

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA 1165/2011

with

OA 2165/2011

And

OA 246/2012

New Delhi this the 21st day of April, 2015

Honble Mr. P.K. Basu, Member (A)

Honble Mr. Raj Vir Sharma, Member (J)

OA 1165/2011

**1. Pratap Narayan, Executive Director (Retired). FICC, Min. of Fertilizers,
R/o C-47, Friends Colony East New Delhi-110065**

AND Others

Versus

Union of India through

1. Secretary,

Ministry of Personnel, P.G. & Pensions,

Deptt. of Pensions & Pensioners Welfare

Lok Nayak Bhawan, New Delhi-110003

2. Secretary,

Deptt. of Expenditure Ministry of Finance,

Central Secretariat North Block, New Delhi-110001 Respondents

(Through Sh.Rajesh Katyal and Sh. D.S. Mahendru, Advocates)

Judgement of CAT PB New Delhi dated 21st day of April, 2015

OA 1165/2011 with OA 1165/2011 & OA 246/2012

Pratap Narayan & Others – Vs- Union of India

ORDER

Mr. P.K. Basu, Member (A)

1. OA 1165/2011, OA 2165/2011 and OA 247/2012, all deal with the same issue and, therefore, are being disposed off through this common order.

2. The prayer of the applicants arises from a clarification issued by the Department of Pension and Pensioners Welfare dated 3.10.2008, in specific challenging the following provision:

“The pension will be reduced pro-rata, where the pensioner has less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable on 01.01.2006 and in no case it will be less than Rs.3500/- p.m.”

3. The background of the case is that after the VI Pay Commission submitted its report, the government issued OM dated 1.09.2008 relating to revision of pension of pre-2006 pensioners/ family pensioners etc. Para 4.2 of the OM provides 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.

4. Thereafter, the respondents issued the above mentioned OM dated 3.10.2008 in which the clarification was issued that pension will be reduced pro-rata where the pensioner had less than the maximum required service for full pension of 33 years. The Department of Pension and Pensioners Welfare vide resolution dated 29.08.2008 introduced the revised pension structure with effect from 1.01.2006. In this, the recommendation of the Pay Commission and the decision of the government were elaborated. The paragraphs relevant to this case are quoted below:

S. No	Recommendation	Decision of Government
2.	Linkage of full pension with 33 years of qualifying service should be dispensed with. Once an employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. Simultaneously, the extant benefit of adding years of qualifying service for purposes of computing pension/related benefits should be withdrawn as it would no longer be relevant (5.1.33)	Accepted

3.	The recommendation regarding payment of full pension on completion of 20 years of qualifying service will take effect only prospectively for all Government employees other than PBORs in Defence Forces from the date it is accepted by the Government (6.5.3.)	Accepted
12.	All past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance/dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. 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 sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. (5.1.47).	Accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86, i.e. basic pension + Dearness Pension (wherever applicable) + dearness relief of 24% as on 1.1.2006, instead of 1.74.

The respondents further issued an OM dated 19.03.2010, which is reproduced below:

The undersigned is directed to say that orders for revision of pension/family pension of pre-2006 pensioners were issued vide this Departments OM of even number dated 01.09.2008. Para 4.1 of that OM lays down the manner in which the pension/family pension of pre-2006 pensioners is to be consolidated w.e.f.1.1.2006. In accordance with these instructions, a fitment weightage @ 40% of the pre-2006 basic pension/family pension (excluding the merged dearness relief of 50%) is to be given for revision of the pension of pre-2006 pensioners/family pensioners.

2. Para 4.2 of the aforesaid OM further provides that 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 . It was clarified in the OM dated 3.10.2008 that the pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale. The pension will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable before 1.1.2006 and in no case it will be less than Rs.3500/- p.m. The fixation of family pension will be subject to the provision that the revised family pension, in no case, shall be lower than thirty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. A Table indicating the revised

pension based on revised pay bands and grade pay was also annexed with this Departments OM dated 14.10.2008.

3. A large number of representations/references were received in the Department in regard to the provisions of para 4.2 of the OM dated 1.9.2008 and it was clarified in this Departments OM of even number dated 11.2.2009 that the instructions/clarifications issued in this regard were in consonance with the decision of the Government on the recommendations of the Sixth Central Pay Commission and no change was required to be made in this respect.

4. In spite of the above clarifications, representations are still being received from pre-2006 pensioners (including those who retired from the pre-revised S-29 pay scale i.e. Rs.18400-22400) for higher revised pension in terms of para 4.2 of the OM dated 1.9.2008. Representations have also been received demanding a higher fitment weightage to the pre-2006 pensioners in revision of pension in terms of Para 4.1 of the said OM.

5. These representations have been examined in consultation with Ministry of Finance. It is reiterated that orders relating to revision of pension of pre-2006 pensioners/family pensioners have been correctly issued as per the recommendations of the Sixth Central Pay Commission and no change is required to be made in this respect.

6. All references/representations received in this Department on the above issues stand disposed off accordingly.

5. The above OM basically reiterated the OM dated 3.10.2008 namely that there will be pro-rata reduction. In all the three OAs, the applicants have challenged the OM dated 3.10.2008 claiming that it is violative of the law laid down by the Honble Supreme Court in D.S. Nakara Vs. Union of India, 1983 SCC (L&S) 145. The prayer made is that their pension should be fixed in accordance with para 4.2 quoted above ensuring parity between pensioners who have retired pre-1.01.2006 and post-1.01.2006. The question before us is, therefore, whether the date of retirement is a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date. This was precisely the point which was before the Hon'ble Supreme Court in D.S. Nakara (supra). The question that was raised by their Lordships of the Hon 'ble Supreme Court in para 2 of the judgment reads as follows:

“2. 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? 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? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14? These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's own feet.”

And the Hon 'ble Supreme Court answered the questions as follows:

“(1) Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical raison detre for pension is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Article 309 and 148 (5) of the Constitution.”

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In the present case Article 14 is wholly violated inasmuch as the pension rules being statutory in character, the amended rules, since the specified date, accord differential and discriminatory treatment to equals in the matter of commutation of pension. It would have a traumatic effect on those who retired just before that date. This division which classified pensioners into two classes is artificial and arbitrary, is not based on any rational principle and whatever principle, if there be any, has not only no nexus to the objects sought to be achieved by liberalizing the pension rules, but is counter-productive and runs counter to the whole gamut of the pension scheme. Further, there is not a single acceptable or persuasive reason for this division. Therefore, the classification does not stand the test of Article 14.

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Date of retirement cannot form a valid criterion for classification, for if that be the criterion those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose.

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The basic principle which informs both Articles 14 and 16 is equality and inhibition against discrimination. Article 14 strikes at arbitrariness because any action that is arbitrary must necessarily involve negation of equality. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

6. Learned counsel for the applicants also cited V. Kasturi Vs. Managing Director, State Bank of India, Bombay and another, (1998) 8 SCC 30 in which the Honble Supreme Court held as follows:

“If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme,

he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension. He would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred.”

Similarly, the learned counsel for the applicants also relied on the judgment of the Honble Supreme Court in T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and others, (1993) 2 SCC 174 in which it was held as follows:

“The object of bringing into existence the revised terms and conditions in the memorandum dated June 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the applicability of the revised memorandum only to those who are absorbed after the coming into force of the said memorandum, would be defeating the very object and purpose of the revised memorandum and contrary to fair play and justice.”

There is no substance in the contention that the revised benefits being new it could only be prospective in operation and cannot be extended to employees who were absorbed earlier. The memorandum dated June 16, 1967 is prospective which only means that the benefits therein can be claimed only after June 16, 1967. The memorandum, however, takes into consideration the past event that is the period of service under the Central Government for the purposes of giving pro rata pension. Whoever has rendered pensionable service prior to coming into force of the memorandum would be entitled to claim the benefits under the said memorandum. Restricting the benefits only to those who were absorbed in public undertakings after June 16, 1967 is arbitrary and hit by Article 14 & 16.

The appellant was permitted to be absorbed in the Central Government public undertaking in public interest. The appellant, as such, shall be deemed to have retired from Government service from the date of his absorption and is eligible to receive the retirement benefits. Though the retirement benefits envisaged under Rule 37 are to be determined in accordance with the Government orders but the plain language of the rule does not permit any discrimination while granting the retirement benefits.

Appeal allowed.

7. This Tribunal (full Bench) had also examined a similar issue in OA 937/2010 decided along with OA 2101/2010. In those cases, the prayer made was to remove discrimination between pre-2006 and post-2006 retirees as regards their pension, who were in the pay scale S-30 i.e. Rs.22400-525-24500. The matter was examined in depth considering the judgments of the Honble Supreme Court in D.S. Nakara (supra), Union of India Vs. S.P.S. Vains, (2008) 9 SCC 125, Union of India Vs. P.N. Menon, JT 1994 (3) SC 26, State of Punjab and others Vs. Amar Nath Goyal and others, 2005 SCC (L&S) 910, Union of India Vs. S.R. Dhingra and others, (2008) 2 SCC 229, Government of Andhra Pradesh and ors. Vs. N. Subbarayudu and others, 2008 (4) SLR 136 and Bank of India and another Vs. K. Mohandas and others, 2009 (5) SCC 313. The OAs were allowed vide order dated 20.11.2014 and the Tribunal gave the following directions:

“We direct the respondents to consider the revised pay of the applicants corresponding to the pay at which the concerned pensioner had in fact retired, instead of considering the minimum of the said pay scale, thereby determining pension/ family pension to pre-2006 retirees.

8. The learned counsel for the respondents has filed detailed reply primarily explaining how pension of pre-2006 and post-2006 retirees has to be fixed. It is reiterated that the government had accepted the recommendation regarding payment of full pension on completion of twenty years service, prospectively. Therefore, this cannot be given retrospective effect now. It is further stated that in the order dated 6.03.2012 (Annexure A-7), disposing of the OAs No. 937/2010 and 2101/2010, this Tribunal (Full Bench) made the following observations/directions in regard to the prayer of the applicants seeking complete parity with post-2006 retirees:-

One of the reliefs sought for by the applicants in those OAs is that pre-2006 pensioners may be allowed a total parity with post 1.1.2006 pensioners by notionally revising their pay as on 1.1.2006 and then fixing pension at 50% of that notional pay.

At the outset, it may be stated here that the issue regarding admissibility of pension/family pension to the pre 1.1.2006 retiree officers belonging to S-29 scale and also whether the 2006 pensioners are entitled to the pension/family pension at par with post 2006 retiree officers has been considered and decided by the Full Bench of the Tribunal in Central Government SAG (S-29) Pensioners Association and another Vs Union of India and another (OA 655/2010 with connected matters) decided on 1.11.2011 after taking into consideration the decisions of Apex Court in D.S. Nakara Vs. S.P.S. Vains (2008)9 SCC 125) and the said relief has been rejected. The Full Bench of this Tribunal in the aforesaid judgment has held that pre-2006 retirees cannot claim benefit at par with post-2006 retirees, who are governed by the separate set of scheme and also that the judgment in the case of S.P.S.Vains (supra) was rendered in the different facts and circumstances of the case and relates to the Army personnel and based on the premise of one rank one pension. However, regarding admissibility of pension based on modified parity, as recommended by the Pay Commission and accepted by resolution dated 29.8.2008, direction was given to the respondents to re-fix the pension and pay the arrears to all pre-2006 retirees belonging to S-29 scale of pay, within a period of three months from the date of receipt of a copy of the order. Thus, the aforesaid issue stands decided of in the light of the reasoning given by the Full Bench of this Tribunal for parity of reasoning given therein.

9. The respondents further argue that in its order dated 1.11.2011 in the OA No. 655/2010 referred to in the aforesaid order dated 6.3.2012 in the OAs No.937/2010 and 2101/2010, this Tribunal (full bench) decided that the challenge made by the applicants based upon the judgment in D.S. Nakara that pre-2006 retirees should be extended the same pensionary benefits as that of post-2006 retirees cannot be accepted. It is stated that in para 9 of the judgment, this Tribunal also rejected the prayer for grant of full pension on completion of 20 years of qualifying service at par with post-2006 retirees and observed that the pre-2006 retirees cannot claim benefit at par with post-2006 retirees, who are governed by the separate set of scheme.

10. It is further added on behalf of the respondents that the applicants in the above mentioned OAs No.937/2010 and 2101/2010 filed writ petitions being WP No. 4572/2012

and WP 7342/2012 in the High Court of Delhi. Honble High Court of Delhi in its order dated 19.8.2013 (Annexure A-9) passed the following order:

8. Keeping in view the aforesaid facts, none of which are disputed by learned counsel for the respondents, with consent of learned counsel for the parties we set aside the impugned decision(s) dated March 06,2012 and simultaneously we restore OA No.937/2010 and OA No.2101/2010 for fresh adjudication on merits by the Tribunal on the claim of the petitioners for full parity. The decision shall be rendered after giving full opportunity of hearing to the petitioners and the decision dated November 01, 2011 passed by the Tribunal in the case of S-29 scale retirees shall not be treated as binding upon it by the Tribunal for the reasons on the subject of full parity the said decision was pronounced notwithstanding said retirees giving up the claim for full parity.

Thus Honble High Court remanded back the OA No.937/2010 and OA No.No.2101/2010 for fresh adjudication on merits by this Honble Tribunal on the claim of the petitioners for full parity. As stated earlier, these OAs were accordingly heard by this Tribunal (Full Bench) and order dated 20.11.2014 passed.

11. We have gone through various judgments of the Honble Supreme Court in various cases and also this Tribunals order dated 20.11.2014 in OA 937/2010 with OA 2101/2010. The law has by now been well settled by the Honble Supreme Court that the date of retirement cannot form a valid criterion for classification. It is held by their Lordships that any clarification has to be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

13. In view of the judgments of the Honble Supreme Court in D.S. Nakara (supra), V. Kasturi (supra), T.S. Thiruvengadam (supra) and order of the Full Bench of the Tribunal in OA 937/2010 with OA 2101/2010 dated 20.11.2014, we are of the opinion that the prayer in the OAs is fully justified. We, therefore, quash and set aside the impugned orders dated 3.10.2008 and 19.03.2010 being violative of law laid down by the Honble Supreme Court and direct the respondents that the qualifying service for earning full pension will be treated as twenty years also for those who retired from the Central Government service on or before 31.12.2005 and were alive on that day. The respondents are also directed to modify/amend all relevant government orders/ letters/ notifications in accordance with the above decision. It is made clear that this parity of pension between pre and post-1.01.2006 pensioners (on the question of eligibility of minimum pensionable service of twenty years) would apply both as regards pension and family pension. The respondents are granted three monthstime from the date of receipt of this order for implementation of directions contained in this order.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)