

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH



OA 350/1452/2017

Date of Order: 17.07.2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. E.Rajeswar Rao,
Son of Late E.N.Murty,
Aged about 61 years,
Ex-DHS, OFB Kolkata,
residing at Qtr. No. J 5 Rajabagan Estate,
Ordnance Factory, Dum Dum,
Kolkata 700028.

.... Applicant.

Versus

1. Union of India,
Through the Secretary, Ministry of Defence,
Government of India, Delhi 1.
2. The Director General of Ordnance Factory & Chairman,
Ordnance Factory Board, 10A, S.K.Bose Road, Kolkata
700001.
3. The Director of Health Service, Ordnance Factory Board,
10A, S.K.Bose Road, Kolkata 700001.
4. The Secretary, Department of Personnel & Training,
Ministry of Home, New Delhi 110001.

..... Respondents.

For the Applicant(s) : Mr. A.Chakraborty & Ms. P.Mondal, Counsel

For the Respondent(s) : Mr. R.Halder

ORDERPer Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal for the following relief:

"i) Cut off date introduced by the Ministry of Defence in the matter of enhancement of age of superannuation of the Officers of Indian Ordnance Factory issued by Ministry of Defence vide Office Order dated 13.10.17 is discriminatory and as such same may be modified.

(ii) An order do issue directing the respondents to grant the benefit of enhancement of age upto 65 years with effect from 31.05.2016.

(iii) An order do issue directing the respondents to re-induct the applicant into service till he completes the age of 65 years and the pay salary for the period he was out of service an account of retirement at the age of 60 years."

2. Heard both Ld. Counsel, examined pleadings, documents on record as well as citations referred to in support of respective claims. Written notes of argument have been furnished by both sides.

3. The submissions of the applicant, as made through his Ld. Counsel, are that the applicant was the Director of Health Services with the Ordnance Factory Board, Govt. of India, Ministry of Defence, who, on attaining the age of superannuation at 60 years, had superannuated w.e.f. 30.11.2016. Prior to the same, namely, on 31.05.2016, a notification was issued vide the Ministry of Health and Family Welfare of the Govt. of India whereby it was notified that age of superannuation of the Specialists of Non-Teaching and Public Health sub-cadres of Central Health Service (CHS, in short) and general duty Medical Officers of CHS was enhanced to 65 years with immediate effect and such orders were followed by an amendment in FR 56 whereby a clause *bb) to FR 56 was incorporated accordingly. According to the applicant, the Govt. order dated 31.05.2016 ought to have been extended in his case, as because, he was very much in service on 31.05.2016 and the matter of extension of retirement age of the IOFHS Medical Officers to 65 years had already been initiated by the Board and the Ministry for consideration of the Union Cabinet.

That, the applicant represented severally before the competent authorities praying for extension of age enhancement but to no effect and, finally, once again

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he represented on 10.10.2017 quoting an order of the Principal Bench of the Central Administrative Tribunal in O.A. 2712/2016, which had allowed similar benefits to the Ayurveda/Homeopathy doctors of the North Delhi Municipal Corporation (NDMC) and East Delhi Municipal Corporation (EDMC) respectively. As his prayers were not considered, being aggrieved, the applicant approached the Tribunal seeking the aforementioned relief.

The applicant has cited the following grounds in support of his claim:

(a) That, although the Ministry of Health and Family Welfare had directed enhancement of retirement age as early as on 31.05.2016 with consequent amendment in FR 56, the Ministry of Defence took about 18 months to notify such enhancement. Hence, the Govt. action, particularly in the part of the Respondent authorities of Ministry of Defence, has been discriminatory against the applicant.

(b) That, as the applicant was in service when the said order dated 31.05.2016 was issued, he is entitled to get the benefit of said order as it is related to his serving tenure.

(c) Applicant is entitled to the benefit of the orders of the Principal Bench of the C.A.T. in O.A. 2712/2016 wherein it was observed that those, who have retired at the age of 60 shall be re-inducted in service till the age of completing 65 years and paid salary for the period when they were out of service on account of retirement at the age of 60 years.

4. Respondents have controverted the claim of the applicant by arguing as follows:



When the applicant had superannuated on 30.11.2016 and had also availed of all his retiral benefits, the employee employer relationship has ceased from the date of his superannuation.

That, any circular or office memorandum by any other authority of the Govt. of India cannot become mandatorily applicable for all other departments and employees of Union of India and cannot be automatically applicable to the employees of the Respondent authorities in the instant O.A., particularly when, each department has distinct nature of working agenda, working criteria, skill and requisite level of fitness. That, an employee of Defence cannot automatically claim the benefit of civil category posts.

The Respondents have further contended that it is for the authority to decide the cut off date for implementing any rule, circular or memorandum and, in the case of Respondent authorities, the cut off date was decided consequent to a Cabinet Decision on 27.09.2017 and as the applicant had retired 11 months before the giving effect to such order, the extension, according to the authorities, of the retiring age of doctors of Indian Ordnance Factory Health Services, is not applicable to him. Respondents have further gone ahead to argue that although the applicant has referred to the orders dated 24.08.2017 in O.A. 2712/2016 read with O.A. 2771/2016, O.A. 2946/2016, O.A. 4066/2016, O.A. 4192/2016 and O.A. 4189/2016 by the Principal Bench of the C.A.T., the authorities had moved against the said order before the Hon'ble High Court of Delhi in Writ Petition (C) 8704/2017, which was admitted, stay was granted vide order dated 26.09.2017, subsequently extended and, as a result, the orders of the CAT, Principal Bench, dated 24.08.2017 are currently without any force in respect of the instant O.A.

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5. The primary issue for adjudication is whether there has been any discrimination meted out to the applicant in fixing the cut off date in extending the age of superannuation of IOFHS doctors vide Respondents' orders dated 13.10.2017.

6.1 In support of his contention that specifying a cut off date has introduced invidious and discriminatory classification to the prejudice of the applicant, the applicant has cited the decision of the Constitution Bench of the Hon'ble Supreme Court in **D.S.Nakara Vs Union of India [AIR 1983 SC 130]**, which is the leading case in relation to the discriminatory effect of cut off date. In **Nakara** (supra), the issue was concerned with the pensioners governed by the CCS (Pension) Rules, 1972 and the Liberalized Pension Formula introduced by Office Memorandum dated 25.05.1979 whereby the formula of pension was made applicable to Govt. servants, who were in service on 31.03.1979 and retired on or after that date. The Ministry of Defence had introduced this Liberalized Pension Formula for Armed Forces personnel with the condition that the new rules of pension will be effective only on 01.04.1979, which meant that those, who retired prior to specified date, would not be entitled to the benefits of the Liberalized Pension Formula. The same was challenged by alleging discriminatory deprivation. On this fact, the Court formulated the following questions for consideration:

"(i) Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 (1972 Rules' for short) form a class as a whole?

(ii) Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date?

(iii) Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Art. 14 of the Constitution and the element of

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discrimination liable to be declared unconstitutional as being violative of Art. 14?"

The challenge succeeded and all the questions were answered in favour of the pre-1st April, 1979 retirees. Thereafter, as observed in **Orissa Sponge Iron Ltd. Vs. State of Orissa, (1998) 2 SCC 268**, Nakara became the foundation of indiscriminate challenges to statutory or administrative provisions, specifying a cut off date for the applicability of a benefit or a liability and, ultimately, the Constitution Bench, in **Indian Ex-Services League Vs. V.Venkateswar**, AIR 1991 SC 1182, had to consider, what the Nakara had actually decided, to resolve the issue regarding validity of Govt. orders of 1983 with respect to Army Officers and it was clarified as follows:

" It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in Nakara and no more."

Hence, Nakara has been, thereafter, considered to have limited application and distinguished on many subsequent occasions, such as in **Krishena Kumar Vs. Union of India, AIR 1990 SC 1782**, when the revised pension rules divided the retirees in two parts, i.e. those who were in service on 29.10.1979 and those who retired thereafter. The distinction was based, *inter alia*, on the fact that age of superannuation was increased from 55 years to 58 years w.e.f. 29.10.1979. Hence, from the study of the post-Nakara Supreme Court judgements, it can be reasonably concluded that the principle laid down in **Nakara**, namely, that specification of a cut off date dividing the retirees into two classes will only be violative of Articles 14 and 16 (1) of the Constitution if the division is of a

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homogeneous class and without any discernible reason. If, however, some reason is disclosed, the Hon'ble Supreme Court has readily distinguished **Nakara** as in **State of West Bengal Vs. Ratan Behari Dey, (1993) 4 SCC 62** wherein the Hon'ble Court ruled that classification of single class of retired employees into two categories with reference to the cut off date was reasonable and not arbitrary and was not violative of Articles 14 and 16 of the Constitution. In **Govt. of Andhra Pradesh Vs. N.Subbarayudu (2008) 14 SCC 702**, it was held that even if no reason was given in the counter affidavit of the government for choosing the cut off date, same cannot be termed as arbitrary or violative of Article 14 unless the particular cut-off date produces blatantly capricious results.

6.2 In **Union of India Vs. Thakur, (2008) 13 SCC 463**, it was held that the matters relating to revision of pay scale and fixing of cut off date are essentially administrative in nature and, normally, the scope of judicial review, unless such decision is unreasonable, unjust and prejudicial to a section of employees, is not warranted. In **N.Subbarayudu, (supra)**, the Hon'ble Court, relying on the decision in **Aravali Club Vs. Chander Hass, (2008) 1 SCC 683**, and **Govt. of A.P. Vs. P.laxmi Devi, (2008) 4 SCC 720**, held that the Court must maintain judicial restraint in matters relating to legislative and executive domain. In **Union of India Vs. P.N.Menon, AIR 1994 SC 2225**, the Hon'ble Court ruled that a cut off date fixed in some rational and reasonable basis for extending the benefits, is neither arbitrary nor discriminatory.

6.3. The Respondents have relied on **State of Punjab Vs. Amar Nath Goyal & Ors., 2005 (6) SCC 754**, wherein the ratio of **Nakara (supra)** was discussed. The Hon'ble Court, while deciding the legality of fixing the cut off date, held as follows:

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"31. In *Action Committee South Eastern Railway Pensioners v. Union of India*, it was held that, on merger of a part of dearness allowance as dearness pay on Average Price Index Level at 272 with reference to different pay ranges, fixing a cut-off date in such a manner was not arbitrary and the principle enunciated in *D.S. Nakara* was not applicable. In this connection, the ratios in *Krishena Kumar v. Union of India*, *Indian Ex- Services League v. Union of India*, *State Government Pensioners' Association v. State of A.P.*, and *All India Reserve Bank Retired Officers' Association v. Union of India* are apt. In all these cases, the prescription of a cut-off date for implementation of such benefits was held not to be arbitrary, irrational or violative of Article 14 of the Constitution.

32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including in the following two cases. In *State of Rajasthan and Anr. v. Amritlal Gandhi & Ors.*, this Court went so as far as to note that:

"Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990"

33. More recently, in *Veerasamy* this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis. In that case, the pension scheme applied differently to persons who had retired from service before 1.7.1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.

34. In *State of Punjab v. Boota Singh and Anr.*, ("*Boota Singh*") after considering several judgments of this Court in *D.S. Nakara* to *K.L. Rathee v. Union of India*, it was held that *D.S. Nakara* should not be interpreted to mean that the emoluments of persons who retired after a notified date holding the same status, must be treated to be the same.

In *State of Punjab v. J. L. Gupta and Ors.*, where one of us was on the Bench (Sabharwal, J.), the views expressed in *Boota Singh* (*supra*) were reiterated, and it was held that for the grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary.

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Further, in **Ramrao & Ors. Vs. All India Backward Class Bank Employees Welfare Association and Ors., (2004) 2 SCC 76**, relied upon by the Respondents, the Hon'ble Court held that whenever a cut off date is fixed, undisputedly, those who fall within a purview thereof, would form a separate class. Such a classification has a reasonable nexus with the object which is the decision that the Bank seeks to achieve for promotion of its employees. Such a classification will neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India. It was further held that the fact that some persons or a section of society would face hardship by itself cannot be a ground for holding that the cut off date so fixed is ultra vires Article 14 of the Constitution. The Hon'ble Court, in its ruling, had referred to the **State of West Bengal Vs. Monotosh Roy, (1999) 2 SCC 71**, **Nakara (supra)**, **All India Reserve Bank Retired Officers Assn. Vs. Union of India, 1992 SCCC (L&S) 517**, **P.N.Menon (supra)**, **State of U.P. Vs. Jogendra Singh, (1998) 1 SCC 449**, as well as **V.Kasturi Vs. Managing Director, State Bank of India, (1998) 8 SCC 30**, and declined to interfere in the policy matters of the Bank.

7. In this case, the applicant claims that he was discriminated against because when the provision of FR were amended w.e.f. 31.05.2016 to be made applicable to the CHS Officers of the Ministry of Health and Family Welfare, delayed implementation of the extension of said policy in the case of Indian Ordnance Factory Health Services Officers led to the consequent notification dated 13.10.2017 and the cut off date was arbitrarily fixed 27.09.2017. Such invidious and arbitrary fixation of cut off date 27.09.2017 prejudiced the applicant, who, being in service on 31.05.2016, was entitled to receive the benefit of the FR amendment dated 31.05.2016.

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In this case, Respondents have justified their decision with reference to a subsequent cut off date on the following grounds, namely;

- (a) That the authorities to decide the cut off date would be the respective Organization/Department/Ministry, to which the employee belongs.
- (b) As different organizations have different agenda of work, different nature of duties, different requirement of skills and requisite fitness at specific levels, the decision made in the case of CHS Officers of Ministry of Health and Family Welfare cannot be automatically extended to the employees of the Defence.
- (c) The Respondents have also argued that the decisions to extend retirement age will also depend on the financial resources as well as other deciding factors, which are to be considered by the Respondent authorities prior to adopting any policy decision with respect to a particular Ministry/Department/Organization. Consequently, they hold that the classification made between those who have retired prior to 27.09.2017 and those who have retired after 27.09.2017 is a reasonable classification.

In **Central Railway Audit Staff Association Vs. Director of Audit, Central Railway, AIR 1993 SC 2467**, the Hon'ble Apex Court ruled that the charge of discrimination may fail if the employee belong to different unit. In this case, undisputedly, the employee belongs to IOFHS as against CHS and the doctors were serving two different ministries, viz. Ministry of Defence and Ministry of Family Health and Welfare respectively.

8. Indeed, it may be difficult to come across a provision for automatic

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extension as a matter of right since any employer will preserve with itself the power of replacing the existing age of retirement by another date of retirement with extended date.

9. In the instant matter, as the Respondents have established before us that there was indeed a reasonable classification made between CHS and IOFHS when different cut off date were specified for extension of retirement age of their employees and, as such, classification was based on the reason of distinct skill sets of the employee, different job requirements, adequacy of financial resources as well as the policy making and decision making authorities of the Respondent authorities, we would hesitate to interfere with the policy decision dated 13.10.2017 of the Respondent authorities in fixing the cut off date as 27.09.2017 in the case of IOFHS Officers.

As ruled by the Hon'ble Apex Court, the principle of **Nakara** (supra) cannot be used indiscriminately. The fact that a section of employees will be affected by the cut off date and the consequent classification thereof, will not be subject to violation of Article 14 of the Constitution of India.

We are of the considered view that the cut off date was on the basis of reasonable classification and the applicant's challenge to the same does not succeed. Accordingly, the O.A. fails to succeed and is hence dismissed on merit. There will be no order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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