Krishena Kumar And Anr. Etc. Etc vs Union Of India And Ors on 13 July, 1990

Equivalent citations: 1990 AIR 1782, 1990 SCR (3) 352, AIR 1990 SUPREME COURT 1782, 1990 (4) SCC 207, 1990 LAB IC 1490, (1990) 2 LAB LN 1063, (1990) 2 UPLBEC 1257, (1990) 14 ATC 846, (1990) 2 CURLR 424, (1991) 1 LABLJ 191, (1990) 4 SERVLR 716, (1990) 3 JT 173 (SC), 1991 SCC (L&S) 112

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Bench: K.N. Saikia, Sabyasachi Mukharji, B.C. Ray, M.H. Kania, S.C. Agrawal

PETITIONER:
KRISHENA KUMAR AND ANR. ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT13/07/1990

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
MUKHARJI, SABYASACHI (CJ)
RAY, B.C. (J)
KANIA, M.H.
AGRAWAL, S.C. (J)

CITATION:
1990 AIR 1782 1990 SCR (3) 352
1990 SCC (4) 207 JT 1990 (3) 173
1990 SCALE (2)44
CITATOR INFO :
RF 1991 SC 672 (19)
RF 1991 SC1182 (14,21)
F 1991 SC1743 (2,4)
RF 1991 SC1818 (5)
RF 1992 SC 767 (7,10)

ACT:
Constitution of India, 1950: Article 141--Policy of courts is to stand by precedent and not disturb settled point.
Civil Services: Railway Board Circular dated May 8, 1987-Change over of railway employees from SRPF (Contributo-

ry Scheme) to Pension Scheme--12th option--Exercise of Para 3.1--Whether constitutionally valid.

HEADNOTE:

The petitioners are retired railway employees who were covered by the Railway Contributory Provident Fund Scheme. The Provident Fund Scheme was replaced in the year 1957 by the Pension Scheme. The employees who entered Railway service on or after 1.4.1957 were automatically covered by the Pension Scheme instead of the Provident Fund Scheme. The employees who were already in service on 1.4.1957 were given an option either to retain the Provident Fund benefits or to switch over to the pensionary benefits. The petitioners had opted for Contributory Provident Fund Scheme.

The petitioners' case is that till 1.4.1957 or even sometime thereafter, the pensionary benefits and the alternative Contributory Provident Fund benefits were considered to be more or less equally beneficial; at the time when the option was given to choose between pension and Provident Fund, the employees had no idea that in future improvements would be made to either of them; and that as a result of the decision of the Railways to implement the judgment of this Court in D.S. Nakara v. Union of India, [1983] 2 SCR 165, and to extend the liberalised pension benefits even to those railway employees who had retired long before the liberalisations of pension were introduced, the pension retirees derived manifold benefits while P.F. retirees' benefits remained stagnant.

The main legal contention of the petitioners is that the Railways had issued twelve notifications giving option to certain Provident Fund retirees after the respective cut-off dates, to opt for the Pension Scheme

353

even after their retirement, but the same options were not given to other similarly situated Provident Fund retirees beyond the respective cut-off dates, which was discriminatory and hence violative of Art. 14 of the Constitution. It is further contended that the notifications specifying cut-off dates were arbitrary and un-related to the objects sought to be achieved by giving of the option, and therefore violative of Article 14 and also of the principle laid down in Nakara's case. According to counsel, the principle is that pension retirees could not be divided by such arbitrary cut-off dates for the purpose of giving benefits to some and not to other similarly situated employees. It is submitted that by analogy the principle is equally applicable to the Provident Fund retirees as a class.

On these grounds, it is prayed that applying the law laid down in Nakara's case this Court should simply strike down or read down paragraph 3.1 of the 12th option dated 8.5.1987. That paragraph said that all Contributory Provi-

dent Fund beneficiaries who were in service on 1.1.86 and who were still in service on the date of the order would be deemed to have come over to the pension scheme. It is submitted that once this limiting requirement is removed all the Contributory Provident Fund beneficiaries shall be eligible and will be deemed to have come over to the pension scheme. As the basis for striking or reading down paragraph 3.1 on Nakara's ratio, it is urged that all the Railway employees both in service and pensioners constitute one family and must be treated as one class, and Government's obligation to look after the retired Railway employees both under the pension scheme and the provident fund scheme being the same, they could not be treated differently, and any differential treatment will be discriminatory and violative of Article 14 of the Constitution of India. In Nakara's case the date arbitrarily chosen was struck down and, as a result, the revised formula for computing pension was made applicable to all the retired pensioners.

On behalf of the respondents it was contended that the options were meant to give the Provident Fund retirees after the specified dates option to switch over to Pension Scheme and that each specified date had nexus with the reason for granting the particular option. It is further submitted that the petitioners' basic assumption is erroneous inasmuch as Nakara's case did not hold that whenever there was a liberalisation of pension, aH other pension retirees and Provident Fund retirees must be given the option, and that the older system of pension or Provident Fund was always insufficient.

Dismissing the writ petitions and the Special Leave Petition, this Court,

354

HELD: (1) The doctrine of precedent, that is, being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required." [374A-B]

(2) The enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. [382A; 374D]

Caledonian Railway Co. v. Walker's Trustees, and Quin v. Leathern, [1901] A.C. 495 (502), referred to.

(3) Apart from Article 141 of the Constitution the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. [381F-G]

(4). In Nakara's case it was never required to be decided that all the retirees formed a class and no further classification was permissible. At the same time it was never held in that case that both the pension retirees and the Provident Fund retirees formed a homogeneous class and that any further classification among them could be violative of Article 14. On the other hand, the Court had clearly observed that it was not dealing with the problem of a "fund". [380H]

(5) The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under Contributory Provident Fund Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystalized, and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand, under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. Therefore, the provident fund retirees could not be treated at par with the living
355
pensioners. There was, therefore, no discrimination, and the question of striking down or reading down clause 3.1 of the 12th option does not arise. [380H; 381A-B; 382F]

Union of India v. Ghansham Das & Ors., S.L.P. No. 5973 of 1988 and Union of India v. Bidhubhushan Malik, [1984] 3 SCC 95, distinguished.

(6) The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to Provident Fund retirees. [381C]

(7) An imaginary definition of obligation to include all the Government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case. [381E]

D.S. Nakara v. Union of India, [1983] 2 SCC 165, explained.

(8) The argument is that the State's obligation towards pension retirees is the same as that towards Provident Fund retirees. That may be morally so. But that was not the ratio decidendi of Nakara. Legislation has not said so. To say so legally would amount to legislation by enlarging the circumference of the obligation and converting a moral obligation into a legal obligation. [380C-D]

(9) The statements made on behalf of the respondents to the effect that cut-off dates had nexus with the reason for granting the particular option, has been substantiated by

facts. The cut-off dates were not arbitrarily chosen but had nexus with the purpose for which the option was given. [382B-D]

(10) That the Pension Scheme and the Provident Fund Scheme are structurally different is also the view of the Central Pay Commissions, and hence ex-gratia benefits have been recommended, which may be suitably increased. [383E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 8461 of 1986.

From the Judgment and Order dated 31.3.1986 of the Central Administrative Tribunal, New Delhi, in Original Appln. No. 40 of 1986.

AND Writ Petition Nos. 1285, 1575/86, 352,361 & 1165 of 1989. (Under Article 32 of the Constitution of India). Petitioners in Person in SLP 8461 of 1986 and W.P. No. 1285 of 1986.

Shanti Bhushan, Mrs. Swaran Mahajan, Ms. Anuradha Maha- jan, Mrs. Rekha Pandey, Jayant Bhushan, Badri Das Sharma, C.V. Francis, Ramesh Babu, Ms. Santosh Paul and G. Prakash, for the Petitioners in W.P. No. 1575 of 1986, 352,361 and 1165 of 1989.

Kapil Sibal, Additional Solicitor General, R.B. Datar, Mukul Mudgal, C.V. Subba Rao, B.D. Sharma, R.B. Mishra, B.K. Prasad and A.M. Khanwilkar for the Respondents. N.P. Saxena for the Intervener.

The Judgment of the Court was delivered by K.N. SAIKIA, J. This analogous cluster of five writ petitions and one special leave petition involves a common question of law. The petitioner in Writ Petition No. 352 of 1989 is the President of the All India Retired Railwaymen (P.F. Terms) Association and the petition has been filed in a representative capacity on behalf of all the members of the Association who retired with Provident Fund benefits. Writ Petition No. 361 of 1989 has been filed by three indi- vidual retired Railway employees who also retired with Provident Fund benefits. The petitioner in Writ Petition No. 1285 of 1986 retired as Block Inspector of Northern Railway on 7.1.1968, a non-pensionable post. All the petitioners except petitioner No. 5 in W.P. No. 1575 of 1986 retired from Railway service high posts. Petitioner No. 1 retired as Additional Member, Railway Board on 5.11.1960 with Provident Fund benefits. Petitioner No. 2 was Member, Railway Board and similarly retired on 1.3. 1968 opting for Provident Fund Scheme as at that time the maximum monthly pension was Rs.675 only. Petitioner No. 3 similarly retired as General Manager on 5.12.1960. Petitioner No. 4 retired as Member (Staff) Railway Board and Ex-officio Secretary to the Gov- ernment of India on 30.6.1977 opting for the Provident Fund Scheme. Petitioner No. 5 also retired on 19.6.1972 opting for the Provident Fund Scheme. Petitioner No. 6 retired on 28.8.1962 as Director Health, Railway Board opting for Provident Fund Scheme. Petitioner No. 7 similarly retired on 17.2.1968 as Director, Railway Board. Petitioner No. 8 retired as General Manager, Indian Railways on 15.10.1966 with the Contributory Provi- dent Fund Scheme. The petitioners in Writ Petition No. 1165 of 1989are also similarly retired persons. The petitioner in Special Leave Petition

(Civil) No. 8461 of 1986 retired as Assistant Auditor, with Provident Fund benefits. His claim to switch over to pension after retirement was rejected. The petitioners are thus retired railway employees who were covered by or had opted for the Railway Contributory Provi- dent Fund Scheme. It is the petitioners' case that before 1957 the only scheme for retirement benefits in the Railways was the Provident Fund Scheme wherein each employee had to contribute till retirement a portion of his annual income towards the Provident Fund and the Railways as the employer would make a matching contribution thereto. This provident Fund Scheme was replaced in the year 1957 by the Pension Scheme whereunder the Railways would give posterior to his retirement certain monthly pension to each retired employee instead of making prior contribution to his Provident Fund. It is stated that the employees who entered Railway service on or after 1.4.1957 were automatically covered by the Pension Scheme instead of the Provident Fund Scheme. In so far as the employees who were already in service on 1.4.1957, they were given an option either to retain the Provident Fund benefits or to switch over to the pensionary benefits on condition that the matching Railway contribution already made to their Provident Fund accounts would revert to the Railway on exercise of the option.

It is the petitioners' case that till 1.4.1957 or even sometime thereafter, the pensionary benefits and the alter- native Contributory Provident Fund benefits were considered to be more or less equally beneficial, wherefore, employees opted for either of them. That the benefits of the two were evenly balanced was evidenced by the Railway Board circular dated 17.9.1960 which gave an option to the employees cov- ered by the Provident Fund Scheme to switch over to pension scheme and vice versa.

Mr. Shanti Bhushan, the learned counsel for the petitioners in Writ Petition Nos. 352 and 361 of 1989, submits that between 1957 and 1987 the pensionary benefits of Railway employees were enhanced on several occasions by different ways such as altering the formula for computing the pension, by including dearness allowance in the pay for computing pension, by removal of the ceiling on pension, and by intro-

ducing or liberalising the Family Pension Scheme etc. The Railway, it is urged, had expressed no intention of extend- ing the benefits of this liberalised pension to those em- ployees who had already retired. At the time when the option was given to choose between pension and Provident Fund, the employees had no idea that in future improvements would be made to either of them. However, it is stated, this Court in D.S. Nakara and Ors. v. Union of India, [1983] 2 SCR 165 held that the benefit of any liberalisation in computation of pension would also have to be extended to those employees who had already retired as they were similarly situated with those who were yet to retire. It is submitted, that even though Nakara's case related to Central Government employ- ees, the Railways also implemented the Judgment and extended the liberalised pension benefits even to those employees who had retired long before the liberalisations concerned were introduced. The decision to implement Nakara's Judgment to Railway employees is admittedly contained in G.O. No. FI (3)-EV/83 dated 22.10.1983. This has, according to the learned counsel, given rise to the "strange situation"

> namely, that while two alternative benefits of provident fund and pension were more or less equal at the time when the petitioners were to make their choice, the pensions

have thereafter been liberalised manifold to the benefit of the pension retirees, whereas no similar benefits have been extended to those who retired opting for Provident Fund, hereinafter called 'the P.F. retirees'. It is asserted that due to successive liberalisations of pensions, the pension retirees derived manifold benefits while the P.F. retirees' benefits remained stagnant. It is submitted that had the petitioners, all of whom are P.F. retirees, known that pensionary benefits might subsequently be so increased, they would no doubt have opted for pension instead of Provident FUnd, The following twelve notifications given such options are referred to:

---------- Date of Notification Cut-off date chosen

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1. 17.09.60 01.07.59

2. 26.10.62 01.09.62

3. 03.03.66 31.12.65

4. 13.09.68 01.05.68

5. 23.07.74 01..01.73

6. 23.08.79 31.03.79 7 01.09.80 23.02.80

8. 04.10.82 31.08.82

9. 09.11.82 31.01.82

10. 13.05.8 31.01.82

11. 18.06.85 31.03.85

12. 08.05.87 01.01.86 It may be noted that in case of each option the cut-off date was anterior to the respective dates of.announcement, and as a result, employees who retired after the cut-off date (specified date) and before the notification date were also made eligible for exercising the option despite the fact that they already retired in the meantime. From the above, the 'main legal point' that arises, submits Mr. Shanti Bhushan, is that the Railways issued the above noti-

fication giving option to certain P.F. retirees after the respective cut-off dates to opt for the Pension Scheme even after their retirement, but the same options were not given to other similarly situated

P.F. retirees beyond the respec- tive cut-off dates. This, it is submitted, is clearly dis- criminatory and violative of Art. 14 of the Constitution and deserves to be struck down.

It is contended by the petitioners that each of the above notifications including the last one, dated 8.5. 1987 had given a fresh option to some of the P.F. retirees while denying that option to other P.F. retirees who were identi- cally placed but were separated from the rest by the arbi- trary cut-off date. Each of the notifications specified a date and provided that the P.F. retirees who retired on or after that date would have fresh option of switching over to the pensionary benefits even though they had already re- tired, and also had already drawn the entire Provident Fund benefits due to them. It is also contended that the speci- fied dates in these notifications having formed the basis of the discrimination between similarly placed P.F. retirees those were arbitrary and un-related to the objects sought to be achieved by giving of the option and were clearly viola- tive of Art. 14 and also of the principle laid down in Nakara's case, which according to counsel, is that pension retirees could not be divided by such arbitrary cut-off dates for the purpose of giving benefitS' to some and not to other similarly situated employees; and that by analogy the rule is equally applicable to the Provident Fund retirees as a class.

Mr. Kapil Sibal, the learned Additional Solicitor Gener- al refuting the argument submits that each of the options was meant to give the P.F. retirees after the specified dates option to switch over to Pension Scheme and that each specified date had nexus with the reason for granting the particular option. He relies on the following statements to substantiate his submission.

STATEMENT SHOWING PENSION OPTIONS GIVEN TO RAILWAY EMPLOYEES

S1. No.	Option	Granted Rly. Board's letter No. date	Option validity period	Reasons for granting option
1	2	3	4	5
1.	I Option	F(E) 50/RTI/6 dated 16.11.57	1.4.57 to 31.3.58 (For those in service on 1.4.1957	Intro- duction system on Rai- lways
	Extensions	F(P) 58.PN-1/6 dated 7.3.58	Extended upto 30.6.56	
		F(P)58.PN-1/6	Extended upto	

		dated 19.6.58 F(P)58.PN-1/6 dated 24.12.58 F(P)58.PN-1/6 dated 28.3.59	31.12.58 Extended upto 31.3.59 Extended upto 30.9.59	
2.	II Option	PC-60/RB/2/2 dated 17.9.60	1.7.59 to 15.12.60 (For those in service on	Revision of Pay Structure (2nd Pay Commission recommendation)
	Extensions	PC-60/RB-2/2 dated 7.4.61 PC/60/RB-2/2 dated 2.11.61	Extended upto 30.6.61 Extended upto 31.12.61	
3.	III Option	F(P)62.PN-1/2 dated 26.10.62	1.9.62 to 31.3.63 (For those in service on 1.9.62	Consequent upon decision to count officiating pay for pensionary benefits.

4. IV Option F(P)63.PN/1/ 1.1.64 to 16.7.66 Introduc-

40 dated 17.1.64 tion of family pension scheme.

5. V Option F(P)65.PN1/41 31.12.65 to In pursuance dated 3.3.66 30.6.66 of decision (for those to liberalise in service on the family 31.12.65 pension Scheme by Extending it to employ-

ess who die wh-

ile in service.

6. VI Option F(E) III.68.PN-1.5.68 to 31.12.68 In pursu 1/2 dated 13.9.88 (for those in ance of service on decision 1.5.68 to change the defi-

nition of "pay" w.e.

f.1.5.68 for the purpose of pensionary benifits.

Extensions F(E)III.68PN- Extended upto 1/2 dated 31.1.69 31.3.69

7. VII Option F(E)III.71.PN 15.7.72 to As a result of 1/3 dated 15.7.72 21.10.72 demandes from (for those orgnised in service labour.

on 15.7.72

8. VIII Option PC-III.73.PN/3 1.1.73 to 22.1.75 Consequet dated 23.7.74 (for those to acceptance in service III Pay Commis-

on 1.1.73) sions' Recommen-

dations.

Extensions PC-III.73.PN/3 Extended upto Extended becau-

dated 18.1.75 & 30.6.76 & se by schedule for 25.6.75 31.12.75 vsrious categories PC-III, 73.PN/3 Extended upto were being Pt I 30.6.76 Finalised.

dated 16.12.75 PC-III.73 PN/3 Extended upto Pt.I 31.12.76 dated 30.6.76 PC-III 73 PN/3 Extended upto Pt.I 30.6.76 dated 3.1.77 PC-III 73 PN/3 Extended upto Pt.I 31.12.77 dated 12.7.77 PC-III 73 PN/3 Extended upto Pt.I 30.6.78 dated 17.4.78 PC-III 73 PN/3 Option Exercised Pt.I upto 31.12.78 be dated 20.5.78 considered as valid PC-III.78 PN/3 (staff who were in Pt.I service as on 1.1.73 & dated 27.12.78 retired/died/quited service during the period from 1.1.73 to 31.12.78)

9. IX Option F(E) III. 79. PN 31.3.79 to On account

- 1/4 22.2.80 of liberalisa-

dated 23.8.79 (For those in tion of pen-

service on 1.4.79) sion formula and introduc-tion of slab system.

Extensions F(E) III. 79. PN Extended upto

-1/4 dated 1.9.80 22.2.81

10. X Option F(E) III 82. 31.8.82 to 28.2.830n account PN 1/7 (For those in of part of DA dated 4.10.82 service on treated as 31.8.82) pay.

Extension F(E)III 82. PN Extended upto 1/7 dated 13.5.83 31.8.83 % made applicable from 31.1.82 under letter No. F(E) III 82 PN 1/7 dated 9.11.82

11. XI Option F(E) III 85. 31.3.85 to Consequent PN 1/5 17.12.85 upon DA/ dated 18.6.85 (For those inADA upto service on average price 31.3.85) index at point 568 treated as pay for retire-

ment benefits.

12. XII Option PC-IV/87/13/ 1.1.86 to 30.9.87 All CPFbene-

881 ficiaries who dated 8.5.87 (for those in were in service service on on 1.1.86 and 1.1.86) who are still in service will be deemed to have come over to pen-

sion Scheme unless they specifically opt out pension scheme and desire to retain the CPF scheme.

INTRODUCTION OF PENSION SCHEME OF RAILWAYS AND SUBSEQUENT PENSION OPTION

(i) Introduction of Pension Scheme Pension Scheme was introduced on the Railways on 16.11.57 and was applicable to the following:

(a) To all Railway servants who enter service on and after 16.11.57 and

(b) To all non-pensionable Railway servants who were in service on 1.4.57 or join Railway Service between 1.4.57 and 16.11.57 and opt for the Pension Scheme.

The scheme was made applicable from 1.4.57 because the financial year commences from April each year. This option was extended 4 times from time to time and was valid upto 28.3.59. The extensions were given because there were repre- sentations for its extension so that the staff could get time to weigh the merits of the Schemes before they take decision.

(ii) Pension option dated 17.9. 1960 Orders were issued on 2.8.1960 notifying Railway Serv- ices (Authorised Pay) Rules, 1960. Under this notification new pay scales were introduced for Railway Servants. These new pay scales were effective from 1st July, 1959. Fresh option was granted on 17.9.60 to Railway employees who were in service on 1.7.59 to come over to the pension scheme. The last date for exercising the option was 15.12.60. This was ex- tended upto 31.12.60 to enable the concerned employees to come to a considered decision whether to retain the P.F. or opt for the pension scheme.

(iii) Pension Option dated 26.10.62 A decision was taken on 26.10.62 to count the officiat- ing pay for the purpose of retirement benefits in case of those who were in service on 1.9.62. Accordingly, a fresh option was given to staff to come over to pension scheme on 26.10.62. This option remained open till 31.3.63.

(iv) Pension Option dated 17. 1. 1964 As a result of introduction of Family Pension Scheme 1964, which came into force on 1.1.1964 orders were issued on 17.1.64 to the effect that all Railway employees who were in service could opt for pension scheme within a period of 6 months. This option was extended upto 16.9.64.

(v) Pension Option dated 3.3.66 Family Pension Scheme was further liberalised for em- ployees who die while in service. In view of this improve- ment in Pension Scheme, pension option under Railway Board's orders dated 3.3.66 was given to employees who were in service on 31.12.65. Since the liberalisation in Family Pension Scheme came into effect from 1st January, 1966, the option was open for employees who were in service on 31.12.65 and was open upto 30.6.1966.

(vi) Pension Option dated 13.9.68 The definition of 'Pay' for pensionary benefits was changed from 1.5.68, through Board's orders dated 13.9.68. In view of this, a further option was given on 13.9.68 to Railway employees who were in service on and after 1.5.68 to opt for the Pension Scheme. This option was open upto 31.12.68. This was further extended upto 31.3.69.

(vii) Pension Option dt. 15.7. 72 On representation from the recognised labour federations that many employees had not clearly understood the liberali- sation introduced in the pension scheme, a fresh option was allowed on 15.7.72 to all serving employees. This was open till 21.10.72.

(viii) Pension Option dated 23.7. 74 This option was based on similar orders issued by Minis- try of Finance. The rationale behind this option was that the recommendations of the 3rd Pay Commission became effec- tive from 1.1.73 but pay structure of all employees who were in service on 1.1.73 got altered through orders issued piecemeal from time to time. There were liberalisations in the pension scheme also in the form of increase in the amount of gratuity as also introduction of the concept of Dearness Relief made available to the pensioners. This option was made available to all employees who were in service on 1.1.73. Employees who had retired earlier did not get affected in any way by the recommendations of the 3rd Pay Commission and were accordingly not given this option to come over to Pension Scheme. This option was available upto 22.1.75, a period of 6 months.

The option given vide letter of 23.7.74 was extended from time to time till 31.12.78. The reason why this exten- sion had to be allowed was that the revised pay scales recommended by the Pay Commission for many of the categories could not be finalised and notified. Till such time, the revised pay scale admissible to each category was made known, it was impossible for the concerned staff to assess the benefit admissible for opting for the revised scale as also for the pension option. The pension option had there- fore to be extended from time to time in this manner. The letters authorising extension of the date of option were not very clearly worded with the result that the pen- sion option during the periods of extension was granted, even to those who had retired before such extension became admissible but who were in service on 1.1.73. The clarifica- tion was accordingly issued to all the Railways stating that the subsequent orders extending the date of option were applicable to serving employees only, but the cases already decided otherwise may be treated as closed and need not be opened again.

It was subsequently represented by the organised labour that the options actually exercised upto 31.12.78 should be treated valid even though such cases may not have been decided by that date. This was agreed to and orders issued accordingly.

(ix) Pension Option dated 23.8. 79 A liberalised formula and slab-system for calculation of pension effective from 31.3.79 was notified by Railway Board on 1.6.79. Accordingly, orders were issued on

23.8.79 allowing pension option to those Railway employees who were in serv- ice on 31.3.79. This option was initially open till 22.2.80 but was extended subsequently to enable wider participation upto 22.2.1981.

(x) Pension Option dated 4. 10.82 Orders were issued by Board on 30.4.82 ordering that a portion of Dearness Allowance will be treated as pay for retirement benefits w.e.f. 31.1.82. Accordingly a fresh option was allowed on 4.10.82 which could be exercised by Railway employees who were in service on 31.1.82. This option was available upto 31.8.83.

(xi) Pension Option dated 18.6.85 Orders were issued by Railway Board on 17.5.85 merging Dearness Allowance to the price index upto 568 with pay for the purpose of retirement benefits and raising the ceiling of DCRG from 36,000 to 50,000 w.e.f. 31.3.85. Accordingly, another option was granted to the Railway employees who were in service on 31.3.85. This option was available for a period of 6 months i.e. upto 17.12.1985.

(xii) Pension Option dated 8.5.87 Consequent upon acceptance of the recommendations of the 4th Pay Commission the revised pay scales were notified on 19.9.86 and 14.3.87, effective from 1.1.1986. Accordingly another pension option was given to the Railway employees who were in service on 1.1.86 vide orders of 8.5.87. Under these orders those who did not specifically opt out of pension scheme by 17.12.87 would he automatically deemed to have opted for the pension scheme.

We may now examine these options. The Railway Board's letter No. F(E) 50-RTI/6 dated November 16, 1967 introduced the pension scheme for railway servants. It said that the President had been pleased to decide that the pension rules, as liberalised vide Railway Board's Memo No. E-48 OPC-208 dated 8.7.1950 as amended or clarified from time to time should apply "(a) to all railway servants who entered serv- ice on or after issue of that letter and (b) to all non- pensionable railway servants who were in service on 1.4.57 or have joined railway service between that date and the date of issue of the order." The Railway servants referred to in para (b) were required to exercise an unconditional and unambiguous option on the prescribed form on or before 31.3.1958 electing for the pensionary benefits or retaining their existing retirement benefits under the State Railway Provident Fund Rules. It further said that any such employee from whom an option form prescribed for the employee's option was not received within the above time limit or whose option was incomplete or conditional or ambiguous shall be deemed to have opted for the pensionary benefits and if any such employee had died by that date or on or after 1.4.57 without exercising option for the pensionary scheme, his dues would be paid on the provident fund system. The period of validity of this option was first extended upto 30.6.58, 31.12.58, 31.3.59 and lastly upto 30.9.59. There could, therefore, be no doubt that those who did not opt for the pension scheme had ample opportunity to choose between the two.

The second option was given by the Board's letter No. PC-60/ RB/2/2 dated 17.9.60 to elect the retirement benefits under the Provident Fund Rules or the Pension Rules. All Railway servants who were in non-pensionable service on 15.11.57 prior to the introduction of the pension scheme on the Railways and who were still in service including (IPR) on 1.7.59 were granted this option to have their retirement benefits regulated by the State Railway Provident Fund Rules or the Railway

Pension Rules. Every eligible railway servant was given the option to change over from P.F. benefits to pensionary benefits or vice versa. It clearly said that Railway servants who did not exercise the option would continue to be eligible for the P.F. benefits or pensionary benefits as the case might be for which he was already eligible.

The option was subject to the special conditions stated therein. Where the Railway servants opted for pensionary benefits, the part of the Government contribution together with interest thereon and/or special contribution to the Railway servants' P.F. account had already been paid, the excess of the amount over the gratuity due under the Pension Rules should be refunded to the Government. It clearly said that: "the option once exercised shall, however, be final and irrevocable irrespective of the decision taken on that issue." If a Railway servant opted for P.F. benefits and if the payment of pensionary benefits had already commenced, further payment would be stopped and his P.F. account would be reconstructed as if he had never opted for pensionary benefits. The period of validity of option was extended upto 30.6.61, and then upto 31.12.61. This letter clearly indi- cated the reason for giving this option as "under the re- vised pay structure introduced from 1.7.59, the bulk or whole of the D.A. previously payable have been absorbed into pay and a number of changes are also being made in the rules regarding retirement benefits." In pursuance of the 3rd Pay Commission Report, Govern- ment decided to give opportunity to opt for liberalised Railway Pension Rules including benefits of Family Pension Scheme, 1964, to Railway employees, who had retained the contributory P.F. Rules and who were in service on 31.3.1979 and retired on or after that date provided they gave in writing their option within six months. Employees who had retired under the said State Railway P.F. (Contributory) Rules, their option would be valid if they refunded the entire Government contribution and the excess, if any, of special contribution to P.F. received by them over D.C.R.G. due to them under Pension Rules. In case of deceased employ- ees request could be made for option by valid nominee and in the absence. of him by legal guardian. Thereafter a number of representations were made and the Government extended the time for giving option for adopting Pension Scheme in place of contributory P.F. Scheme.

As a result of treatment of a portion of ADA as pay for purpose of retirement benefits and consequently enhancement in pensionary benefits, the date for giving option was further extended by 28.2.1983 only for these employees who were in service on 31.8.1982 and who quitted/retired on or after that date. The date of option was further extended from time to time.

Keeping in view the treatment of entire DA upto the price index line of 568 as pay for retirement benefit with effect from 31.3.85, removal of ceiling limit of Rs. 1500 on pension and raising of ceiling of DCRG from Rs.36,000 to Rs.50,000 the date of option for employees who were in service on 31.3.85 and onwards and still governed by S.R.P.F. (Contributory) Rules, was further extended upto 17.12.1985 provided the amount of death-cum-retirement gratuity and the excess, if any, of special contribution over the D .C.R.G., was refunded.

The 12th option was as under.

> "Government of India/Bharat Sarkar Ministry of Railways/Rail Mantralaya (Railway Board) Machine No. PC-IV/87/13/881 The General Managers, RBBIS. No. 116/87 All

Indian Railways, New Delhi, dated 8th May, Production Units etc. as per mailing list.

Subject:- Change over of Railway employees from the SRPF (Contributory Scheme) to Pension Scheme'Implementation of the recommendation of the IV Central Pay Commission-regard- ing.

The Railway employees who are covered by the SRPF (Contributory Scheme) CPF Scheme have been given repeated options in the past to come over the Pension Scheme. Howev- er, some Railway employees still continue under the CPF Scheme. The Fourth Central Pay Commission has now recommend- ed that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date, unless they specifically opt out to continue under the GPF Scheme.

2. After careful consideration the President is pleased to decide that the said recommendation shall be accepted and implemented in the manner hereinafter indicated. 3.1. All CPF beneficiaries, who were in service on 1.1.86 and who are still in service on the date of issue of these orders, will be deemed to have come over to the Pension Scheme. ?

3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.9.87, in the form enclosed, if the employees wish to continue under the GPF Scheme. 1f no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

3.3. The CPF beneficiaries, ,who were in service on 1.1.1986, but have since retired and in whose cases retire- ment benefits have also been paid under the CPF Scheme, will have an option to 'have their retirement benefits calculated under the Pension Scheme provided they refund to the Government the Government contribution to the Con- tributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF Account. Such option shall be exercised latest by 30.9. 1987. 3.4. CPF beneficiaries, who were in service on 1.1.1986 but were since retired, and in whose cases the CPF Account has not already been paid, will be allowed retirement benefits as if they were borne on pensionable establishments, unless they specifically opt, by 30.9.87, to have their retirement benefits settled under the CPF Scheme.

3.5. Cases of CPF beneficiaries, who were in service on 1.1.86, but have since died, either before retirement or after retirement, will be settled in accordance with para 3.3. or 3.4 above, as the case may be. Options in such cases will be exercised, latest by 30.9.87, by the widow/widower and, in the absence of widow/widower, by the eldest surviv- ing member of the family, who would have otherwise been eligible to family pension under the Family Pension Scheme, if such Scheme were applicable.

3.6. The option, once exercised, shall be final. 3.7.....

4.1.....

4 . 2 In the case of employees referred to above who come over or are deemed to have come over to the Pension Scheme, the Government's contribution to the CPF together with the interest thereon, credited to the CPF Account of the employee, will be resumed by the Government. Special contribution to Provident Fund if already paid in these cases, will be adjusted against the death/ retirement Gratuity, payable under these orders. The employee's contri- bution, together with the interest thereon at his credit in the CPF account, will be transferred to the CRPF (Non-Con- tributory) Account, to be allotted to him, on his coming over to the Pension Scheme.

4.3..... 5 'A proposal to grant ex-gratia payment to the benefici- aries, who retired prior to 1.1.1986 and to the families of CPF beneficiaries who died prior to 1.1.1986, on the basis of the recommendations of the Fourth Central Pay Commission, is separately under consideration of the Govern- ment. The said ex-gratia payment, if and when sanctioned, will not be admissible to the employees or their families who opt to continue under the CPF Scheme from 1.1.1986 onward.

6.....

(G. Chatterjee) Executive Director, Pay Commission Railway Board."

The learned Additional Solicitor General stated that each option was given for stated reasons related to the options. On each occasion time was given not only to the persons in service on the date of the Railway Board's letter but also to persons who were in service till the stated anterior date but had retired in the meantime. The period of validity of option was extended in all the options except Nos. 3rd, 4th, 5th and 7th. We find the statements to have been substantiated by facts. The cut-off dates were not arbitrarily chosen but had nexus with the purpose for which the option was given.

Mr. Shanti Bhushan however submits that applying the law laid down in Nakara's case this Court should simply strike down or read down paragraph 8.1 of the above 12th option dated 8.5. 1987. That paragraph said that aH C.P.F. benefi- ciaries who were in service on 1.1.86 and who were still in service on the date of issue of the order would be deemed to have come over to the pension scheme. It is submitted that once this limiting requirement is removed all the C.P.F. beneficiaries shall be eligible and will be deemed to have come over to the pension scheme.

As the basis or justification for striking or reading down paragraph 3.1 on Nakara's ratio, it is urged that all the Railway employees numbering about 22 lakhs comprising 16,22,000 in service and about 6 lakhs pensioners constitute one family and must be treated as one class as the Govern- ment's obligation to look after the retired Railway employ- ees both under the pension scheme and the provident fund scheme being the same, they could not be treated different- ly. Any differential treatment will be discriminatory and violative of Article 14 of the Constitution of India. In Nalcara's

case the date arbitrarily chosen was struck down and as a result the revised formula for computing pension was made applicable to all the retired pensioners. The same principle, it is urged, has to be extended to the provident fund retires also otherwise there would be discrimination. It is stated that though at the time of choosing between provident fund and pension scheme both the alternative appeared to be more or less equal and the retired provident funders took their lump sum yet subsequently stage by stage the pensioners benefits were in- creased in such ways and to such extent that it became more and more discriminatory against the provident funders old and new. It was because of this discrimination that aucces- sive options were given by the Railway Board for the provi- dent funders to become pensioners. Hence the submission that this limitation must go, and all the provident funders must be deemed to have become pensioners subject to the condition that the Government contribution received by them along with interest thereon is refunded or adjusted. Obviously this gives no importance to the condition in the notifications that option once exercised shall be final and binding and to the fact that in each option a cut-off date was there relat- ed to the purpose of giving that option:

> Admittedly, the entire case of the petitioners is sought to be based on the decision in Nakara's case. Mr. Kapil Sibal submits that the petitioners' basic assumption is erroneous inasmuch as Nakara's case did not hold that when- ever there was a liberalisation of pension all other pension retirees and P.F. retirees must be given option and that the older system of pension or Provident Fund was always insuf- ficient. According to counsel the only question decided in Nakara can be gathered from the following paragraph of the report at page 172:
>
> "Do pensioners entitled to receive superannuation or retir- ing pension under Central Civil Services (Pension) Rules, 1972 (' 1972 Rules' for short) form a class as a whole? Is the date of retirement a relevant consideration for eligi- bility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pen- sion attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Art. 14?"

The basic question of law that has to be decided, therefore, is what was the ratio decidendi in Nakara's case and how far that would be applicable to the case of the P.F. retirees. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required." This was what Lord Selborne said in Caledonian Railway Co. v. Walker's Trustees and Lord Halsbury in Quinn v. Leathem, [1981] A.C. 495, (502). Sir Frederick Pollock has also said: "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision." In other words, the enunciation of the reason or princi- ple upon which a question before a court has been decided is along binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the

specific peculiarities of the particu- lar case which gives rise to the decision. The ratio deci- dendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate considera- tion. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, 4th Edn., Vol. 26, para 573:

> "The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the sub- ject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribu- nal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more rea- sons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."

The question then is, has the court said in Nakara that what was applicable to pensioners vis-a-vis liberalisation of pension was to be equally applicable to P.F. retirees? In Nakara's case petitioners 1 and 2 were retired pensioners of the Central Government, the first being a civil servant and the second being a member of the service personnel of the Armed Forces. The third peti- tioner was a society registered under the Societies Regis- tration Act, 1860, formed to ventilate the legitimate public problems and was espousing the cause of the pensioners all over the country. The first petitioner retired in 1972 and on computation, his pension worked out at Rs.675 per month and with dearness allowance he was drawing monthly pension of Rs.935. The second petitioner retired at or about that time and at the relevant time was in receipt of a pension plus dearness relief of Rs .981.

The Union of India had been revising and liberalising the pension rules from time to time. The Central Government servants on retirement from service were entitled to receive pension under the Central Civil Services (Pension) Rules, 1972. Successive Central Pay Commissions recommended en- hancement of pension in different ways. The first Central Pay Commission (1946-47) recommended raising of the retire- ment age to 58 years and the scale of pension to 1/80 of the emoluments of each year of service subject to a limit 35/80 with a ceiling of Rs.8,000 per year for 35 years of service. The Second Central Pay Commission (1957-58) did not recom- mend any increase in the non-contributory retirement bene- fits. The Administrative Reforms Commissioner (ARC) 1956 took note of the fact that the cost of living had shot up and correspondingly the possibility of savings had gone down and accordingly recommended that the quantum of pension may be raised to 3/6 of the emoluments of the last three years of service from existing 3/8 and the ceiling to be raised from Rs.675 per month to Rs. 1,000 per month. Before the Government acted upon it, the Third Central Pay Commission did not examine the question of relief to pensioners because of its terms and recommended no change in the pension formu- la except that the existing ceiling to be raised from Rs.675 to Rs. 1,000 per month and the maximum gratuity should be raised from Rs.24,000 to Rs.30,000.

On May 25, 1979, Government of India, Ministry of Finance, issued Office Memorandum No. F-19(3)-EV-79 whereby the formula for computation of pension was liberalised but made it applicable. to Government servants who were in service on March 31, 1979 and retired from service on or after that date. The formula introduced a slab system for computation of pension which was applicable to employees governed by the 1972 rules retiring on or after the speci- fied date. The pension for the service personnel which would include Army, Navy and Air Force staff was governed by the relevant regulations. By the Memorandum of the Ministry of Defence bearing No. B/40725/ AG/PS4-C/1816/AD (Pension)/Services dated September 28, 1979, the liberalised pension formula introduced for the government servants governed by the 1972 rules was extended to the armed forces personnel subject to the limitations set out in the memorandum with a condition that the new rules of pension would be effective from April 1, 1979 and may be applicable to all service officers who become/ became non- effective on or after that date. This liberalised 'pension formula was to be applicable prospectively to those who retired on or after March 31, 1979 in case of government servants governed by 1972 rules and in respect of defence personnel those who became/become non-effective on or after April 1, 1979. Consequently those who retired prior to -the specified date would not be entitled to the benefits of the liberalised pension formula.

On the above facts the petitioners' therein contended that this Court would consider the raison d'etre for payment of pension, namely, whether it was paid for past satisfacto- ry service rendered, and to avoid destitution in old age as well as a social welfare or socioeconomic justice measure, the differential treatment for those who retired prior to a certain date and those retiring subsequently, the choice of the date being wholly arbitrary would amount to discrimina- tion and violative of Art. 14; and whether the classifica- tion based on fortuitous circumstance of retirement before or subsequent to a date, fixing of which was not shown to be related to any rational principle, would be equally viola- tive of Art. 14. It was contended that pensioners of the Central Government formed a class for the purpose of pen- sionary benefits and there could not be mini-classification within the class designated as pensioners. The Court considered the nature and purposes of pension in the context of a welfare State and found that though unquestionably pension was linked to length of service and the last pay drawn which did not imply the pay on the last day of retirement but average emoluments of 36 months serv- ice which under the liberalised scheme was reduced to aver- age emoluments of 10 months preceding the date which was expected to be higher than that of the higher average emolu- ments of 36 months, coupled with the slab system for compu- tation amounted to liberalisation of pension in different ways. If the pensioners who retired prior to the specified date had to earn pension on the average emoluments of 36 months' salary just preceding the date of retirement, natu- rally the average would be lower and they would be doubly hit because the slab system newly introduced was not avail- able to them while the ceiling was at a lower level and thus they would suffer "triple jeopardy, viz., lower average emoluments, absence of slab system and lower ceiling." This Court, therefore, wanted to know what was the purpose in prescrib- ing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retired subsequent to that date and why was the pension scheme liberalised. Receiving no satisfactory reply the Court observed:

> "Both the impugned memoranda do not spell out the raison d'etre for liberalising the pension formula. In the affida- vit in opposition by Shri S.N. Mathut, it has been

> stated that the liberalisation of pension of retiring Government servants was decided by the Government in view of the per- sistent demand of the Central Government employees repre- sented in the scheme of Joint Consultative Machinery. This would clearly imply that the pre-liberalised pension scheme did not provide adequate protection in old age and that a further liberalisation was necessary as a measure of econom- ic security. When Government favorably responded to the demand it thereby ipso facto conceded that there was a larger available national cake part of which could be uti- lised for providing higher security to erstwhile government servants who would retire. The Government also took note of the fact that Continuous upward movement of the cost of living index as a sequel of inflationary inputs and dimin- ishing purchasing power of rupee necessitated upward revi- sion of pension. If this be the underlying intendment of liberalisation of pension scheme, can any one be bold enough to assert that it was good enough only for those who would retire subsequent to the specified date but those who had already retired did not suffer the pangs of rising prices and falling purchasing power of the rupee?"

The Court then proceeded to examine whether there was any rationale behind the eligibility qualification and finding no rationale concluded:

> "Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory."

The Court accordingly concluded that the division was thus arbitrary and unprincipled and therefore the classifi- cation did not stand the test of Art. 14. It was also arbi- trary as the Court did not find a single acceptable or persuasive reason for this division and this arbitrary action violated the guarantee of Art. 14. The Court observed that the pension scheme including the liberalised scheme to the Government employees was non-contributory in' character. The payment of pension was a statutory liability undertaken by the Government and whatever became due and payable was 2budgeted for. The Court specifically observed:

> "One could have appreciated this line of reasoning where there is a contributory scheme and a pension fund from which alone pension is disbursed. That being not the case, there is no question of pensioners dividing the pension fund which, if more persons are admitted to the scheme, would pro rata affect the share. Therefore, there is no question of dividing the pension fund. Pension is a liability incurred and has to be provided for in the budget."

The Court further observed:

> "If from the impugned memoranda the event of being in serv- ice and retiring subsequent to specified date is served, all pensioners would be governed by the liberalised pension scheme. The pension will have to be recomputed in accordance

> with the provisions of the liberalised pension scheme as salaries were required to be recomputed in accordance with the recommendation of the Third Pay Commission but becoming operative from the specified date. It does therefore appear that the reading down of impugned memoranda by severing the objectionable portion would not render the liberalised pension scheme vague, unenforceable or unworkable."

The Court in Nakara was not satisfied with the explana- tion that the legislation had defined the class with clarity and precision and it would not be the function of this Court to enlarge the class. The Court held in paragraph 65 of the report:

> "With the expanding horizons of socio-economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: 'being in service and retiring subsequent to the specified date' for being eligi- ble for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exs. P-1 and P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under:
>
> In other words, Ex. P-1, the words: 'that in respect of the government servants who were in service on March 31, 1979 and retiring from service on or after that date'; and in Ex. P-2, the words: 'the new rates of pension are effective from April 1, 1979 and will be applicable to all service officers who became/become non-effective on or after that date';
>
> are unconstitutional and are struck down with this specifi- cation that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespec- tive of the date of retirement. Omitting the unconstitution- al 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 retire- ment. Arrears of pension prior to the specified date as per fresh computation is not admissible."

Thus the Court treated the pension retirees only as a homogeneous class. The P.F. retirees were not in mind. The Court also clearly observed that while so reading down it was not dealing with any fund and there was no question of the same cake being divided amongst larger number of the pensioners than would have been under the notification with respect to the specified date. All the pensioners

governed by the 1972 Rules were treated as a class because payment of pension was a continuing obligation on the part of the State till the death of each of the pensioners and, unlike the case of Contributory Provident Fund, there was no question of a fund in libera- lising pension.

The argument of Mr. Shanti Bhushan is that the State's obligation towards pension retirees is the same as that towards P.F. retirees. That may be morally so. But that was not the ratio decidendi of Nakara. Legislation has not said so. To say so legally would amount to legislation by enlarg- ing the circumference of the obligation and converting a moral obligation into a legal obligation. It reminds us of the distinction between law and morality and limits which separate morals from legislation. Bentham in his Theory of Legislation, Chapter XII, page 60 said:

> "Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, wheth- er public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows. Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same centre with morals, but it has not the same circumference."

In Nakara it was never held that both the pension reti- rees and the P.F. retirees formed a homogeneous class and that any further classification among them would be viola- tive of Art. 14. On the other hand the Court clearly ob- served that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under C.P.F. Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the em- ployee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pen- sion retirees must also equally be applicable to P.F. reti- rees. This being the legal position the rights of each individual P.F. retiree finally crystallized on his retire- ment whereafter no continuing obligation remained while on the other hand, as regards Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the P.F. retirees they would not be so adversely affected ipso facto. It cannot,

there- fore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its P.F. retirees must be the same as that towards the pension retirees An imaginary definition of obligation to include all the Government retirees in a class was 'not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case.

Stare decisis et non guieta movere. To adhere to prece- dent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided ques- tions. Apart from Art. 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determina- tion, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subse- quent cases where the very point is again in controversy unless there are occasions when departure is rendered neces- sary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible.

The next argument of the petitioners is that the option given to the P.F. employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Art. 14 of the Constitution for the same rea- sons for which in Nakara the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive the Government has a continuing obligation and if one is affected by dearness the others may also be similarly affected. In case of P.F. retirees each one's rights having finally crystallized on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. How the corpus after retirement of a P.F. retiree was affected or benefitted by prices and interest rise was not kept any track of by the Railways. It appears in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once exer- cised was told to have been final. Options were exercisable vice versa. It is clarified by Mr. Kapil Sibal that the specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notifi- cation were made eligible. This submission appears to have been substantiated by what has been stated by the successive Pay Commissions. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down clause 3.1 of the 12th Option does not arise.

It would also appear that most of the petitioners before their filing these petitions had more than one opportunities to switch over to the Pension Scheme which they did not exercise. Some again opted for P.F. Scheme from the Pension Scheme.

Mr. Shanti Bhushan then submits that the same relief as is being canvassed by the petitioners herein has been upheld by this Hon'ble Court by dismissing the SLP No. 5973/88 of the Government in the case of Union of India v. Ghansham Das and Ors. against the Judgment of the Central Administrative Tribunal, Bombay. The Tribunal had held the same notifications as were impugned herein to be discriminatory and had directed that a flesh option be given to all P.F. retirees subject to refund of the Govern- ment contribution to Provident Fund received by adjusting it against their pensionary rights. Similarly, it is submitted, in a Rajasthan case, both the single Judge and the Division Bench have held that all the retirees would have to be given a flesh option as the notifications giving the option only to some retirees are clearly discriminatory. This view has, it is urged, again been upheld by this Hon'ble Court by dismissing the Special Leave Petition No. 7192/87 of the Government by order dated 11.8.87.

We have perused the judgments. The Central Administra- tive Tribunal in Transferred Application No. 27/87 was dealing with the case of the petitioners' right to revise options during the period from 1.4.69 to 14.7.72 as both the petitioners retired during that period. The tribunal ob- served that no explanation was given to it nor could it find any such explanation. In State of Rajasthan v. Retired C.P.F. Holder Association, Jodhpur, the erstwhile employees of erstwhile Princely State of Jodhpur who after becoming Government servants opted Contributory Provident Fund wanted to be given option to switch over to Pension Scheme, were directed to be allowed to do so by the Rajasthan High Court relying on Nakara which was also followed in Union of India v. Bidhubhushan Malik, [1984] 3 SCC 95, subject matter of which was High Court Judges' pension and as such both are distinguishable on facts.

That the Pension Scheme and the P.F. Scheme are struc- turally different is also the view of the Central Pay Com- missions and hence ex gratia benefits have been recommended, which may be suitably increased.

In the report of the Third Central Pay Commission 1973, Vol. 4 at page 49, dealing with State Railway Provident Fund it was said:

> "49. Both gazetted and non-gazetted Railway employees with a service of not less than 15 years who are governed by the State Railway Provident Fund Scheme are at present allowed a special contribution at the rate of 1/4th of a month's pay for each completed 6 monthly period of service but not exceeding 15 months' pay or Rs.35,000, whichever is less. We have been informed by the Railway Board that for such em- ployees the Government contribution and the special contri- bution to the Provident Fund together constitute the retirement benefits which in other civil departments are given in the shape of pension and death-cum-retirement gratuity. Accordingly, when pensionery benefits to the other civil employees were im- proved in 1956 and 1957, the maximum of the special contri- bution to the provident fund for the Railway employees was also increased from Rs.25,000 to Rs.35,000. We have not examined whether and to what extent any further increase in this contribution should be made consequent upon the en- hancement of the maximum pension and gratuity being recom- mended by us for pensionable employees. The Government may decide

the same as they deem fit."

In the Report of the Fourth Central Pay Commission, in Chapter 9 the Commission has discussed the State Railway Provident Fund Scheme including Contributory Provident Fund Scheme. In para 9.1 of the report, the Commission said that the employees who joined railways prior to November 16, 1957 and did not opt for the pension scheme were also covered under the C.P.F. Scheme known as State Railways Provident Fund Scheme (SRPF). About 50,000 employees were stated to be covered under the C.P.F. Scheme of which the majority were in the railways. The number of employees who retired under the CPF and SRPF schemes were 1.20 lakhs. Under the CPF scheme every employee was required to subscribe a minimum of 8-1/3 per cent of his reckonable emoluments to be credited to the fund. The Government makes a matching contribution. Both the contributions earned interest at a rate specified by the Government from time to time. On retirement, employ- ees governed under the scheme was paid his contribution, the contribution made by the Government and the interest earned on the total amount.

In para 9.3 of the Report it was stated:

> "The SRPF scheme in the railways was replaced by the pension scheme as applicable to other Central Government employees, in November, 1957 and those employees who were in service on April 1, 1957 and were governed by the scheme were given an option to come under the pension scheme. Whenever changes occurred in the pension structure for the Central Government employees an option was given to railway employees still covered by the scheme. Such options have been given on eleven occasions in the past and the last such option was valid upto December, 1985."

Comparing the advantage and disadvantage of the schemes the Commission said:

> "While pension scheme has been improved, enlarged and lib- eralised from time to time, there has been no similar im- provement in the CPF scheme, excepting through improvement of rates of interest which were modified from 7 per cent on 1974 to 9 per cent in 1983-84, to 10 per cent in 1984-85 and to 12 per cent in 1985-86. While those governed by the pension scheme are entitled to receive dearness relief sanctioned from time to time to compensate for increase in the cost of living, those under the CPF scheme were not entitled to such relief. The employees governed by the CPF scheme are also not entitled to the family pension available to those governed by the pension scheme. The matching gov- ernment contribution in the case of CPF employees is paid for the full period of service the restriction of 33 years for those governed by pension scheme does not apply in their case. Those who have retired under the CPF scheme have a corpus yielding regular return. In the case of railway employees, special contribution to PF is paid at the time of retirement equivalent to half a month's salary for each completed year of service subject to a maximum of 16 months' salary or Rs.60,000 whichever is less. The amount of special contribution has been raised from time to time as and when the limit on death-cum-retirement gratuity was changed."

In para 9.5 of the Report as to ex gratia alternative it is stated:

> "As the pension scheme was introduced on the railways m' 1957, those who retired earlier did not have an opportunity to opt for pension. It was, therefore, decided to give some ex gratia payment to them in consideration of the fact that the retirement benefits were lower than what they would have received if they had retired under the pension scheme. Since this applied mainly to the low paid employees, the ex gratia payment ranging from Rs. 15 to Rs.22.50 per mensem was sanctioned to those drawing pay upto Rs.500 per month. They were also given relief on a graded scale subsequently. The amount of ex gratia payment together with the relief now ranges from Rs. 170 to Rs. 283 per mensem."

In para 9.6, the Commission said that the P.F. and pension schemes are structurally different. Accordingly alternative ex gratia reliefs were suggested:

> "We have received a number of suggestions from individuals, associations and other organisations in respect of the CPF scheme. It has been stated that the objective of both the schemes, viz., pension scheme and the CPF scheme being the same, there should not be differences in the matter of retirement benefits between the pensioners and the benefici- aries of the CPF. It has been urged that the liberalisation in the pension scheme needs to be appropriately extended to the beneficiaries under the CPF scheme. Since the schemes are structurally different, equality of benefits under the two schemes is not feasible. We are, however, of the view that the CPF beneficiaries who have retired on low scales of pay deserve some measure of relief. We according recommend that all the CPF beneficiaries who have retired prior to March 31, 1985 with a basic pay upto Rs.500 per mensem may be given an ex gratia payment of Rs.300 per mensem which will be in addition to the benefits already received by them under the CPF scheme. The ex gratia payments and the period- ic increases already received by those who retired on pay upto Rs.500 may be so adjusted that the total ex gratia amount is not less than Rs.300. We further recommend that ex gratia amount of Rs.300 per mensem may be reviewed as and when dearness relief is sanctioned to pensioners."

> "9.7. Railways have suggested grant of ex gratia payment to the widows and dependent children of deceased employees covered by CPF scheme at 50 per cent of the rate for ex gratia payment. We agree and recommend accordingly for those getting pay upto Rs.500 per mensem. The eligibility of widow and minor children for the purposes of this relief may be same as laid down under the pension rules."

> "9.8. In so far as the CPF beneficiaries still in service on January 1, 1986 are concerned, we recommend that they should be deemed to have come over to the pension scheme on that date unless they specifically opt out to continue under the CPF scheme. The CPF beneficiaries who decide to continue to remain under that scheme should not be eligible on retire- ment for ex gratia payment recommended by

> us for the CPF retirees. Government may, however, extend the benefit of DCRG to CPF beneficiaries in other departments on the same lines as in railways."
>
> "9.9. Government may also consider the feasibility of giving an option to all other CPF retirees who are not covered under paragraph 9.6 above to come over to the pension scheme with effect from January 1, 1986 subject to their refunding to government the entire amount of government contribution inclusive of interest thereon credited to their Provident Fund account at the time of their retirement."

We have no doubt about the above recommendations receiv- ing due consideration by the Union of India. The 12th Option already given has to be viewed in this context. The next question debated is that of financial implica- tions. It is submitted that given the fact that the budget for the year 1990-91 for disbursement of pension is Rs.900 crores (as per page 11 of the Budget of the Railway Revenue and Expenditure of the Central Government for 1990-91), the additional liability which would arise by giving relief to the Petitioners would be insignificant in comparison. Ac- cording to the petitioners as per their affidavit dated 15.9.88, the additional liability would come to Rs. 18 crores per annum and this figure would steadily decrease as the number of P.F. retirees diminishes every year due to the fact that this question arises only with respect to very old retirees, and a substantial number of them pass away every year.

The Government in its affidavit dated 21.9.88 has stated that the additional liability as far as the Railway employ- ees are concerned, would be Rs.50 crores a year. This is based on the assumption that there are 79,000 surviving P.F. retirees. Apart from the fact that this number of 79,000 was based on calculations made in 1988, and would be greatly reduced by this time, the petitioners submit that the actual number of survivors would only be about 38,000. Thus, the actual burden would be less than half. Further, even assum- ing that the figure of 79,000 put forth by the Government is correct, the aver- age annual expenditure per retiree for pension calculated by the Government is incorrect as the calculation includes the non-recurring arrear payments for the year 1987-88. Taking the correct figures of total pension outlay and total number of beneficiaries the per capita pension expenditure per annum works out to Rs.4521. Multiplying this by 79,000 (assuming the figures of the Railways to be correct) the annual expenditure comes to Rs.35.71 crores. This compared to the current budget of pensions of Rs.900 crores, is quite insignificant and can be easily awarded by this Court as was done in Nakara, it is urged.

It is submitted in the alternative that if this Court feels that a positive direction cannot be made to the Gov- ernment in this regard, it is prayed that at least an option should no given to the respondents either to withdraw the benefit of switching over to pension from every one or to give it to the petitioners as well, so that the discrimina- tion must go.

We are not inclined to accept either of these submis- sions. The P.F. retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includable in the Annual Financial Statement, this Court has to be loath to pass any order to give any direction, because of the division of functions between the three co-equal organs of the Government under the Constitution.

Lastly, the question of feasibility of converting all living P.F. retirees to Pension retirees was debated from the point of view of records and adjustments. Because of the view we have taken in the matter, we do not consider it necessary to express any opinion.

Mr. C.V. Francis in W.P. No. 1165 of 1989 argued the case more or less adopting the arguments of Mr. Shanti Bhushan. Mrs. Swaran Mahajan, in W.P. No. 1575 of 1986, submitted that the rule as to commuted portion of the pen- sion reviving after 15 years should be applied to P.F. retirees so that the corpus of Provident Fund dues received more than 15 years ago should be treated as committed por- tion of pension and be allowed to revive for adjustments against pension. In the view we have taken in this case it is not necessary to express any opinion on this question.

Mr. R.B. Datar for the respondent in W.P. No. 1575 of 1986 and W.P. No. 352 of 1989 more or less adopted the arguments of the learned Additional Solicitor General. In the result, all the Writ Petitions and the Special Leave Petition are dismissed, but the petitioners being retirees, we make no order as to costs.

R.S.S.' Petitions dismissed.