

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

Original Application No.94/91.

Shri N.G.Bhadkamkar. Applicant.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri M.Y.Priolkar, Member(A).

Appearances:-

Applicant present in person.
Respondents by Shri P.M.Pradhan.

Oral Judgment:-

[Per Shri M.Y.Priolkar, Member(A)] Dt. 7.9.1993.

Heard the applicant who is present in person
and Shri P.M.Pradhan, counsel for the Respondents.

2. The applicant who retired on super-annuation
on 29.2.1984 while holding the post of Lower Selection
Grade has the grievance that the special pay of Rs.35/-
per month which he was drawing in the grade of UDC was
not taken into account for fixation of his initial pay
and promotion to Lower Selection Grade with consequent
(adverse) effects on his pension and other retirement
benefits. According to the applicant, the Ministry of
Finance, Department of Expenditure i.e. O.M. dt.1.9.87
provided that special pay of Rs.35/- p.m. paid to the UDC
be taken into account for fixation of pay on promotion
but these orders were effective only from 1.9.1985.
Subsequently, however, in pursuance of Judgments
of the CAT, Principal Bench and Bangalore Bench, the
Government of India extended the benefits to those
UDCs who were drawing the special pay of Rs.35/- p.m.
and promoted to higher post prior to 1.9.1985. This
order from the Ministry dt.22.5.1989 specifically
provided that while in such cases the pay should be
re-fixed on notional basis on the date of promotion

.....2.


by taking special pay of Rs.35/- p.m. into account, the actual benefit was to be allowed only from 1.9.1985 without payment of any arrears. The Ministry of Communication, Department of Telecommunication in consultation with Ministry of Finance, however, has clarified by O.M. dt. 30.8.1990 that the benefit of the increased pay not actually drawn cannot be allowed to be taken into account for the computation of pension and other retirement benefits.

3. The applicant contends that his pay should be re-fixed on notional basis from 7.6.1981 i.e. the date of his promotion to Lower Selection Grade and his pension should be re-calculated on that basis from 1.3.1984 i.e. the date of superannuation and the actual benefit in pension should be given to him from 1.9.1985. According to the applicant the clarification now issued by the Ministry of Communication, Department of Telecommunication is violative of Article 14 and 16 of the Constitution and of the Supreme Court Judgment in the case of D.S.Nakara V/s. UOI (AIR 1983 S.C. 130).

4. The Judgment cited by the applicant viz. the Judgment of the Supreme Court in the case of D.S.Nakara ^a deals with the division of homogeneous class as far as it relates to the entitlement for the liberalised formula for the computation of pension and does not support the proposition of the applicant that other conditions like inclusion of special pay etc. for calculating the average emoluments, pensioners ^{should be identical for all} irrespective of their date of retirement. Admittedly, the Statutory Pension Rules specifically provide that pension is to be calculated only on the basis of the actual pay drawn and these provisions have not been struck down in the Supreme Court Judgment cited by the applicant. It is clear that in the present case

(71)

the concession that the special pay should be taken
the pay on promotion was taken
into account for fixing/in pursuance of the award of the
Board of Arbitration dt. 28.4.1987 and Presidential
sanction conveyed by the Finance Ministry's Order
dt. 1.9.1987. The clarification dt. 30.8.1990 was
issued by the Ministry of Communications in consulta-
tion with the Ministry of Finance and Department of
Pension. This clarification is in conformity with
the Statutory Pension Rules. In my view, there is
nothing in this order to support the applicant's
contention of discrimination or of violation of the
principle laid down in Nakara's Judgment of the
Supreme Court. I see no merit in this application.
It is dismissed. No order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)

B.