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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.874 OF 2003

New Delhi, this the ^{6th} day of ~~February~~, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Shri B.L.Sikka,
S/o Shri Chanan Das Sikka,
(Retired Dy.Postmaster, Rohtak
Head Office)
Resident of Subhash Nagar, Rohtak

....Applicant
(By Advocate : Shri K.L.Bandula)

Versus

1. Union of India, through
Secretary, Ministry of Personnel,
Public Grievances & Pension,
Department of Pension & Pensioners'
Welfare, North Block, New Delhi-110001.
2. Secretary, Ministry of Finance,
Department of Expenditure, North Block,
New Delhi-110001.
3. Secretary, Ministry of Communication,
Department of Posts, Dak Bhavan,
New Delhi-110001.

...Respondents

(By Advocate: Shri K.R. Sachdeva)

ORDER

Shri R.K.Upadhyaya, Administrative Member:

The applicant in this OA is seeking parity in pension with pensioners who retired before 1.1.1986 or after September, 1986. His grievance is that though he retired on 28.2.1986, his pension and family pension were sanctioned lower than these employees.

2. The applicant had earlier filed OA-330/2001 which was disposed of vide order dated 1.1.2002 directing the respondent Secretary, Ministry of Personnel, Public Grievances & Pensions to decide

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the representation of the applicant. In pursuance to the direction, the impugned order dated 28.3.2002 (Annexure-I) has been passed wherein it is stated as follows:

"I have gone through the representation dated 23.1.2000 of Shri Sikka. It is apparent that the anomaly referred to by Shri Sikka has arisen due to benefit of notional fixation of pay given to serving employees having been extended to pre-1986 pensioners. After having a figure of pension made from the notional pay the same was consolidated by adding DR, Interim Relief I and II and 40% fitmen weightage. However, in the case of post-1986 retired personnel like the applicant the pension amount was worked out on the basis of average emoluments in which portion of the emoluments drawn in 1985 was also included. I also find that as per the recommendations of the Fifth Central Pay Commission for post-1986 retirees only consolidation was recommended subject to the condition that if it fell short 50% of the minimum of the revised scale of pay as on 1.1.1986, then the same was to be stepped up to that level. The clarification given in O.M. dated 18.10.1999 the Department of Pension is specific to Government servants who retired in the year 1996 and the same is not applicable to the applicant who retired in February 1986. In view of this, the O.M. of 19.12.2000 relating to the revision of pension pre-1986 retirees, has mentioned that no change in pension formula is visualised in respect of calculation of pension of Government servants who retired between January-September, 1986. This is the considered view of the Government and it will be difficult to continuously correct individual aberrations that might have occurred as a result of Pay Commission recommendations."

3. It is claimed by the applicant that similar anomaly in respect of employees retiring between January, 1996 and September, 1996 has been corrected as per OM dated 18.10.1999. Denial of similar benefits to the applicant is discriminatory.

4(a). The respondents have stated that the "issue of perceived anomaly in the calculation of pension of those who retired between 1.1.1986 and 30.9.1986 had been considered in detail in the past also. The issue also came up for consideration at the time of extension of special dispensation to employees

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retiring between 1.1.1996 and 30.9.1996. After due deliberations, a view was taken consistently that it would not be proper to extend special dispensation given in respect of employees retired between 1.1.1996 - 30.9.1996 to employees retired between 1.1.1986 - 30.9.1996 for the following reasons:

- a) The special dispensation in respect of retirees of the period 1.1.1996 to 30.9.1996 was taken because the higher fitment benefit of 40% allowed by the Government at the time of implementation of recommendations of the Fifth CPC had resulted in significant losses in the pension of these employees in relation to those who had retired prior to 1.1.1996. The decision could, by itself, not provide enough justification for re-opening the issue relating to a past period.
- b) The perceived anomaly is attributable to the formula for calculation of pension based on ten months average emoluments and is inherent in the scheme.
- c) Any decision taken in this regard would also logically have to be extended to those who retired within a period of ten months from the date of implementation of the Third CPC and earlier Central Pay Commission's recommendations.
- d) The problem in this regard would not be acute, as the decision had already been taken to equate the pension of all pre-1996 retirees.

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including the pre-1986 retirees, to at least 50% of the minimum of the applicable Fifth CPC revised pay scales."

The respondents have further stated that as a sequel to the concept of the parity as recommended by the 5th CPC, OMs dated 27.10.1997, 10.2.1998, 17.12.1998, 18.10.1999, 19.12.2000 and 11.5.2001 were issued. Further, the average emoluments for the purpose of pension has to be calculated on the basis of emoluments of past 10 (ten) months as per rule 34 of CCS(Pension) Rules, 1972 and the pension as well as Family Pension as determined is in accordance with the Govt. decisions and relevant rules. Any individual aberrations could not be continued to be corrected.

4(b). The learned counsel of the respondents has also placed reliance on the decision dated 16.7.2003 in OA No.580 of 1999 in the case of All India Retired Railwaymen's Assn., Thane Branch etc. Vs Union of India & Ors wherein similar claim has been rejected by Mumbai Bench of this Tribunal.

5. In the rejoinder filed by the Applicants, same arguments as in OA have been reiterated.

6. We have considered the facts of the case and the material available on record. The Mumbai Bench of this Tribunal in OA No.580/99 dated 16.7.2003(Supra) has referred to the decision of the Apex Court as follows:-



"10. The Apex Court in K.L. Rathee Vs. Union of India and others, AIR 1997 SC 2763 has considered the following question:-

"4. According to the clarification issued by the Ministry of Finance, the revised pension is to be computed on the average emoluments drawn during the last ten months' of service. This rule will apply to all the pensioners. However, the definition of emoluments as in force at time of the retirement of an employee has not undergone any change. The case of the petitioner is that following Nakara's case (AIR 1983 SC 130) he has to be given the same amount of pension as other employees of his rank irrespective of the date of retirement."

The Apex Court held:-

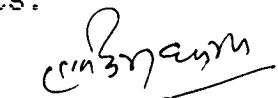
"Nakara's case reported in AIR 1983 SC 130 is not a case of Universal application irrespective of the facts and circumstances of the case. When the Government decided that pension was to be calculated on the basis of average salary drawn over a period of last ten months, it was held in Nakara that this principle has to be applied even to those persons who had retired before the notified date. That, however, does not mean that the emoluments of the person who were retiring after the notified date and those who have retired before the notified date holding the same status must be treated to be the same. Nakara's case does not lay down that the last ten months emoluments must be deemed to be the same for all the employees at the time of their retirement. The emoluments have to be calculated according to the Government rules at the time of retirement of the employees. But, if the principle of average of last ten months emoluments has been adopted for some employees then that principle must be extended to all the employees who have retired before them. Nakara's case did not lay down that the reckonable emoluments for the purpose of calculation of pension must be the same for a person occupying the same post. Therefore, petitioner is not entitled to ask for computation of pension with reference to emoluments which he never got."

After considering the other decisions of the Hon'ble Supreme Court on the subject, the Mumbai Bench dismissed the said OA. Respectfully following the



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said decision, we dismiss the present OA as the issue for consideration in this OA is also the same. No costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(V.S. AGGARWAL)
CHAIRMAN

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