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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2686/2003

NEW DELHI THIS... 16th DAY OF AUGUST 2004

HON'BLE SHRI JUSTICE SHRI V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

1. Shri S K Vyas, Coordinating Secretary, National coordination Committee of Pensioners, 13-C, Ferozshah Road, New Delhi - 110 001.
2. Shri V D Changela s/o Shri Dhramshibhai Bhonji, aged 75 years, by caste Hindu r/o 'Gokul' Nand Kishore society, Block No.3, Rajkot - 360004 last employed as Audit Officer, O/o Accountant General (Audit) Rajkot;
3. Shri Prasanta Kumar Dutta S/o late Shri Pranesh Kumar Dutta aged 75 years r/o 30, Choudhury Para Road, Barasat-700124 last employed as Communication Officer, Civil Aviation Depott. Kolkata;
4. Shri Kumud Chandra Biswas S/o late Dinesh Chandra Biswas aged 75 years r/o Flat IC/3 K.B. Sarani, Kolkata -700080 last employed as Service Communication Officer of Civil Aviation Deptt. Kolkata.

.....Applicants

(By Shri Lalita Prasad proxy for the Sh. P. K. De,
Advocate)

VERSUS

1. Union of India through
Secretary, Ministry of Personnel, Pensions & Public
Grievances, Deptt. of Pension & Pensioners Welfare,
North block New Delhi
2. Additional Secretary, Deptt. of Pension & Pensioners
Welfare, Lok Nayak Bhawan, Khan Market, New Delhi
3. Secretary, Ministry of Finance, Deptt of Expenditure,
North Blkock, New Delhi -110 001.

.....Respondents

(By Sh. Bhaskar Bhardwaj proxy for Sh. Arun Bhardwaj,
Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicants are persons who retired between 1.1.86 and 30.9.86 and seek parity in pension to those who retired prior to 1.1.86.

2. The anomaly has arisen because as per recommendations of the 5th CPC pension of all pre 1986 retirees was to be consolidated by notional fixation of their pay as on 1.1.86 and to be treated as average emoluments for the purpose of determining the notional pension. However, in the case of persons retiring between 1.1.86 and 30.9.86 the pension was to be fixed as per normal rules of 10 months average pay, thereby their pension became lower to those who retired prior to 1.1.86.

3. Applicant No. 2 made a representation to the respondents pointing out the anomaly and asking for parity which was not agreed to by the impugned letter, which is reproduced below:

Sub:- Representation from Sh. V. D. Changela, retired Audit Officer, Rajkot-360 004, O/O C&AG - regarding fixation of pension of those who retired between Jan.- Sept., 1986.

A representation from Shri V..D.Changela, retired (retired w.e.f. 31.5.86) Audit Officer, Rajkot has been received from the Office of the Home Minister requesting for extension of the benefit of notional revision of emoluments for the period prior to 1.1.86 to all pensioners who retired between 1.1.86 to 30.9.86.

2. As a result of implementation of Government's decision on the recommendation of 4th CPC, employees retiring between 1.1.86 and 30.6.87 were given the option to retain the pre-revised scale of pay i.e. 3d Central Pay Commission and to have their pension calculated with reference to the provisions of the pension rules and orders issued thereon that were in force prior to 1.1.86. With the acceptance of the concept of priority pension of all pre-86 retirees are to be notionally revised from 1.1.86 and consolidated thereafter as per the formula prescribed. As this involves fixation of notional pay on the 4th Central Pay Commission scale of pay i.e. specifically opted to retain the 3rd CPC scale of pay will for this purpose need to be treated as pre-86 pensioners so that their

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notional pay can be fixed as on 1.1.86. The option for fixation of notional pay once exercised by the pensioners is final. A series of orders indicating the pension formula for pre-86 pensioners in orders dated 10.2.98 clarifying further in orders dated 17.12.98 and confirming the same subsequently in orders dated 19.12.2000 have been issued by the Government.

3. Several representations have been received and are still continuing to be received regarding the anomaly that has occurred in the fixation of pension in respect of Government servants who retired during the period January-September 1986. This anomaly arose on account of two factors namely:

1. Government servants who retired during this period were drawing pay partly on pre-revised scale (3rd CPC scales) and partly on the revised scales i.e. 4th CPC scales at the time of retirement. Resultantly when the average emoluments were taken this was lower in respect of those for whom the emoluments on the 4th CPC scale was calculated.

2. As a consequence to the acceptance of the concept of parity recommended by the Pay Commission, all pre-86 pensioners were brought on to the 4th CPC's scales of pay through notional fixation on 1.1.86. The notional pay so fixed was treated as average emoluments for purposes of pension. This meant that these pensioners drew a higher pension than a government servant who retired during January- September 86 resulting is an anomaly.

The representation received from Shri V.D.Changela addressed to the Home Minister relates to this anomaly. He has requested that the benefit of notional revision of emoluments allowed in respect of pre-86 pensioners may be also extended to Government servants who retired during January-September 86.

4. The above issue of anomaly was examined in this Department and also taken up with the Department of Expenditure. However, a conscious decision has been taken by the Government that since pension in absolute amount has considerably enhanced with the acceptance of the 5th Pay Commission recommendations and the fact that this anomaly has arisen due to the restructuring of the pension package it would not be possible to continuously correct such anomalies that occurred with policy changes in pension.

5. PS to Deputy Prime Minister and Home Minister may kindly see for information. A copy of the representation from Shri Changela is sent herewith.

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6. This issue with the approval of Additional Secretary (Pension)".

4. It is the case of the applicants that similar anomaly had arisen in the case of the persons who retired from 1.1.96 to 30.9.96 after implementation of the 5th Central Pay Commission recommendations and the same had been removed. There was, therefore, no valid ground for not removing the same in respect of applicant who retired during the period 1.1.86 to 30.9.86. This is, thus, a case of reverse discrimination. The applicants prayed that the last pay drawn by them may be treated for the purpose of determining of the basic pension because by not doing so great discrimination has been caused to those who retired after 31.12.85. The Apex Court in the case of D.S. Nakara Vs UOI (1993 SC 305) and Subarata Sen Vs UOI (JTI 998 (7) SC 147) and also the judgement of the Hon'ble High Court in the case of Employees led by Sh A N Sharma Vs Punjab & Haryana in CWP 4913/2002 has held that this was not permissible.

5. The respondents have contested the claim of the applicants and pointed out that the 5th CPC had strictly observed that it was not possible to give complete parity between the present and past pensioners as the financial implications would be considerable. The Pay Commission recommended notionally fixing pay and thereafter pension in respect of all pre 1986 retirees as on 1.1.86. The government has accepted these recommendations and notionally fixed pension of pre- at par with serving employees and thereafter consolidate their pension as per the prescribed formula. It was also provided that the consolidate pension as recommended by the 5th CPC was not to be less than 50% of the minimum of



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the corresponding 5th CPC revised pay scales held by the pensioners at the time of the retirement. The anomaly which has sought to be corrected by the applicants in the present OA has come up for consideration at the time of special dispensation to employees retiring between 01.01.1996 - 30.9.96 and after due deliberations, a view was taken consistently that it would not be proper to extend special dispensation given to employees retiring between 1.1.86 to 30.9.86 as has been done with those who had retired from 1.1.96 to 30.9.96 for the following reasons:

(a) The special dispensation in respect of retirees of the period 01.01.1996 to 30.09.1996 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 01.01.1996. 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, including the pre-1986 retirees, to at least 50% of the minimum of the applicable Fifth CPC revised pay scales".

6. The respondents relied upon the judgement of the Hon'ble Tribunal Mumbai Bench dated 16.7.2003 in OA 580/1999 in the case of All India Retired Railwaymen's Association & Others Vs. UOI & Others where the plea made for granting equality of pension was not agreed to and the order to the

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date of retirement taken to be in accordance with the principles innunciated by the Hon'ble Supreme Court in the case of D S Nakara Vs Union of India (AIR 1983 SC 130). The respondents also relied upon the judgement of the Principal Bench in the case of BL Sikka Vs UOI & Another in OA 874/2003 pronounced on 6.2.2004 where the applicant had sought parity in pension with the pensioners who retired before 1.1.86 for those who retired after 1.1.86 and upto 30.9.86. In this case the Tribunal had relied upon the judgement of the CAT Mumbai Bench in OA 580/99 and dismissed the OA.

7. We have heard the learned counsel for the parties and gone through the documents placed on record. We find that the facts of this case are identical to that of the case of B.L. Sikka (supra). In view of the decision of the Tribunal in the case of B.L.Sinha which fully covers with the present OA, we respectively follow the said decision and dismiss the OA as the issue under consideration is the same. No costs.



(S.A. Singh)
Member (A)



(V.S. Aggarwal)
Chairman.

Patwal/