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Court : Central Administrative Tribunal CAT Delhi

Decided On : Sep-03-2007

Judge : S Raju, C A Chitra

Appellant : J.B. Gupta, Ex-senior Auditor

Respondent : Union of India (Uoi) Through the

Judgement :

1. By virtue of this OA applicant, who has retired compulsorily by way of punishment with 20% cut in pension on 14.2.2006, has sought benefit of leave encashment and challenged the vires of OM dated 13.2.2006.

2. Applicant, who was proceeded for a major penalty, was inflicted a punishment of compulsory retirement from service with 20% cut in pension for 15 years and gratuity as well by an order passed on 14.2.2002.

3. On the ground that other similarly circumstanced have been allowed leave salary, OA-1853/2004 filed by applicant was dismissed on 13.9.2005, holding that negative equality has no place under Article 14 of the Constitution of India and would not accord an indefeasible right to applicant.

4. Meanwhile, on demand of the staff side and in consultation with the Ministry of Finance, Rule 39 (5-A) of the CCS (Leave) Rules, 1972 has been deleted and those who have been compulsorily retired as a measure of punishment with imposition of cut in pension previously when not entitled to the leave encashment have been made entitled but the orders have been made effective from the date of its issue, i.e., 13.2.2006.

The aforesaid has been assailed.

5. Learned Counsel of applicant would contend that by enforcing the operation of the entitlement of leave salary to the compulsorily retired persons from 13.2.2006 has no intelligible differentia with the object sought to be achieved.

6. Learned Counsel would contend that such a cut off date would violate the dicta of the decision of the Constitution Bench of the Apex Court in D.S. Nakara v. Union of India 7. Learned Counsel would further contend that there is no rationale in the cut off date, which is arbitrary and is violative of Articles 14 and 16 of the Constitution of India.

8. On the other hand, learned Counsel of respondents vehemently opposed the contentions and stated that OM dated 13.2.2006 was made effective from 13.2.2006 and there is no scope for re-opening old cases.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. Admittedly, before 13.2.2006 when Rule 39 (5-A) of CCS (Leave) Rules, 1972 existed, those who have been compulsorily retired as a measure of punishment with cut in pension, were not entitled to 300 days encashment of leave. This impediment has been done away with on deletion of the aforesaid Rule, but prospectively.Ramrao v.All India Backward Class Bank Employees Welfare Association and Ors.

2004 (1) SC SLJ 283 held as follows: 29. It is now well-settled that for the purpose of effecting promotion, the employer is required to fix a date for the purpose of effecting promotion and, thus, unless cut off date so fixed is held to be arbitrary or unreasonable, the same cannot be set side as offending Article 14 of the Constitution of India. In the instant case, the cut off date so fixed having regard to the directions contained by the National Industrial Tribunal which had been given a retrospective effect cannot be said to be arbitrary, irrational, whimsical or capricious.

30. The learned Counsel could not point out as to how the said date can be said to be arbitrary and, thus, violative of Article 14 of the Constitution of India.

31. It is not in dispute that a cut-off date can be provided in terms of the provisions of the statute or executive order. In University Grants Commission v. Sadhana Chaudhary and Ors.

. It has been observed: 21. It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: Union of India v. Parameswaran Match Works 32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employee seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.In State of W.B. v. Monotosh Roy and Anr. , it was held:In All India Reserve Bank Retired Officers' Association v. Union of India 1992 Supp (1) SCC 664 : 1992 SCC (L&S) 517 : (1992) 19 ATC 856 a Bench of this Court distinguished the judgment in Nakara, and pointed out that it is for the Government to fix a cut-off date in the case of introducing a new pension scheme.

The Court negatived the claim of the persons who had retired prior to the cut-off date and had collected their retiral benefits from the employer. A similar view was taken in Union of India v. P.N. MenonIn State of Rajasthan v. Amrit Lal Gandhi the ruling in P.N. Menon case (supra) was followed and it was reiterated that in matters of revising the pensionary benefits and even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits.In State of U.P. v. Jogendra Singh a Division Bench of this Court held that liberalized provisions introduced after an employee's retirement with regard to retiral benefits cannot be availed of by such an employee. In that case the employee retired voluntarily on 12-4-1976. Later on, the statutory rules were amended by Notification dated 18-11-1976 granting benefit of additional qualifying service in case of voluntary retirement. The Court held that the employee was not entitled to get the benefit of the liberalized provision which came into existence after his retirement. A similar ruling was rendered in V. Kasturi v. Managing Director, State Bank of India .

15. The present case will be governed squarely by the last two rulings referred to above. We have no doubt whatever that the first respondent is not entitled to the relief prayed for by him in the writ petition....In Vice Chairman & Managing Director, A.P.S.I.D.C. Ltd. and Anr.

v. R. Varaprasad and Ors. 2003 (4) Supreme 245 in relation to 'cut off' date fixed for the purpose of implementation of Voluntary Retirement Scheme, it was said: ...The employee may continue in service in the interregnum by virtue of Clause (i) but that cannot alter the date on which the benefits that were due to an employee under the VRS to be calculated. Clause (c) itself indicates that any increase in salary after the cut off point/date cannot be taken into consideration for the purpose of calculation of payments to which an

employee is entitled under the VRS. 36. The High Court in its impugned judgment has arrived at a finding of fact that the Association had failed to prove any malice on the part of the authorities of the Bank in fixing the cut off date. A plea of malice as is well-known must be specifically pleaded and proved. Even such a requirement has not been complied with by the writ petitioners.

12. Furthermore, in State of Punjab and Ors. v. Amarnath Goyal and Ors.

2005 SCC (L&S) 910 insofar as cut off date and it significance is concerned, the financial constraints to the Government has been found to be apt, with the following observations:In Action Committee South Eastern Railway Pensioners v. Union of India, it was held that, on merger of a part of dearness allowance as dearness pay on average price index level at 272 with reference to different pay ranges, fixing a cut-off date in such a manner was not arbitrary and the principle enunciated in D.S. Nakara (supra) was not applicable. In this connection, the ratios in Krishena Kumar v. Union of India, Indian Ex-Services LeagueUnion of India, State Government Pensioners' Association v. State of A.P., and All India Reserve Bank Retired Officers' Association v. Union of India are apt. In all these cases, the prescription of a cut-off date for implementation of such benefits was held not to be arbitrary, irrational or violative of Article 14 of the Constitution.

32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including in the following two cases. In State of Rajasthan and Anr. v. Amritlal Gandhi and Ors., this Court went so as far as to note that: Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990 33. More recently, in Veerasamy (supra), this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis.

In that case, the pension scheme applied differently to persons who had retired from service before 1.7.1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.In State of Punjab and Ors. v. Boota Singh and Anr., ("Boota Singh") after considering several judgments of this Court in D.S. Nakara (supra) to K.L. Rathee v. Union of India, it was held that D.S. Nakara (supra) should not be interpreted to mean that the emoluments of persons who retired after a notified date holding the same status, must be treated to be the same.In State of Punjab and Anr. v. J. L. Gupta and Ors., where one of us was on the Bench (Sabharwal, J.), the views expressed in Boota Singh (supra) were reiterated, and it was held that for the grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary.In Ramrao and Ors. v. All India Backward Class Bank Employees Welfare Association and Ors., a Division Bench of this Court said, even for the purpose of effecting promotion, the fixing of a cut-off date was neither arbitrary, unreasonable nor did it offend Article 14 of the Constitution. Moreover, the Court held that possible hardship to be endured by a person as a result did not make cut-off dates violative of Article 14.

37. In the instant case before us, the cut-off date has been fixed as 1.4.1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that the fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14.

13. What is discerned from the reading of the above dicta, we are of the considered view that having failed to establish any arbitrariness or irrationality, which offends Article 14 of the Constitution of India, those who retired before 13.2.2006 as a measure of punishment compulsorily and those who retired after 2006 constitute different class and are not equal. A policy decision of the Government when has an object sought to be achieved, i.e., not to re-open old cases, a person falling on the wrong side of the cut off date, would not be allowed to successfully assail the cut off date only on the ground of undue hardship.

14. Moreover, the CCS (Leave) Rules, 1972 are subordinate legislation and in view of the decision of the Apex

Court in Vice-Chancellor, M.D.University v. Jahan Singh 2007 (2) SCC (L&S) 118 it is ruled that a subordinate legislation cannot be given retrospective effect.

15. Having regard to the above, we do not find any infirmity in the OM impugned before us. The same is intra vires. Hence, the claim of applicant is found bereft of merit and the OA is accordingly dismissed.

No costs.