Commander Head Quarter, Calcutta vs Capt. Biplabendra Chanda on 5 November, 1996

Equivalent citations: (1996) 3 SCJ 706, AIR 1997 SUPREME COURT 2607, 1997 (1) SCC 208, 1997 AIR SCW 2564, 1997 LAB. I. C. 2646, 1997 (1) SERVLJ 143 SC, (1997) 10 JT 371 (SC), (1997) 1 CURLR 376, 1997 SCC (L&S) 444, (1998) 78 FACLR 548, (1997) 1 LAB LN 125, (1997) 1 SCT 434, (1997) 1 SERVLR 22, (1997) 1 ESC 555

Bench: B.P. Jeevan Reddy, Suhas C. Sen

PETITIONER:
COMMANDER HEAD QUARTER, CALCUTTA

Vs.

RESPONDENT:
CAPT. BIPLABENDRA CHANDA

DATE OF JUDGMENT: 05/11/1996

BENCH:
B.P. JEEVAN REDDY, SUHAS C. SEN

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Heard the counsel for both the parties.

Leave granted.

This appeal is preferred against the judgment a Division Bench of the Calcutta High Court dismissing the writ appeal preferred by the appellants. The respondent was a Commissioned Officer. He retired on May 18, 1982. According to the Rules then in force, only 2/3rd of the pre-commissioned service was allowed to be counted towards qualifying service for earning pensionary benefits. a minimum period of qualifying service was also provided for becoming eligible for

pension. On the basis of the aid Rule, the respondent was found ineligible for grant of grant of pension and accordingly no pension was granted to him. About four years later, the Rules relating to qualifying service were changed [with effect from January 1, 1986] based upon the recommendations of the fourth pay commission. One of the features of these Rules was that full pre commissioned service was to be taken into count for working out the qualifying service required for earning pensionary benefits. In other words, whereas previously only 2/3rd of the pre-commissioned service was to be taken into count for determining the eligibility and the quantum of pension, the entire pre-commissioned service could be taken into count as per the Rules which came into force with effect from January 1, 1986. The respondent laid a claim for grant of pension on the basis of the said new Rules or revised Rules, as they may be called. That was denied whereupon he approached the High Court by way of a writ petition. The learned Single Judge allowed the writ petition relying upon the decision of this Court in D.S. Nakara & Ors. V. Union of India [1983 (2) S.C.R. 165], which order has been affirmed by the Division Bench.

We are of the opinion that the ratio of D.S.Nakara has no application here. D.S.Nakara prohibits discrimination between pensioners forming a single class and governed by the same Rules. It was held in that case that the date specified in the liberalised pension Rules as the cut-off date was chosen arbitrarily. What is not the case here. No pension was granted to the respondent because he was not eligible therefor as per the Rules in force on the date of his retirement. The new and revised Rules [it is not necessary for the purpose of this case to go into the question whether the Rules that came into force with effect from January 1, 1986 were new Rules or merely revised or liberalised Rules] which came into force with effect from January 1, 1996 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not a case where a discrimination is being made among pensioners who were similarly situated. Accepting the respondent's contention would have very curious consequences even a person who had retired long earlier would equally become eligible for pension on the basis of the 1986 Rules. The cannot be.

The decision in D.S.Nakara has indeed been explained by two subsequent Constitution Bench decisions of this Court in Krishna Kumar & Ors. v. Union of India & Ors. {1990 (4) S.C.C. 207] and Indian Ex-Services League & Ors. Etc. v Union of India & ors etc. [1991 (1) S.C.R. 158. In the later decision, it has been held that "the petitioners' claim that all pre-1.4.1979 retirees of the Armed Forces are entitled to the same amount of pension as shown in appendices 'A', 'B' and 'C' for each rank is clearly untenable and does not flow from the Nakara decision". We may also refer in this connection to the observations in another decision of this Court in State of West Bengal v. Ratan Behari Dey [1993 (4) S.C.C. 62] to the following effect.

> "..it is open to the State or to the Corporation as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without

> bringing about a discrimination between similarly situated persons, no interference is called for by the court in that behalf the power of the State to specify a date with effectfrom which the Regulations framed or amended, as the case may be, shall come into force is unquestioned. a date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is unreasonable or discriminatory. Since we have found that the prescription of the date in this case is neither arbitrary nor unreasonable, the complaint of discrimination must fail."

The learned counsel for the respondent relied upon a recent decision of this Court in M.C.Dhinqra. Union India & Ors. [1996 (7) S.C.C.564] but that was also a case where a distinction was sought to be made between the same class of pensioners. The said decision, therefore, cannot come to the rescue of the respondent.

For tho above reasons, this appeal is allowed. the judgment of the Division Bench of the High court affirming the decision of the learned Single Judge is set aside. The writ petition filed by the respondent is dismissed. No costs.