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K.L. RATHEE

v.

UNION OF INDIA AND ORS.

JULY 7, 1997

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[S.C. AGRAWAL AND S.C. SEN, JJ.]

Service Law—CCS(Pension) Rules, 1972—Rule 5—Liberalised Pension Formula, 1979—Applicability of—Pension was to be calculated on the basis of average salary drawn over a period of last ten months—Applicability of the C *principle even to those persons who had retired before the notified date—Emoluments to be calculated according to Government rules in force at the time of retirement of the employees.*

On 25.5.1979 the Government of India introduced Liberalised Pension D **Formula with revised method of calculation of pension based on slab system and raised monthly pension to Rs. 1500 p.m. The benefit of this liberalised Pension Formula, 1979 was made available only to those Government servants who retired on or after 31.3.1979. The fixation of cut off date of 31.3.1979 was challenged as arbitrary. This Court allowing the Writ Petition held that all the pensioners governed by CCS (Pension) Rules 1972 will be** E **governed by this liberalised scheme of pension irrespective of the date of their retirement. Accordingly, the Government issued orders extending the benefit of the judgment to all pensioners covered by CCS (Pension) Rules as well as liberalised Pension Rules, 1950. The Government clarified that only the benefit of this liberalisation should be allowed to all pensioners as had been mentioned in the Government Orders and that in all other respects the** F **rules, prevalent on the date of retirement of the pensioners will apply; that the revised pension was to be computed on the average emoluments drawn during the last 10 months of service. However, the definition of 'emoluments' as in force at the time of the retirement of an employee had not undergone any change. The petitioner, who retired from Government Service on** G **1.5.1968, as Joint Secretary, after having got pension and other retirement benefits according to the Government rules in force at that time, claimed that he had to be given the same amount of pension as other employees of his rank irrespective of the date of retirement and argued that there should be no discrimination among the persons getting pension from the Government as there cannot be any classification among the retired Government** H **employees on the basis of date of retirement, and they must be given higher**

pension on the same basis as it was being given to persons who had retired after 1.4.1979. A

Dismissing the writ petition, this Court

HELD : According to the clarification issued by the Ministry of Finance, the average of the last ten months' emoluments must form the B basis for calculation of pension. That means those who were actually drawing larger emoluments in the last ten months of their service will get large amounts of pension. *Nakara's* Case does not lay down that the same amount of pension must be paid to all persons retiring from Government service irrespective of the date of retirement. There is only one class of C government employees for the purpose of calculation of pension. There cannot be any mini classification of Government servants for calculating the amount of pension payable. That means the same method should be adopted for calculating pension for all Government servants. Even if pension is calculated on the basis of the same formula the basis of calculation has to be the average of the last ten month's emoluments as D the basis for calculation of pension must be uniformly applied to all persons drawing pension from the Central Government. It however, does not mean that the quantum of emoluments drawn during the last ten months of service of each Government employee must be taken to be the same. The emoluments have to be calculated according to the Government E rules in force at the time of retirement of the employees. *Nakara's* case is not a case of universal application irrespective of the facts and circumstances of the case. When the Government decided that pension was to be calculated on the basis of average salary drawn over a period of last ten months, it was held in *Nakara's* case that this principle has to be applied F even to those persons who had retired before the notified date. That, however, does not mean that the emoluments of the persons who were retiring after the notified date and those who have retired before the notified date holding the same status must be treated to be the same.

[429-D; 432-B-G-H; 431-B-C; 433-A]

D.S. Nakara & Ors. v. *Union of India & Ors.*, [1983] 2 SCR 165 and G *Indian Ex-Services Leaque and Ors. Etc.* v. *Union of India and Ors. Etc.*, [1991] 1 SCR 158, relied on.

Krishena Kumar v. *Union of India and Others*, AIR (1990) SC 1782 and *Union of India* v. *All India Services Pensioners' Association and another*, H

A **AIR (1988) SC 501, distinguished.**

CIVIL ORIGINAL JURISDICTION : Civil Writ Petition No. 15434 of 1984.

(Under Article 32 of the Constitution of India.)

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S. Balakrishnan, S. Prasad and M.K.D. Namboodiri for the Petitioner.

K. Lahiri, G. Venkatesh Rao and C.V. Subba Rao, for the Respondents.

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The Judgment of the Court was delivered by

SEN, J. On 1.5.1968 the petitioner retired from Government service as Secretary, Industrial Licensing Policy Inquiry Committee and Joint
D Secretary to the Government of India in the Ministry of Industrial Development and Company Affairs, New Delhi. The petitioner got pension and other retirement benefits according to the Government rules in force at that time. On 25.5.1979 the Government of India introduced Liberalised Pension Formula. The main feature of this Formula was that it introduced revised method of calculation of pension based on slab system and raised
E monthly pension to Rs. 1500 per month. The benefit of the Liberalised Pension Formula, 1979 was made available only to those Government servants who retired on or after 31.3.1979. A Writ Petition was filed in this Court challenging the fixation of the cut-off date of 31.3.1979 for payment of liberalised pension. It was claimed that irrespective of the date of
F retirement the benefit of the Liberalised Pension Formula must be made available to all the pensioners. This Court upheld the contention of the petitioner and held that all the pensioners governed by 1972 Rules will be governed by this liberalised scheme of pension irrespective of the date of their retirement. In that case *D.S. Nakara & Ors.* v. *Union of India & Ors.*, [1983] 2 SCR 165, it was argued on behalf of the petitioners that all
G petitioners entitled to receive pension under the relevant rules formed a class irrespective of the date of their retirement. There could not be a mini classification within this class. The classification based on retirement before or subsequent to the specified date was invalid. The scheme of liberalisation in computation of pension must be uniformly enforced with regard to
H all pensioners.

On the basis of the judgment of this Court on 22.10.1983 the Government issued orders extending the benefit of the judgment to all pensioners covered by CCS (Pension) Rules 1972 as well as Liberalised Pension Rules, 1950. A

After promulgation of the Order dated 22.10.1983 doubts arose regarding the extent of the benefit of various liberalisations made from time to time in Pension Rules. It was clarified by the Government that only the benefit of this liberalisation should be allowed to all pensioners as had been mentioned in the Government Orders dated 22.10.1983. In all other respects the rules, prevalent on the date of retirement of the pensioners, will apply. B C

According to the clarification issued by the Ministry of Finance, the revised pension is to be computed on the average emoluments drawn during the last 10 months of service. This rule will apply to all the pensioners. However, the definition of emoluments as in force at the time of the retirement of an employee has not undergone any change. The case of the petitioner is the following *Nakara's* case he has to be given the same amount of pension as other employees of his rank irrespective of the date of retirement. D

The case of the petitioner is that the judgment in *Nakara's* Case leaves no room for doubt that there should be no discrimination among the persons getting pension from the Government. There cannot be any classification among the retired Government employees on the basis of date of retirement. Therefore, they must be given higher pension on the same basis as it was being given to persons who have retired after 1st April, 1979. E F

We are unable to uphold this contention. *Nakara's* Case (supra) dealt with the manner of calculation of pension on the basis of average emoluments of a retired Government employee. Prior to the liberalisation of the formula for computation of pension made by the memorandum dated 25th May, 1979, average emoluments of the last thirty months of service of the employee provided the basis for calculation of pension. The 1979 memorandum provided that average emoluments must be calculated on the basis of the emoluments received by a Government servant during the last ten months of the service. That apart, a new slab system for computa- G H

A tion of pension was introduced and the ceiling on pension was raised. As a result of these changes, the pensioners who retired prior to the specified date suffered triple jeopardy, viz., lower average emoluments, absence of slab system and the lower ceiling. This Court struck down the provision including the memorandum which provided that :

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> "the new rates of pension are effective from 1st April, 1979 and will be applicable to all service officers who became/become non-effective on or after that date."

The Court further held :

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> "Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible."

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It is to be seen that the judgment did not strike down the definition of 'emoluments'. It merely held that if pension was to be calculated on the basis of the last ten months' emoluments of a Government servant, after 1.4.1979, there is no reason why those who have retired before 1.4.1979 should get pension calculated on the basis of average of last thirty six months' emoluments. In other words, the rule of computation must be the same. This Court did not hold that those who have retired before 1.4.1979 must be treated as having the same emoluments as those who retired on or after 1.4.1979 for the purpose of calculation of pension. Therefore, on the strength of *Nakara's* Case (supra), the petitioner is not entitled to ask for computation of pension with reference to emoluments which he never got. Rule 5(1) of CCS (Pension) Rules, 1972 provides :

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> "5(1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be."

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The average of the last ten months' emoluments must form the basis for calculation of pension. That means those who were actually drawing

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larger emoluments in the last ten months of their service will get larger amounts of pension. *Nakara's* Case does not lay down that the same amount of pension must be paid to all persons retiring from Government service irrespective of the date of retirement. The contention of the petitioner that there is only one class of Government employees for the purpose of calculation of pension cannot be disputed. The Constitution Bench in *Nakara's* Case has clearly laid down that there cannot be any mini classification of Government servants for calculating the amount of pension payable. That means the same method should be adopted for calculating pension for all Government servants. But the question is what should be the quantum of pension payable to a Government servant? Even if pension is calculated on the basis of the same formula the basis of calculation has to be the average of the last ten months' emoluments. This principle of adopting last ten months' emoluments as the basis for calculation of pension must be uniformly applied to all persons drawing pension from the Central Government. This was all that was laid down in *Nakara's* case. It, however, did not mean that the quantum of emoluments drawn during the last ten months of service of each Government employee must be taken to be the same for this purpose.

This aspect of the question was examined in the case of *Indian Ex-Services League and Ors. Etc.* v. *Union of India and Ors. Etc.*, [1991] 1 SCR 158. The case was argued on behalf of Armed Forces personnel retiring from commissioned ranks as well as Armed Forces personnel retiring from below the commissioned rank who were represented by Shri K.L. Rathee, J.S. Verma, J. (As His Lordship, then was) speaking for the Constitution Bench which heard the matter observed that the contention of the writ petitioners on the basis of *Nakara* decision was untenable. On behalf of the petitioners, it had been contended that all retirees who held the same ranks irrespective of their date of retirement must be given the same amount of pension. In effect, what was urged was that there must be "one rank one pension" for all the retirees irrespective of their date of retirement. This contention of the petitioners was rejected by the Constitution Bench by holding that *Nakara's* decision was of limited application. There was no scope for enlarging the ambit of that decision to cover all claims made by the petitioners for identical amount of pension to every retired person from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation

A of pension were different.

In fact, the principle laid down in the case of *Indian Ex- service League & Ors.* (supra) negates the case of the petitioner in the instant case. *Nakara's* case does not lay down that the last ten months emoluments must be deemed to be the same for all the employees at the time of their B retirement. The emoluments have to be calculated according to the Government rules in force at the time of retirement of the employee. But, if the principle of *average of last ten months' emoluments* has been adopted for some employees, then that principle must be extended to all the employees who have retired before them. *Nakara's* Case did not lay down C that the reckonable emoluments for the purpose of calculation of pension must be the same for a person occupying the same post.

It is also to be noted that the case of *Krishena Kumar* v. *Union of India and Others,* AIR (1990) SC 1782, another Constitution Bench examined the question whether on the strength of *Nakara's* Case, petitioners D were entitled to the same Provident Fund benefits as were given to those who retired subsequent to 31st March, 1979. It was argued on behalf of the petitioner that State's obligation towards pensioners was the same as that towards persons who were to be paid Provident Fund benefits. This Court held that that was not the ratio of *Nakara's* Case. On retirement of an E employee, legal obligation under the Provident Fund account ended on payment of the Provident Fund dues of the employee. The Rules Governing Provident Fund and contribution to such Fund were entirely different from the rules governing pension.

It was also held in the case of *Union of India* v. *All India Services* F *Pensioners' Association and Another*, AIR 1988 SC 501, that the principles laid down in *Nakara's* Case could not be extended to the case of payment of gratuity.

It clearly appears from all these cases that *Nakara's* case is not a case of universal application irrespective of the facts and circumstances of the G case. When the Government decided that pension was to be calculated on the basis of average salary drawn over a period of last ten months, it was held in *Nakara,* that this principle has to be applied even to those persons who had retired before the notified date. That, however, does not mean that the emoluments of the persons who were retiring after the notified H date and those who have retired before the notified date holding the same

status must be treated to be the same. This argument was specifically negatived by the Constitution Bench in the case of *All India Services Pensioners' Association*, (supra). What the petitioner is claiming in this case is more or less the same relief as was denied to him in the above case. A

In view of the aforesaid, this writ petition must fail and is dismissed with no order as to costs. B

R.A. Petition dismissed.