

Des Raj Bhatnagar and Another

Vs

Union of India

With

S. K. Nanda

Vs

Union of India

Writ Petition (Civil) Nos. 11757 and 11758 of 1984 with Civil Appeal No. 1124 of 1984

(K. Ramaswamy, S. Ranganathan JJ)

13.02.1991

JUDGMENT

KASLIWAL, J. –

1. The above writ petitions and appeal are disposed of by one single order as identical questions of law are involved in these cases. In order to appreciate the controversy we would narrate the fact of the writ petitions. Shri Des Raj Bhatnagar, petitioner 1 and Shri Ved Pal Seth, petitioner 2 were employees of the Central Government. Petitioner 1 after serving in various capacities in the Department of Food of the Central Government from October 24, 1941 to August 31, 1971 (29 years and 10 months) was permanently absorbed in Food Corporation of India as Assistant on September 1, 1971 and retired from the government service.
2. Petitioner 2 after serving the government in various capacities for the period from November 5, 1947 to February 8, 1972 (20 years and 3 months) was permanently absorbed on February 9, 1972 in Food Corporation of India as Senior Assistant Manager and retired from the government service.
3. On absorption in the Food Corporation of India, the petitioners were required to exercise either of the following two options :
 - (a) Receiving the pro rata monthly pension and death-cum-retirement gratuity as admissible under the rules; and
 - (b) Receiving the pro rata gratuity and a lump sum amount in lieu of pension worked out with reference to commutation table obtaining on the date from which the pension was to be admissible and under the option order.

The office of the Pay and Accounts Officer, Ministry of Food and Agriculture determined the original pension payable to the petitioners per mensem. The petitioners were sanctioned original pensions in accordance with the provisions of the Central Civil Services (Pension) Rules, 1972. In case of petitioner 1 the original pension was determined at Rs. 240 per mensem payable from

September 1, 1971. In case of petitioner 2 the original pension admissible was determined at Rs. 287 per mensem payable from February 9, 1972.

4. Petitioner 1 received his pension @ Rs. 240 per mensem for the period from September 1, 1971 to October 29, 1972. Petitioner 2 received his pension @ Rs. 287 per mensem for the period from February 9, 1972 to August 16, 1972. Under the above Rules maximum of one third of the amount of admissible pension could be commuted. However, in the case of government officers including Industrial Management Pool Officers who were opting for permanent absorption in Public Sector Undertakings, an option was given to commute the full amount of their original pension. Petitioner 1 and petitioner 2 commuted their original pensions for a lump sum of Rs. 35,568 and Rs. 43,601 on October 30, 1972 and August 17, 1972 respectively.

5. The Third Central Pay Commission was required to make its recommendations in the matter of providing relief of government pensioners. The Pay Commission, in order to secure government pensioners against the continuing erosion in the value of the rupee and to recommend appropriate measures for protecting the pension of government servants from such erosion on account of the possible increase in the cost of living in future and after having considered the matter, recommended that irrespective of the amount of pension drawn by them, pensioners should be given relief at the rate of 5 per cent of their pension subject to a minimum of Rs. 5 per mensem and a maximum of Rs. 25 per mensem. The relief at those rates were recommended to be given to the government pensioner as and when there was a 16 point rise in the 12 months average of the All India Working Class Consumer Price Index (1960-100). The relief for the first time, at these rates was to be paid when the 12th monthly average of this index reached 216. The said recommendation made by the Pay Commission was duly accepted by the Central Government.

6. The Ministry of Finance Office Memorandum No. F. 22(8)-EV (A) /75 dated February 13, 1976 inter alia, provided that where an officer on his retirement commutes a portion of his pension he is eligible for relief and ad hoc reliefs in pension on the full amount of original pension as admissible to him. Under the said OM the term ' Pension' includes for the purposes of ad hoc relief the commuted portion of pension, if any. The case of the petitioners is that according to these Rules, an officer who has commuted any part of his pension and an officer who has not opted for any commutation both receive the full quantum of relief and ad hoc relief on full amount of original pension. It has thus been contended that for the purposes of grant of the full benefit of relief or ad hoc relief the Rules do not make any distinction between an officer who has sought commutation of his original pension and one who has not sought any such commutation. The petitioner and other government servants who opted for commutation of their original pension in accordance with the Rules are being arbitrarily and without just and reasonable cause deprived of the relief and ad hoc relief on commutation in pursuance of the Office Memorandum dated February 13, 1976. Though, an officer who commutes one-third of this pension gets relief and ad hoc relief on the basis of original amount of his pension but whereas an officer commutes whole of his original pension is deprived of the entire amount of the relief or ad hoc relief. The petitioners have thus contended that aforesaid Office Memorandum dated February 13, 1976 is vitiated by an inherent discrimination and is violative of Articles 14 and 16 of the Constitution.

7. The petitioners have further submitted that they are entitled to the aforesaid reliefs granted to all other government pensioners, and the amount of relief to which pensioners are entitled and has been denied to them under the impugned Office Memorandum dated February 13, 1976 works out to Rs. 13,592 and Rs. 15,040 in case of petitioner 1 and petitioner 2 respectively up to February 29, 1984. The Ministry of Finance in their Office Memorandum No. F. 2(8)/EV/82 dated October 10, 1983

has sanctioned the grant of relief and ad hoc reliefs to government servants who retired prior to September 10, 1979 @ 92.5 per cent of their original pension subject to minimum of Rs. 93 and maximum of Rs. 463 with effect from July 1, 1983. This has been done by taking in view the decline in the purchasing power of the rupee and the original sanction being insufficient and meagre to sustain the pensioners.

8. Apart from the above the petitioners have submitted that they are also entitled to the benefit to Liberalised Pension Formula of 1979, which was introduced vide the Finance Ministry's Office Memorandum No. F. 19(37)/EV/79 dated May 25, 1979, in respect of the approved pensionable service rendered by them in the Central Government as admissible to other pensioners who retired from government service between April 17, 1950 to March 31, 1979. The said memorandum was made applicable only to those government servants who retired from service on or after March 31, 1979. However, this Court in *D. S. Nakara v. Union of India* ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165) held that all Central Government pensioners governed by the Central Civil Services (Pension) Rules, 1972 were entitled pension w.e.f. April 1, 1979 as computed under the Liberalised Pension Formula irrespective of the date of their retirement. Placing reliance on the above decision it has been claimed that there should be no discrimination between the applicability of the Liberalised Pension Formula to per-March 31, 1979 pensioners and there is no just and reasonable cause in denying such benefit to the petitioners under the impugned Office Memorandum No. F. 1(3)/EV/83 dated October 22, 1983.

9. Clause 5 of the Office Memorandum dated October 22, 1983 reads as under :

"Central Government employees, who got themselves absorbed under Central Public Sector Undertaking/autonomous bodies prior to April 1, 1979 and have received/or opted to receive commuted raise for one-third of pension as well as terminal benefit equal to the commuted value of the balance amount of pension left after commuting one-third, of pension, are not entitled to any benefit under these orders as they were not Central Government pensioners as on April 1, 1979. In cases where only a portion of pension has been commuted, the pension will have to be enhanced in accordance with these orders with effect from April 1, 1979."

The above clause makes it clear that such Central Government Employees, who got themselves absorbed under Central Public Sector Undertakings prior to April 1, 1979 and opted to receive commuted raise for one-third of pension as well as terminal benefit equal to the commuted value of the balance amount of pension left after commuting one-third of pension were not entitled to any benefit as they were into Central Government pensioners as on April 1, 1979. An identical Writ Petition No. 1068 of 1987 under Article 32 of the constitution was filed on behalf of the Welfare Association of absorbed Central Government Employees in Public Enterprises and this Court dismissed the said writ petition on April 12, 1990 (*Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India*, (1991) 2 SCC 265). In the said writ petition benefit of judgment of this Court in "*Common Cause*" a Registered Society v. Union of India ((1987) 1 SCC 142 : (1987) 2 ATC 100) was claimed but the same was negated by making a distinction that the write petition "*Common Cause*" was on behalf of the government servants who has commuted their pension partially and this Court for the reason indicated in the judgment came to hold that on the expiry of 15 years from the date of commutation the entire pension revived. The petitioners were persons who had, at the time of retirement from government service and entering into public sector had taken the advantage of commuting the entire pension. They certainly belong to a class different from those whose case was before this Court at the instance of the Common

Cause in Writ Petition Nos. 1955-61 of 1983. It was further held in the above case that the commutation does bring certain advantages to the commutees and the class of government officers whom the petitioner seeks to represent have derived such benefits.

10. We find no reason to take a different view. The commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in the course of his spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation - (1) availability of a lump sum amount, and (2) the risk factor. In the present case the petitioners had not only got one-third of their pension commuted but exercised the option of getting the entire pension commuted and in lieu thereof got a lump sum. Such persons cannot fall in the category of Central Government pensioners for the purposes of getting benefit of Liberalised Pension Rules which can be made applicable only to Central Government pensioners. It is no doubt correct that the family pension has been allowed in case of the persons like the petitioners but that does not make them entitle to get any benefit given to the pensioners on account of the Liberalised Pension Rules taking note of the fallen value of the rupee.

11. It was contended by Mr. Rao on behalf of the petitioners that the petitioners are not claiming any pension but their contention is that the Liberalised Pension Rules which give benefit to those pensioners who had got their one-third pension commuted should be granted to the petitioners by awarding lump sum after increasing their pension and calculating such amount in proportion to the increased pension. We find no force in this contention as the petitioners fall in a different class altogether and are not entitled to claim any benefit granted to Central Government pensioners. After getting a lump sum in lieu of entire pension, they do not fall in the class of Central Government pensioners and are not entitled to any benefit granted to Central Government pensioners. The case of such Central Government pensioners who got their one-third pension commuted also fall in a different class inasmuch as they get two-third pension, and after 15 years of such commutation or having attained the age of 70 years whichever was later they become entitled to full pension. Petitioners on the other hand were not entitled to any pension after having received the lump sum amount in lieu of pension being commuted and having opted to receive such amount in lump sum at the time of entering the service in Public Sector Undertaking.

12. In the abovementioned civil appeal the legal question is identical except that the appellant in this case became a pensioner of the Central Government w.e.f. April 1, 1977 and the pension determined as payable to him was Rs. 609 per month and the same was got commuted by the appellant for a lump sum amount on and from August 7, 1978. The appellant had exercised the option for absorption in Steel Authority of India Limited (SAIL) a Public Sector Enterprise. The writ petition filed by him before the High Court of Delhi was dismissed on August 25, 1982. The appellant then filed a SLP against the said order. This Court had granted special leave on March 25, 1985 and had given a direction to hear the appeal along with the Writ Petition Nos. 11757 and 11758 of 1984.

13. In the result we find no force in all these cases and the same are dismissed with no order as to costs.

</html