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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 430 of 1987

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Date of Decision : 5.12.80

Capt. S.K.Tatacharya (Retd.)

Petitioner.

Shri L.Narasimha Reddy

Advocate for the
petitioner (s)

Versus

Union of India rep. by Secretary,

Ministry of Defence, New Delhi,

& another

Respondent.

Shri E.Madan Mohan Rao, Addl.CGSC. Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HON'BLE MR. D.SURYA RAO, MEMBER (JUDICIAL).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

B.N.J.
(B.N.J.)

D.S.R.
(D.S.R.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : HYDERABAD.

O.A.No. 430 of 1987

Dt. of Decision: 5.12.1990

Between:-

Capt. S.K.Tatacharya (Retd.) .. Applicant
and

1. Union of India, represented by
its Secretary, Ministry of
Defence, New Delhi.

2. Controller of Defence Accounts
(Pensions), Draupadighat,
Allahabad, Utter Pradesh. ..

Respondents

Appearance:

For the Applicant : Shri L.Narasimha Reddy, Advocate

For the Respondents : Shri E.Madan Mohan Rao, Addl.CGSC.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MEMBER (J))
SHRI D.SURYA RAO

1. The applicant herein was formerly an officer in the Hyderabad Army of erstwhile Hyderabad State. According to the applicant, he was appointed in the year 1932 as Sarjant Major and Stenographer to the Adjutant and Quarter Master General of the Hyderabad State Force, whereas according to the respondents, he was appointed to the Hyderabad Army on 5.11.1930. This difference is however not of much relevance. The applicant, while serving in the Hyderabad Army, was seconded (deputed) to the Indian Army as Records and Accounts Officer on 17-9-1945. He retained his lien in the Hyderabad State Force. He

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continued to receive promotions in his regular service i.e. Hyderabad Army. The last promotion he received was to the post of Cantonment Executive Officer, Warangal, w.e.f. 1.4.1950 in the Hyderabad Army.

2. It is stated that the State Forces were de-mobilised and disbanded by the Union of India w.e.f. 1-4-1951 and according to the applicant, the assets and liabilities of the disbanded forces were taken over by the Union of India. All the officers and other servicemen, who were working in the Hyderabad Army, were granted pensions on the basis of the scales they were drawing consequent on their retirement after disbandment. Since the applicant was working in the Indian Army ever since 1945, he was granted pension in the Hyderabad Army w.e.f. 1-10-1951. Though he was relieved from the Hyderabad Army w.e.f. 1951, he continued to work in the Indian Army upto 31.12.1956 and thereafter he was reemployed from September 1957 to 31-12-1961. The applicant states that he was retired from the Indian Army on 31-12-1956 and that he did not get any pensionary benefits for the period of his reemployment. His case is that he is paid pension from 1957 onwards. His grievance is that he was not being paid pension on the basis of his salary which he was drawing in the Hyderabad Army and that he was driven from pillar to post. He states that he was ~~not~~ paid the pension on par with the Hyderabad Army Officers nor on par with the Indian Army Officers. ^{The applicant states that from 1957} In the year 1985, in the wake of the Judgement of the Supreme Court (in Nakara's case), the applicant states that he is entitled to the benefit of Revised Pension Rules and he represented to the 2nd respondent for giving him the benefit of the Liberalised Pension Formula. He was replied on 29-3-1985

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by the 2nd respondent stating that he was not entitled for the same since he is governed by the State Forces Rules. The applicant states that though the Pension Rules applicable to Hyderabad State Forces were also revised, he was not given the benefit of the said revision. He has, therefore, filed this application praying for the following two reliefs:-

- (i) To issue an appropriate Order or Direction to the Respondents to fix the pension of the applicant on the basis of the scale in which the applicant was placed in the Hyderabad Army before his deputation to Indian Army with periodical increments, and
- (ii) To extend the benefit of the revision of pensions made from time to time that are applicable to the applicant.

3. On behalf of the respondents a reply affidavit ^{in the present department P.} has been filed stating that the applicant was promoted as Cantonment Executive Officer (C.E.O.) in the grade of ^{Due to P.} Rs.800--1100 w.e.f. 1-4-1950. During demobilisation of the Hyderabad Army, the applicant was discharged from service w.e.f. 1.10.1951 and a pension of Rs.290.70 p.m. was granted to him by an order passed in 1961. Initially his pay in the substantive post of C.E.O. for the period from 1.9.1950 to 30.9.1950 was taken into account. Subsequently the applicant filed a Suit in the City Civil Court, Hyderabad, against the Union of India seeking the relief of revision of pension based on the actual pay drawn by him. Consequently he was sanctioned revised pension @ Rs.330-40 p.m. w.e.f. 1.8.1966. The arrears for the period from 1.1.1957 to 31.7.1966 excluding the

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period of re-employment during 26.7.1957 to 30.11.1961, was also admitted by an order of the Ministry of Defence dated 26.12.1970. The applicant had further sought revision of his pension w.e.f. 1.4.1979 in the light of the judgement of the Supreme Court reported in A.I.R.-1983-SC 130 (Nakara's case). He was informed that his case is not covered by the said judgement as he was granted pension under the State Forces Rules and the relief of liberalised pension was available only to those governed by the Pension Regulations for the Army, Navy and Air Force. It is asserted that the applicant is a civilian pensioner of the Ex-State Force of Hyderabad, that he is in receipt of pension under the State Force rules and that he is not entitled to any of the benefits sanctioned to service personnel of the Indian Army. It is reiterated that the applicant was granted pension with reference to the pay of Rs.800/- drawn by him w.e.f. 1.4.1950 to 31.3.1951 and Rs.850/-p.m. w.e.f. 1.4.1951 to 30.4.1951. Therefore ^{therefore} it is stated that his contention that the scale of Rs.800--1100 in the Hyderabad State Force was not taken into account before the applicant's deputation to the Indian Army is not correct. For these reasons the respondents pray that the application may be dismissed with costs.

4. We have heard Shri L.Narasimha Reddy, learned Counsel for the applicant, and Shri E.Madan Mohan Rao, learned Additional Central Government Standing Counsel, on behalf of the respondents.

5. From the averments made in the application as well as in the counter(reply affidavit) and also from the arguments on both sides, it is clear that the applicant is asking for two reliefs. The first relief is that the pension

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that was being paid to him from 1957 onwards is without any basis, that despite taking a stand that the applicant is governed by the Hyderabad State Force Rules, the respondents are not paying him pension on the basis of his salary which he was drawing in the Hyderabad Army. The second relief is that in the light of the Supreme Court judgement, ^{in Nakwas Case} the applicant is entitled to the benefit of the revised pension rules according to the revised pension formula w.e.f.1979. Consequently non-extension of the liberalised pension rules of 1979 amounts to illegal and arbitrary action violative of the applicant's right under articles 14 and 16 of the Constitution. We will take up the first contention viz., that the applicant is not being paid the pension due to him on the basis of the salary which he was drawing in the Hyderabad Army. The respondents have specifically rebutted this contention stating that his pension was fixed on the basis of the pay last drawn in the scale of Rs.800--1100 at the time of retirement of the applicant from the Hyderabad State Force in the year 1951. It is also clear from the averments made in the counter that the applicant had raised a dispute in regard to the quantum of pension that he is entitled to by way of a Civil Suit viz., O.S.87 of 1960 on the file of the City Civil Court, Hyderabad. As a result of the decree, he was given additional relief by increasing his pension from Rs.290.70 p.m. to Rs.330.40 p.m. If the applicant was aggrieved that his pension had not been properly fixed in accordance with rules and that he is entitled to something more than Rs.330.40 p.m. as pension, then he should have got an adjudication from the Civil Court to this effect and if the Civil Court had failed to adjudicate on such a

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claim, he should have preferred appeal therefrom. On the basis of the averments made in the Counter and on the basis of the arguments of the learned Counsel for respondents, it is clear that the applicant had agitated previously in regard to his claim or right to additional pension and that this was finally determined. That judgement would, therefore, constitute res judicata and the applicant cannot once again seek to reopen either what was not granted to him in the Judgement and Decree in O.S.87 of 1960 or what was not questioned therein. The first relief sought for by the applicant is accordingly negatived.

6. The next question is whether the applicant is entitled to the benefit of the Liberalised Pension Rules as available to the Central Government employees consequent on the recommendations of the IV Pay Commission as contained in the C.C.S. Pension Rules 1972 as amended from time to time. The applicant, though a member of the Hyderabad State Armed Forces, is paid pension from out of the Central revenues. This is not denied by the respondents. The only ground or objection raised by the respondents is that the applicant was not granted pension under the Pension Regulations applicable to members of the Army, Navy and Air Force and is therefore not entitled to the benefit of the decision rendered by the Supreme Court in D.S.Nakara's case (A.I.R. 1983 SC-130). This Bench of the Tribunal had an occasion previously to consider the right of the employee of the erstwhile Hyderabad State, who was paid pension out of Central Government funds in O.A.446 of 1988 dated 15.1.1990 (Mohd.Abdul Rehman vs. Union of India and another). The applicant in that case was employed

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by the erstwhile Hyderabad State and was allotted to the Indian Audit and Accounts Services III Grade Clerk after 1950. He retired in the year 1956 and opted to draw pension under the Hyderabad Civil Services Regulation Pension Rules. He was denied the benefits of the C.C.S. Pension Rules 1972 on the ground that the said rules are applicable only to (1) Central Government employees, Industrial employees and non-Industrial employees; (2) persons belonging to the All India Service, (3) employees of the Union Territories, (4) Armed Service Personnel. It was contended that those who opted to be governed by the State Pension Rules were excluded from the benefit of C.C.S. Pension Rules 1972. We had held that Central Govt. when making a reference to the Fourth Pay Commission, had sought recommendations to have a proper pension structure for pensioners both past and future, that recommendations were to be made for employees of the Central Govt. and the Union Territory, members of the All India Services and Armed Forces and that in doing so, no distinction was sought to be made between the Central Govt. employees governed by the C.C.S. Pension Rules and those governed by the other Pension Rules and that persons governed by other Pension Rules should also derive the benefit of the recommendations of the Fourth Pay Commission. We had also held that the term 'Central Government Pensioners' would bring in all categories of the Central Government employees i.e. all persons paid out of Central Revenues. We had accordingly rejected the plea that only those governed by the C.C.S. (Pension) Rules were eligible for the benefit of the Fourth Pay Commission's recommendations. We had also held that denial of the benefits to persons,

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who had opted for the State Pension Rules, would be violative of the employee's right enshrined under Article 14 of the Constitution, that classification of persons depending upon the rules by which he is governed how it relates to his object sought to be achieved. We had accordingly held that the action of the Government in denying the said employee governed by State Pension Rules, the benefit of the Fourth Pay Commission's recommendations was arbitrary and violative of Article 14.

7. As already stated earlier, the applicant herein is sought to be denied the benefit of the Fourth Pay Commission's recommendation i.e. the benefit of Liberalised Pension Rules on the ground that he was granted pension under the rules applicable to the employees of the Hyderabad State Force. While doing so, however, it is not denied that the applicant is being paid out of the Central Revenues. Once it is conceded that the applicant is being paid out of the Central Revenues, then it would follow that the benefit of Liberalised Pension Rules should also be extended to him. As already held by us in O.A.446 of 1988, the reference to Fourth Pay Commission was for making recommendations for a proper pension structure for all Central Government Pensioners irrespective of the Pension Rules by which they were governed. Denying the benefit of Liberalised Pension Rules to the applicant would be discriminatory and violative of Article 14 of the Constitution.

8. We accordingly hold that the applicant is entitled to the benefit of the Central Civil Service Pension Rules 1972 as amended from time to time and that the decision of the Supreme Court rendered in A.I.R. 1983 S.C. 130 (Nakara's case) should be extended to the applicant herein. His pension should accordingly be revised and

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S. M. Dargav

arrears, if any due to him, be computed and paid to him by the authorities within a period of 3 months from the date of receipt of this order.

9. With the above direction, the application is disposed of. No order as to costs.

B.N.Jayasimha
(B.N.JAYASIMHA)
VICE-CHAIRMAN

D.Surya Rao
(D.SURYA RAO)
MEMBER (JUDICIAL)

Date: 5 Dec 1990 *By/* *D.S.Rao*
Par Deputy Registrar (J) 20/12/90

To,
nsr

1. Union of India, represented by its Secretary, Ministry of Defence, New Delhi.
2. Controller of Defence Accounts (Pensions), Draupadignat, Allahabad, Utter Pradesh.
3. One copy to L. Narasimha Reddy, Advocate, H.No.2-2-25/3/3, Bagn Amberpet, Hyderabad - 500 013.
4. One copy to Shri E. Madan Mohan Rao, Addl. CGSC.
5. One Spare Copy.

srr/-

Amberpet 27/12/90