

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Registered

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 1 JUL 1988

APPLICATION NO. 820 /87(F)

W.P. NO. _____

Applicant(s)

Shri M. Jayaram Iyer
To

Respondent(s)

V/s The Secy, M/o Labour, New Delhi
& another

1. Shri M. Jayaram Iyer
289/A, 9th 'A' Main
5th Block, Jayanagar
Bangalore - 560 041
2. Shri M. Narayanaswamy
Advocate
844 (Upstairs)
Vth Block, Rajajinagar
Bangalore - 560 010
3. The Secretary
Ministry of Labour
Shram Shakti Bhavan
New Delhi - 110 001

4. The Director
Incharge of Central Board
for Workers Education
Ministry of Labour
New Delhi - 110 001
5. Shri M. Vasudeva Rao
Central Govt. Sing Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~/SCM/INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 29-6-88.

Encl : As above

d/c
DEPUTY REGISTRAR
(JUDICIAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 29th day of June, 1988.

Present

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

THE HON'BLE MR.CH.RAMAKRISHNA RAO MEMBER(J)

APPLICATION NO.820 OF 1987(F)

M.Jayaram Iyer
S/o late K.Narayana Iyer,
67 years,
289/A, 9th 'A' Main,
5th Block, Jayanagar,
Bangalore-41. .. Applicant.

(SHRI M.NARAYANASWAMY, Advocate for the applicant)

-vs.-

1. The Union of India
represented by its Secretary,
Ministry of Labour,
'Shram Mantralaya',
New Delhi.

2. The Director,
Incharge of Central Board
for Workers Education,
Ministry of Labour,
Government of India,
New Delhi. .. Respondents.

(Sri M.Vasudev Rao, Addl.Central Government
Standing Counsel for respondents)

This application coming on for hearing,
Hon'ble Mr.L.H.A.REGO, MEMBER(A), made the
following:

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ORDER



ORDER

In this application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant prays for a declaration, that the decision of the Government of India, that the benefit of the Non-Contributory Retirement Pension Scheme (NCRPS, for short) is inapplicable to those, who stood retired from service of the Central Board for Workers' Education ('Board' for short) prior to 1-8-1985, is arbitrary and discriminatory and that the benefit of this scheme is also applicable to those who stood retired from services of the Board, prior to 1-8-1985. The applicant further prays, that a direction be issued to the respondents, to extend the benefit of the said scheme, to the applicant, who retired from services of the Board in June 1978, by setting off the amount⁴ claimed by him towards the Contributory Provident Fund Scheme (CPFS, for short), [to which he was a subscriber initially] with all other consequential relief.



2. The facts, in so far as they are relevant to the questions, to be determined in this application, are succinctly recapitulated below: The applicant was appointed as Teacher/Administrator in the Board, which was under the administrative control of the Ministry of Labour, Government of India, with a clear understanding, that his service conditions would be governed by the rules of the Board relating to his

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appointment

appointment. The applicant retired from the Board in June 1978 (after over two decades⁴ of service) when the NCRPS, was not applicable to the employees of the Board. This scheme came into effect on 1-8-1985, according to Letter dated 23-8-1985 from the Government of India, Union Ministry of Labour (Annexure-A) i.e., long after the applicant retired from the services of the Board. According to the instructions contained in the aforesaid letter dated 1-8-1985, from the Government of India, only those employees of the Board, as were in service on 1-8-1985, would come within the purview of the NCRPS provided, they had opted for the same.

3. According to the above instructions of the Government of India, those persons who stood retired from the Board prior to 1-8-1985, were denied the benefit of the NCRPS. The applicant contends, that the employees of the Board who stood retired prior to 1-8-1985 or thereafter, are similarly circumstanced, particularly in regard to entitlement to the benefit of the NCRPS. He further contends, that exclusion of the employees of the Board, who stood retired prior to 1-8-1985, from the purview of the NCRPS, is illegal and arbitrary, as the cut-off date, namely, 1-8-1985, bears no nexus and/or rational basis, to the object sought to be achieved.



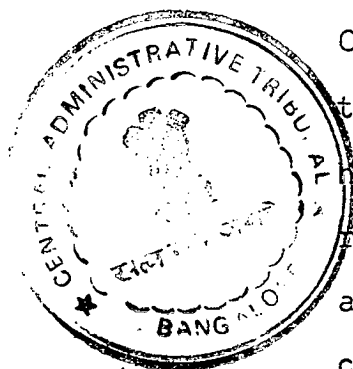
4. The applicant states, that he had submitted a representation on 14-3-1987 to respondent(R) 2 (Annexure-B), for extension of the benefit of the NCRPS

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to him. He refers to Annexure-C, whereby he states, R2 had informed his colleagues similarly circumstanced as he, that the benefits of the NCRPS, could not be extended to them, with retrospective effect. The applicant apprehends, that his representation too, would be rejected likewise. Thus, aggrieved, he has approached this Tribunal for redress.

5. Shri M.Narayana Swamy, learned Counsel for the applicant, iterating the contentions urged in the application, stated, that the cut-off date, namely, 1-8-1985, fixed by the respondents, for extension of the benefit of the NCRPS to the employees of the Board, to en masse exclusion of those, who had retired earlier, from the services of the Board, was arbitrary and discriminatory, being violative of Articles 14 and 16(1) of the Constitution of India, for which he relied as a bulwark, on the ratio of the decision of the Supreme Court in 1988 SCC(L&S) 145 D.S.NAKARA & ORS. -vs.- UNION OF INDIA⁷, in so far as it was relevant to his case. Elaborating the ratio of that decision, he pleaded, that all pensioners, had equal right to receive the benefits of the Liberalised Pension Scheme and that pensioners as a whole, formed a homogeneous class, and therefore, could not be segregated on arbitrary, unprincipled and unreasonable eligibility criteria⁸, for the purpose of extensions⁹ of the benefit of NCRPS, as in this case. Besides, he alleged, that

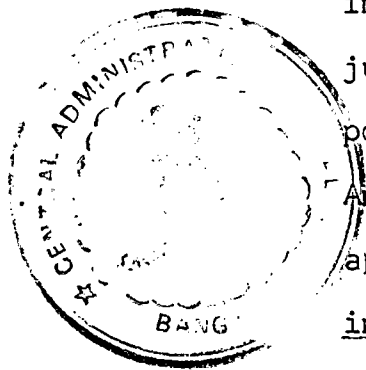


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^{the} the cut-off date, namely, 1-8-1985, was determined capriciously, without rational basis or nexus to the object sought to be achieved and that date, was almost "taken from a hat" he said, borrowing the phraseology used in NAKARA's case. This date, he said, was thus arbitrary and discriminatory, attracting the frown of Articles 14 and 16(1) of the Constitution.

6. Seeking to buttress his contention further, Sri Narayana Swamy, referred to an unreported decision of the High Court of Judicature, Bombay, in a writ petition, said to have been filed recently by some of the employees of the Board, placed likewise as the applicant, who had obtained an order in their favour, to the effect, that the benefits of the NCRPS, be extended to them, even though they had retired prior to the cut-off date, namely, 1-8-1985. Shri Narayana Swamy stated, that he could not succeed in ascertaining the ^{year} ~~order~~ and number of the above judgment and obtain a copy thereof. He, however, pointed out, that this judgment was referred to in Annexure-R1, to the reply of the respondents to the application. This annexure is reproduced below in toto, so as to facilitate reference at a glance:



"No.G-19011/2/86-WE

GOVERNMENT OF INDIA
Ministry of Labour

New Delhi, the 25th March, 1988

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To

To

The Director,
Central Board for Workers Education,
Nagpur-440 010.

Sub: Pensionary benefit to employees
of the CBWE, who retired prior
to August, 1985.

Sir,

I am directed to refer to correspondence resting with your letter No.WE/Accts./Pension/260 dated 6/8th April,1987 on the above subject and to say that the Department of Pension & Pensioners' Welfare, who were consulted in the matter have advised as under:

"As regards giving retrospective effect to the pension scheme introduced on 1st August 1985 for the employees of the Central Board for Workers Education, an autonomous organisation under the Ministry of Labour, a conscious decision was taken in 1987 in consultation with the Ministry of Finance, Department of Expenditure, not to give effect to the scheme w.e.f. a date earlier than 1-8-1985. The Bombay High Court judgment quoted in paragraph-3 of the preceding note are applicable only to the petitioners to the writ petition and not relevant to the present proposal."

Yours faithfully,
Sd. A.K. Chanda,
Deputy Secretary."



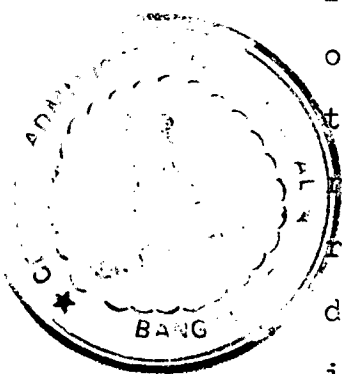
7. Sri Narayanaswamy asserted, that, it was evident from Annexure-R1, that the applicant was entitled to the benefit of the aforesaid judgment of the High Court of Judicature, Bombay, being similarly circumstanced, as the petitioners therein,

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but the respondents strange enough, had taken a rigid and unrealistic view, in denying the benefit to others, who were not a party to the aforesaid writ petition, even though their case was alike on all fours. He, therefore, urged, that the applicant in this case, was clearly entitled to the benefit of the aforesaid judgment of the High Court of Judicature, Bombay, as he was similarly circumstanced.

8. Shri M. Vasudev Rao, learned Counsel for the respondents, refuting the contentions of Sri Narayanaswamy, averred, that as the applicant was not in service, on the cut-off date namely, 1-8-1985, when the benefit of the NCRPS was extended to the employees of the Board, under the Letter dated 23-8-1985 of the Ministry of Labour, Government of India (Annexure-A), he was not entitled to that benefit. He, further submitted, that in reply to the representation of the applicant, the Union Ministry of Labour, by its letter dated 2-5-1987, had informed, that the benefit of the NCRPS, could not be extended retrospectively, to the employees of the Board, who had retired from its service, prior to 1-8-1985. This decision was also reiterated, he said, by the Ministry in its letter dated 25-3-1985 (Annexure-R1) addressed by it, to the Director of the Board at Nagpur. Sri Rao submitted, in the above circumstances, that the



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request

request of the applicant, to extend to him the benefit of the NCRPS was not tenable.

9. We have examined the rival contentions carefully and have also perused whatever record placed before us in the matter. We were keen to see a copy of the judgment of the High Court of Judicature, Bombay, referred to above, as also the linked Note of the concerned Ministry, referred to in Annexure R-1, to help ascertain, as to whether the case of the applicant was on all fours, similar to that of the petitioners, in the above writ petition filed before the High Court of Judicature, Bombay. Shri Rao candidly expressed, that despite all effort on his part, he could not obtain a copy of the said judgment and the linked Note from the respondents. However, he could not convince us, that the case of the petitioners in the said writ petition, before the High Court of Judicature, Bombay, was not alike to that of the applicant before us. A plain reading of Annexure-R1, leads us to an irresistible impression, that the High Court of Judicature, Bombay, had granted the benefit of the NCRPS, to the employees of the Board, who had retired prior to 1-8-1985 but the respondents had denied the benefit of that judgment, to others, solely on the premise, that they were not a party to that writ petition. It is disconcerting to note, that the respondents, could not make available the above crucial documents, to the Tribunal, in spite of best effort of their Counsel, which has avoidably prolonged the disposal of this case.



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10. We are of the view, that if the case of the applicant was identical in all respects, to that of the petitioners in the above writ petition, filed before the High Court of Judicature, Bombay, there is no reason for denying him, the benefit of the NCRPS, as extended to the above petitioners. The ground urged on behalf of the respondents, that the applicant is not entitled to the benefit of the aforesaid judgment, since he was not a party to that writ petition, cannot hold water, since we are satisfied, that the judgment under consideration, is in the nature of a judgment, binding on all similarly situated.

11. In view of the above facts and circumstances, we keep the question of the applicability of NAKARA's case, open, and direct the respondents, to ascertain, as to whether the case of the applicant is identical with that of the petitioners, in the aforesaid writ petition, filed before the High Court of Judicature, Bombay, and if so, to extend to him all such benefits (as extended by the said judgment to the above petitioners) with the utmost expedition, and in any case, not later than a period of three months, from the date of receipt of this order. If the applicant is aggrieved, he is at liberty, to move this Tribunal, after the respondents communicate their decision.



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12. The application is disposed of, in
the above terms. No order as to costs.

Sd/-

(L.H.A. REGO) 29.6.11
MEMBER(A).

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Sd/-

(CH. RAMAKRISHNA RAO)
MEMBER(J).

TRUE COPY

B. V. Subrahmanyam
DEPUTY REGISTRAR (JDLT) 117
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE



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