

Des Raj Bhatnagar And Anr. Etc vs Union Of India on 13 February, 1991

Equivalent citations: 1991 SCR (1) 356, 1991 SCC (2) 266, 1991 AIR SCW 523, 1991 (2) SCC 266, (1991) 1 SCR 356 (SC), (1991) 62 FACLR 428, 1991 SCC (L&S) 495, (1991) 16 ATC 469, (1991) 1 CURLR 633, (1991) 2 SERVLR 116, 1991 UJ(SC) 2 65, (1991) 1 JT 443 (SC)

Author: N.M. Kasliwal

Bench: N.M. Kasliwal, K. Ramaswamy

PETITIONER:

DES RAJ BHATNAGAR AND ANR. ETC.

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 13/02/1991

BENCH:

KASLIWAL, N.M. (J)

BENCH:

KASLIWAL, N.M. (J)

RAMASWAMY, K.

CITATION:

1991 SCR (1) 356

1991 SCC (2) 266

JT 1991 (1) 443

1991 SCALE (1) 208

ACT:

Constitution of India: Articles 14 and 16. Central Government employees absorbed in Central Public Sector Undertakings-Entitlement of pensionary benefits-Central Civil Service (Pension) Rules, 1972: O. MS. dated 13.2.1976 and 22.10.1983-Validity of.

Service Law: Central Civil Service (Pension) Rules, 1972: Liberalised Pension Formula, 1979: O. Ms. dated 13.2.1976 and 22.10.1983-Central Government pensioners-Relief and adhoc relief on pension-Central Government employees absorbed in Central Public Sector Undertakings-Retiring from Central Government service - Commuted original pension-Whether eligible to be treated as Central Government pensioners.

Central Civil Service (Pension) Rules, 1972: Commutation of pension-Effect of.

HEADNOTE:

The petitioners, who were Central Government employees, on their absorption in a Central Public Sector Undertaking, retired from Central Government service on different dates prior to 31.3.1979, and commuted their original pension for a lump sum as permissible under the Civil Service (Pension) Rules, 1972.

The Central Government issued O.M. dated 13.2.1976, enabling an officer who commuted a portion of his pension to be eligible for relief and ad hoc reliefs on the full amount of his original pension, but persons who got themselves absorbed in Public Sector Undertakings were not eligible to the said benefits. Taking note of the erosion in the value of the rupee, the Government, by O.M. dated 25.5.1979, introduced the Liberalised Pension Formula, benefit of which, by this Court's decision in D.S. Nakara's case was extended to all Central Government pensioners irrespective of the dates of their retirement. In order to implement the said decision, the Government issued O.M. dated 22.10.1983, but the benefit was not given to those persons who got themselves absorbed in Central Public Sector Undertakings and received/opted to receive commuted raise of 1/3rd of pension as well as

357

terminal benefits equal to the commuted value of the balance amount of pension left after such commutation.

The petitioners challenged the validity of the aforesaid O.Ms. dated 13.2.1976 and 22.10.1983 and contended that for the purposes of grant of the full benefit of relief or ad hoc relief, the Rules do not make any distinction between an officer who has sought commutation of a portion of his original pension and one who has not sought any such commutation; and as the petitioners who opted for commutation of their original pension in accordance with the Rules were being arbitrarily and without just and reasonable cause deprived of the relief, the aforesaid Office Memoranda were vitiated by an inherent discrimination and were violative of Articles 14 and 16 of the Constitution.

The facts of the appeal were identical to those of the petitions except that the appellant came before this Court in appeal against the order of the High Court which dismissed his writ petition.

On the question: whether the petitioners/appellants fell in the category of Central Government pensioners for the purpose of entitlement to the benefit of the Liberalised Pension Formula or did they fall in a different class altogether and were not entitled to get any such benefit,

Dismissing the writ petitions and the appeal, this Court,

HELD: 1. Clause 5 of O.M. dated 22.10-1983 is clear that such Central Government employees who got themselves absorbed under Central Public Sector Undertakings prior to 1.4.1979 and opted to receive commuted raise for 1/3rd of pension as well as terminal benefit equal to the commuted value of the balance amount of pension were not entitled to any benefit as they were not Central Government Pensioners as on 1.4-1979. [362B-C]

2. Commutation brings about certain advantages. The person who commutes his pension gets a lump sum which ordinarily he would have received in the course of his spread over period subject to his continuing to live. The two advantages of the commutation are the availability of a lump sum and the risk factor. The allowance of Family Pension to such person does not however make them entitled to get any benefit that is given to the pensioners on account of Liberalised Pension Rules taking note of the fallen value of the rupee. [362F-G, 363A-B]

3.1 In the instant case, the petitioners had not only got 1/3rd of

358

their pension commuted but exercised the option of getting the entire pension commuted and in lieu thereof got a lump sum. Such persons cannot fall in the category of Central Government pensioners for the purposes of getting benefit of the Liberalised Pension Rules which can be made applicable only to Central Government pensioners. [362G-H, 363A]

3.2 The petitioners fell in a different class altogether and were not entitled to claim any benefit granted to the Central Government Pensioners. After getting a lump sum in lieu of entire pension, they did not fall in the class of Central Government pensioners and were not entitled to any benefit granted to such pensioners. The case of the Central Government pensioners who got their 1/3rd pension commuted also fail in a different class inasmuch as they got 2/3rd pension, and after 15 years of such commutation or having attained the age of 70 years whichever was later, they became entitled to full pension. [363C-D]

"Common Cause" a Registered Society & Ors. v. Union of India, [1987] 1 SCC 142, distinguished.

D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos.11757 & 11758 of 1984.

(Under Article 32 of the Constitution of India).

WITH Civil Appeal No. 1124 of 1985.

P.P. Rao, K. Jagan Mohan Rao and Raju Ramachandran for the Petitioners.

V.C. Mahajan, Ms. A Subhashini and R.B. Mishra for the Respondent.

The Judgment of the Court was delivered by KASLIWAL, J. The above writ petitions and appeal are disposed of by one single order as identical question of law are involved in these cases. In order to appreciate the controversy we would narrate the facts of the writ petitions. Shri Des Raj Bhatnagar, Petitioner DES No. 1 and Shri Ved Pal Seth, Petitioner No.2 were employees of the Central Government. The petitioner No. 1 after serving in various capacities in the Department of food of the Central Government from 24.10.1941 to 31.8.1971 (29 years and 10 months) was permanently absorbed in Food Corporation of India as Assistant on 1st September, 1971 and retired from the Government service.

The petitioner No. 2 after serving the Government in various capacities for the period from 5.11.1947 to 8.2.1972 (20 years and 3 months) was permanently absorbed on 9.2.1972 in Food Corporation of India as Sr. Asstt. Manager and retired from the Government service.

On absorption in the Food Corporation of India, the petitioners were required to exercise either of the following two options:

- (a) Receiving the pro-rata monthly pension and death-cum-retirement gratuity as admissible under the rules; and
- (b) Receiving the pro-rata gratuity and a lumpsum amount in lieu of pension worked out with reference to commutation table obtaining on the date from which the pension was to be admissible and under the option order.

The office of the Pay and Accounts Officer, Ministry of Food and Agriculture determined the original pension payable to the petitioners per mensem. The petitioners were sanctioned original pensions in accordance with the provisions of the Central Civil Service (Pension) Rules, 1972. In case of petitioner No. 1 the original pension was determined at Rs. 240 per mensem payable from 1st September, 1971. In case of petitioner No. 2 the original pension admissible was determined at Rs.287 per mensem payable from 9.2.1972.

The petitioner No. 1 received his pension @ Rs.240 per mensem for the period from 1.9.1971 to 29.10.1972. Petitioner No. 2 received his pension @ Rs.287 per mensem for the period from 9.2.1972 to 16.8.1972. Under the above Rules maximum of one third of the amount of admissible pension could be commuted. However, in the case of Government officers including Industrial Management Pool Officers who were opting for permanent absorption in Public Sector Undertakings, an option was given to commute the full amount of their original pension. The

petitioner No. 1 and petitioner No. 2 commuted their original pensions for a lumpsum of Rs.35,568 and Rs.43,601 on 30.10.1972 and 17.8.1972 respectively.

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

The Ministry of Finance Office Memorandum No. F. 22(8)- EV(A)/75 dated 13.2.1976 inter alia, provided that where an officer on his retirement commutes a portion of his pension he is eligible for relief and ad hoc reliefs in pension on the full amount of original pension as admissible to him. Under the said O.M. the term 'Pension' includes for the purposes of ad hoc relief the commuted portion of pension, if any. The case of the petitioners is that according to these Rules, an officer who has commuted any part of this pension and an officer who has not opted for any commutation both receive the full quantum of relief and ad hoc relief on full amount of original pension. It has thus been contended that for the purposes of grant of the full benefit of relief or ad hoc relief the Rules do not make any distinction between an officer who has sought commutation of his original pension and one who has not sought any such commutation. The petitioner and other Government servants who opted for commutation of their original pension in accordance with the Rules are being arbitrarily and without just and reasonable cause are deprived of the relief and ad hoc relief on commutation in pursuance of the Office Memorandum dated 13.2.1976. Though, an officer who commutes one third of his pension gets relief and ad hoc relief on the basis of original amount of his pension but whereas an officer commutes whole of his original pension is deprived of the entire amount of the relief or ad hoc relief. The petitioners have thus contended that aforesaid Office Memorandum dated 13.2.1976 is vitiated by an inherent discrimination and is violative of Articles 14 and 16 of the Constitution.

The petitioners have further submitted that they are entitled to the aforesaid reliefs granted to all other Government pensioners, and the amount of relief to which pensioners are entitled and has been denied to them under the impugned Office Memorandum dated 13.2. 1976 works out to Rs. 13,592 and Rs. 15,040 in case of petitioner No. 1 and petitioner No. 2 respectively upto 29.2.1984. The Ministry of Finance in their Office Memorandum No. 2(8)/EV/82 dated 10.10.1983 has sanctioned the grant of relief and ad hoc reliefs to Government servants who retired prior to 10th September, 1979 @ 92.5% of their original pension subject to minimum of Rs.93 and maximum of Rs.463 with effect from 1st July, 1983. This has been done by taking in view the decline in the purchasing power of the rupee and the original sanction being insufficient and meagre to sustain the

pensioners.

Apart from the above the petitioners have submitted that they are also entitled to the benefit of Liberalised Pension Formula of 1979, which was introduced vide the Finance Ministry's Office Memorandum No. F. 19(37)/EV/79 dated 25.5.1979, in respect of the approved pensionable service rendered by them in the Central Government as admissible to other pensioners who retired from Government service between 17.4.1950 to 31.3.1979. The said Memorandum was made applicable only to those Government servants who retired from service on or after 31.3.1979. However, this Court in *D.S. Nakara & Others v. Union of India*, [1983] 2 SCR 165 held that all Central Government pensioners governed by the Central Civil Service (Pension) Rules, 1972 were entitled to pension w.e.f. 1.4.1979 as computed under the Liberalised Pension Formula irrespective of the date of their retirement. Placing reliance on the above decision it has been claimed that there should be no discrimination between the applicability of the Liberalised Pension Formula to pre 31.3.1979 pensioners and there is no just and reasonable cause in denying such benefit to the petitioners under the impugned Office Memorandum No. F. 1(3)/EV/83 dated 22.10.1983. Clause 5 of the Office Memorandum dated 22.10.1983 reads as under:

"Central Government employees, who got themselves absorbed under Central Public sector undertaking/autonomous bodies prior to 1.4.1979 and have received/or opted to receive commuted raise for 1/3rd of pension as well as terminal benefit equal to the commuted value of the balance amount of pension left after commuting 1/3rd, of pension, are not entitled to any benefit under these orders as they were not Central Government pensioners as on 1.4.79. In cases where only a portion of pension has been commuted the pension will have to be enhanced in accordance with these orders with effect from 1.4.1979". The above clause makes it clear that such Central Government employees, who got themselves absorbed under Central Public Sector Undertakings prior to 1.4.1979 and opted to receive commuted raise for 1/3rd of pension as well as terminal benefit equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension were not entitled to any benefit as they were not Central Government pensioners as on 1.4.1979. An identical writ petition No. 1068/1987 under Art. 32 of the constitution was filed on behalf of the Welfare Association of absorbed Central Government Employees in Public Enterprises and this Court dismissed the said writ petition on April 12, 1990. In the said writ petition benefit of Judgment of this Court in "*Common Cause*" a Registered Society & Ors. v. Union of India, [1987] 1 SCC 142 was claimed but the same was negated by making a distinction that the Writ Petition "*Common Cause*" was on behalf of the Government servants who had commuted their pension partially and this Court for the reasons indicated in the judgment came to hold that on the expiry of 15 years from the date of commutation the entire pension revived. The petitioners were persons who had, at the time of retirement from Government service and entering into public sector had taken the advantage of commuting the entire pension. They certainly belong to a class different from those whose case was before this Court at the instance of the common cause in Writ Petition Nos. 1955-61 of 1983. It was further held in the above case that the commutation does bring certain advantages to the committees and the class of Government officers whom the petitioner seeks to represent have derived such benefits.' We find no reason to take a different view. The commutation brings about certain advantages. The commuting pensioner gets a lumpsum amount which ordinarily he would have received in the course of his spread over period subject to his continuing to live. Thus, two

advantages are certainly forthcoming out of commutation-(1) availability of a lumpsum amount, and (2) the risk factor. In the present case the petitioners had not only got 1/3rd of their pension commuted but exercised the option of getting the entire pension commuted and in lieu thereof got a lumpsum. Such persons cannot fall in the category of Central Government pensioners for the purposes of getting benefit of Liberalised Pension Rules which can be made applicable only to Central Government Pensioners. It is no doubt correct that the family pension has been allowed in case of the persons like the petitioners but that does not make them entitled to get any benefit given to the pensioners on account of the liberalised Pension Rules taking note of the fallen value of the rupee.

It was contended by Mr. Rao on behalf of the petitioners that the petitioners are not claiming any pension but their contention is that the Liberalised Pension Rules which given benefit to those pensioners who had got their 1/3rd pension commuted should be granted to the petitioners by awarding lumpsum after increasing their pension and calculating such amount in proportion to the increased pension. We find no force in this contention as the petitioners fall in a different class altogether and are not entitled to claim any benefit granted to Central Government pensioners. After getting a lumpsum in lieu of entire pension, they do not fall in the class of Central Government pensioners and are not entitled to any benefit granted to Central Government pensioners. The case of such Central Government pensioners who got their 1/3rd pension commuted also fall in a different class in as much as they get 2/3rd pension, and after 15 years of such commutation or having attained the age of 70 years whichever was later they become entitled to full pension. Petitioners on the other hand were not entitled to any pension after having received the lumpsum amount in lieu of pension being commuted and having opted to receive such amount in lumpsum at the time of entering the service in Public, Sector Undertaking.

In the above mentioned civil appeal the legal question is identical except that the appellant in this case became a pensioner of the Central Government w.e.f. 1.4.1977 and the pension determined as payable to him was Rs.609 per month and the same was got commuted by the appellant for a lumpsum amount on and from 7.8.1978. The appellant had exercised the option for absorption in Steel Authority of India Limited (SAIL) a Public Sector Enterprise. The Writ Petition filed by him before the High Court of Delhi was dismissed on 25.8.1982. The appellant then filed a S.L.P. against the said order. This Court had granted special leave on 25.3.1985 and had given a direction to hear the appeal alongwith the writ petition Nos. 11757 & 11758 of 1984.

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

R.P.

Petitions and Appeal
dismissed.