

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATIONS NO.542, 942 & 943/1997

21st
THIS THE TH DAY OF SEPTEMBER, 2001

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SHRI S.L. JAIN. MEMBER (J)
SMT. SHANTA SHAstry. MEMBER (A)

O.A. NO. 542/1997

1. Shri Baburao ShankarDhuri.
Son of Shankar Dhuri.
Adult, retired on 31.10.94 as
P.A. (B.C.R.) from the office of the
Chief Postmaster General,
Maharashtry Circle, Mumbai-400 001
R/at Waredkar Chawl, Swadeshi Mills
Road, Chunabhatti, Sion,
Mumbai-400 022.
2. Shri Govind Vasudeo Limaye,
Son of Vasudev G. Limaye,
Adult, Retired on 31.7.1993
as Senior Superintendent of
Post Offices, Mumbai City North-
East Division, Bhandup, Mumbai and
R/at 206, Sair Anand, Near Chandanwadi
Police Chawki, Thane-400 601.
3. Shri Ananth Kashinath Lipare,
Son of Kashinath V. Libare,
Adult, Retiried on 31.5.1994
as Section Supervisor from Office of
the Chief Postmaster General,
Maharashtra Circle, Mumbai-400 001
R/at 1, Sarita, Varsha Society,
High Way Naka, Navpada,
Thane-400 602.
4. Shri V.G. Parkhi,
Son of Govind Parushottam Parkhi,
Age: Adult,
Retired as S.P.M., H.S.G. -II,
Mulund (West) PO,
R/at Kelkar Chawl, Opposite
Town Hall, Ground Floor,
At P.O. Thane-400 601.

O.A. NO. 942/97

O.A. NO. 943/97

5. Suresh Pandurang Thatte,
Age 52 years,
working as S.S.R.M.,
Central Division, Dadar,
Retired from Thane Sorting Office,
thane,
R/at B-14/ Sanyogita Society
Anand Nagar, Deen Dayal Road,
Dombivli (West), Dist-Thane
Disitrcit-Thane-421 202. ... Applicants

By Advocate Shri S.P. Kulkarni.

Versus

1. Union of India through
Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Building, 2nd Floor,
Near C.S.T. Railway, Fort,
Mumbai-400 001.
2. The Secretary,
Department of Pension and Pensioners'
Welfare, in the Ministry of Personnel
Public Grievances and Pensions,
parliament Street,
New Delhi-110 001.
3. The Secretary,
Department of Posts,
Ministry of Communications,
Dak Bhawan, Sansad Marg,
New Delhi-110 001. ... Respondents

By Advocate Shri P.M. Pradhan.

O R D E R

Smt. Shanta Shastry. Member (A)

In all these three OAs, the question of facts
and law involved are one and the same. These OAs were
heard and orders were passed on 22nd June, 2001. It was

decided to refer the matter to a larger Bench as there is a conflict between the decisions given by the Principal Bench as well as Chandigarh Bench of the Tribunal and the view held by the Mumbai Bench. Therefore, a reference has been made to the larger bench as follows:-

~~in re~~
Whether any nexus or rational consideration in fixing the cut off date of first April, 1995 vide OM No.7/1/95-P&PW (F) dated 14th June, 95 issued by Ministry of Personnel Public Grievances and Pension (Department of Pension and Pensioners' Welfare), New Delhi.

During the hearing on 5.9.2001 it was decided that although only one question has been referred to this Full Bench, the Bench would hear the cases finally and accordingly, the matter was heard.

2. The relief sought in these 3 OAs are the same and are as follows:

- a) This Hon'ble Tribunal may be pleased to call for records/notes and correspondence pertaining to the issue for better appreciation of the issue involved.
- b) The Hon'ble Tribunal maybe pleased to hold and declare the date of effect notified as 1.4.95 in OM letter dated 14.7.95 (Ex.A1) as arbitrary, illegal and unconstitutional.
- c) Hold and declare the cut off date as 1.4.95 for the purpose of counting D.A at the rate of 97%.

after treating/linking it to AICPI level of 1201.66 (equivalent to 97% of pay) as an act of sub-dividing the homogeneous class of pensioners who retired on or after 1.7.93 as discriminatory in violation of Art.14, as also declaring the said date 1.4.95 in OM dated 14.7.95 Ex.A-1 page 18 of O.A. as wide off the mark.

- d) The date of the effect in OM dated 14.7.95 Ex.A-1 appearing in para one as 1.4.95 be quashed and set aside and further holding that such benefit be granted to the applicants who retired on or after 1.7.93. In other words, the date "1.4.95" as appearing in the last sentence of para one of Exh.A-1 (i.e. om dtd 14.7.95) be substituted by 1.7.93.
- e) All consequential benefits such as difference between Gratuity paid earlier and admissible enhanced gratuity flowing from the above reliefs may be directed to be granted and paid with interest at the rate of 12% p.a. from the respective dates of retirement of applicants till the date of payment.
- f) Any other order and such further reliefs as may be deemed fit & proper by this Hon'ble Tribunal.
- g) Cost of the O.A if awarded be paid to the applicants.

The applicants in these OAs were working in different capacities as Postal Assistant, Senior Superintendent of Post Offices, Section Supervisor etc., and retired on superannuation between 31.7.93 and 31.10.94 on different dates.

3. During the year 1995, the respondent Ministry of Personnel Public Grievances and Pension (department of Pension and Pensioners' Welfare), New Delhi issued OM

No. 7/1/95-P & PW (F) dated 14.7.95 declaring that dearness allowance is to be merged with pay and has to be treated as dearness pay for the purposes of Death gratuity and retirement gratuity at 97% of the basic pay upto Rs.3500/- under the CCS (Pension) Rules, 1972 in the case of those Central Government employees, . who retired on or after first April, 1995. The benefits of such merger were not allowed to those who had retired prior to 1.4.95. The grievance of the applicants is that they were also drawing 97% DA as on 1.7.93, they are being discriminated against by excluding them from the benefit of merger of DA in DP for recalculating death/retirement gratuity by prescribing the date of implementation to be 1.4.95. According to the applicants the DA of 97% was granted with effect from 1.7.93 to all employes when the All India Consumer Price Index (AICPI for short) reached the level of 1201.66 and once a decision is taken to link the DA with the Consumer Price Index the date of merger of such DA in pay cannot be postponed to 1.4.95. The cut off date of 1.4.95 has no reasonable nexus to the objective of the scheme, there is no rational basis.

4. The respondents submit that the DA on average AICPI as been sanctioned with effect from 1.7.93 has now

been treated as DP for the purpose of reckoning emoluments for calculation of death/retirement gratuity with effect from 1.4.95. This decision of the Government of India is based on the interim report of the 5th Central Pay Commission and acceptance of the same by the Government. The decision was a policy measure after taking into consideration the financial implication. It cannot be said to be arbitrary. Since the applicants had retired earlier than 1.4.95 they cannot claim the benefit of merger of 97% DA in DP.

5. The respondents have further stated that the issue has been settled already in civil appeal No.517/97 by the Supreme Court and in OA No.634-CH of 1997 of the Chandigarh Bench of the Tribunal and OA No.1875/95 of the Principal Bench of the Tribunal. The respondents have further contended that prima facie the applicants have not made out any case. The respondents have denied that the cut off date is arbitrary or in violation of principles of law and Articles 14 and 16 of the Constitution of India. The respondents are relying on the judgment of the Supreme Court in Civil Appeal No.517/97 in the matter of UOI Vs. P.N. Menon & Ors. reported in 1994 27 ATC 515. In this case, it was observed in para 14 of the judgment as follows:

14. According to us, for the reasons disclosed on behalf of the appellant - Union of India for fixing 30.9.77 as the cut-off date, which date was fixed when the price index level was 272, cannot be held to be arbitrary. The decision to merge a part of the dearness allowance with pay, when the price index level was at 272, appears to have been taken on basis of the recommendation of the Third Pay Commission. As such it cannot be held that the cut-off date has been selected in an arbitrary manner. Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rationale or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December, of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations.

It was held that the scheme to merge a part of DA for purpose of DP was evolved and was merged with the average of cost of living index fixed at 272 which fell on 30.9.77. In this background, it cannot be said that the date of 30.9.77 picked out in an arbitrary or irrational manner. The appeal was allowed. In that

case the decision for the cut off date of 30.9.77 was taken on the basis of the recommendation of the Third Pay Commission. In the present case also, the cut off date has been fixed on the basis of the recommendation of the 5th Pay Commission. Therefore, the cut off date cannot be said to be arbitrary.

6. The notification dated 14.7.95 by which the cut off date of 1.4.95 was fixed for merger of 97% DA in the pay was also challenged in OA 634-CH of 97 before the Chandigarh Bench of this Tribunal. The Tribunal dismissed the OA holding that the fixation of cut off date by the respondents in their OM dated 14.7.95 cannot be said to be illegal or arbitrary. The Bench relied on the judgment of the Supreme Court in the case of UOI Vs. P.N. Menon (supra). Support was also drawn from the judgment in the matter of State of Rajasthan Vs. Premraj 1997 (1) SLR 691 SC as well as the judgment in the case of Krishna Kumar Vs. UOI 1997 (4) SCC 207. In the case of Premraj (supra) the Supreme Court held that no illegality in the Government of Rajasthan notification dated 2nd September, 1985 extending the benefit of revised pension formula on slab basis to pre March 1997 can be found. In that case, the Hon'ble Supreme court followed the judgment of Krishna Kumar Vs.

UOI (supra) and observed that the State can specify a date with effect from which pecuniary benefits can come into force and it shall not amount to picking out a date from the hat and a date has to be fixed keeping in view the facts and circumstances prevalent at a particular moment. These judgments apart, the Bench also took the view that this Tribunal cannot go into the adequacy or otherwise of the pay scales and other allowances etc., in view of the direction of the Supreme Court in the case of UOI Vs. P.V. Hariharan in Civil Appeal No.7127/90 arising out of OA 391/97.

7. In the judgment in OA 1875/95, the Principal Bench held that the petitioner cannot have any vested right to receive the interim relief of Rs.50/sanctioned from 1.4.95. It cannot be directed to be paid from 16.9.93.

8. The learned counsel for the applicants contends that no cut off date can be fixed by dividing and sub-dividing a homogeneous class of retirees, who retired between 1.7.93 and 31.3.95 and those who retired after 31.3.95. All of them had drawn 97% DA uniformly from 1.7.93 onwards. Excluding pre 31.3.95 retirees from the benefit of DA merger in pay is arbitrary and

violative of Articles 14 and 16 of the Constitution of India. Further, the arguments of the respondents that the policy decision was taken on the basis of financial implication and that the applicants had retired earlier is not at all sustainable as the respondents have not come out with any financial implications involved, the burden of which they could not bear. On the contrary even though the 5th pay Commission recommended 20% increase in pay, the Government had enhanced it to 40%.

9. The learned counsel for the applicants while relying on certain judgments has tried to distinguish the judgments referred to by the respondents. The learned counsel has also chosen to rely on the very same judgment in the case of UOI Vs. P.N. Menon (supra). According to the applicants, though the Apex Court held the Government of India's decision about the cut off date of 30.9.77 as not being arbitrary, all the same, the ratio laid down in that case actually supports the applicant's case. The cut off date of 30.9.77 in that case was upheld as valid based on the recommendations of the Third Pay Commission, but the underlying principle was that of linking the date of sanctioning of the DA with the AICPI reaching the level of 272 and the cut off date was fixed accordingly from the date of

sanctioning of the DA at that level. There was synchronisation of the cut off date and the date of actual receipt of DA at the prescribed level of AICPI. In sharp contrast to that in the present case, the cut off date has no nexus to the objective of linking the DA as per the level of AICPI. The actual DA of 97% was drawn by the employees from 1.7.93 when the AICPI reached 1201.66, whereas, the effect has been given from 1.4.95. this cannot be said to be logical.

10. The Chandigarh Bench in OA No.634-CH of 97 has relied on the judgment in P.N> Menon's case without appreciating the ratio laid down. The other judgments relied upon by the Chandigarh Bench differ in facts and cannot be made applicable in the present case. Even in OA 1875/95 decided by the Principal Bench the issue was about the cut off date for granting of interim relief of Rs.50/-. Interim relief is not the same as pension. Therefore, this judgment also cannot be made applicable in the case of the applicants.

11. The respondents had also contended that no retrospective effect can be given. But in the case of P.N. Menon (supra) the merger of DA was granted vide order dated 25. 5.79 with retrospective effect from

30.9.77. On the same analogy the applicants are also entitled to the benefit of merger of DA from 1.7.83. The learned counsel for the applicants has relied on some other judgments also. In the judgment in the matter of Ranga Jochi Vs. UOI 1983 (1) SLJ CAT 84 Bangalore Bench of the Tribunal held that the benefits of half DA given to those pensioners who retired prior to 30.6.82 and full DA to those pensioners who retired on or after 30.6.82 amounts to discriminatory classification and is violative of Article 14 of the Constitution of India. There cannot therefore be dividing and sub-dividing in homogeneous class. The applicants are also drawing support from the judgment of the Supreme Court in the case of V. Kastury Vs. Managing Director, State Bank of India reported in 1999 (3) SLJ SC 17. The relevant portion is reproduced below:

Held: Category I: If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of

pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara's case, 1983 (1) SCC 305, would cover this category of cases.

According to the applicants, their case is governed by the Category-I and therefore, they should also be granted the benefit of DA merger in pay. The learned counsel for the applicant also produces the judgment in the case of D.S. Nakara & Others Vs. UOI 1983 (1) SCC 305. It was held in this case that pension is a right and the payment does not depend upon the discretion of the Government but is governed by the Rules. The liberalised pension formula adopted giving benefit only to those retired on or after some specified date does not have any rationale behind the eligibility qualification. The classification is only arbitrary and is violative of Article 14. In this case, the financial implication had been placed before the court and the court observed that availability of other benefits is hardly a relevant factor because it is admissible to all retirees. The figure of 233 crores required for fresh commutation if pensioners who retired prior to 31st March, 79 were brought within the purview of the liberalised pension scheme, was neither frightening nor

liability was supposed to be staggering which would deflect us from going to the logical and constitutional mandate. It was held that increased liability consequent upon the judgment was not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the scheme.

13. The learned counsel for the applicants also submitted that pension includes gratuity and in support of this he has referred to the judgment in case of Jarnail Singh Vs. Secretary, Ministry of Home Affairs & Others 1993 (1) SLR 23.

14. Summing up the learned counsel asserted that the applicants are in the same category of those who retired on or after 1.4.95. Because all of them including the applicants had started drawing the DA of 97% with effect from 1.7.93. Therefore, it is discriminatory to exclude the applicants from the benefit of the DA merger only because they had retired prior to 1.4.95. As is evident the date of 1.4.95 does not synchronise with the date of 1.7.93 from when 97% DA was granted to the employees. The applicants have, therefore, prayed for extending the benefit of the OM dated 14.7.95 to them also by setting aside the cut off date of 1.4.95.

15. The respondents would not give up easily. They have relied on further judgments in support of their stand that the cut off date of 1.4.95 was not arbitrary but had a nexus to the objective.

15. They have placed reliance on the judgment of State of Rajasthan Vs. Premraj 1997 (1) SLR 691. Also the judgment of Krishna Kumar Vs. UOI 1990 (4) SCSLJ 716 and Indian Ex-Service League & Others Vs. UOI 1991 SCC (L & S) 536. In both these judgments, the judgment in Nakara's case (supra) has been discussed. In Krishna Kumar's case it has been held that rules governing provident fund and its contribution are entirely different from the rules governing pension. It is not necessary that rules governing pension retirees must also be equally applicable to provident fund retirees. Both categories form a separate class and therefore, the classification is not hit by Article 14 of the Constitution of India. In Indian Ex-Service League & Others, (supra) the petitioners claimed therein that all pre April 1979 of the Armed Forces are entitled to the same amount of pension as shown in appendices A, B, C for each rank is clearly untenable and does not flow from Nakara's decision and gratuity having already been

paid on the basis of salary drawn on the date of retirement, was to be held as transaction completed and closed and should not be reopened as a result of enhancement made at a later date for persons retiring subsequently. Another case relied upon by the respondents is that of State of Punjab & another Vs. J.L. Gupta & Others reported in 2000 (2) ATJ 165. In this case, it was held that the Government notification dated 9.7.85 provides that the DA and adhoc DA sanctioned upto AICP index NO.568 will be treated as dearness pay for the purpose of pensionary benefits in respect of those who retired on or after 31.3.85. The respondents who had retired prior to 31.3.95 would not be entitled to the benefit of the said notification. It was held that the respondents are not entitled to claim the benefits which became available at a later date to retiring employees by reason of changes in the rules relating to pensionary benefits. The respondents therefore assert that the action of the Government in not extending the benefit of the merger of 97% DA in pay to those who retired prior to 1.4.95 is in order and rational.

16. We have heard the learned counsel for the applicants as well as the respondents and have given our careful consideration to the pleadings. We have also

perused the various judgments relied upon by both sides. The main contention of the respondents is that the decision to fix 1.4.95 as the cut off date for implementing the merger of 97% DA in pay was taken in pursuance of the recommendations of the 5th Central Pay Commission in their interim report. We, therefore, deemed it necessary to peruse the recommendations of the 5th Central Pay Commission given in the interim report as well as the final report. The same were produced and we have perused them.

17. The 5th Central Pay Commission in their interim report which was submitted to the Government on 2nd May, 1995 recommended the grant of interim relief equal to 10% of basic pay subject to minimum of Rs.100/- per month. Further, instalment of interim relief equal to 10% of the basic pension/family pension subject to a minimum of Rs.50/- per month was also recommended. It was suggested that DA linked to the AICPI 1201.66 as on first July, 1993 be treated as dearness pay for reckoning emoluments for the purpose of retirement and death gratuity and the ceiling on gratuity be enhanced to Rs.2.5 lakhs. These recommendations were to be given effect to from first April, 1995 (para 1.43 of the report Volume-I). It is seen from this that the

objective of the Pay Commission was very clear namely that when the DA reached the average AICPI 1201.66 that DA was to be merged in pay for reckoning emoluments for purpose of retirement and death gratuities. Had the intention been otherwise, then, the Commission would have recommended the DA, which was being drawn as on 1.1.95 which was 125%, but that was not so. The idea was clearly to link it with the DA which was due at the level of AICPI 1201.66. That apart it is to be borne in mind that this recommendation was only in the interim report of the Pay Commission. When the final report of the Pay Commission was submitted the Pay Commission recommended complete parity between past and present pensioners. This is evident from the concern expressed by the Pay Commission about the glaring disparity between the people drawing vastly unequal pension if they had retired at different points of time. The Commission, therefore, attempted a major policy thrust by suggesting complete parity between past and present pensioners at the time of 4th Central Pay Commission while recommending a modified parity between pre 1996 and post 1996 pensioners. The Pay Commission felt that the formula would ensure total equity as between persons who retired before 1996 and those who retired later. It also ensured that all pensioners get at least the

minimum pension appurtenant to post 1996 revised scales of pay of the post held at the time of retirement. The thinking of the 5th Central Pay Commission clearly establishes that the Pay Commission was not in favour of creating any disparity, but was for bringing parity. Considering this approach of the 5th Central Pay Commission in their final report, in our considered view, these recommendations of the final report would prevail over the recommendations made in the interim report. Therefore, we feel that no distinction should have been made on the basis of the date of retirement while fixing the date of merger of DA of 97% in the pay from the date of 1.4.95. The judgments referred to by the respondents have already been distinguished by the learned counsel for the applicants and we agree with the same. We are in agreement with the learned counsel for the applicants that in the present case there is no synchronisation of the date of grant of DA of 97% with the cut off date as in the case of P.N. Menon (supra). The objective was to link the DA as on the date of average AICPI 1201.66 for the merger of DA in pay. This being so it would have been rational and it would have had a nexus with the objective if the date for merging 97% in pay had been fixed as 1.7.93 instead of 1.4.95, which has no nexus with the object. In the case

of P.N. Menon (supra) the Hon'ble Apex Court held cut off date of 30.9.77 as reasonable and not arbitrary mainly because the date of grant of date and the cut off date were the same. The respondents have failed to put forth any convincing ground to justify the cut off date of 1.4.95 except that the Pay Commission had recommended it. The applicants are also justified in drawing support in the case of V. Kasturi (supra). A plea has been raised since it is a policy matter involving pay, allowances etc., it is not be interfered with by the Tribunal. The judgment in the case of UOI & another Vs. P.V. Hariharan 1997 SCC (L&S) 838 has been cited in support. In this case while holding that it is for the Expert Bodies like Pay Commission to go into the problems of pay, pay fixation etc. It has been held that unless a case of hostile discrimination is made out, courts would not be justified for interference for fixation of pay scales. Thus, if there is hostile discrimination this Tribunal can consider adjudicating in the matter. In the present case, it cannot be ignored that all factors being equal the applicants have been discriminated against on the ground that they had retired earlier than the cut off date. We, therefore, hold that the applicants who retired between 1.7.93 to 31.3.1995 are entitled to the benefits of the scheme of merger of 97% DA in the pay for purposes of emoluments for calculating death/retirement gratuities.

17. In view of the above discussion our answer to the reference made to the Full Bench is as follows:-

"We do not find that there is any nexus or rational consideration in fixing the cut off date of first April, 1995 vide OM No.7/1/95-P &PW (F) dated 14th June, 1995 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioners' Welfare), New Delhi.

18. In the light of the above decision all the three OAs are allowed. We do not order any costs.

(SMT. SHANTA SHAstry) (S.L. JAIN) (BIRENDRA DIKSHIT)

MEMBER (A)

MEMBER (J)

VICE CHAIRMAN