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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 14/90

Transfer Application No: _____

DATE OF DECISION: 18/5/95

D. L. Joshi Petitioner

Shri H. Y. Deo Advocate for the Petitioner

Versus

Union of India & 4 others Respondent

Shri S. S. Karkera Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Hon'ble Shri M. R. Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M. R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

(17)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

O.A.14/90

D.L.Joshi

.... Applicant.

V/s.

1. Union of India
Represented by the Secretary,
Govt. of India,
Ministry of Finance,
(Deptt. of Revenue),
NEW DELHI.
2. The Asstt. Collector,
Central Excise & Customs,
Kolhapur Division,
KOLHAPUR.
3. Collector,
Central Excise & Customs,
PUNE.
4. Collector,
Central Excise & Customs,
Bombay Division,
Construction House,
Ballard Estate,
P.B.No.806,
BOMBAY - 400 001.
5. The Secretary,
Ministry of Personnel &
Public Grievance & Pensioners,
Deptt. of Pension & Pensioners'
Welfare,
6th Floor, Nirvachan Sadan,
Ashok Road, NEW DELHI-110 001.

.... Respondents.

CORAM: Hon'ble Shri M.R.Kolhatkar, Member(A).

APPEARANCES:

Shri H.Y.Deo, Counsel
for Applicant.

Shri S.S.Karkera, Counsel
for Respondents.

JUDGEMENT:

DATED: 18/7/95

¶ Per Shri M.R.Kolhatkar, Member (A). ¶

In this case the applicant has impugned the letter dt. 30/1/89 at Annexure-7 page-21 on the subject of Revision of Pension in terms of Liberalised Pension Scheme in which his request for revision of pension in terms of the judgement of Gujarat High Court was turned down since the judgement of the High Court applied only to that particular petitioner

and not to all unless the rules are also amended.

2. The Applicant retired as Superintendent, Central Excise Group B, Kolhapur Division as on 30/11/84. After his retirement, the Government OM No.F-1(12-EV/84 dt. 30/4/85 was issued. The relevant portions of this OM are reproduced below:-

"The undersigned is directed to refer to this Ministry's O.M.No.F.19(4)-EV/79 dt. 25th May, 1978 amended vide O.M. dt. 30.12.1981 and No.F.1(3)-EV/82 dt. 8th April, 1982 (as amended by O.M. dated 4.3.1983) according to which the Dearness Allowance and a portion of Additional Dearness Allowance as indicated therein is treated as 'Dearness Pay' in respect of Central Government Employees.

The question of treatment of further portion of Additional Dearness Allowance (Ad-hoc Dearness Allowance as Dearness Pay has been engaging the attention of the Government of India and the President is now pleased to decide that the entire Additional Dearness Allowance and Ad hoc Dearness Allowance sanctioned in this Ministry's O.M.No.13017/1/85-E.IIB dated 19th January, 1985 (linked to average index level 568) shall be treated as dearness pay in addition to the Dearness Pay treated as part of pay vide this Ministry's O.M. dated 25th May, 1979 amended vide O.M. dated 30.12.1981 referred to above for the purpose of retirement benefits in respect of Government servants who retire on or after 31st March, 1985, to the extent specified hereafter."

3. In this OM, cut-off date for purpose of treatment of further portion of additional Dearness Allowance (Ad hoc Dearness Allowance) as Dearness Pay linked to average index level of 568 ~~has~~ been fixed for the purpose of retirement benefits in respect of Government servants who retire on or

after 31st March, 1985. The Applicant retired prior to this date namely 30/11/84. According to the applicant the fixation of the cut off date is discriminatory and he relies on the judgement of Gujarat High Court in the case of Shri R.C.Gupta V/s. Union of India decided by Gujarat High Court in Civil Application No.4694 of 1985. In that case also the petitioner had retired on 30/9/84^{and he had challenged the OM} as being discriminatory relying on Nakara's case vide 1983/LAB, I.C.I. The Applicant particularly relied on paras-35,38, 39 and 65 of the judgement. In these paragraphs the Court has gone into the question of reasons of liberalisation of the Pension Scheme and the rationale for fixing a particular day. In para-65, the Court held that the cut off date for the liberalised pension scheme involved dividing a homogeneous class and the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension was struck down.

4. The judgement in full of Gujarat High Court is not available. From the operative portion which is produced, it is gathered that the High Court held the O.M. to be illegal and un-constitutional and violative of Article 14 of the constitution to the extent that the benefit of the Liberalised Pension Scheme is extended only to Government servants who retired on or after 31/3/85.

5. The respondents have, however, opposed the Application. First of all they have stated that an SLP against the judgement of the Gujarat High Court is pending but apart from filing a copy of the petition no further details are available.. The pendency of the SLP is therefore not material for the decision of the case. The respondents however have argued that Nakara

judgement on which heavy reliance has been placed is not applicable to the present case. Nakara's judgement said nothing regarding revised definition of emoluments in the Pension rules. Moreover, in the Writ Petition 15434/84 in Shri ^{K d Rathore} ~~Rathore~~ V/s. Union of India, Supreme Court has decided that the benefit of the change in the definition of emoluments made after the retirement of Shri Rathore ^u could not be given to him. The respondents have also relied on the Supreme Court judgement in Union of India V/s. P.N. Menon & Ors. (1884 ICIR-902) in which the fixation of September, 77 as a cut off date fixed with reference to price index level ^u of 272 for treating a portion of Dearness Allowance as pay for retirement benefits was held to be valid. They have also relied on ^{u of this Bench u} decision in N.G. Bhadkamkar's case vide N.G. Bhadkamkar V/s Union of India OA No. 94/91 ^u decided on 7/9/93 in which it was held that the judgement in Nakara's case does not apply to the pension rules regarding emoluments.

6. The whole matter of implication of Nakara judgement and the subsequent judgement ^u of the Supreme Court has been dealt with by the Supreme Court in recent judgement of State of Rajasthan V/s. Sevanivritta Karamchari Hitkari Samiti vide 1995 SCC (I&S) 415. Vide para 22 of the case, the Supreme Court has dealt with particulars of Nakara's judgement in the light of subsequent judgement of Supreme Court. Para 22 of the judgement reads as below:-

"After considering the respective

...5/-

contentions made by the learned Counsel for the parties, it appears to us that after the impugned decision was made by Rajasthan High Court, this Court has considered the import of the decision rendered in D.S.Nakara case. This Court has noticed the ratio in D.S.Nakara case as indicated in Krishena Kumar case and in Indian Ex-Services League case and also in Rajasthan Pensioner Samaj case, it has been clearly indicated by this Court that the Government servants can be governed by different sets of retiral benefits rules with a reference to their holding of office from a cut off date. In Krishena Kumar case it has been indicated that in D.S.Nakara case this Court considered a case where an artificial date was specified classifying the retirees into two different classes even though they were governed by the same rules and were similarly situated. Such classification, where both the groups were governed by the same rules, amounted to deprivation of the benefits of liberalisation of pension rules. It was only in that situation it was held in D.S.Nakara case that specification of the date from which the liberalisation pension rules were to come into force was arbitrary. This Court, in D.S.Nakara case clearly indicated that it was not a new scheme but only a revision of the existing scheme and it was not a new retiral benefit but it was a case of upward revision of existing benefit. In D.S.Nakara case it was pointed out that if it was wholly a new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. The Constitution Bench of Krishena Kumar case has upheld different sets of retiral benefits being made applicable to the employees retiring prior to 1.4.1977 and retiring thereafter. It has been indicated by the Constitution Bench in Krishena Kumar case that any argument to the contrary would mean that the Government can never change the condition of service relating to retiral benefits w.e.f. a

particular date. It has, however, been pointed out that the State cannot pick a date out of its hat but it has to prescribe a date in a reasonable manner having regard to the relevant facts and circumstances."

7. In our view taking account of the ratio and the clarification of Nakara judgement given in the above judgement, the fixation of cut off date by the O.M. dt. 30/4/85 does not appear to be discriminatory. The judgement of Gujarat High Court on which heavy reliance has been placed by the Applicant does not bind us and in any case pre-dates the latest Supreme Court judgement referred to by us,

In our view therefore there is no merit in the OA, It is accordingly dismissed without any orders as to cost.

abp.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)