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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

ORIGINAL APPLICATION NO.060/00125/2014

**Order Reserved on 09.01.2015
Pronounced on 19.01. 2015**

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

Chatter Singh S/o Sh. Shrichand Resident of Village Manpura Post Office Ballah, Tehsil Assandh District Karnal.

... Applicant

Versus

1. The Secretary, Ministry of Communication, Government of India, New Delhi.
2. The Chief Post Master General, Haryana Circle, Ambala.
3. The Senior Superintendent of Post Offices, Karnal Division, Karnal.
4. The Assistant Superintendent of Post Offices, Panipat District, Panipat.
5. The Director of Accounts (Postal) Ambala.

... Respondents

Present: Sh. R.P. Mehra, counsel for the applicant.
Sh. B.B. Sharma, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"8 (i) That the respondents be directed to make a notional fixation of his pay of 4030/- at 9040/- vide Annexure A-3 w.e.f. 1.1.2006 per law. As



- (ii) To compute his pension at 50% i.e. at 4700/- instead of 4280/- already computed.
- (iii) To allow him the arrears of pension with subsequent dearness reliefs as per law per O.A. No.1249-HR-11 vide Annexure A-7 and A-8."

2. It has been stated in the O.A. that the applicant retired on 31.5.2003 after attaining the age of superannuation from the service of the respondents. At the relevant time the applicant was in receipt of a Basic Pay of Rs.4030/- in the scale of 3050-75-3950-80-4590. The applicant was allowed basic pension of Rs.1136/- w.e.f. 01.6.2003, which was subsequently revised to 4280/- vide letter no.F 38/37/08-P and PN(A) dated 01.9.2008 vide Para 4.1. However, this computation was subject to Para 4.2 of the letter dated 01.9.2008 which is reproduced as follows:

"Para 4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the Pay Band plus the Grade Pay corresponding to the pre-revised pay scale from which the petitioner had retired. In the case of HAG+ and above scales this will be fifty percent of the minimum of the revised pay scale."

This order stipulates that the pension is not to be less than 50% of the applicable stage of the Basic Pay of Rs.4030/- in the Scale of 3050-75-3950-80-4590 and its corresponding revised pay scale comes under Table S.5 PB1 in the revised pay scale of Rs.5200-20200 with Grade Pay of Rs.1900/- vide Annexure A-3. The Basic Pay of Rs.4030/- received by the

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applicant was to be fixed at $7500+1900=9400$ and its half works out at Rs.4700 which is payable as on 1.1.2006, however the respondents have computed the same at Rs.4280.

3. In the grounds for relief, it has been stated that the claim of the applicant is covered by the law already settled in:

1. D.S. Nakra and others Vs. Union of India (1983) 1 SCC 305.
2. Col. BJ Akkra (Retd) Vs. Government of India and others 2006 (11) SCC 709.
3. Rajkumar Vs. UOI, CWP No.6871-CAT of 2004 decided on 22.11.2010 vide Annexure A-5.
4. Smt. Savitri Devi Vs. UOI and others, CWP No.1682 of 2003 decided on 23.11.2010, 2011 (2) SCT 819 Annexure A-6.
5. Ramkishan vs. UOI and others in OA No.1249/HR/2011 Annexure A-7.

The applicant's pension interests are being violated under Article 14 and 300A of the Constitution of India in as much as the applicant is not being extended the equal protection of law. Hence this O.A.

4. In the written statement filed on behalf of the respondents it has been stated that the applicant drew his last basic pay as Rs.4030/- in the scale of Rs.3050-75-3950-80-4590. His pension was fixed as Rs.1893 w.e.f. 01.06.2003. The pension of the applicant was further revised to Rs.4280 w.e.f. 01.01.2006 correctly as per orders contained in Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioner's Welfare, New Delhi F

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No.38/37/08/P&PW (A) dated 01.9.2008 (Annexure R-1). A concordance table (Annexure) of the pre-1996, pre-2006 and post-2006 pay scales/pay bands indicating the pension/family pension (at ordinary rates) payable under the above provisions is enclosed with the OM to facilitate payment of revised pension/family pension. The pension of the pensioner if revised with reference to latest instructions of Nodal Ministry i.e. OM dated 28.1.2013 comes out to be Rs.3890/- but the pensioner is already drawing Rs.4280/- which is more pension than the pension arrived at with reference to OM dated 28.01.2013 (Annexure R-2).

5. In D.S. Nakara's case, there was no dispute regarding implementation of a liberalized Scheme from a cutoff date. Rather the Apex Court in that case in Para 47 has categorically held that undoubtedly when an upward revision is introduced a date from which it becomes effective has to be provided. In another decision in the case of Union of India vs. S.R. Dhingra and others, (2008) 2 SCC 229, the Apex Court relying upon its earlier decision in para 25 has made the following observations:

"25. It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated, though they retired with the same rank, they are not of the same class or homogeneous group. Hence Article 14 has no application. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a

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benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment (vide Col B.J. Akkara (Retd) vs. Govt of India, (2006) 11 SCC 709, D.S. Nakara vs. Union of India (1983) 1 SCC 305, Krishna Kumar vs. Union of India (1990) 4 SCC 207, Indian Ex-Services League vs. Union of India (1991) 2 SCC 104, V. Kasturi vs. Managing Director, State Bank of India (1998) 8 SCC 30 and Union of India vs. Dr. Vijayapurapu Subbayamma (2000) 7 SCC 662)".

If the matter is seen in the light of law laid down by the Apex Court, as noticed above, it cannot be said that fixation of cut off date of 01.01.2006 for the purposes of extending retiral benefits is arbitrary and it is permissible for the Govt. to fix a cut off date for introducing any new pension/retirement Scheme or for discontinuing of any existing Scheme.

6. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant reiterated the content of the O.A. He also placed reliance on the judgment dated 23.7.2012 in O.A. No.1249/HR/2011 titled Ram Kishan Vs. UOI & Others wherein it had been decided that there could be no distinction amongst pre and post 2006 retirees. He stated that this judgment had been upheld by the Hon'ble High Court as well as Apex Court and the applicant was entitled to similar benefit.

7. Learned counsel for the respondents stated that the judgments cited by the applicant were distinguishable from the case of the

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applicant. The pension of the applicant had been fixed in accordance with the O.M. dated 01.9.2008, which had not been impugned through the O.A. The applicant was interpreting the content of the OM in his own way while the fitment table annexed with OM is for the guidance of pay/pension fixing authorities to be kept in view while fixing pension due to the applicant. In fact, if the pension was to be revised in accordance with OM dated 28.1.2013 (Annexure R-2), the applicant would be getting Rs.3890/- while he was drawing Rs.4280/- which was more than 50% of the Pay+Grade Pay corresponding to the pre-revised scale from which pensioner had retired, hence the claim of the applicant for fixing his pension at Rs.4700 is inadmissible.

8. We have given our thoughtful consideration to the matter. There appears to be no defect in pay fixation of the applicant with reference to OM dated 01.9.2008 and the applicant cannot apply his own interpretation in this regard. The judgments cited by the applicant are not pertinent to the present case. Hence this O.A. is rejected.

(DR. BRAHM A. AGRAWAL)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.
Dated: 19. 1. 2015

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