

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

TODAY THE TWELFTH NOVEMBER, 1986

Present: Hon'ble Mr Justice K.S. Puttaswamy Vice Chairman

Hon'ble Mr P. Srinivasan Member(A)

REVIEW APPLICATION NO. 12/86  
(Original application no. 1589/86)  
(disposed of on 1.10.86)

Shriyut Jagannathrao Srinivasrao Shahapurkar,  
age 60 years, Occ. Retired Govt. Servant  
R/o Plot No. 30, CTS No. 4842/A Sadashiv Nagar,  
Belgaum .. Applicant

Vs

1. Union of India, the Secretary,  
Govt. of India, Ministry of Finance,  
Department of Defence, South Block,  
New Delhi-110 001.
2. The Controller General of Defence  
Accounts, R.K. Puram, West Block  
New Delhi-110 022.
3. The C.D.A.(O.Rs.) South, Teynyampeth,  
Madras 600 018.
4. The Accounts Officer i/c PAO(O.Rs.),  
the M.L.I. Camp, Belgaum-590 009. .. Respondents  
(Shri M. Vasudeva Rao ... Advocate)

This application has come up before Court today for  
hearing. Member(A) made the following:

O R D E R

In this review application, the applicant wants us  
to review our ex parte order dt. 1.10.86 in application  
no. 1589/86. In that order, we had rejected the claim  
of the applicant for an increased special pay as Cashier  
of Rs. 50.00 per month with effect from 1.4.82 because  
under the rules, special pay of Rs. 50.00 could have been  
granted to him only if the average monthly disbursement  
of cash in the immediately preceding year had exceeded  
Rs. 1.00 lakh and that condition had not been fulfilled.

*P. S. Srinivasan*

...2/-

2. The applicant present in person wanted us to hear him on the merits of his original application and review our order after hearing him. We have heard him fully as also Shri M.Vasudeva Rao, learned counsel for the respondents who opposed the claim of the applicant.

3. We are unable to see any merit in the contentions of the applicant. His claim for special pay is founded on the order of the Director General Posts & Telegraphs dated 16.5.79 and if he is to be entitled to the increased special pay, the conditions set out in the order have to be strictly fulfilled. The said order regulating grant of special pay requires that the Head of Department should certify "on the basis of the previous financial year's average the amount of cash disbursed and sanction the rate of special pay appropriate to that quantum". This implies a clear condition that unless the monthly disbursement was over Rs. 1.00 lakh, in the immediately preceding financial year, the higher rate of special pay cannot be granted. In this case, the applicant's claim is for a higher special pay of Rs. 50.00 from 1.4.82, and the average monthly disbursement in the immediately preceding financial year was less than Rs. 1.00 lakh. Therefore, under the conditions of the very order on which he bases his claim for special pay, his claim has to fail.

P. L. M.

....3/-

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\*\*\*\*\*

Commercial Complex(BDA),  
Indiranagar,  
Bangalore - 560 038

Dated : **23 DEC 1986**

Application No. 1296 to 1299/86(T) /86( )

W.P. No 16605 to 608/84 /

Applicant

B. Ranga Joshi & 3 ors.

vs. Vs.

Secretary, M/o Finance & ors. vs.  
New Delhi.

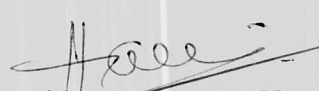
To

1. Shri HS Hande, Advocate,  
Arcot House, Vth Main,  
Malleswaram, BANGALORE-3. (5 copies)
2. Shri DV Shailendra Kurar,  
Central Govt. Sng. Counsel,  
High Court Bldgs.,  
BANGALORE-1.
3. The Secretary,  
Ministry of Finance,  
NEW DELHI-1.
4. The Secretary,  
Ministry of Communication, (Dept. of Posts)  
NEW DELHI-1.

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/~~Interim Order~~  
passed by this Tribunal in the above said Application on 30-10-86.

Encl : as above.

  
SECTION OFFICER  
(JUDICIAL)

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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 Amrith 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)

v.

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. Shylendra Kumar, Central Govt. 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.FI(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

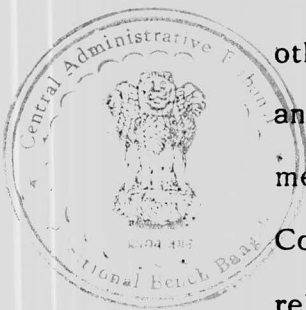


challenge to para 3(iii)(a) and the words "after 29-6-1982" occurring in para 3(iii)(b) and for a direction to respondents to extend the benefits specified in para 3(iii)(b) to all the pensioners irrespective of the date of their retirement. We, therefore, confine the case of the applicants to that prayer 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 130].



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(1) 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.1(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.

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The undersigned is directed to refer to this Ministry's Office Memorandum No.F19(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/- and 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 ~~30x~~ 30-6-1982. So far 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.

11. 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



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.1(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 costs.

Sd/-

VOCE-CHAIRMAN, 30/10/82

Sd/-

MEMBER(AM)(R)

np/

- True Copy -

*[Signature]*  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE