

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00599/2017

Friday, this the 30th day of November, 2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

R. Sudhakaran, S/o. Late T.P. Raghavan, aged 77 years,
 Technical Assistant 'C' (Retd.), (NPOL), Sunil Nivas,
 Konthuruthy, Cochin – 682 013.

..... **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Director, Naval Physical & Oceanographic Laboratory,
 Cochin – 682 021.
2. Principal Controller of Defence Accounts (Pension),
 Draupadi Ghat, Allahabad 211014.
3. Union of India, represented by its Secretary,
 Department of Pension & Pensioners' Welfare,
 South Block, New Delhi – 110 001.

..... **Respondents**

(By Advocate : Mr. S.R.K. Prathap, ACGSC)

This application having been heard on 28.11.2018 the Tribunal on
 30.11.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

- “(i) To call for records leading up to the issue of Annexure A11 and quash the same,
- (ii) To declare that the applicant is entitled for revision of pension @ Rs. 9,230/- w.e.f. 1.1.2006.
- (iii) To direct the respondents to grant a monthly pension of Rs. 9,230/- with all consequential benefits and disburse the arrears within a stipulated period.

(iv) To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(v) To grant cost of this OA.”

2. The brief facts of the case are that the applicant is an ex-serviceman. He was re-employed as Radio Mechanic under the 1st respondent since 1.12.1980. He was promoted as Chargeman II during June, 1990. During August, 1995 Chargeman II was re-designated as Technical Assistant and based on the recommendations of the assessment board, the applicant was promoted as Technical Assistant 'C' w.e.f. 1.9.1996. The posts of Technical Assistant 'C' and Senior Technical Assistant were abolished and merged with Technical Officer w.e.f. 1.1.2006 and the pay scale was PB-2 with Grade Pay of Rs. 4,600/-. The applicant has retired on 31.10.1999 on superannuation. Applicant submitted that as per the decision of this Tribunal and various High Courts and Supreme Court the pension should be revised to 50% of the minimum pay of the post from which the pension had retired. In as much as the post from which the applicant retired has been upgraded as Technical Officer and thus he is entitled for pension based on the minimum pay of the said post. Applicant submitted representations dated 8.7.2016 and 23.11.2016 for granting him the revised pension based on the upgradation of the post. However, the respondents vide Annexure A11 dated 7.6.2017 rejected the claim of the applicant. Aggrieved the applicant has approached this Tribunal.

3. Notices were issued to the respondents. They have entered appearance through Shri S.R.K. Prathap, ACGSC and filed a reply statement. The stand

taken by the respondents in the reply statement is that the post of Technical Assistant 'C' (pre-revised Rs. 5500-9000/-) which the applicant was holding at the time of superannuation in 1999 is distinct from the post of Technical Assistant 'C' (pre-revised Rs. 6500-10500/-) which was upgraded to the pay scale of Rs. 7450-11500/- after implementation of the 6th CPC. The claim of the applicant is merely on the fact that the nomenclature of the post from which he retired i.e. Technical Assistant 'C' in 1999 happens to be same as that which was upgraded and re-designated as Technical Officer at a higher scale of pay after implementation of the 6th CPC recommendations. The applicant has been granted basic pension corresponding to 50% of the minimum pay in the scale as per fitment table/sum of minimum pay in the pay band and grade pay of the pre-revised pay scale from which the applicant retired. On implementation of 6th Pay Commission recommendations the basic pension of the applicant was fixed at Rs. 7,215/- per month with effect from 1.1.2006 corresponding to 50% of the minimum pay in the scale as per fitment table/sum of minimum pay in the pay band/ Grade Pay of PB-2 i.e. Rs.9300-34800/- plus 4,200/- which is the replacement scale of post from which the applicant retired. As regards the pension of Shri T.J. Jose who is junior to the applicant drawing higher pension than the applicant, it is due to the higher qualification he possessed and due to which he eventually retired more than six years later from a different post in accordance with revised statutory rules and orders. The respondents have relied on the judgment of the apex court in ***K.S. Krishnaswamy etc. v. Union of India & Anr.*** - Appeal (Civil) No. 3174 of 2006 dated 23.11.2006.

4. Heard Shri C.S.G. Nair, learned counsel appearing for the applicant and Shri S.R.K. Prathap, ACGSC learned counsel appearing for the respondents. Perused the records.

5. The applicant relied on the following judgments of various High Courts as well as orders of this Tribunal in support of his contentions:

- a) ***M.M.P. Sinha v. Union of India & Ors.*** - Civil Writ Jurisdiction Case No. 10757 of 2010 dated 18.5.2015 of Hon'ble High Court of Patna
- b) ***Union of India & Anr. v. Central Govt. Sag & Ors.*** – WP(C) No. 1535/2012 & connected cases dated 29.4.2013 of Hon'ble High Court of Delhi
- c) ***Pay & Accounts Officer & Ors. v. N.R. Purushothaman Pillai*** – OP (CAT) No. 169 of 2015 dated 18.1.2016 of Hon'ble High Court of Kerala
- d) ***M.O. Inasu v. UOI & Ors.*** - OA/715/2012 & connected matter dated 16.8.2013 of Ernakulam Bench of the Tribunal
- e) ***M.I. Thomas v. Pay & Accounts Officer & Ors.*** - OA 180/315/2017 dated 25.09.2018 of Ernakulam Bench of the Tribunal.

6. The Hon'ble Supreme Court in ***K.S. Krishnaswamy's*** case (supra) held as under:

“It is common knowledge that an increase in the pay scale in any recommendation of a pay commission is a corresponding increase in the pay scale. In our view, therefore, Executive Instructions dated 11.5.2001 have been validly made keeping in view the recommendations of the Pay Commission accepted by the Policy Resolution of the Government on 30.9.1997, clarified by Executive Instructions dated 17.12.1998. The Executive Instructions dated 11.5.2001 neither over-ride the Policy Resolution dated 30.9.1997 nor Executive Instructions dated 17.12.1998 clarifying the Policy Resolution dated 30.9.1997. The Executive Instructions dated 11.5.2001 were in the form of further clarifying the Executive Instructions dated 17.12.1998 and do not over-ride the same.

Counsel for the appellants heavily relied on the Constitution Bench decision of this Court in [D.S. Nakara v. Union of India](#) (1983) 1 SCC 305 where this Court at Page 345 SCC observed that "liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement."

Nakara's case (supra) has been distinguished by this Court in [State of Punjab & Ors. v. Boota Singh & Anr.](#) (2000) 3 SCC 733; [State of Punjab & Anr. v. J.L. Gupta & Ors.](#) (2000) 3 SCC 736; [State of West Bengal and Anr. v. W.B. Govt. Pensioners' Association & Ors.](#) (2002) 2 SCC 179; and [State of Punjab & Ors. v. Amar Nath Goyal & Ors.](#) (2005) 6 SCC 754.

Nakara's case (supra) was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut off line and granting the revised pensionary benefits to employees retiring on or after the cut- off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of [Article 14](#) of the Constitution, as it was both arbitrary and discriminatory in nature. It was further held that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. The facts of Nakara's case (supra) are not available in the facts of the present case. In other words, the facts in Nakara's case are clearly distinguishable.

In [Indian Ex-Services League v. Union of India](#) (1991) 2 SCC 104, this Court distinguished the decision in Nakara's case (supra) and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. In [K.L. Rathee v. Union of India](#) (1997) 6 SCC 7, this Court, after referring to various judgments of this Court, has held that Nakara case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. In our view, therefore, the ratio in Nakara's case (supra) is not applicable in the facts of the present case. Lastly, it is contended that against the decision of the Delhi High Court, an SLP was dismissed by this Court on 8.7.2004 and, therefore, the doctrine of merger applies. It is not disputed that the SLP was dismissed in limine without a speaking order. This question has been set at rest by a three-Judge Bench of this Court in [Kunhayammed & Ors. v. State of Kerala & Anr.](#) (2000) 6 SCC 359, where this Court after referring to a two-Judge Bench, of this Court in [V.M. Salgaokar & Bros. \(P\) Ltd. v. CIT](#) (2000) 5 SCC 373 held at page 375 (para 22) SCC as under:

"22. We may refer to a recent decision, by a two- Judge Bench, of this Court in [V.M. Salgaokar & Bros. \(P\) Ltd. v. CIT](#) (2000) 5 SCC 373 holding that when a special leave petition is dismissed, this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. What the Court means is that it does not consider it to be a fit case for exercising its jurisdiction under [Article 136](#) of the Constitution. That certainly could not be so when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case the Supreme Court upholds the decision of the High Court or of the Tribunal. This doctrine of merger does not apply in the case of dismissal of a special leave

petition under [Article 136](#). When appeal is dismissed, order of the High Court is merged with that of the Supreme Court. We find ourselves in entire agreement with the law so stated. We are clear in our mind that an order dismissing a special leave petition, more so when it is by a non-speaking order, does not result in merger of the order impugned into the order of the Supreme Court."

Therefore, when the special leave petition is dismissed by the Supreme Court under [Article 136](#) of the Constitution, the doctrine of merger is not attracted.

For the reasons aforesaid, the view taken by the Madras High Court that the clarificatory Executive Instructions in O.M. dated 11.5.2001 are an integral part of the O.M. dated 17.12.1998 clarifying the Policy Resolution of the Government dated 30.9.1997 and do not over-ride the original O.M. dated 17.12.1998 is correct law and it is, accordingly, affirmed. The view taken by the Delhi High Court that O.M. dated 11.5.2001 over-rides the original O.M. dated 17.12.1998 and creates two classes of pensioners does not lay down the correct law and is, hereby, set aside. The net result is that the Civil Appeal Nos. 3174 and 3173 of 2006, preferred by the pensioners, are dismissed and the Civil Appeal Nos. 3188, 3189 and 3190 of 2006, preferred by the employer Union of India, are allowed. The Judgment and order of the Madras High Court dated 29.4.2005 is affirmed. The Judgment and Orders of the Delhi High Court dated 17.8.2005, 5.9.2005, 10.11.2005 and 3.8.2005 are set aside.

Parties are asked to bear their own costs."

7. It has to be noted at the outset that the pay revision and revision of pension based on the 6th CPC have been brought into effect by the decisions of Government of India. The office memorandum dated 01.09.2008 conveys the Government's decision on the recommendations of the 6th CPC revising the pension of number of pensioners/family pensioners.

The relevant provision in the OM dated 1.9.2008 reads as follows:

"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 pensioner had retired. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale."

(emphasis supplied)

8. The most important portion of the aforequoted OM which tends to escape from the sight of a casual reader is that the revised pension shall in

no case be lower than 50% of the minimum of the pay in the pay band plus **grade pay corresponding to the pre-revised pay scale from which the pensioner had retired**. One can not lose sight of the importance of the wordings of paragraph 4.2 because revision of pay and revision of pension is within the policy domain of the Government. When the Government of India's decision on the 6th CPC recommendations has been made clear in the OM dated 1.9.2008, every revision relating to pre-2006 pensioner has to go by paragraph 4.2 (*supra*) of the said OM. In this context we feel it appropriate to quote relevant portion of the order passed by the co-ordinate Bench of this Tribunal at Chandigarh on 01.09.2016 in OA No. 060/00912/2015 which reads as follows:

“8. According to OMs dated 27.10.1997 and 17.12.1998 for revision of pension w.e.f. 01.01.1996, pension has to be revised according to fitment formula given therein and then the revised pension, if less than the minimum for the corresponding revised pay scale, was to be stepped up to the said minimum amount. Similarly, w.e.f. 01.01.2006 according to OM dated 01.09.2008 revised pension has to be fixed as per fitment formula given in para 4.1 thereof, and then as per para 4.2 thereof, the revised pension was in no case to be lower than 50% of minimum of the pay in the Pay Band + Grade Pay corresponding to the pre-revised scale from which the pensioner had retired. It is, thus, manifest from the bare perusal of these OMs that only pension had to be revised. There is no provision in the OMs for notional fixation of revised pay of the pensioners in the corresponding revised pay scales and then revising their pension. On the contrary, formula for fixing revised pension directly has been given in the OMs. According to the said formula, existing pension along with dearness pension etc. has to be taken into consideration and then some fitment weightage has to be given to arrive at the revised pension. For this purpose, even reference to corresponding revised pay scale is not there in the OMs. Reference to corresponding revised pay scale comes in the context of minimum pension. The revised pension should not be lower than 50% of minimum revised pay scale/Pay Band + Grade Pay corresponding to pre-revised pay-scale. In this context only, the revised pay-scale/Pay Band + Grade Pay comes into picture. There is no reference at all to notional fixation of pay in the corresponding revised pay-scale/Pay Band + Grade Pay for revising the pension of pensioners who had retired prior to 01.01.1996/01.01.2006. Thus, the very basis of claim of the applicants that their pay has to be notionally fixed in the in the revised pay-scale (for revising their pension) does not exist in any of the relevant OMs. It is, thus, manifest that revised pension of the applicants has been rightly fixed by the respondents w.e.f. 01.01.1996 and 01.01.2006, as detailed in chart (Annexure R-6)”

9. This Tribunal is of the view that the aforesaid decision is squarely applicable in the instant case also. In the light of the above discussion, this Tribunal hold that the OA has no merits and is only to be dismissed. Ordered accordingly. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00599/2017**APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of the order No. NPOL/A/ESI-I/140/2 dt. 28.1.1999.
- Annexure A2** - True copy of the daily order Part II No. II/NIEs dt.16.2.1999.
- Annexure A3** - True copy of the gazette notification dt. 20.1.2014.
- Annexure A4** - True copy of the fitment table annexed to the CCS (RP) Rules, 2008.
- Annexure A5** - True copy of the order dt. 16.8.2013 in OA No. 715/2012.
- Annexure A6** - True copy of the order in RP © No. 2565/2015 in SLP © No. 6567/2015 dt. 28.8.2015.
- Annexure A7** - True copy of the judgment in OP (CAT) No. 169/2015.
- Annexure A8** - True copy of the representation dt. 8.7.2016.
- Annexure A9** - True copy of the memo No. NPOL/A/FIN/319/RS/161 dt. 15.11.2016.
- Annexure A10** - True copy of the representation dt. 23.11.2016.
- Annexure A11** - True copy of the memo No. NPOL/A/FIN/319/RS/161 dt. 7.6.2017.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of the necessary pages of SRO 177 dated 16.8.1995.
- Annexure R2** - True copy of the necessary pages of SRO 147 dated 28.6.2002.
- Annexure R3** - True copy of the necessary pages of SRO 13 dated 20.1.2014.
- Annexure R4** - True copy of the relevant extracts from SRO 177 dated 16.8.1995.
- Annexure R5** - True copy of the relevant extracts from SRO 296 dated 5.12.2000

Annexure R6 - True copy of SRO 147 dated 28.6.2002.

Annexure R7 - True copy of relevant extracts from SRO 13 dated 20.1.2014.

Annexure R8 - True copy of OM No. 45/86/97-P&PW(A)(pt.) dated 11.5.2001.

Annexure R9 - True copy of SRO 77 dt. 19.4.1999.

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