

H.A. Vaishnav and ors. Vs. Union of India (Uoi) and ors.

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SooperKanoon Citation : sooperkanoon.com/54017

Court : Central Administrative Tribunal CAT Ahmedabad

Decided On : Apr-27-2000

Judge : V Ramakrishnan, A Sanghavi

Appellant : H.A. Vaishnav and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Pet/Ap. : Mr. Tanna Counsel

Judgement :

1. Mr. B.P. Tanna, learned Counsel appearing for the applicants in all matters and Mr. B.N. Doctor, learned Counsel appearing for the respondents.

All these 4 O.As raise common question of law and are being disposed of by this common judgment.

2. The applicants of all these O.As are Central Government employees who have retired between 1.1.93 and 31.12.95. Their main grievance pertains to non extension of recommendation of the 5th Pay Commission to their cases and they have prayed that they should be given the same benefit in respect of the liberalized pay scale, liberalized gratuity, higher commutation benefit, pension on the basis of the fitment in the revised scales corresponding to their pre revised scales at the time of the retirement etc. Mr. Tanna has submitted that while the petitioners have a claim for the liberalized pay scales etc. from an earlier date, they will be satisfied if a direction is given to extend the scales to them from a date

prior to their retirement and their pay in the revised pay scales may be fixed notionally and they will not press for actual financial arrears. Mr. Tanna takes note of the fact that the Government have since accepted the recommendations of the pay commission to grant pension at a level not less than 50% of the minimum of the revised pay scales of the post held by them prior to their retirement and that the alternate relief at para 9(B) of the O.A. sought for has been granted by the Government itself. He however, points out that the ceiling on gratuity has been raised to Rs. 3.5 lakhs from 1.1.96. Besides as per the Government of India orders issued on 14th July, 1995. Dearness Allowance linked to all India Consumer Price Index (CPI) 1201.66 has been treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity and the ceiling of the gratuity has also been raised to 2.50 lakhs for those who retired on or after 1.4.95. Mr. Tanna submits that the CPI of 1201.66 was reached prior to 1st July, 1993 and there is no rational for restricting this benefit of conversion of dearness allowance into dearness pay and increase in ceiling only to those who retired on or after 1.4.95 and this benefit should be given to the applicants also.

3. According to the applicant's case, the 5th Pay Commission was constituted by the Government of India on accepting the need for setting up of such Pay Commission vide Office Memorandum No. 7(26) E-III/93 dated 27.9.93. The Government had also issued O.M. dated 19.10.93 treating 20% of the basic pay as dearness pay for the purpose of commuting retirement gratuity/death gratuity giving effect of this order from 16.9.93. The 5th Pay Commission which was constituted vide Government of India's order dated 9.4.1994 gave its interim report in June 1995 and implementing its recommendations, the Government of India, liberalized the formula for the calculation of the gratuity by including in emoluments Dearness Allowance equivalent to 63% of the pay as in force in September, 1993 and increasing the ceiling of gratuity to 2.50 lakhs. The effect to these recommendations was given from dated 1.4.95. The applicants have contended that when the 20% of the Dearness Allowance was considered as dearness pay for the purpose of pay fixation of gratuity, no benefit was extended to them as the ceiling of the gratuity of Rs. 1 lakh had remained undisturbed. When the ceiling of the gratuity was enhanced to Rs. 2.50 lakhs by the order dated 14.7.95, the applicants were denied the benefits of liberalized formula and the extended ceiling

as the effect of this benefit was given from 1.4.95. They have further contended that in its final report, the Pay Commission has liberalized the definition of 'emoluments' for the purpose of gratuity (of all kinds including retirement gratuity) and the new formula for the calculation of the gratuity involved merging of 100% D.A at the time of the retirement. The commission has also recommended the removal of ceiling on the gratuity but the Government of India has not accepted the recommendation of the complete removal of the ceiling and has only raised the ceiling to Rs. 3.50 lakhs. The 5th Pay Commission has also recommended 1.1.96 as the cut off date for the extending the new pay scales, allowances, gratuity etc. This recommendation of the Commission of the cut off date of 1.1.96 does not take into account the plight of the employees who retired between 1.1.93 to 31.12.95. The applicants have alleged that the orders of the Government of India do not give any justification for cut off dates.

The commission also while recommending the cut off date of 1.1.96 and not recommending the date 16.9.93 has observed that if the recommendations are to be given effect from 16.9.93, the burden on Central Government's finance would be of alarming magnitude and that giving effect from 1.1.94 would also cause undue burden on the Government of India and has taken a decision that all its recommendations should be prospective in effect. The applicants have contended that the Commission has selected the date 1.1.96 arbitrarily and this selection of the date on the part of the Commission has caused great undue loss to the applicants. According to the applicants, the argument regarding financial burden does not hold any water as under the threat of agitation, the Government of India has upwardly revised the pay scales going even beyond the recommendations of the Commission, and given additional benefits of Rs. 7000 crores. They have also contended that the argument of giving prospective effect also does not stand the reasonable scrutiny as the Commission has itself given retrospective effect to its recommendations and therefore, the same cannot be said to be a legitimate argument. According to them, the decision of Central Government to implement the recommendation from 1.1.96 and not from 16.6.93, is quite arbitrary and the said has caused injustice to the petitioners as they have been denied the fitment in the new higher scales and higher gratuity. They have contended that extending the benefit of revised gratuity to one class of employees and non extending the

same to another class of employees is clearly discriminatory and it violates the provisions of Article 14 of the Constitution. They have therefore, prayed that they should also be treated on equal basis with the beneficiaries of the various recommendations of the Commission in respect of liberalized pay scales, liberalized gratuity, higher commutation benefit, pension on the basis of the fitment in the revised pay scales corresponding to their pre revised scales at the time of retirement pursuant to the order dated 16.4.95 and they be declared to be entitled to get the benefits of liberalization of the retirement benefits w.e.f 16,9.93.

4. The respondents have resisted these O.As and in their reply contended that in view of the several decisions of the Hon'ble Supreme Court and High Courts and different Benches of the Tribunal, it is a settled position that for implementing the recommendations of the Pay Commission, some cut off date will have to be provided and provision of this cut off date even if it results into denial of some benefits to some employees cannot be said to be irrational or arbitrary. They have also contended that choice of a date cannot be dubbed as arbitrary unless it is shown to be capricious and whimsical in the circumstances, and since cut off date as fixed in the instant case, has been fixed by the expert body like the pay commission, the same cannot be considered to be arbitrary or discriminatory.

According to the respondents, the 5th Pay Commission had given interim report on dated 9th May, 1995, recommending that the Dearness Allowance linked to the Average AICPI of 1201.66 should be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the CCS (Pension) Rules, 1972. It further recommended that the ceiling on gratuity be enhanced to Rs. 2.50 lakhs.

The Pay Commission had also recommended the implementation of this report w.e.f. 1.4.95. The Government of India considered and accepted the recommendations of the 5th Pay Commission and issued the orders in this regard on 14.7.95. Accordingly, the ceiling on the maximum amount of retirement gratuity/death gratuity was raised to 2.50 lakhs w.e.f 1.4.95 and Dearness Allowance was merged with the pay for the purpose of calculating the gratuity. They have however, contended that the question regarding cut off date of 1.4.95

being arbitrary and discriminatory for gratuity purpose, is answered in the case of Union of India v. P.N. Menon wherein the Supreme Court has laid down that whenever the revision takes place, a cut off date becomes imperative because the benefits has to be allowed within financial resources available with the Government. They have also contended that in O.A/1875/95 filed by Shri Surinder Kumar Jain v. Union of India, the Principal Bench of the C.A.T. New Delhi has dismissed the plea of the petitioner which wanted a direction that the interim relief to the pensioners be given from 16.9.93 instead of 1.4.95. According to the respondents since an identical plea was raised in that O.A. and the same has been answered by the Principal Bench in the negative, these O.As also should be rejected.

They have denied that deciding the cut off dates of 1.4.95 and 1.1.96 was arbitrary or irrational and have contended that these dates were applied on the recommendations of the expert body like pay commission which had also given good reasons for recommending the same. They have prayed that the O.As. be dismissed with costs.

5. We have heard the learned advocates of both the parties at length and have carefully gone through the various judgments cited at the bar.

Though the matters have been argued forcefully and at length on the part of the learned advocate of the applicants, the short question that arises for our decision is as to whether the cut off date fixed by Govt. of India for implementation of the interim report as well as final report of the 5th pay commission for the purpose of liberalised pay scales, retirement gratuity/death gratuity was fixed arbitrarily or irrationally.

6. It is an uncontroversial fact that recognizing the need for the revision of the pay scales, the Govt. of India vide its resolution No.5(12) E-III 193 dated 9.4.94 had constituted the 5th Pay Commission and this 5th Pay Commission had submitted its final report in January, 1997. Prior to submission of the final report, the commission had also submitted three interim reports and in the IInd interim report, the Commission had recommended that the D.A linked to the average AICPI 1201.66 as on July 1993 may be treated as dearness pay for reckoning the

emoluments for the purpose of retirement/death gratuity under the CCS (Pension) Rules, 1972. It had also recommended the enhancement of the gratuity to Rs. 2.50 lakhs from 1 lakh and to give effect to these recommendations from 1.4.95. In the final report submitted in January 1997, the Commission inter alia recommended the removal of cash ceiling and computation of gratuity of pay plus D.A on the date of retirement.

It also stated that along with other benefits the recommendations of the gratuity also be given effect from 1.1.96. These two dates i.e.

1.4.95 and 1.1.96 recommended and subsequently adopted by the Government as cut off dates for the implementation of the recommendations of the 5th Pay Commission are assailed before us on the ground of the same being arbitrary discriminatory and devoid of any rationalization.

7. Mr. B.P. Tanna, learned advocate appearing for the applicant has submitted that in 1993 when the Government accepted the need for the setting up of 5th Pay Commission in Parliament and subsequently constituted the Commission, the fact remained without being controverted that there was an erosion in the pay scale of the Central Government employees and that their pay scales and other benefits required to be revised. The applicants were in the service at that time and they expected that the Constitution of the Commission would be a blessing for them and the benefit of recommendations of the Commission would be extended to them also. He has further, submitted that on dated 16.9.93 when the decision to constitute the 5th Pay Commission was taken, all the applicants being in service, they constituted one single class for the purpose of recommendations of the Pay Commission along with other Central Government employees. They were therefore, entitled to all the benefits flowing from the recommendations of the 5th Pay Commission and to exclude them from any of the benefits would be in clear violation of the Article 14 of the Constitution. According to him, this would amount to creating different groups of employee in the same class and extending the benefits of the same Pay Commission to some and not to others on the basis of the different cut off dates.

According to him, the Commission by recommending the different cut off dates for the implementation of these recommendations and the Government of India on adopting those recommendations, have caused pecuniary loss to the applicants and artificially excluded the small portion of the employees who retired between 16.9.93 to 31.12.95. He has further submitted that in the interim report as well as the final report, the Commission has recommended the retrospective effect to be given for the implementation of the recommendations and when such retrospective effect was recommended, and the benefit was given to some employees, other employees who were left out by virtue of having retired earlier than 16.9.93 but before the cut off dates were clearly discriminated. Referring to the O.M. dated 14.7.95 whereby the ceiling on the maximum retirement gratuity/death gratuity was raised from Rs. 1.00 lakh to 2.50 lakhs and the D. A linked to the average AICPI 1201.66 as on July 1993 was decided to be treated as dearness pay for reckoning the emoluments for the purpose of retirement gratuity/death gratuity. He has argued that though the D.A. as on July 1993 was merged with the basic pay and the ceiling of Rs. 1 lakh was enhanced to Rs. 2.50 lakh, the effect of these recommendations was given from 1.4.95 defying all logic and rationalism. According to him most of the applicants, stagnated at the maximum of their pay scales, were entitled to the maximum gratuity of more than Rs. 1 lakh and following the treatment of 20% of the basic pay as dearness pay for the purpose of gratuity w.e.f. 16.9.93 all those in receipt of the basic pay in excess of Rs. 5,000 per month approximately, were entitled to the maximum gratuity. Even without merging of D.A as on 1.7.93, they were entitled to draw the gratuity in excess of Rs. 1 lakh. However, relaxing the ceiling of the gratuity w.e.f. 1.1.95 has deprived them of their legitimate financial entitlement and this has clearly resulted into a major pecuniary loss to them. Assailing the reasons given by the 5th Pay Commission as well as the Government for adopting cut off dates of 1.4.95 as well as 1.1.96. Mr. Tanna has submitted that the reasons given are hardly convincing and logical. One of the reasons according to him, given by the Pay Commission and the Government is regarding financial implication of accepting the demands but the subsequent conduct of the Government in not only accepting all the recommendations of the 5th Pay Commission, but even giving up ward revision of the pay scales and thereby incurring an additional burden of Rs. 7000 crores,

defeats the very argument of financial implication. According to him, if the benefit of enhanced gratuity had been extended to the employees w.e.f. 16.9.93 then also it would not have involved financial implication of Rs. 7000 crores. He has vehemently submitted that once this argument of financial burden is discarded then it becomes quite obvious that the cut off dates recommended by the Commission as well as accepted by the Government were arbitrary and without any rational.

Referring to the reason of prospectivity of the decision, Mr. Tanna has also submitted that the recommendations made in the final report in January 1997 are recommended for implementation w.e.f. 1.1.96 i.e.

giving retrospective effect at least of one year and the recommendations with regard to the enhancement of the gratuity to 2.50 lakhs were given effect from 1.4.95 which were also not prospective.

According to him, when these recommendations were stretched to 12 to 18 months retrospectively, the same could have been stretched much further to encompass the employees of 16.9.93. This would have mitigated the injustice to the applicants.

8. Mr. Doctor, learned advocate appearing for the respondents on the other hand has submitted that the cut off dates adopted by the Government were on the recommendations of the expert body and so far as the Government is concerned, there was no question of any arbitrary decision. According to Mr. Doctor, the 5th Pay Commission itself has given reasons in its recommendations for the effective date of these recommendations and if by virtue of adopting certain cut off dates if some employees are deprived of some of the benefits, then the same cannot be held illegal. Referring to the several decisions of the Supreme Court as well as High Courts and different benches of the Tribunal, Mr. Doctor has submitted that necessity of providing the cut off dates for implementing the recommendations of the Pay Commission is recognized by all the courts and the question of the arbitrariness in recommending the cut off dates does not arise at all. Pointing out that the Commission had all along taken a stand that all its recommendations should be implemented prospectively and that the 4th Pay Commission had also

recommended the revision of the pay scales w.e.f. 1.1.96 and that the 5th Pay Commission also in para 171.2 recommended that the Govt.

should consider the right of the employees to have a complete pay revision once in 10 years and that the date of implementation of the 6th Pay Commission should be redetermined as 1.1.2006, Mr. Doctor has submitted that cut off date of 1.1.96 suggested by the Commission and adopted by the Government cannot be said to be arbitrary or irrational.

Referring to para 171.3 of the 5th Pay Commission report, Mr. Doctor has submitted that the Pay Commission has given reasons for the cut off date of 1.1.96 and according to him these are logical reasons which cannot be discarded off handedly. The Commission has stated therein that in our chapter in Continuing Machinery for pay revision we have recommended revision of pay scales of Central Government once in every 10 years. Since the 4th Pay Commission came into effect from 1.1.86, our recommendations on revised pay scales and dearness allowances should logically be given effect from 1.1.96 at the 12 monthly AICPI as 1510. At the end, the Pay Commission has observed that many of the allowances being meant to reimburse the expenditure incurred by the employees should not be raised significantly on a retrospective basis, as they would thereby become a source of unintended benefit to the employees.

9. Now prior to the introduction of the liberalized pension rules, there was no provision for death cum retirement gratuity. With effect from 17.4.50, the gratuity at the rate of 9/20th emoluments for each completed years of qualifying service subject to a maximum of 15 times of emoluments was introduced. The rate of gratuity was improved w.e.f.

22.4.60 and was made 1/4th of emoluments of each completed 6 months' period of qualifying service. From 1.1.73 the ceiling of 15 months' of emoluments was enhanced to 16 1/2 times emoluments. The maximum emoluments for calculation of gratuity was Rs. 4000 p.m. and the gratuity was subject to a ceiling of Rs. 50,000. The 4th pay commission had recommended the enhancement of maximum ceiling of gratuity and the Govt. had enhanced the same from Rs. 50000 to 1 lakh w.e.f. 1.1.86.

Subsequently, in respect of the Govt. employees who retired or died after 16.9.93, 20% of the basic pay was allowed to be treated as dearness pay for the purpose of reckoning emoluments for calculating retirement gratuity and death gratuity. On the basis of the interim report of the 5th pay commission, the dearness allowance linked to AICPI 1201.66 obtaining as on 1.7.93 was treated as dearness pay for the purpose of DCRG and the date of effect was given from 1.4.95. The ceiling of DCRG was also raised from 1 lakh to 2.50 lakh w.e.f. 1.4.95.

10. The gratuity is subjected to three kinds of ceiling. First is the rate of gratuity which is half of a months' emolument for each completed year of service put in. This is subject to 2nd ceiling of 16 1/2 months in number of service and on the top of these other ceilings, there was a ceiling of 2.50 lakhs and subsequently it was enhanced to Rs, 3.50 lakhs by the Government on acceptance of the final report of the Commission. It is therefore, quite evident that the amount of the gratuity becoming payable on the date of retirement depends on the emoluments and subject to a cash ceiling. One of the submissions of Mr. Tanna was that while recommending the cut off date for the implementation of the interim report, as well as the final report, the erosion of the pay packet of the employees who retired prior to 1.4.95 or 1.1.96 was not taken into account by the Commission and thereby these employees were unnecessarily made to suffer.

According to Mr. Tanna, the revised pay fixation formula effective only for the employees w.e.f. to 1.1.96 did not consider the merger of the D. A with the basic pay and as such there was no benefit given to the persons retiring prior to 1.1.96, this has apparently created two different classes and hence, this cut off date can be said to be discriminatory and arbitrary.

11. The submission made by the learned Counsel appears to be not well founded when we consider the recommendations of the 5th pay commission.

While adopting the minimum pay scale, in para 41.7 under the heading of "Criteria accepted by the 5th Central Pay Commission" the commission has observed as under:- "we would like to adopt a modified version of the constant relative income criterion as possibly the most equitable norm, both from the point of view of the employee as well as the Government. Taking Rs. 750 as the basic pay fixed in

1986 and D. A of Rs. 1110 as on 1.1.96 we may adopt a compensation factor of 30.9% as being increase in the per capita net national product during the period 1986-95. This comes to Rs. 574.74 when it is added to the existing basic pay Rs. 750 and D.A as on 1.1.96 Rs. 1110, the total works out as Rs. 2434.75. This figure could be rounded off to Rs. 2440, which would also incidentally mean more than a threefold jump in the basic pay from Rs. 750 to 2440. The interim reliefs to Rs. 200 paid so far to the lowest functionary would naturally be subsumed within the above mentioned figure." It is therefore quite obvious that the commission has considered the D.A in the intervening period of 1986 to 1995 and added average enhanced per capita net national product. It is therefore, not correct to say that the commission had not taken into account the erosion in the emoluments on account of the inflanatory conditions.

12. The main thrust of the argument of Mr. Tanna related to the ground of financial constraint advanced by the pay commission for recommending the cut of dates being no more available to the Government, in view of the subsequent up ward revision of the pay scales and incurring the additional burden of Rs. 7000 crores by the Govt. According to Mr.

Tanna, even at the time of recommending the cut off dates for the raising of the ceiling of gratuity from 1 lakh to 2.50 lakhs in its interim report and subsequently in the final report, the commission has observed that the burden on the Central Government would be of alarming magnitude and considering these financial implications, as one of the major ground, these cut off dates were recommended. The commission had estimated that their recommendations would have additional financial implications of Rs. 8800 crores per annum. But while giving effect to these recommendations, the Government had even given something more than recommend to a Section of its employees incurring an additional burden of Rs. 7000 crores. This according to Mr. Tanna negates the main reason of financial constraint for not effecting the recommendations from earlier dates. The argument though quite attractive at a first glance, however, does not carry much weight. It is no doubt true that while recommending the cut off date of 1.4.95 for the implementation of the interim report, the commission had observed that substantial financial implications on accepting the demands put forth has to be also kept in

view and in the final report also, the commission has observed that the cut off date is recommended keeping in view the financial implications of the recommendations. The commission had clearly no reason to believe when those recommendations were made that the Governments' financial condition was sound enough to bear additional burden. It is also not the case of anybody that the Government, when it accepted the recommendations of the commission was in a sound financial position so as to bear the additional burden of these recommendations. Merely because the Government had to modify the pay scales and give some thing more than recommended under compulsion, it cannot be said that the reason of financial restraint was not there and that this ground should be discarded. A judicial notice can be taken of the fact that the up ward modification of the pay scales, than the one suggested by the commission, had to be made by the Government under compulsion and that this was done on the reasons other than the economic considerations. The recommendations of the commission were based purely on the economic considerations and therefore if subsequently, the Government under compulsion, other than the economic consideration, enhanced the financial liabilities, it cannot be said that the reasoning adopted by the commission was not correct and that consequently, the cut off dates recommended by the commission were also not correct and the same were arbitrary one. It is also not even the case of the applicants that the Government had adequate financial resources and was in a position to cull out the additional amount required for the payment of gratuity etc. The increase in the fiduciary deficit in the subsequent budget of the Government clearly reflects the financial burden that had to be borne by the Government under compulsion. Hence, it is not possible to agree with the submission of Mr. Tanna that the ground of financial restraint was not in existence and that the cut off dates recommended by the commission on this ground was not justifiable.

13. The question of whether gratuity must be paid on the stepped up basis, to all those who had retired before the date of up ward revision, with retrospective effect, even if the provision provides for prospective operation, in order not to offend Article 14 of the constitution of India had cropped up before the Supreme Court, immediately after the decision in the case of D.S. Nakara v. Union of India, 1983(1)SLJ 131 (SC) and in that case vizly. The State Government Pensioners

Association v. State of A.P., 1986(3) SCC 501, M.P. Thakkar (J) has observed as under:- "The upward revision of gratuity takes effect from the specified date (April 1, 1978) with prospective effect. The High Court has rightly understood and correctly applied the principle pronounced by this Court in Nakara case. There is no illegality or unconstitutionality (from the platform of Article 14 of the Constitution of India) involved in providing for prospective operation from the specified date. Even if that part of the notification which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation not retrospective operation. In that event (if the specified date line is effaced) it will operate only prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date. In order to make it retrospective so that it applies to all those who retired after the commencement of the Constitution of January 26, 1950, and before the date of issuance of the notification on March 26, 1980 the Court will have to re write the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively. Merely striking down (or effacing) the alleged offending portion whereby it is made effective from the specified date will not do. And this the Court cannot do. Besides giving prospective operation to such payments cannot by any stretch of imagination be condemned as offending Article 14. An illustration will make it clear. Improvements in pay scales by the very nature of things can be made prospectively so as to apply only those who are in the employment on the date of the up ward revision. Those who were in employment say in 1950, 1960, or 1970, lived spent and saved on the basis of the then prevailing cost of living structure and pay scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say in 1980. If up ward revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be, made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for up ward or down ward revision in the context of up wards or down ward revision of the formula evolved

later on in future unless the provision in this behalf expressly so provides retrospectively (down ward revision may not be legally permissible even)." 14. This decision obviously answers most of the submissions of Mr.

Tanna. The applicants who retired prior to 1.4.95 cannot be considered to be constituting a class for the purpose of gratuity and they cannot invoke Article 14, in order to claim higher pay scale as well as gratuity. In practically all other decisions since then, the Supreme Court has upheld the necessity of providing cut off date and has consistently held that merely because the cut off date is provided for implementing the recommendations of the pay commission or any scheme, it cannot be said to be arbitrary or irrational. Whenever a revision takes place the cut off date or effective date becomes imperative because the benefit is to be allowed within the financial resources available with the Governments. It has, however been laid down that the cut off date should have logical nexus to the decision for grant of the benefits on the basis of the report of the expert body, 15. In the case of Hari Ram Gupta (Dead) through L.R. Kasturi Devi v.State of U.P., 1998(6) SCC, 328 referring to the several other previous decisions, the Supreme Court has laid down as under:- "The only other question that survives for our consideration is whether the ratio in Nakara case will assist the appellant in getting the relief sought for. In D.S. Nakara v. Union of India, the question for consideration before this Court was whether on the basis of date of retirement the retirees can be classified into different groups and thereupon make provision granting some benefits to one group denying the others. In the aforesaid case, the provision for pension were applicable to all retirees and therefore, pensioners form a class as a whole, but when the liberalized pension scheme was introduced, the said scheme was made applicable to a group of pensioners and not to all and therefore, it was held by this Court that pensioners form a class as a whole and cannot be micro classified by an arbitrary, unprincipled and unreasonable eligibility criterion. It is to be noted that the aforesaid judgment was considered by this Court in the subsequent Constitution bench judgment of Krishena Kumar v. Union of India wherein the decision of Nakara was explained and it was held that the pension retirees and provident fund retirees do not form one homogeneous class and on the other hand, the rules governing the provident fund and its contribution are entirely different from the rules governing pension and therefore, it would not be

reasonable to argue that if applicable to the pension retirees must also equally be applicable to provident fund retirees. It was further held in the aforesaid case that the rights of each individual retiree finally crystallized on his retirement whereafter no continuing obligation remained in case of those who are governed by provident fund rule whereas in the case of pension retirees the obligation continues till the death of the employee. This Court categorically held that Nakara cannot be an authority for the decision Krishena Kumar. In Union of India v. P.N. Menon a similar question came up for consideration and distinguishing Nakara and following the Krishena Kumar and other similar cases, the Court held that whenever the Government or an Authority, which can be held to be a state within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service due to many constraints it is not always possible to extend the same benefits to one and all irrespective of the dates of superannuation. As such any revised scheme in respect of post retirement benefits, if implemented with a cut off date which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid.

Whenever a revision takes place, a cut off date becomes imperative because the benefits has to be allowed within the financial resources available with the Government. When the army personnel claimed the same pension irrespective of their date of retirement this Court in the Constitution Bench case of the Indian Ex Services League v. Union of India considered the grievance of ex service man who had laid the claim on the basis of Nakara but ultimately negated the same and followed Krishena Kumar. In All India Reserve Bank Retired Officers' Association v. Union of India when the validity of the introduction of pension scheme in lieu of contributory provident fund scheme was challenged on the ground that bank employees who retired prior to 1.1.86 have not been given the benefit of the said scheme, it was held by this Court that there is no arbitrariness in the same." (Emphasis supplied) 16. In the instant case, the cut off dates, adopted by the Government are not taken from a hat but admittedly the Government has accepted the recommendations of the expert body like the 5th pay commission in this regard also. So far these recommendations of the 5th pay commission are concerned, it is not that the effective dates are recommended in isolation for

gratuity by the commission, the cut off date for other benefits is also the same as that of the gratuity. The commission has while recommending the cut off date has stipulated in clear terms that they are adopting the policy of prospective implementation of the recommendations. In Para-54 of its second interim report, the commission has stated as under:- "As regards the date from which the recommendations should be given effect to, we are of the view that it will not be reasonable to give retrospective effect to them from such distant dates as have been suggested by the staff and others. This will also be contrary to the accepted principle that monetary benefits should normally accrue only prospectively. The substantial financial implications of accepting the demands as put forth also need to be kept in view.

After careful consideration, we recommend that our recommendations be implemented with effect from April 1, 1995." 17. Thereafter again in the final report, in para 133.89 the commission has reiterated as under:- "For grant of any benefit, prescription of a cut off date is essential. In view of Supreme Court's judgment upholding the right of the Government to prescribe a cut off date and a policy decision of this commission that all our recommendations shall have prospective effect, we do not recommend any change in our earlier recommendations of merger of 97% D A for computation of gratuity w.e.f. 1.4.95 and its applicability to those who retired or died on or after 1.4.95.

18. Linking the cut off date of 1.1.96 to 1.1.86, i.e. cut off date of 4th pay commission, the 5th pay commission has also recommended that after a decade i.e. from 1.1.2006 the revision of pay scales of the central government employees be made. In para 170.3 of the report, the commission has stated as under:- "The 3rd and the 4th CPCs submitted their reports in March, 1975 and June 1986 and their recommendations were given effect from 1.3.73 and 1.1.86 respectively. In our chapter on continuing Machinery for the Pay revision, we have recommended revision of pay scale of Central Government employees once every 10 years. Since the 4th CPC pay scales came into effect from 1.1.86, our recommendations on revised pay scales and dearness allowances should logically be given effect from 1.1.96 at the 12 monthly AICPI average of 1510. This will prepare the ground for a decennial pay revision for Central Government employees in the years to

come. Even though this effective date, recommended by us, will also cast a burden of 15 months arrear payments on the Central Government's next budget, it is felt that this reasonable and legitimate claim of the Central Government employees cannot be wished away. Our recommendations on pensionary benefits shall also be given effect from 1.1.96. However, our recommendations on introduction of new allowances, revision of rates of allowances etc. (including CCA) may be given effect to prospectively, because of the heavy financial liabilities involved and also due to the fact that many of the increases in the rates of existing allowances have made a qualitative difference to the allowances rather than being just a marginal increase. Many of the allowances being meant to reimburse expenditure incurred by the employee should not be raised significantly on a retrospective basis as they would thereby become a source of unintended benefit to the employees." 19. From the above narration, it cannot be said that there is no rational in providing any cut off date in both the cases. It is not that the commission had not given any reasons for the cut off date and had arbitrarily picked the date from a hat, it may be that some people may not agree with the reasons given by the pay commission for adopting the cut off date, but that does not mean that the reasoning given are arbitrary or irrational or that there is no nexus between the cut off date and decision for its implementing the recommendations.

20. So far as the applicants are concerned, they having been paid gratuity on the basis of the salary drawn on the date of retirement this transaction as held by the Supreme Court in the case of State Government Pensioners Association v. State of Andhra Pradesh, (supra) is completed and closed and could not be re-opened as a result of the enhancement made at a later date for the persons retiring on later date subsequently. Mr. Tanna has submitted that while prescribing the cut off date the Government had given retrospective effect to the recommendations of the pay commission and if this much retrospective effect could be given, the same could have been extended to 1.7.93. His grievance was that when the Government specified a date giving retrospective effect of 18 months, the same could have easily been extended further to the date on which the Government had accepted in principle that there was a necessity for the revision of the pay scales. It is no doubt true that retrospective effect to the recommendations made by the

commission in 1997, is given by the Government but then the cut off date is not picked up by the Government and the Government has only adopted the recommendations of the expert body like pay commission. The pay commission had its own reasons for recommending this date as prior to the 2nd interim report, first interim report was already given and the Government had also paid interim relief to the employees. Furthermore, extending this benefit beyond 18 months retrospectively would nullify the policy of prospective implementation of recommendations adopted by the commission. This would open up pandora box for others to claim other benefits from earlier dates. This would have clearly carried an unbearable financial burden for Government. It is therefore, obvious that commission had stretched the effective date as back as possible and has clearly implied in its report that further stretching back would be impossible. Furthermore, the Government can also always specify the date with effect, from, which the recommendations are to be implemented and so long as the date to be specified is not discriminatory or arbitrary, this Tribunal or the Court cannot interfere on the ground of discrimination. This Principle is up held by the Supreme Court in the case of State of West Bengal v. Ratan Behari Dey, (1993) 4 SCC 62=1994(1) SLJ 12 (SC). Further more in the case of Union of India v. P.N. Menon referred to earlier. It is observed as under:- "The decision to merge a part of the D.A with pay, when the price index level was at 272, appears to have been taken on basis of the recommendations of the Third Pay Commission. As such, it cannot be held that the cut off date has been selected in arbitrary or irrational manner. Not only in matters of revising pensionary benefits but even in respect of the revision of scales of pay, a cut off date on some rational or reasonable basis has to be fixed for extending the benefits." It is further observed therein that no scheme can be held to be fool proof so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be while examining any such grievance to see as to whether a particular date for extending a particular benefit or scheme has been fixed on objective and rational consideration." 21. These observations clearly apply with full force to the facts of the instant case. It may be that the Government had adopted the recommendations of the 5th Pay Commission to give effect of revision of the ceiling of the gratuity from a cut off date but then the Government cannot be

compelled to extend that benefits so as to cover all the employees who retired prior to the cut off date. The financial implication was one consideration which weighed with the commission in recommending the aforesaid date and it is not shown by the applicants that there were no such financial constraint when the said date was recommended. The policy of the prospective implementation of the recommendations adopted by the Government also cannot be said to be irrational or unjustifiable.

22. Mr. Tanna has submitted that the liberalized pay scales should be given retrospective effect from September 1993. He brings out that the Central Government employees were pressing for the acceptance of the Fourth Pay Commission's recommendations to set up a permanent machinery to undertake a periodical review of their pay and allowances. The matter was discussed in a number of meetings of the National Council of the Joint Consultative Machinery and finally in September 1993, the Government while not conceding the demand to implement the above recommendations nevertheless promised to appoint a new pay commission to review the pay structure of the Central Government employees. Mr.

Tanna contends that the liberalized pay scales are to be given effect from the date on which the Government agreed to set up the pay commission.

We find that this suggestion of Mr. Tanna has not been followed at any time in the past. The practice has been to give effect to the revised pay scales recommended by the pay commission from the beginning of the year in which the report is submitted and such a cut off date has been held to be reasonable by the Supreme Court and not with effect from the date on which the Govt. took the decision to set up the pay commission.

In the present case, the Fifth Pay Commission has given its report in January 1997 and it recommended that the revised pay scales may be given effect to from 1.1.96 recording detailed reasons for suggesting such a date.

If Mr. Tanna's argument for granting the liberalized pay scales from an earlier date is agreed to, it will take away the very basis on which the pay structure has been

drawn up. The pay commission in para 41.7 of its report while adopting the minimum pay scales has made certain observations which has been referred to in para 11 of this order. The pay commission had then taken into account (a) the sum of Rs. 750 as basic pay fixed in 1986 (b) D.A. of Rs. 1110 as on 31.12.1995 and (c) a compensation formula of 30.9% being increase in per capita national product during the period 1986 to 1995, working out to Rs. 574.74 making a total of Rs. 2434.75 and recommended the minimum of the lowest scale at Rs. 2440. In other words it took into account the D.A of Rs. 1110 which relates to the CPI as on 31.12.1995. It is a different matter, that the Government agreed to increase the minimum pay and also for higher rate of increase of 40% instead of 20% for fixation of pay in the revised scale, on account of agitation by the employees. But the fact remains that the pay commission had gone on the basis of certain criteria. If the cut off date namely 1.1.96 is to be advanced for giving effect to the new pay scales, it has to be linked to the consumer price index of the concerned earlier date such as September 1993 and not as on 31.12.95 and the pay structure will substantially change. This would amount to the Court ordering the re-writing of the entire pay structure which it cannot do.

Mr. Tanna has stated that if the liberalized pay scales are given effect from September 1993 the applicants will be satisfied with the notional fixation of pay and will not claim for financial arrears. The issue involved is whether fixing the cut off date as 1.1.96 is rational and arbitrary. Any advancement will effect not only the applicants who had retired but also all the Central Government employees in service on that date and they will have a right to get their pay re-fixed in the revised pay scales from such an earlier date. We have held that the cut off date as on 1.1.96 is not arbitrary and there is no question of advancing the same. The fact that the applicants have agreed to forgo the financial arrears and have stated that they will be satisfied if notional fixation of pay is done in the liberalized pay scales without claiming financial arrears along with the additional gratuity is not therefore material.

As regards the gratuity the same gets crystallized on the date of retirement of the application the basis of the salary drawn by them, on that date. In the present case, it will be reckoned as per the pay drawn by them in the pre revised scales

not the liberalized pay scales and the applicants have no right to get their gratuity calculated on the basis of notional fixation of pay in the liberalized pay scales.

23. Mr. Tanna had argued that the action of the Government in giving the benefit of conversion of part of the Dearness Allowance (D. A) linked to CPI 1201.66 as Dearness Pay (DP) only to those who retired on or after 1st April 1995 is irrational and arbitrary. He has submitted that the CPI 1201.66 was reached before 1st July 1993 and such a conversion of D.A as DP for reckoning emoluments for the purpose of gratuity should take effect from a date not later than September 1993 when the decision was taken to set up the pay commission. He states that in Menon's case the Supreme Court has upheld the decision of the Government to give effect to the merger of part of D.A with pay effect from 30.9.97 when the price index level reached 272 on that date and the Third pay commission had made certain recommendations when the CPI reached 272. In the present case, price index level of 1201.66 was reached before September 1993 and the benefit of such merger should have been extended to those who retired on or after September 1993.

We find that the terms of reference of the Fifth pay commission were enlarged by the Government by a resolution dated 12.1.1995 and sub para 2(f) was added to read as follows:- "2(f): The commission may consider the demands of the staff side and the National Council of Joint Consultative Machinery for grant of another instalment of Interim relief and merger of a further portion of D.A with pay (for the purpose of gratuity alone) and send the report thereon, if the commission feels that it will not be possible for them to submit their final report within a period of 18 months from the date of its appointment.

While considering these demands, the Fifth Pay Commission may take into account the interim relief and the merger of 20% D.A with pay only for the purpose of gratuity already sanctioned by the Government in September 1993".

The commission accordingly considered this matter and submitted its second interim report to the Government on 2nd May, 1995. We may reproduce paras 53 and 54 of this interim report as follows:- Para 53 :- After due consideration, we recommend that the dearness allowances linked to the average AICPI 1201.66 as

on July 1, 1993 (representing respectively, 97% and 73% and 63% of the basic pay in respect of employees drawing pay up to Rs. 3500 per month, above Rs. 3500 but up to Rs. 6000 per month and above Rs. 6000 per month) may be treated as dearness pay for reckoning emoluments for the purpose of retirement/death gratuity under the Central Civil Services (Pension) Rules, 1972. Further, the ceiling on gratuity may be enhanced to Rs. 2.5 lakhs.

Para 54 :--As regards the date from which the recommendations should be given effect to, we are of the view that it will not be reasonable to give retrospective effect to them from such distant dates as have been suggested by the staff side and others. This will also be contrary to the accepted principle that monetary benefits should normally accrue only prospectively. The substantial financial implications of accepting the demands as put forth also need to be kept in view. After careful consideration, we recommend that our recommendations be implemented with effect from April 1, 1995".

Two benefits were given by these recommendations namely (1) merger of dearness allowances as on 1st July 1993 as DP for reckoning emoluments for the purpose of gratuity and (2) the ceiling on gratuity was enhanced from Rs. 1 lakh to Rs. 2.5 lakhs. The commission had noted that monetary benefits should normally accrue only prospectively, As it had finalized its second interim report in April 1995 which was presented to the Government on 2nd May 1995, it had suggested the implementation of the recommendations w.e.f. April 1, 1995.

The comparison with the CPI 272 referred to in the case of Menon as sought to be done by Mr. Tanna is not quite relevant for the present purpose. The Third Pay Commission had suggested setting up a new pay commission when the CPI reached 272 points. The C.P.I. 272 and thus a special significance. In view of the inflationary situation, this point was reached on 30.9.97 much earlier than could have been anticipated and the Government decided to merge the D. A as on that date as part of pay by terming it as DP. No particular significance is attached to the CPI of 1201.66 excepting that it was the twelve monthly average as on 1.7.93 on the basis of the which D. A was sanctioned with effect from the date. This was the last instalment of D. A before the decision to set up a pay commission was

taken in September 1993. The CPI of 1201.66 does not therefore stand on the same footing as the CPI of 272.

In the present case, the Government of India had in their order dated 14.7.95 accepted the recommendations of the Pay Commission in its second interim report and have conveyed their decision in their order dated 14.7.95. The date 1.4.95 has been recommended by the pay commission as such a recommendations was formulated in April 1995 and the second interim report was presented to the Government on 2.5.95.

The decision to merge part of the dearness allowances as dearness pay and also to raise the ceiling on gratuity are in the nature of new decisions which are generally given effect to only prospectively. We see nothing irrational in the decision of the Government fixing 1.4.95 as the cut off date.

24. Under the circumstances, it is not possible to agree with the submission of Mr. Tanna that the cut off dates adopted by the Government for implementing the recommendations of the 5th pay commission with regard to the gratuity were arbitrary and unreasonable.

It therefore cannot be held that the orders issued by the Government in adopting these cut off dates are violative of Article 14 of the Constitution and require to be set aside.

25. Mr. B.N. Doctor, learned advocate appearing for the respondents has relied upon several decisions of different Benches of CAT where the very question of cut off date being arbitrary was considered and decided. Without entering into merit of these cases, we may state that practically in all those cases, the validity of the cut off date is up held and the applications have been rejected. The cases are as follows:- 1. D. Arjuna Rao and Ors. v. Chief General Manager, Department of Telecommunication, O.A 292/96 decided on 18.11.96 by the Hyderabad Bench.

2. Narinder Singh Kohli v. Union of India, O.A. No. 962/95 decided on 25.7.97.

3. C.P. Agrish v. Union of India, O.A. 634/97 decided on 3.6.97 by the Chandigarh Bench.

4. Gurnam Singh v. Union of India, O.A. No. 1315/96 decided on 3.2.98 by the Chandigarh Bench. Dr. Asa Singh and Ors. v. State of Punjab decided by the Punjab and Haryana High Court in Civil Writ Petition No. 14763/90 decided on 22.4.91. The same was taken in appeal by way of LPA No. 756/91 by the State of Punjab in the judgment dated 25.11.92 the Division Bench of the Punjab High Court had rejected the appeal and this was taken in appeal to the Supreme Court by way of SLP No. 6660/94 but the same was dismissed by the Supreme Court.

6. Amal Kanti Kanjilal v. Union of India, in O.A. No. 1196/98 decided on 29.6.98, by the Principal Bench of CAT, New Delhi.

7. G.S. Chaman v. Union of India in O.A. No. 2630/96 decided on 12.9.97 by the Principal Bench of CAT, New Delhi.

In all the above decision, the validity of the cut off date is upheld and these decisions are also binding to this Tribunal.

26. For the reasons discussed above, we do not see any merit in these O.As and are of the opinion that all the O.As deserve to be rejected.

We, however, put on record our appreciation of the pain taken by Mr.

Tanna Counsel for the applicants in procuring the material required and providing valuable assistance to this Tribunal. In the conclusion, the O.A. No. 229/96, 794/96, 318/98, and 651/98 stand dismissed with no order as to costs.

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