

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 10 OCT 1988

APPLICATION NO. 671 / 88(F)

W.P. NO. _____

Applicant(s)

Shri V. Venkateshri
To

Respondent(s)

V/s The District Valuation Officer, Income-tax Dept.
Bangalore & 3 Ors

1. Shri V. Venkateshri
215, V Block
Rajajinagar
Bangalore - 560 010

2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

3. The District Valuation Officer
Income-tax Department
28, Infantry Road
Bangalore - 560 001

4. The Zonal Accounts Officer
Zonal Accounts Office
Central Board of Direct Taxes
Central Revenue Building
Bangalore - 560 001

5. The Secretary
Ministry of Finance
Department of Revenue
New Delhi

6. The Secretary
Dept of Pension & Pensioners Welfare
Ministry of Personnel, Public Grievances
& Pension
6th Floor, 'Nirwahan Sदन'
Ashoka Road
New Delhi - 110 001

7. Shri M.S. Padmarajeshri
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAX~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 30-9-88.

Issued
K. Narayana
11-10-88

Encl : As above

o/c
[Signature]
SECTION OFFICER
~~REGISTRAR~~
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRTEETH DAY OF SEPTEMBER 1988

Present : Hon'ble Justice Shri K.S. Puttaswamy ... Vice-Chairman
Hon'ble Shri P. Srinivasan ... Member(A)

APPLICATION NO. 671 OF 88 (F)

V. Venkatadri,
215, V Block,
Rajajinagar,
Bangalore-560 010.

... Applicant

(Dr. M.S. Nagaraja .. Advocate)

v.

The District Valuation Officer,
Income-tax Department,
Bangalore - 560 001.

The Zonal Accounts Officer,
Zonal Accounts Officer,
Central Board of Direct Taxes,
Central Revenue Building,
Bangalore-560 001.

The Secretary,
Ministry of Finance,
Government of India,
New Delhi.

The Secretary,
Deptt. of Pension & Pensioners Welfare,
Ministry of Personnel, Public
Grievances and Pensions,
6th Floor, 'Nirwahan Sadan',
Ashoka Road, New Delhi-110 001.

(Shri M.S. Padmarajaiah .. Advocate)

This application had come up for hearing before this
Tribunal on 21.9.1988. Hon'ble Shri P.Srinivasan, Member(A),
made the following:

O R D E R

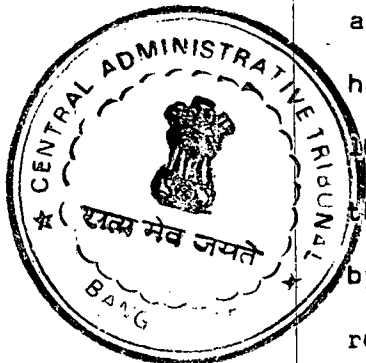
The applicant who was working as Valuation Officer in
the Income-tax Department, Bangalore, took voluntary retirement

P. Srinivasan



from service on 31.3.1982 when he was 52 years of age and had completed a service of 28 years and 7 months. Under Rule 48-A(3) of the Pension Rules, as they stood at that time, a Government servant taking voluntary retirement by giving three months notice after completion of 20 years of qualifying service was allowed to add upto five years to the qualifying service put in by him for the purpose of pension. However, if he had already attained the age of 50 years when proceeding on voluntary retirement, this concession of adding five years to qualifying service was not available. Since the applicant had attained the age of 50 years ~~at the~~ when he took voluntary retirement he did not get the benefit of Rule 48-A(3).

2. With effect from 10.9.1983 i.e., more than a year and a half after the applicant's retirement, Rule 48-A(3) was deleted and a new rule was introduced as Rule 48-B. According to this rule, a person proceeding on voluntary retirement has the right to have the qualifying service actually rendered by him increased by a period not exceeding five years subject to the condition that the total qualifying service after such increase does not exceed 33 years or does not take him beyond the date of superannuation. The applicant's contention is that he should have been given the benefit of ^{the} newly added Rule 48-B from 10.9.1983. In other words the applicant's contention is that his pension on and after 10.9.1983 should be calculated by adding five years to the qualifying service actually rendered by him.



P. S. K.

3. Dr. M.S. Nagaraja, learned counsel for the applicant contended, relying on the decision of the Supreme Court in D.S. NAKARA V. UNION OF INDIA, 1983(2) SLR 246, 1983 SCC(L&S) 145, that all pensioners constitute one class and that, therefore, classifying them into those who had retired before 10.9.1983 and those who retired thereafter for the purpose of applying the newly introduced Rule 48-B, was arbitrary and resulted in hostile discrimination against the applicant. A date may no doubt be fixed from which pension at a higher rate could be paid but the benefit of higher pension should be available from that date equally to those who retired before that date. Prior to 1979 a Government servant could earn maximum pension on completion of 30 years qualifying service. That was why Rule 48-A(3) had been earlier framed subjecting the benefit of adding upto five years to qualifying service to a total of 30 years after such addition. The qualifying service required for earning maximum pension was increased to 33 years from 1979. Therefore, the ^Mprovisions of present Rule 48-B providing for ^Maddition to qualifying service upto the maximum of 33 years should have been introduced in 1979 itself. Merely because the new rule 48-B was notified much later, the benefit of that rule should ^{M not} have been denied to those who had retired after 1979. There was no basis for fixing the date from which the new Rule 48-B was to take effect as 10.9.1983. It was, therefore, an arbitrary date picked out of a hat which had resulted in discrimination against persons like the applicant, who had retired after 1979 but before 10.9.1983.



P. S. Nagaraja

4. Shri M.S. Padmarajaiah, learned counsel appearing on behalf of the respondents sought to refute the contentions of Dr. Nagaraja. Pension rules are drafted and announced by the Government under Article 309 of the Constitution. The right of the Government to amend these rules from time to time has been recognised by the courts. An amendment to a rule generally has prospective operation. To say that a new rule introduced in 1983 should be made applicable to persons who had retired well before that date is to suggest that Government cannot rectify rules of service from time to time prospectively. In Nakara's case the Supreme Court was dealing with a liberalised pension scheme and it was in that context that it was held that the benefits of the scheme should be given also to those who had retired before the said scheme was brought into effect. Rule 48-B extended certain benefits to persons who sought voluntary retirement. The same was also the purpose of old rule 48-A(B). The primary purpose of Rule 48-B was not to change the amount of pension payable to all pensioners but only to provide an incentive to persons in Government service to take voluntary retirement if they ^{or were} ~~are~~ not happy in service. This did not result in a classification of pensioners qua pensioners into two classes. Therefore, the decision in Nakara's case had no application to the present case.

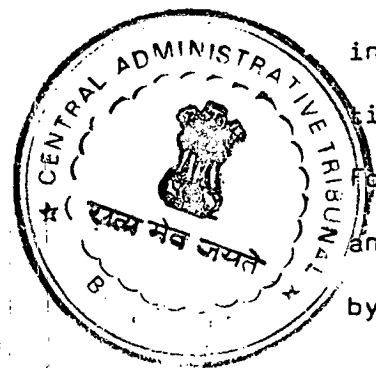
5. We have given the matter/most anxious consideration. We agree with Shri Padmarajaiah that in Nakara's case the Supreme Court was dealing with a new scheme, the purpose of



P. S. K.

which was to determine the quantum of pension for all Government servants. The court held that when Government decided to liberalise the amount of pension payable to its pensioners, those who retired earlier were also likely to experience the same privations as those who retired later if the amount of their pension remained unchanged. The purpose of liberalising the pension scheme was to provide an adequate means of livelihood for those who had rendered service in the past and to compensate for the rising cost of living. Equally with those who retired later those who had retired earlier had also rendered faithful service to the Government and were also adversely affected by the rising cost of living. In these circumstances the court held that it was unfair to restrict the extended benefits in regard to pension to those who retired later and not to those who retired earlier. Rule 48-B with which we are concerned is not a provision which extends to all pensioners, as did the liberalised pension scheme considered by the Supreme Court. Further the primary object of the new Rule 48-B is not so much to vary the quantum of pension as to provide an incentive to persons who are not happy in Government service, to seek voluntary retirement from service. The benefit that such persons would derive by way of extra pension is only an incidental result. A provision providing for such incentive is based on the perceptions of the Government at the time it makes that provision and is not of universal application. For instance a person who takes voluntary retirement before such an incentive is offered cannot at all be influenced in his decision by the expectation of such a benefit. On the other hand after

P. S. K.



5. benefit is introduced in the rules ~~xxxx~~ as in Rule 48-B, persons who would not otherwise have sought voluntary retirement might do so. Therefore, a provision like the present Rule 48-B is a reflection of the policy of the Government in regard to its relations with its employees. If a person had taken voluntary retirement from service earlier he may feel that he would have done better to have retired after this rule had been made, but he cannot make a complaint of it because when he took voluntary retirement he did not expect any benefit and probably did so for other reasons of his own. When an incentive is brought into force it cannot be said that persons who retired earlier and to whom the incentive was not available had been subjected to hostile discrimination. The concept of pensioners as a whole constituting one class between whom no distinction can be made for the purpose of determining the quantum of pension payable to them does not apply to the situations brought about by the new rule 48-B.

M

it can operate only prospectively;

6. We must also refer to the decision of the Supreme Court in R.L. MARWAHA V. UNION OF INDIA 1987 SCC (L&S) 350 relied on by Dr. Nagaraja. There the question was whether the benefit of earlier service with the Government should be allowed to be counted by the petitioner for the purpose payable of computing his pension by the Indian Council of Agricultural Research from whose service he eventually retired. Counting of such earlier service for pension was allowed to those who retired after a particular date but not to those who had retired before that date and the petitioner there fell in the



P. S. ...

letter category. The Supreme Court held that the concession of counting earlier service should be given to the petitioner also. The mere fact that a person retired later should not deprive him of the benefit of service rendered by him earlier as compared to another who may have also rendered such earlier service at about the same time as the former but continued in service for some period after the former. We must here mention that even in Marwaha's case the concession which was given to one class of persons had the sole objective of determining the quantum of pension due to the superannuated official. Here Rule 48-B with which we are concerned was not intended so much to affect the quantum of pension as to provide greater mobility for Government servants to retire from long Government service/prior to the date of their superannuation to undertake other activities while still in good health. The purpose of Rule 48-B is thus to encourage voluntary retirement and not to determine the quantum of pension which may flow as an incidental result. Therefore, Rule 48-B does not make a distinction purely for the purpose of determining the quantum of pension between two sets of pensioners as in Nakara's case or in Marwaha's case. Therefore, the fact that Rule 48-B was brought into force from 10.9.1983 and was made applicable to those who took voluntary retirement after that date does not result in any discrimination or classification which offends Articles 14 and 16 of the Constitution. The decision in Nakara's case and Marwaha's case being founded

P. S. - 62



on a different set of facts has no application to the facts of this case.

7. In the result the application is dismissed. Parties to bear their own costs.



Sd/-

VICE CHAIRMAN

30/9/16

Sd/-

MEMBER (A)

TRUE COPY

bsv

Hee
SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

10/6

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 10 OCT 1988

To

1. Shri Sanjeev Malhotra
All India Law Journal
Hakikat Nagar, Mal Road
New Delhi - 110 009
2. Administrative Tribunal Reporter
Post Box No. 1518
Delhi - 110 006
3. The Editor
Administrative Tribunal Cases
C/o Eastern Book Co.
34, Lal Bagh
Lucknow - 226 001
4. The Editor
Administrative Tribunal Law Times
5335, Jawahar Nagar
(Kolhapur Road)
Delhi - 110 007
5. M/s All India Reporter
Congressnagar
Nagpur

Sir,

I am directed to forward herewith a copy of the under mentioned order passed by a Bench of this Tribunal comprising of Hon'ble Mr. Justice K.S. Puttaswamy Vice-Chairman/~~Member (J)~~ and Hon'ble Mr. P. Srinivasan Member (A) with a request for publication of the order in the journals.

Order dated 30-9-88 passed in A.Nos 671/88(F)

Yours faithfully,

[Signature]
for (B.V. VENKATA REDDY)
DEPUTY REGISTRAR(J)

Issued
K. Rajan
11-10-88

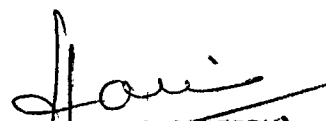
ofc

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras - 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta - 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex (CBD), 1st Floor, Near Konkon Bhavan, New Bombay - 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad - 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shillong Road, Guwahati - 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin - 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur (MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, C/o Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 001 (Orissa).

Copy with enclosures also to :

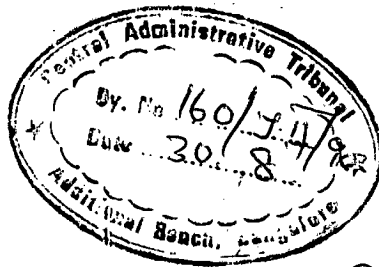
1. Court Officer (Court I)
2. Court Officer (Court II)

for 
(B.V. VENKATA REDDY)
DEPUTY REGISTRAR (J)

Issued
K. N. Rajan
11-10-88

yc

Section IVA
SUPREME COURT OF INDIA
NEW DELHI.
DATED:- 09/05/95



From:-

The Registrar
Supreme Court of India,
NEW DELHI.

To

The Registrar,
Central Administrative Tribunal,
Bangalore Bench,
BANGALORE.

Recd: by post
R 2/8/95

Enter in SLP list Register, O.A.
Register, add to file & note
Ote. as per R 143 of
189 Rop 93

PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL No .4119

(Petition under Article 136(1) of the constitution of India from
the Judgment and Order dated 30/9/88
of the ~~High court~~ ^{CAT} of Judicature at Bangalore Bench
in Appln. no. 671/88(F).

With a copy of
O.A. order
9/8/95

SH. V. VENKATAURI

... PETITIONER(S)

- vs -

DISTT. VALUATION OFFICER & ORS.

... RESPONDENT(S)

So [Signature] 09/8/95
Sob

Sir,

I am directed to inform you that the petition above mentioned
filed in the Supreme Court was dismissed
by the Court on 30/01/95

Yours faithfully

[Signature]
For Registrar

COPY TO
MR. M.M. KASHYAP (Adv)

Circular