbitrary because it was made applicable only to members of AIS who retired on or after 22.9.77 but not to those who retired earlier such as the applicant; (ii) ~~the~~ ^{the} amendment to Pension Rules made in 1979, by which the ceiling of DCRG was raised from Rs.30,000 to Rs.36,000, is also arbitrary since it was applicable to members of AIS who retired on or after the said amendment but not to those who retired prior thereto. According to the applicant he is, therefore, entitled to the benefit of the notification. The applicant further submits that he is entitled to payment of Rs.6,000/- because the ceiling of Rs.30,000/- on account of DCRG was raised to Rs.36,000/- by virtue of the amendment to pension rules made in 1979. As the applicant has not received any relief at the hands of the respondents he has filed this application.

5. The applicant, appearing in person, has reiterated the ~~please~~ urged by him in the application and has relied on the decision of the Supreme Court in D.S.Nakara v. Union of India 1983 S.C.C.(L&S) 486.

6. Sri M.S.Padmarajaiah, learned counsel for the respondents, submits that the grievance of the applicant

on the first count is not justified in terms of the order of the Supreme Court dated 30.4.1985 in W.P. Nos. 5970-93/81 and other connected petitions.

rajaiah

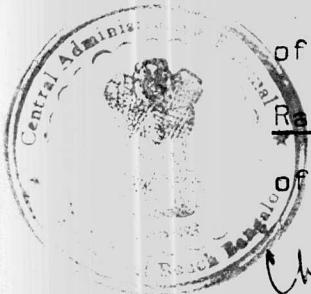
7. Regarding the grievance on the second count, ~~the~~ Sri Padma submits that the ratio of the decision of the Supreme Court in D.S. Nakara is not applicable to gratuity but only to pension and relies on the decisions of the Supreme Court in State Government Pensioners' Association v. State of Andhra Pradesh 1986 S.C.C. (L&S) 676 and N.L. Abbhayankar v. Union of India 1984 S.C.C. (L&S) 486.

8. We have considered the rival contentions carefully. The relevant excerpt from the order of the Supreme Court dated 30.4.1985 set out in paragraph 5 of the reply filed on behalf of the respondents reads as follows:

"Government have already agreed to the grant of arrears of family pension u.e.f. 22.9.1977 - the date on which contribution of two months emoluments by pensioners was dispensed with. Persons who are now to be granted the benefits of family pension will not be required to contribute two months' emoluments. Similarly, no demand for refund of contribution already made by pensioners will be entertained." (emphasis supplied)

Thus it is clear that in terms of the order of the Supreme Court the applicant is not entitled to claim refund of Rs.5000/- being two months salary last drawn by him deducted towards contribution to FPS.

9. Turning to his claim for payment of Rs.6000/- being the difference between DCRG payable under the AIS DCRG in force in 1979 and those in force in 1972, we find that the matter is now concluded by the decision of this Tribunal in All India Pensioners' Association v. Rajasthan 1987 (2 ATC) 706 in favour of the applicant in which it was held :



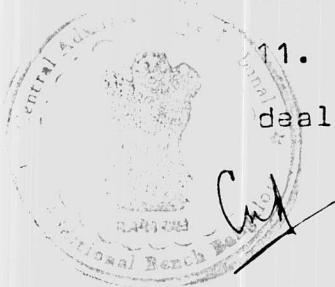
"Gratuity is not an ex gratia payment but a payment made in view of the service rendered in the past and though a one-time payment the quantum of gratuity like pension bears relation to the length of service of the pensioner and the emoluments drawn by him while in service. It is also a social welfare measure calculated to render socio-economic justice towards those who in the heyday of life toil for the employer on an assurance that in their old age they would not be left in the lurch. Except that it is a one-time payment, it is also a certain percentage correlated to the emoluments during ~~to~~ the long years of his service.

"In view of the above, in our view on principle, no distinction can be made between pension and gratuity because both are retirement benefits and ~~they~~ are dependent upon the length of service and the emoluments drawn while in service. The fact that gratuity is a one-time payment and pension as such is a recurring payment should not ~~to~~ make any difference to the application of the principle of Nakara case."

The decisions relied upon by Sri Padmajaiah were noticed in the decision of the said Tribunal cited supra but the ratio therein was not accepted. In view of this, the claim of the applicant regarding gratuity is tenable.

10. It is, however, noticed from paragraph 37 of this Tribunal's judgement cited supra that the operation of the judgement was stayed for 90 days. In para 10 of the reply it is stated that an SLP was filed against the aforesaid judgement and the Supreme Court has granted stay of operation of the judgement until disposal of the ~~SLR~~ appeal. The applicant is not, therefore, entitled to any relief on the basis of the judgement of this Tribunal at this stage.

11. In view of the above we direct the Respondent to deal with the case of the applicant in the light of the



judgement of the Supreme Court as and when rendered.

12. The application is disposed of on the lines indicated above. Parties shall bear their own costs.



"True copy"

bsg/-

H. S. J.
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE