

IN THE HIGH COURT OF DELHI AT NEW DELHI.

W.P.(C) 4572/2012

ALL INDIA S-30 PENSIONERS ASSOCN. and ORS. Petitioners,
Represented by: Mr.Nidhesh Gupta, Sr.Advocate with Mr.Tarun Gupta and
Mr.Daphne Menezes, Advocatesversus UNION OF INDIA and ORS. .
Respondents, Represented by: Mr.Joginder Sukhija, Advocate with
Mr.Yogesh Yogi, Advocate.

W.P.(C) 7342/2012

CENTRAL GOVT. PENSIONERS ASSOCN. OF ADDL./JOINT SECRETARY and
EQUIVALENT OFFICERS Petitioners Represented by: Ms.Tamali Wad,
Advocate.versus..... UNION OF INDIA and ORS. Respondents

Represented by: Mr.Gaurav Sharma, Advocate with Mr.Sumeet Pushkarna,
Advocate for R-1

Mr.R.V.Sinha, Advocate with Mr.R.N.Singh, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

19.08.2013

1. The petitioners of the above captioned writ petitions are associations of pre-2006 retirees who were being paid salary in the S-30 scale. They impugnan order dated March 6, 2012 passed by the Central Administrative Tribunal disposing of OA No. 937/2010 as also OA No.2102/2010, in which Original Applications the petitioners prayed for removal of disparity in pension between the pre and the post January 01, 2006 retirees. Further, the petitioners had sought pension to be fixed of their members at par with the S-31 scale retirees.

2. The original application(s) have been dismissed by the Tribunal and we find that for rejecting the prayer the Tribunal has relied upon its decision dated November, 01, 2011 pertaining to retirees in the S-29 scale.

3. As per the petitioners, the originals applications filed by them as also the one filed by the S-29 scale retirees were being heard together till when the S-29 retirees restricted their claim to 'modified parity' and gave up their claim 'full parity'. As per the petitioners they maintained a claim for full parity.

4. It is the case of the petitioners that in view of the fact that the retirees of S-29 scale had given up the claim for full parity the Tribunal specifically restricted them to argue their case on the issue of modified parity, but while deciding the said matter, even decided the issue of full parity, and for which assertion by the petitioners they have drawn our attention to the written submissions filed before the Tribunal by the retirees of S-29 scale. Indeed, we find that the counsels therein had restricted their submission on the issue of modified parity. Yet in spite thereof we find that the Tribunal, in its decision dated November 01, 2011, has decided the issue of full parity; and the grievance urged before us is that said decision has been applied even to the petitioners and the results is that the petitioners have been denied an opportunity to argue their case for the reason we find that after the judgment was pronounced in the case of S-29 scale retirees, arguments were not heard.

5. It is the case of the petitioners that there can be no disparity in pension on the basis of the date of retirement. Admittedly pre-2006 S-30 scale retirees are receiving not only less pension vis-a-vis post 2006 retirees but in some cases even less than the post 2006 S-24 scale to S-29 scale retirees.

6. We find that this aspect has not been considered by the Tribunal.

7. We find an issue of parity raised between S-30 scale retirees and S-31 scale retirees and for which we find that in the impugned decision the

Tribunal has only noticed the historical comparison between the two scales which shows that the minimum of both pay scales has always been the same, until the instant impugned action based upon the recommendations of the 6th Central Pay Commission. In the writ petitions, the petitioners have specifically referred to the following additional averments made, all of which have not been noted by the Tribunal :-

(a) With regard to the above, it is relevant to note that S-29 Officers can be promoted to both S-30 and S-31 scales directly, after rendering three years service in S-29 scale. Thus, S-30 and S-31 are promotional posts for S-29 officers after rendering the same amount of service.

(b) Further, for S-30 officers to enter S-31 service, nil experience is required in S-30 service.

(c) Appointments to S-30 and S-31 are interchangeable in nature. The factum of their being interchangeable also shows the similar nature of duties etc. being carried out by the employees of S-30 and S-31.

(d) It is submitted that it is for the Government to show what was their reasonable basis or intelligible differentia for giving a higher minimum scale to S-31 employees than that being offered to S-30 employees, when the Government had all along maintained parity at the minimum level in the two scales. The said onus rests on the Respondents which they have completely failed to discharge. A reference to the judgments of the Hon?ble Supreme Court on this aspect shall be made during the course of hearing.

(e) It is further relevant to note that both S-30 and S-31 officers require the same length of time i.e. two years service in the respective scales before being promoted to the next higher scale of S-33. This fact also conclusively establishes the similar nature of the two services.?

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.

9. The matter would be decided in remand as early as possible and preferably within three months from today.

10. Parties shall appear through their counsel before the Registrar of the Tribunal in the two original applications on September 09, 2013 on which date OA No.937/2010 and OA No.2101/2010 shall be listed before the Registrar.

11. The writ petitions stand disposed of.

12. No costs.

13. Dasti.

PRADEEP NANDRAJOG, J.

V. KAMESWAR RAO, J.

AUGUST 19, 2013

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