

Union of India

Vs

Lieut (Mrs.) E.Iacats

(Sujata V. Manohar, M. Jagannadha Rao JJ)

06.08.1997

JUDGMENT

-

Mrs Sujata V. Manohar, J.

1. Pursuant to an advertisement the respondent applied for the post of a Nursing Sister (Lieutenant) in the Military Nursing Service for local service. She was selected and joined the post on 6th of February, 1959. On attaining the age of 55 years she was superannuated with effect from 30.11.1981. The respondent filed a writ petition in the Gauhati High Court challenging retirement at the age of 55 years on the ground that in other nursing services under the Military Establishment the age of retirement was 58 years. It was discriminatory to retire the nurses who were appointed for local service only at the age of 55 years. She also claimed Pensionary benefits on retirement. This petition has been allowed. Hence the appellants have filed the present appeal.

2. There are three different types of Military Nursing Service governed by their own different rules. These are - (1) Military Nursing Service (Regular), (2) Military Nursing Service (Civilian); and (3) Military Nursing Service (Local). The terms and conditions of service in the three services are separate. Under Army Instruction No. 14 issued on 12th of March, 1977 terms and conditions of service for employment of Nursing Officers for local duties are set out. Clause 1 provides that married nurses or nurses who are widow with encumbrances or are separated or divorced including those whose marriage has been dissolved and who have encumbrances, may be granted temporary commission, if otherwise suitable, in the military nursing service for local service only. The service so constituted is to be known as the Military Nursing Service (local). Clause 6 provides that candidates will be appointed in the rank of lieutenant and will not be eligible for further promotion. Clause 10 provides that they will normally be liable for service at one station only. Benefits available on superannuation are also set out. Clause 11 provides for terminal gratuity. It states that on final termination of service members of the Military Nursing Service (Local) will be eligible, subject to their service being satisfactory, to gratuity of one month's basic pay for each completed year of service. There is a provision under clause 12 for disability pension and under clause 13 for dependents' pension in the case of death of a local member of the military nursing service on account on an attributable cause. Since all appointees under the Military Nursing Service (Local) are appointed in the rank of lieutenant and they are not eligible for promotion, they retire as lieutenants. It is an accepted position that the retirement age for lieutenants is 55 years. This is reason why the respondent was retired at the age of 55 years. The terms and conditions of service as spelt out in Army Instruction No.14 do not provide for payment of any pension on retirement. There is a provision for payment of gratuity as already set out. However, the appellants appointed a study team to recommend improvements in service condition of Military Nursing Service (Local), including their pensionary benefits. Pursuant to the recommendations of this committee certain pensionary

benefits were extended to Military Nursing Service (Local) from 1st October, 1983 to those persons who retire after 1st of October, 1983.

3. The respondent contended that the denial of the benefit of pension to the respondent was discriminatory and that although she retired in 1981, she should also be given pensionary benefits in the same manner as those who had retired after 1st of October 1983. On the question of the age of retirement, though the respondent contended that Army Instruction No. 14 does not contain the age of retirement, the position relating to the age of retirement is unambiguous. All appointees in this Service hold the rank of Lieutenant with no eligibility for further promotion. Therefore, they must retire at the same age as a Lieutenant, which is at 55. The contention of the respondent that it is discriminatory not to have prescribed the same age of retirement for her as is prescribed for other military nursing services cannot be accepted. The terms and conditions attaching to the other two military nursing services are different from the terms and conditions attaching to Military Nursing Service (Local). One major difference lies in the fact that those who are appointed to Military Nursing Service (Local) are not liable to transfer and that married women or widows with children can avail of this service without any problem. We are told that under the terms and conditions of service of the other two military nursing services the person appointed is liable to transfer from one place to another and that there are also restrictions on married women or women with children being appointed to the other two services. If different nursing services are constituted under separate army instructions carrying their own separate terms and conditions of service, one cannot complain of discrimination if the ages of retirement prescribed under these different services are different. Each will be governed by its own rules and regulations. The respondent is, therefore, not justified in claiming that she has been discriminated against because she has retired at the age of 55.

4. The next question relates to payment of pension. Under Army Instruction No. 14 which was in force at the material time, the respondent, either on the date of her appointment or on the date of her retirement, or at any time during her service, did not have the benefit of pension on retirement. The terms and conditions of service were known to her at the time when she joined the service. At the time of joining service she has signed an agreement to abide by the Rules and Regulations governing Military Nursing Service (Local) from time to time. She has claimed that pensionary benefits which were conferred for the first time to all those who retired on or after 1st October, 1983 should be given to her although she retired much prior to that date. Although she has not challenged the cut-off date as arbitrary, reliance in this connection is placed by her on the decision in the case of *D.S. Nakara and Ors. Vs. Union of India* (1983 1 SCC 305). This decision has been subsequently explained and distinguished in a number of cases. In the case of *Dr.(Mrs.) Sushma Sharma etc. etc. Vs. State of Rajasthan & Ors.* (AIR 1985 SC 1367 at 1379) this court cited with approval the observations of this court in *Union of India & Anr. Etc. Vs. Parameswaran Match Works Ltd.* (AIR 1974 SC 2349) to the effect that the choice of a date as a basis of classification cannot always be dubbed as arbitrary unless it is capricious or whimsical. In the case of *State of West Bengal & Ors. Vs. Ratan Behari Dey & Ors.* (1993 (4) SCC 62) this court considered the pension scheme introduced by the Calcutta Municipal Corporation from 1.4.1977. It upheld the validity of the cut-off date. *Nakara's case* (supra) was distinguished on the ground that in *Nakara's case* by an artificial cut-off date. *Nakara's case* was an artificial cut-off date, distinction was sought to be made between retired employees who were governed by the same rules. However, when a pension scheme is introduced from a given date, there are two sets of employees who are governed by two different sets of rules. They cannot be treated as similarly situated. As the cut-off date was retrospective, this court also examined the reasonableness of this retrospective operation. It found the cut off date to be reasonable, it being based upon the date of appointment of the Pay Commission. In a recent decision in the case of *Commander, Head Quarter, Calcutta & Ors. Vs.*

Capt. Biplabendra Chanda (1997 (1) SCC 208) new rules reducing the minimum qualifying service for pension came into affect from 1.1.1986. The respondent who had retired prior to this date was not granted pension under the old rules as he did not qualify for pension under those rules. This Court, distinguishing Nakara's case (supra), held that he cannot be retrospectively made eligible under the new rules. Pensioners under the old rules and pensioners under the new rules are not similarly situated. Each set of retiring employees will be governed by their own rules in force when they retire.

5. The respondent, therefore, cannot claim the benefit of a scheme which came into operation from a date subsequent to the date of her retirement. The respondent also did not contend either before the High Court or in the grounds of appeal before us that a cut-off date for grant of pensionary benefit is arbitrary or unreasonable. Even otherwise in view of the fact that a study team was first appointed and pursuant to its report certain benefits were given after considering the report of the study group would show that the cut-off date had a logical nexus with the decision to grant these benefits on the basis of the report of the study team. Fresh financial benefits which are conferred also have to be based on proper estimates of financial outlay required. Bearing in mind all relevant factors, if such a benefit is conferred from a given date. Such conferment of benefits from a given date cannot be considered as arbitrary or unreasonable. The appeal is, therefore, allowed. The judgment and order of the High Court is set aside and the writ petition filed before the High Court is demised. There will, however, be no order as to costs.