

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
3rd Floor, Indira Nagar,
BANGALORE-560 038.

Application No. 1296 to 1299/86(T)
W.P. No 16605 to 608/84

Dated the 31st Dec. 86.

To

1. Shri Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
NEW DELHI - 110 009.
2. Shri R. Venkatesh Prabhu, Member,
Editorial Committee,
Administrative Tribunal Reporter,
67 - Lawyer Palace Orchards,
BANGALORE-560 003.
3. The Registrar,
Central Administrative Tribunal,
Principal Bench, Faridkot House,
Copernicus Marg,
NEW DELHI - 110 001.

4. The Editor,
Administrative
of Tribunal Cases,
c/o Eastern Book Co.,
34, Lal Bagh,
Lucknow - 226001.

Subject:

Sending Copies of Order passed by the Bench in
application No. 1296 to 1299/86(T)

....

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on 30.10.1986.
for needful. The Judgement is ordered to be reported.

R
SECTION OFFICER
(JUDICIAL)
O/C PWD

Jan 2/1/87
Encl: as above.

*Smt. S.
P. Bhattacharya
R.*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH:BANGALORE

DATED THIS THE 30TH DAY OF OCTOBER,1986.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy. .. Vice-Chairman.
And

Hon'ble Mr.L.H.A.Rego. .. Member(A).

APPLICATIONS NUMBERS 1296 TO 1299 OF 1986.

1. B.Ranga Joshi,
Son of Venkatarama Joshi,
Aged about 60 years,
Retired Head Post Master,
residing at Chitpadi,
Udupi 576 101,D.Kannada. .. Applicant in A.1296/86.
2. K.Gopalakrishna Shenoy,
Son of Amrit Shenoy,
Aged about 59 years,
Retired Asst.Post Master,
residing at Narasimha Nivas No.2,
Beedina Gudde, Udupi 576 101,
Dakshina Kannada. ..Applicant in A.1297/86.
3. K.Sadananda Kamath,
Son of K.Devaraya Kamath,
Aged about 60 years,
retired Postal Assistant,
residing at Car Street,
Barkur-576 210,D.Kannada. ..Applicant in A.1298/86.
4. Consumers' Education and Protection
Foundation by its President, Board
of Trustees Sri P.Rabindra Nayak, Aged
about 62 years,Upendra Baug,Near Kalpana Cinema,
Udupi 576 101,D.Kannada. ..Applicant in A.1299/86.

(By H.G.Hande,Advocate)



1. Union of India represented by
a.The Secretary , Ministry of
Finance,New Delhi-110 001.
b.The Secretary, Ministry of
Communication, New Delhi-110 001. .. Respondent.
(By Sri D.V.Shylenra Kumar,CentralGovt. Standing Counsel)

These applications coming on for hearing, Vice-Chairman made
the following order:

ORDER

O R D E R

In these transferred applications received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act of 1985 ('the Act') the applicants have sought for striking down para 3(ii),3(iii), 4 and 6 of Office Memorandum No.F1(3)-EV/82 dated 8-4-1982 (Annexure-A) issued by Government of India in the Ministry of Finance.

2. The applicants in Applications Nos. 1296 to 1298 of 1986 were working in the Postal Department of Government of India and have retired from service on different dates on or before 30-6-1982.

3. The applicant in Application No.1299 of 1986 viz. "Consumers' Education and Protection Foundation,Udupi" ("Trust") claims to be a public trust founded to espouse public interest causes and support the cases of the other applicants and other pensioners.

4. Applicants in Application Nos. 1296 to 1298 of 1986, as pensioners are in receipt of different amounts of pension from Government fixed in accordance with the Pension Rules. From time to time, Government had extended various benefits to pensioners to relieve them from their hardships faced due to the unprecedented inflation and the consequent corrosion of money value. With that object Government on 8-4-1982 made an order extending certain benefits to pensioners to treat the 'Additional Dearness Allowance' ('ADA') as 'pay' for purposes of retirement benefits. The applicants have sought for striking down paras 3(ii),3(iii),4 and 6 of that order. But at the oral hearing of these cases, Sri H.G.Hande, learned counsel for the applicants,in our opinion, very rightly, confined their



challenge to para 3(iii)(a) and the words "after 29-6-1982" occurring in para 3(iii)(b) and for a direction to respondents to extend the benefits specified in para 3(iii)(b) to all the pensioners irrespective of the date of their retirement. We, therefore, confine the case of the applicants to that prayer only.

5. The applicants have urged that clause (a) of para 3(iii) of the order and the words 'after 29-6-1982' of clause (b) of that para, had chosen pensioners who belong to a homogeneous class for a different, hostile and discriminatory treatment, plainly arbitrary and was violative of Article 14 of the Constitution.

6. In their reply, the respondents have urged that the differentiation made between the two classes of pensioners was valid and was not arbitrary.

7. Sri Hande has contended that the impugned clauses of the order had split one homogeneous class of pensioners into two artificial and irrational classes - one retiring prior to 30-6-1982 and the other retiring on and after 30-6-1982, without any differentiation and had subjected the former to a hostile and discriminatory treatment, arbitrary and the same was violative of Article 14 of the Constitution. In support of his contention, Sri Hande has strongly relied on the ruling of the Supreme Court in D.S.NAKARA AND OTHERS v. UNION OF INDIA [1983]SCC(L&S)145 = (1983) 1 SCC 305=AIR 1983 SC 1301.



8. Sri D.V.Shailendra Kumar, learned Additional Standing Counsel for the Central Government appearing for the respondents in supporting the impugned clauses of the order, urged that they did not contravene Article 14 of the Constitution.

9. Section 19(l) of the Act permits an aggrieved person only to approach the Tribunals under the Act. Whether that provision applies to transferred applications under the Act or not, is itself a moot point. Whatever be the position of the 'Trust' on both these questions, the applications made by others who have suffered personal injury are undoubtedly maintainable. We will, therefore, ignore the presence of the applicant in Application No.1296 of 1986 and proceed to examine the case of the other applicants only.

10. The material portion of the order that also contains the clauses now in challenge reads thus:

Copy of letter No.F.I(3)-EV/82 from the Ministry of Finance, Department of Expenditure, dated 8th April, 1982.

OFFICIAL MEMORANDUM

Subject: Treatment of a portion of Additional Dearness Allowance as pay for the purpose of retirement benefits.

The undersigned is directed to refer to this Ministry's Office Memorandum No.FI9(4)-EV/79 dated 25-5-1979, and to say that according to these orders the Dearness Allowance as indicated there is treated as 'Dearness Pay' in respect of certain categories of Central Government employees. The question of treatment of a portion of Additional Dearness Allowance as pay has been engaging the attention of the Government of India, and the President is pleased to decide that in respect of Government Servants who retire/retired on or after the 31st January, 1982, the amount of Additional Dearness Allowance indicated in para 2 below shall be treated as 'dearness pay' in addition to the 'dearness pay' already treated as part of 'pay' vide this Ministry's Office Memorandum dated 25th May, 1979, referred to above, for the purpose and to the extent specified hereinafter.

2. There will be no change in the scale of pay attached to the various posts and the basis on which dearness allowance is calculated. Out of the additional dearness allowance now admissible, the following amount shall also be treated as 'dearness pay' in different pay ranges for the purpose of retirement benefits:

Pay



<u>Pay range:</u>	<u>Amount of Dearness Pay:</u>
1. Upto Rs.300-00	21% of pay, subject to a minimum of Rs.42/-and a maximum of 60/-.
2. Above Rs.300/- upto Rs.2037/-	15% of pay subject to a minimum of Rs.60/- and a maximum of Rs.120/-.
3. Above Rs.2037/-.	Rs.363/-(including the amount of dearness allowance treated as dearness pay in terms of para 2 of this Ministry's Office Memorandum No.F-19(4)EV/79 dated the 25th May 1979).

PENSION AND GRATUITIES

3. (i) The dearness pay indicated above shall count as emoluments for pension and gratuity in terms of Rule 33 of the Central Civil Services (Pension) Rules,1972.

(ii) Except as stated below, the ultimate average emoluments under Rule 34 of the CCS(Pension) Rules,1972 shall be determined on the above basis.

(iii) In the case of persons who have already retired on or after 31-1-1982 or may retire hereafter but within ten months of that date, the ultimate average emoluments will be calculated as follows:-

(a) In the case of persons who retire /retired between 31-1-1982 and 29-6-1982. One half of dearness pay appropriate to the pay equal to such average emoluments as per para 2 above, shall be added to the average emoluments.

(b) In the case of persons who retire after 29-6-1982. Full dearness pay appropriate to the pay equal to such average emoluments as per para 2 above shall be added to the average emoluments.

(iv) Pension and gratuities of persons who have already retired or died on or after the 31st January 1982 shall be recalculated on the above basis and arrears if any paid subject to such adjustments as may be necessary."

Clause (a) of para 3(iii) of the order regulates those that have retired from service between 31-1-1982 and 29-6-1982 for a different treatment namely, for allowing 'one half of dearness pay appropriate to the pay equal to such average emoluments as per para 2 above, shall be added to the average emoluments' or treat them as separate and distinct class. But, sub-clause (b) of the same para, had chosen persons that have retired or retire after 29-6-1982 or on and after 30-6-1982 to a different



and distinct treatment or had treated them as a separate class by allowing them 'full dearness pay appropriate to the pay equal to such average emoluments as per para-2 above, shall be added to the average emoluments'. The benefits allowed to this class are decidedly more advantageous to those that have retired on or before 30-6-1982. Those that have retired on or before 30-6-1982 are chosen for a less favourable treatment to those that have retired or retire on and after 30-6-1982. Sofar as ADA is concerned, the former one allowed only one half of the benefit allowed to the latter for reasons that are not set out in the order itself or in the reply filed except for a dogmatic assertion that there was a valid classification which was not arbitrary. Even at the oral hearing, Sri Shailendra Kumar was content to repeat what is stated in the reply and was not able to furnish any valid and satisfactory reason for differentiating the two classes of pensioners. Whether this differentiation is permissible or not is the short question.

II. We are of the view that the question is completely concluded by Nakara's case for which reason it is useful to notice the facts of that case and the principles expounded therein in some detail.

12. In Nakara's case the facts were these: On 25-5-1979 the Government of India in the Ministry of Finance introduced the liberalised pension scheme ('the Scheme') only for those retiring on or after 1-4-1979, allowing to them computation of the average of 10 months' pay as against the computation of 36 months' average pay allowed before that date to those who had retired on or before 31-3-1979 under the Central Civil Services Pension Rules 1972 (1972 Rules). Nakara and two others



20

others who had retired earlier than 1-4-1979 and were drawing lesser pension challenged the scheme insofar as it restricted only to those that retired on and from 1-4-1979 and sought for a mandamus to extend them the benefit of the Government order. Their claim was founded on Article 14 of the Constitution.

13. On a review of all the earlier cases dealing with the scope and ambit of Article 14 of the Constitution, a Constitution Bench of the Supreme Court speaking through Desai, J. rejecting every one of the justifications and contentions urged for the respondents in these cases, upheld the claim of the petitioners in these words:

42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number



of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs.8100/-p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs.12000/- p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.

14. Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. The next question is what is the way out?

xx xx xx xx

The words "who were in service on March 31, 1979 and retiring from service on or after that date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be severed without impairing the formula.

xx xx xx xx

The decision proceeds on the facts of the case. But, the principle that when a certain date or eligibility criteria is selected with reference to legislative or executive measure which has the pernicious tendency of dividing an otherwise homogeneous class and the choice of beneficiaries of the legislative/executive action becomes selective, the division or classification made by choice of date of eligibility criteria must have some relation to the objects sought to be achieved. And apart from the

first



first test that the division must be referable to some rational principle, if the choice of the date or classification is wholly unrelated to the objects sought to be achieved, it cannot be upheld on the specious plea that that was the choice of the legislature."

On these principles, it is clear that the homogeneous class of pensioners has 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 Government is an impermissible and invalid classification and contravenes Article 14 of the Constitution of India. Even otherwise this classification is plainly arbitrary which is the very antithesis of the rule of law enshrined in Article 14 of the Constitution. On both these grounds and for all the reasons found by the Supreme Court in Nakara's case, the impugned portions of the order suffer from the vice of Article 14 of the Constitution of India and are therefore, liable to be struck down.

14. We are of the view that the question is completely concluded by the principles enunciated in Nakara's case which has been reiterated in all the later cases. We, therefore, consider it unnecessary to refer to either the earlier or later rulings of the Supreme Court in this regard.

15. On the foregoing discussion, we hold that the portions of the Order dated 8-4-1982 that contravene Article 14 of the Constitution have to be struck down and the respondents directed to extend the benefit of clause (b) of para 3(iii) to all pensioners irrespective of the date of their retirement.

16. In the light of our above discussion we make the following orders and directions:

(a) We



(a) We strike down clause (a) of para 3(iii) of the Official Memorandum No.F.I(3)-EV/82 dated 8-4-1982 (Annexure-A) in its entirety and the words "after 29-6-1982" only in clause (b) of para 3(iii) of that memorandum.

(b) We direct the respondents to extend the benefits stipulated in clause (b) of para 3(iii) viz., "Full dearness pay appropriate to the pay equal to such average emoluments as per para 2 above shall be added to the average emoluments." to all pensioners irrespective of the date of their retirement from Government of India service.

17. Applications disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own



Sd/-

VOCE-CHAIRMAN, B
10/86

Sd/-

MEMBER(AM)(R)

np/

- True Copy -

Haseen
SECTION OFFICER 207
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Slipst. SLP/Int. Main Register & add to file & note hereafter
Recd. As RL No. 1514. Enter in
18/1/94. Ofer with a copy of T.T.
order to Hon. V.C. & Hon. Members.
for Intn. R
20/1/94
TII/SiB



SECTION IV-A.

D. No. 3475-78/87/S-IV-A

SUPREME COURT OF INDIA
NEW DELHI.

DATED: 30-6-94

5-7-94.

From:
The Assistant Registrar,
Supreme Court of India,
New Delhi.

To:
The Registrar,

Central Administrative Tribunal,
Bangalore Bench,
Bangalore.

CIVIL APPEALS NOS. 1775-1778 OF 1994.
(Application Nos. 12966 to 1299/86, W.P. Nos. 16605-608/86).

Union of India & Anr.

... Appellants.

-Versus-

B. Ranga Joshi & Anr.

Sir,

... Respondents,

In pursuance of Order XIII, Rule 6, S.C.R. 1966, I am directed by their Lordships of the Supreme Court to transmit herewith a certified copy of the Order dated the 17/2
March, 1994, in the appeal, above-mentioned. The Certified copy of the Decree made in the said appeal, will be sent later on.

Please acknowledge receipt.

Yours faithfully

H. C. S. 17/3/94

ASSISTANT REGISTRAR

cc of dt-17-3-94
Encl.: Signed Judgment, in CA-517/87.

arun/-

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1773 OF 1994
(Arising out of S.L.P.(C) No. 1884 of 1989)!

The Union of India

Versus

S.K. Lall

...Appellants.

522526

...Respondent

JUDGMENT

N.P. SINGH, J.

Leave granted.

This appeal is on behalf of the Union of India, against an order dated 7.10.1988 passed by the Central Administrative Tribunal, Allahabad (hereinafter referred to as the 'Tribunal').

Respondent retired from the service on 31.7.1979. He filed an application before the Tribunal for a direction that an option be given in terms of the Office Memorandum No. 5-19(4)-E.V./79 dated 25.5.1979, even to those who

2 (J-4)
Marked to be a true copy
H. S. Gadhia
Registrar (Jad.)
1st July 28.7.99
Supreme Court of India

- 2 -

retired between 30.4.1979 and 30.1.1982. A grievance was made that in terms of the aforesaid Office Memorandum, option could be exercised only by persons, who retired on or after 30.9.1977 but not later than 30.4.1979. The Tribunal allowed the said application. During the hearing of the present appeal, we were informed that by a later order, the period of exercising the option has been extended upto 1.2.1982. The validity of the Office Memorandum No.F-19(4)-E.V./79 dated 25.5.1979 has been examined in detail in Civil Appeal No. 517 of 1987 (Union of India v. P.N. Menon & Ors) disposed of today. Any grievance made on behalf of the respondent, in respect of the said Office Memorandum shall be examined, in terms of the judgment in the aforesaid appeal. In that view of the matter, hardly anything survives requiring any order or direction by this Court. Accordingly, the appeal is disposed of in terms of the judgment delivered today in Civil Appeal No. 517 of 1987. There will be no order as to costs.

CIVIL APPEAL NO. 1782 OF 1994
(Arising out of S.L.P. (C) No. 753 of 1991)

Secretary to Govt. of India & Ors. ..Appellants
Versus
All India Services Pensioners & Ors. ..Respondents

Leave granted.

This appeal has been filed against an order dated

11.5.1989 passed by the Central Administrative Tribunal, Jodhpur, holding that the members of the All India Services Pensioners - respondents, who retired between 31.12.1978 and 31.1.1982, were entitled to the full graded dearness relief i.e. Rs.200/- per month, from 1.12.1978. This dispute has arisen in view of the Office Memorandum No. F-19(4)-E.V./79 dated 25.5.1979. The Tribunal has pointed out certain anomaly with respect to the grievance of the respondents. During the hearing of the appeal, we were informed that the said anomaly has been removed.. Accordingly, this appeal is disposed of in terms of the judgment delivered today in Civil Appeal No.517 of 1987 (Union of India v. P.N. Menon & Ors.). There will be no order as to costs.

TA 29/06/1998 of Blue Book
F 20/7/94.

CIVIL APPEAL NOS. 1774, 1775-78, 1779, 1780 & 1781 OF 1994

(Arising out of Special Leave Petitions Nos. 9971/85, 9346-49/87, 14427/88, 7049/89 and 9906 of 1991)

Govt. of India & Ors. etc.etc.

....Appellants

Versus

D.Krishna Mohana Rao & Ors.

...Respondents

Leave granted in all the above mentioned Special Leave Petitions. These appeals have been filed on behalf of the Union of India. They are disposed of in terms of the judgment delivered today by this Court in Civil Appeal No. 517 of 1987 (Union of India v. P.N. Menon & Ors.)

There will be no order as to costs.

WRIT PETITION (C) NO. 611 OF 1991

Hari Prakash & Anr.

...Petitioners

Versus

Union of India

...Respondent

During the hearing of the writ petition, counsel for the parties agreed that this case is fully covered by the judgment of this Court in Action Committee South Eastern Railway Pensioners v. Union of India, 1991 Supp.(2) SCC 544. Accordingly, the writ petition is disposed of in terms of the aforesaid judgment. There will be no order as to costs.

Sd/-.....

(A.M. AHMADI)

Sd/-.....

(N.P. SINGH)

New Delhi,

March 17, 1994

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 517 OF 1987

Union of India

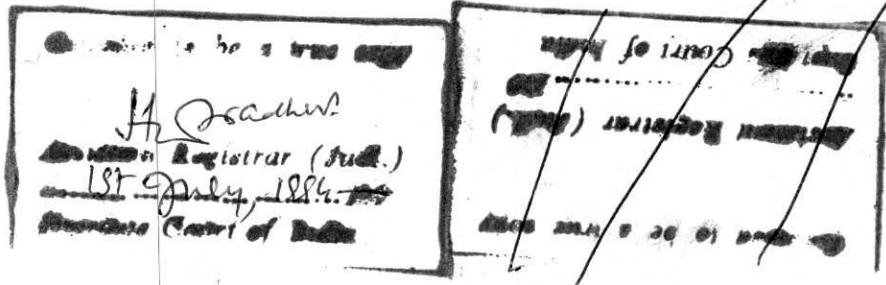
Appellant

versus

522527

P.N. Menon & Ors.

Respondents



JUDGMENT

N.P. SINGH, J.

The respondents, who are retired Government servants, filed a writ application before the High Court, questioning the validity of Office Memorandum No.F-19(4)-E.V./79 dated 25th May, 1979, issued by the Government of India, treating a portion of the dearness allowance, as pay for the purpose of retirement benefits in respect of Government servants who retired on or after the 30th September, 1977. According to respondents, who retired from service before 30th September, 1977, the said benefits

should have been extended to all retired Government servants, irrespective of their date of superannuation.

A learned Judge of the High Court allowed the said writ application on basis of the judgment of this Court in the case of D.S. Nakara and others v. Union of India, AIR 1983 SC 130 = (1983) 2 SCR 165, saying that the said Office Memorandum was discriminatory in nature. The Division Bench dismissed the appeal filed on behalf of the Union of India.

It may be mentioned that Government of India issued on 25th May, 1979 two Office Memorandums Nos. F-19(3)-E.V./79 and F-19(4)-E.V./79. In the Office Memorandum No. F-19(3)-E.V./79, the computation of pension was liberalised, but it was made applicable to the Government servants who were in service on March 31, 1979 and retired from service on or after that date. It introduced a slab system for computation of pension. That Office Memorandum was the subject matter of controversy in the aforesaid case of D.S. Nakara (supra). This Court held that the criteria, "being in service and retiring subsequent to the specified date" for being eligible for liberalised pension in the aforesaid Office Memorandum, was violative of Article 14 of the Constitution, being arbitrary and discriminatory in nature. It was pointed out that the Government servants, who retired prior to the specified date, and those who retired thereafter, formed one class. They having been classified in two separate groups for the purpose of the pensionary benefits, the classification was not founded on any

intelligible differentia. The said classification had also no rational nexus with the object sought to be achieved.

The Office Memorandum No.F-19(4)-E.V./79, with which we are concerned, states that the question of treatment of a portion of dearness allowance as pay had been under consideration of the Government of India and the President had been pleased to decide that "in respect of Government servants who retired on or after the 30th September, 1977, the amount of dearness allowance indicated in para 2 below, shall be treated as pay for the purposes and to the extent specified hereinafter." It further says that part of the dearness allowance, shall be treated 'dearness pay', in different pay ranges specified in the said Office Memorandum for the purpose of retirement benefits. Upto pay range of Rs.300/-, 36% of the pay shall be deemed to be dearness pay. Similarly, in respect of pay range above Rs.300/- and upto Rs.2157/-, 27% of the pay subject to a minimum of Rs.108/- and maximum of Rs.243/- shall be treated as amount of dearness pay. In respect of pay range above Rs.2157/- and upto Rs.2399/-, the dearness pay shall be the amount by which the pay falls short of Rs.2400/-. In the case of officers drawing pay above Rs.2180/- and retiring on or after 1st December, 1978, the amount of dearness pay to be treated for the purpose of retirement benefits, has been specified in the said Office Memorandum. In paragraph 3(1) of that Office Memorandum, it has been said that the dearness pay shall count as emoluments for pension and gratuity in terms of Rule 33 of

the Central Civil Services (Pension) Rules, 1972. But, in the case of persons who have already retired on or after 30th September, 1977/1st December, 1978, but within ten months of those dates, the ultimate average emoluments will be calculated according to the procedure prescribed. In the case of persons, who retired between 30th September, 1977 and 28th February, 1978, and on or after 1st December, 1978 but not later than 30th April, 1979, one-half of the dearness pay, appropriate to the pay equal to such average emoluments, shall be added to the average emoluments. In the case of persons, who retired after 28th February, 1978 and after 30th April, 1979, full dearness pay appropriate to the pay equal to such average emoluments, shall be added to the average emoluments. It further provides that pension and gratuity of persons, who have already retired on or after 30th September, 1977, shall be recalculated on the basis aforesaid and arrears, if any, be paid subject to such adjustment as may be necessary. Paragraph 4 of the said Office Memorandum says that persons, who retired on or after 30th September, 1977 but not later than 30th April, 1979, will have an option to choose either of the two alternatives given in the said Office Memorandum:-

"(a) to have their pension and DCR Gratuity calculated on their pay excluding the element of Dearness Pay as indicated in para 2 above in accordance with the rules in force on 30.9.1977, and get graded relief on pension to the full extent admissible from time to time;

OR

(b) to have their pension and DCR Gratuity

recalculated after taking into account the element of dearness pay. In such cases, the first four instalments of graded relief sanctioned upto the average index level 272 will not be admissible; these pensioners will be entitled only to the instalments of graded relief sanctioned beyond the average index level 272."

The aforesaid Office Memorandum introduced a scheme to treat a portion of the dearness allowance as pay in respect of Government servants, who retired on or after 30th September, 1977. With reference to different pay ranges, amount of dearness pay has been fixed; that dearness pay is to be counted as emoluments for pension and gratuity in terms of Rule 33 of the Central Civil Services (Pension) Rules, 1972. Thereafter, an option has been given to persons who have retired on or after 30th September, 1977 but not later than 30th April, 1979, to exercise an option out of the two alternatives, of getting pension and death-cum-retirement gratuity, calculated either by excluding the element of dearness pay or by including the element of dearness pay. It can be said that the Office Memorandum in question has evolved a concept of treating a portion of dearness allowance as pay in respect of officers in different pay ranges fixing different percentages of the amount of dearness pay for purpose of retirement benefits. The lower the pay range, the higher is the percentage of the dearness pay. Thereafter, such dearness pay is to be taken into consideration for fixation of pension and gratuity.

Now the question which is to be answered is as to

whether even this Office Memorandum suffers from the vice indicated in the aforesaid case of D.S. Nakara (supra)? Is it discriminatory and arbitrary so as to be violative of Article 14 of the Constitution? Does it create classification among the equals? Can it be said that if the concept of treating a portion of the dearness allowance as pay, was to be implemented for the purpose of retirement benefits, then it should have been applied to all the retired Government servants, irrespective of their dates of retirement?

Public service is bilateral in nature in the sense that a public servant is remunerated for the service he renders to the public. Such public servant shall get pension after retirement, is one of the integral part of his employment. That is why it has been repeatedly said by the courts that pension is not a charity. Every public servant becomes entitled, after retirement for pension under the relevant rules for the service he has rendered to public for years. Keeping in view the services rendered in the past and to ensure that they live and lead a dignified life even after superannuation, the Government has been revising the rates of pension or providing certain additional benefits from time to time. But the demand of retired personnel is that throughout they should be treated at par and as a class with persons who retire later.

Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of

the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to 'picking out a date from the hat', as was said by this Court in the case of D.R. Nim v. Union of India, AIR 1967 SC 1301, in connection with fixation of seniority. Whenever a revision takes place, a cut off date becomes imperative, because the benefit has to be allowed within the financial resources available with the Government.

A supplementary affidavit has been filed on behalf of the Union of India, stating that the Third Pay Commission in its report recommended:-

"We recommend that should the price level rise above the 12 monthly average of 272 (1960 = 100) Government should review the position and decide whether the dearness allowance scheme should be extended further or the pay scales themselves should be revised."

It has been further stated that consequent upon the sharp rise in prices, the employees started demanding the merger of dearness allowance with pay. After negotiation with the staff side, the Government agreed to the merger with pay of the dearness allowance at 272 level, at least for purposes of pension and other retirement benefits, and the aforesaid Office Memorandum was issued.

The concept of 'dearness pay' was evolved in respect of employees in different pay ranges with different percentages of the dearness pay. Thereafter the pension and gratuity were worked out and an option was given to persons, who retired on or after 30th September, 1977 but not later than 30th April, 1979, to choose either of the two alternatives - (i) to have their pension and death-cum-retirement gratuity calculated on their pay excluding the element of dearness pay as indicated in paragraph 2 of the said Office Memorandum; or (ii) to have their pension and death-cum-retirement gratuity recalculated after taking into account the element of dearness pay. If the stand of the respondents is to be accepted that this scheme should have been made available, without there being a cut off date, to all including those who have retired even 20 to 25 years before the introduction of the scheme, then, according to us, the whole scheme shall be unworkable, because it is linked with the payment of dearness allowance, which is based on the level of price index. Different institutions/departments have introduced the system of payment of dearness allowance at different stages to mitigate the hardship of their employees with the rise in the prices of the essential articles as a result of the inflation.

On behalf of the Union of India, it has been stated that in the aforesaid Office Memorandum dated 25th May, 1979, 30th September, 1977 was fixed as the cut off

date, with reference to the average cost of living index at 272, which fell on 30th September, 1977. It has been further stated that those who were entitled to the benefits of the said Office Memorandum, were given option either to opt for the revised formula or retain the existing formula. Some of the persons entitled to the new formula opted to retain their existing position, because in their case the application of the new formula would have resulted either in the reduction of the total pension or the increase which would have been only marginal. It has been said that under the Office Memorandum aforesaid, dearness allowance with reference to average price index level at 272 was treated as dearness pay for the purpose of pension for those who retired after 30th September, 1977. It has also been pointed out that pensioners, who retired on or after 30th September, 1977 with the benefits of dearness pay, became entitled to less dearness relief, as compared to those who retired before 30th September, 1977 or retired after 30th September, 1977, but had opted not to get the benefit of the impugned Office Memorandum.

In respect of grievance regarding encashment of earned leave upto maximum encashment of six months' leave, which was made available, it was pointed out that it was a new facility allowed to serving Government servants and as such a date had to be fixed for its application. The date of its operation was fixed in consultation with the representatives of the Government servants. Respondents,

who were not in service on the relevant date, cannot make any grievance of the scheme regarding encashment of earned leave to a maximum period of six months.

Regarding the family pension scheme, it has been pointed out, that the family pension scheme was introduced with effect from 1st January, 1964. Then the scheme was a contributory one and each Government servant to be entitled to family pension under the scheme, had to contribute two months' pay or Rs.3600/- (the maximum amount of Rs.3600/- was raised to Rs.5000/- with effect from 1.1.1973), whichever was less. However, with effect from 22nd September, 1977, the scheme was made non-contributory. Thereafter, there was no obligation on the part of the Government servants to contribute any amount for being eligible for family pension. As the respondents were not in the service on the said date, they were not eligible for the benefit aforesaid and the question of refunding the amount contributed by them under the old scheme, while they were in service, did not arise.

According to us, for the reasons disclosed on behalf of the appellant-Union of India for fixing 30th September, 1977 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 at 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.

In the case of Action Committee South Eastern Railway Pensioners v. Union of India, (1991) Supp. 2 SCC 544, the concept of 'dearness pay' was examined, including the two options which had been framed, beyond average price index level at 272, fixing a cut off date. It was held that merger of a part of the dearness allowance as dearness pay on average price index level at 272, with reference to different pay ranges, was not arbitrary in any manner and

the principle enunciated in the D.S. Nakara's case (supra) was not applicable.

A Constitution Bench in the case of Krishena Kumar v. Union of India, (1990) 4 SCC 207, considered the grievance of retired Railway employees, saying that before 1957 the only scheme for post-retirement benefits in the Railways was the Provident Fund Scheme. This Scheme was replaced in the year 1957 by Pension Scheme. The employees, who entered Railway Service on or after April 1, 1957, were automatically covered by the Pension Scheme instead of Provident Fund Scheme. The employees, who were already in the service on April 1, 1957, were given an option either to retain the Provident Fund benefits or to switch over to the pensionary benefits, on the condition that the matching Railway contribution already made to their Provident Fund Accounts, would revert to the Railways on the exercise of the option. On behalf of the petitioners, it was pointed out before this Court that when two alternative benefits had been given, they were more or less equal. But the pension had thereafter been liberalised manifold to the benefit of the pension retirees. No similar benefit had been extended to those who retired opting for Provident Fund. Had the petitioners known about the subsequent pensionary benefits, they would have also opted for pension instead of Provident Fund. Grievance was also made about the cut off date, saying that it was violative of Article 14 of the Constitution. Dismissing the writ petition, this Court held

that on principle of D.S. Nakara's case (supra), it cannot be held that Provident Fund retirees, who had opted for the same, were being discriminated because the pension retirees in course of time because of revision, were better placed. The contention that a fresh option be given was also rejected, because after exercising the option the Provident Fund retirees formed a separate class from pension retirees.

Another Constitution Bench in the case of Indian Ex-Services League v. Union of India, (1991) 1 SCR 158, had to consider the grievance of ex-servicemen, claiming on basis of the decision in D.S. Nakara's case (supra) that all retirees, who held the same rank, irrespective of their date of retirement, must get the same amount of pension. A claim had also been made for grant of same death-cum-retirement gratuity to pre-1.4.1979 retirees, as had been granted to post-1.4.1979 retirees; claim had also been made for merger of dearness allowance backwards. While negativing the claims aforesaid, it was pointed out that the conclusion of this Court in D.S. Nakara's case (supra), was in context of the benefits of liberalisation given in accordance with liberalised pension scheme, which had to be given equally to all retirees, irrespective of their date of retirement and those benefits could not be confined to only the persons who retired on or after the specified date. After referring to the Krishna Kumar's case (supra), it was said:-

"We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read Nakara decision as

one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different."

In the case of State Government Pensioners' Association v. State of Andhra Pradesh, (1986) 3 SCR 383, the order in question provided that retirement gratuity may be 1/3rd of the pay drawn at the time of the retirement for every six monthly service, subject to maximum of 20 months pay limited to Rs.30,000/-. This order was made effective from 1st April, 1978. The petitioners, who were Government employees and had retired before 1st April, 1978, contended that the gratuity being a part and parcel of the pensionary benefits, they were also entitled to the same retrospectively. On behalf of the State, it was pointed out that the gratuity which had accrued to the petitioners prior to 1st April, 1978, was calculated on the then existing rules and pay, and such petitioners formed a distinct class, for the purpose of payment of gratuity, from others who retired after 1st April, 1978, the date from which the revised pension rules were made applicable by the Government. This Court held that the upward revision of gratuity which took effect from a specified date i.e. 1st April, 1978 with prospective effect, was legal and not violative of Article 14; the principle of D.S. Nakara's case (supra) was not applicable.

In yet another case of All India Reserve Bank Retired Officers Association v. Union of India, AIR 1992 SC 767 = (1992) Suppl. 1 SCC 664, the Retired Officers Association of the Reserve Bank of India questioned the validity of introduction of Pension Scheme in lieu of Contributory Provident Fund Scheme. The Bank employees, who retired prior to 1st January, 1986, had not been given benefit of the said Pension Scheme. It was held that the said cut off date was neither arbitrary nor artificial or whimsical.

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-contributory. 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.

Accordingly, the appeal is allowed. The judgment of the High Court is set aside. In the facts and circumstances of the case, there will be no order as to costs.

.....
(A.M. AHMADI)

.....
(N.P. SINGH)

New Delhi,
March 17, 1994

All communications should be addressed to the Registrar, Supreme Court, by designation. No. by name
Telegraphic address :—
"SUPREMECO"

Recd. *by post*
25/11/94

No. S. 3475-78/87/IV-A.

SUPREME COURT
INDIA

October, 1994.

19

Dated New Delhi, the

10/11/94

FROM The Registrar (Judicial),
Supreme Court of India,
New Delhi.
TO The Registrar,
Central Administrative Tribunal,
Bangalore Bench at Bangalore.

CIVIL APPEAL NOS. 1775 TO 1778 OF 1994.

Union of India & Anr.

...Appellants.

Vs.

B.Ranga Joshi & Ors.

...Respondents.

Sir,

In continuation of this Registry's letter of even number dated the 30th June, 1994 / 5th July, 1994, I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 17th March, 1994 of the Supreme Court in the said appeals.

Please acknowledge receipt.

Yours faithfully,

AMJ

for Registrar (Judicial)

If intended already
Enter in SLP list, SLP Registry, main Registry & add to file & note thereafter, a photocopy of this and a photo copy of order in T.A. be filed office 13 of Reg '93.

Notified
25/11/94

25/11/94 JF
SB

IN THE SUPREME COURT OF INDIA

CRIMINAL CIVIL APPELLATE JURISDICTION

Certified to be true copy
10/12/94

548671

Assistant Registrar (JUDL.)

199

No. xx ~~Set~~ Supreme Court of India
CIVIL APPEAL NOS. 1775 TO 1778 OF 1994.ARISING OUT OF:PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 9346 to 9349
OF 1987.(Petitions under Article 136 of the Constitution of India from
the Order dated 30th October, 1986 of the Central Administrative
Tribunal, Bangalore Bench at Bangalore in Application Nos. 1296-
1299 of 1986).1. Union of India through Secretary,
Ministry of Finance, New Delhi-110 001.2. Secretary, Department of (Posts),
Ministry of Communication, New Delhi
- 110 001.

...Appellants.

Vs.

1. B.Ranga Joshi, S/o Venkatarama Joshi,
Retired Head Post Master, Residing at
Chitpadi, Udupi-576 101, Dakshina Kannada.2. K.Gopalkrishna Shenoy, s/o Amrit Shenoy,
Retired Asstt. Post Master, residing at
Narasimha Nivas No.2, Beedina Gudde,
Upudi-576 101.3. K. Sadananda Kamath, s/o K. Devaraya Kamath,
Retired Postal Assistant, residing at Car
Street, Barkur - 576 210, Dakshina Kannada.4. Consumer's Education and Protection
Foundation by its President, Board of
Trustees Sri P.Rabindra Nayak, Upendra
Bang, Near Kalpana Cinema, Udupi-576 101
Dakshina Kannada.

...Respondents.

17th March, 1994.CORAM:HON'BLE MR. JUSTICE A.M.AHMADI
HON'BLE MR. JUSTICE N.P.SINGHFor the Appellants: Mr. N.N.Goswami and Ms. K.Amareswari,
Senior Advocates.(Ms. Kitty Kumarmangalam, Ms. A.Ayyangar,
M/s. A.D.N.Rao, C.V.S.Rao, V.K.Verma and
Wasim A.Qadri, Advocates with them).The Petitions for Special Leave to Appeal, above-mentioned
alongwith connected matters being called on for hearing before
this Court on the 25th and 28th days of January, 1994, UPON ...?

perusing the record and hearing counsel for the appellants herein, the Court took time to consider its Judgment and the matters being called on for Judgment on the 17th day of March, 1994, THIS COURT DOTH grant Special Leave to Appeal and in disposing of the resultant Appeal in terms of the Judgment dated 17th March, 1994 of this Court in Civil Appeal No.517 of 1987 entitled Union of India Vs. P.N.Menon and Ors. DOTH ORDER:

1. THAT the Order dated 30th October, 1986 of the Central Administrative Tribunal, Bangalore Bench at Bangalore in Application Numbers 1296 to 1299 of 1986, be and is hereby set aside and in place thereof an Order dismissing the said Application Numbers 1296 to 1299 of 1986 filed by the respondents herein, before the aforesaid Tribunal, be and is hereby substituted;
2. THAT there shall be no order as to costs of these appeals in this Court;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Manepalli Narayana Rao Venkatachaliah, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 17th day of March, 1994.

Sdf-
(I.J.SACHDEVA)
JOINT REGISTRAR
k

SUPREME COURT
CIVIL JURISDICTION

XXX

XXXX

CIVIL APPEAL NOS. 1775 TO 1778 OF 1994.

Union of India & Anr.

Appellants.

Petitioner

Versus

B.Ranga Joshi & Ors.

Respondent S.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BENGALORE BENCH AT BANGALORE.

Application Numbers 1296 to 1299 of 1986.

DECREE DISPOSING OF THE APPEALS
WITH NO ORDER AS TO COSTS.

Dated the 17th day of March 1994.

Parmeshwaran,

Advocate on Record for the Appellants.

Compared with

SHRI

No. of folios

Advocate on Record for

SEALED IN MY PRESENCE

14/11/84

Muldaur
Muldaur Beld.
P.S. to Mr. V.C.
T.O.

AT, B/else Beld

15/6/98

RE(T)

RE

Please be informed that to Mr. V.C. at

address mentioned file is sent herewith.

At the Supreme Court today, both ends from the

letter No. 3475-78/87/S-II & AT. 57.94

address of Mr. V.C. at Muldaur Beld, a copy of

AT. 15.6.98, addressed to Mr. V.C. at Muldaur Beld in the

same

to Mr. V.C. at Muldaur Beld.

File no. 1896/1999/86(T)

15.6.98

B/else

AT, B/else Beld

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