

**Thidil Kumaran Vs Union Of India Represented By Its Secretary
Department Of Atomic Energy, Anushakti Bhavan Chatrapathi Shivaji
Maharaj Marg, Mumbai, 400001 & Ors**

Court: Central Administrative Tribunal Ernakulam Bench, Ernakulam

Date of Decision: Oct. 18, 2023

Acts Referred: Administrative Tribunals Act, 1985 â€” Section 14(2)

Central Civil Services (Pension) Rules, 1972 â€” Rule 33, 37A

Railway Services (Pension) Rules, 1993 Rule 90

Constitution Of India, 1950 â€” Article 14

Hon'ble Judges: K. Haripal, Member (J)

Bench: Single Bench

Advocate: John Mani V, Thomas Mathew Nellimoottil

Final Decision: Dismissed

Judgement

K. Haripal, Member (J)

1. Applicant claims that he had commenced service in Tarapur Atomic Power Station as Tradesman-C in 1981. Employees of the Nuclear Power

Board/Department of Atomic Energy were absorbed in Nuclear Power Corporation of India Limited, NPCIL for short, with effect from 17.09.1994

and 01.01.1998 and such absorbees are in receipt of pension under Rule 37A of the CCS(Pension) Rules. Applicant opted for absorption in NPCIL

with effect from 17.09.1994 and was granted pro-rata pension for the period from 20.03.1981 to 16.09.1994. At the time of absorption he was

working as Tradesman-E in the pay scale of Rs.1400-2300. By Annexure-A1 OM dated 17.05.1999 the scale of Tradesman-E was revised to

Rs.5000-8000.

2. According to the applicant, consequent to the implementation of the 6th CPC, it was provided that pension shall be 50% of the minimum of the

revised pay scale. It was also provided that Government servants on permanent absorption in public sector undertaking/autonomous bodies shall

continue to draw pension separately from the Government and have become entitled to the restoration of 1/3 commuted portion of pension. Thus the

grade pay of the applicant was revised to Rs.4200/- in pay band of Rs.9300-34800. The applicant is entitled to get pension not less than 50% of the

minimum of the pay in the pay band and grade pay corresponding to the pre-revised pay scale in which he had retired as per the fitment table without

pro-rata reduction, even though he had qualifying service of less than 33 years. When Annexure-A4 OM regarding the revision of pension of pre-2006

pension was implemented in NPCIL, there occurred anomaly regarding the pension of 1994 optees, vis a vis 1998 optees. Thus the pay band of the

applicant was reduced to Rs.5200-20200 with grade pay of Rs.2800/-. The applicant gave Annexure-A9 representation against this discriminatory

treatment and requested for revising the pension to Rs.6750/- per month corresponding to the 6th pay commission scale of Technician-E and also

revision as per the 7th CPC orders dated 12.05.2017. Thus he wants to rectify the anomaly between the optees of 1994 and 1998. He has also drawn

support from Annexure-A10 order of this Tribunal in OA 33/2012 to support the contention.

3. According to the applicant, respondents 2 and 3 are bound to implement Annexure-A3 order dated 22.08.2012, that he is entitled to get pension of

Rs.6750/-; grant of a higher rate of pension to 1998 absorbees in NPCIL than 1994 absorbees is discriminatory and violative of Article 14 of the

Constitution. In this connection, he has relied on the decisions in D.S. Nakara & Others vs Union Of India [(1983) 1 SCC 305] and Union of

India and another v. SPS Vains (Retd.) and others [(2008) 9 SCC 125.] Thus the applicant seeks a direction to the respondents to revise and re-

fix his pension from 01.01.2006 to 31.12.2015 at Rs.6750/- and further revision as per 7th CPC, to consider Annexure-A9 representation and to grant

him all consequential benefits with interest.

4. Respondents 1 and 2 have challenged the claims of the applicant. As a preliminary objection, it is pointed out that the 2nd respondent, NPCIL is not

a notified organization under Section 14(2) of the Administrative Tribunals Act, nor it is included in Appendix-VI to Rule 154(b) of the Administrative

Tribunals Rules and hence the OA is not maintainable.

5. Without prejudice to the above contention, respondents 1 and 2 have contended that consequent to the incorporation of the NPCIL and on en-masse

deputation of the employees, they were given right of option for permanent absorption in the Corporation. Thus the applicant opted to move to the

Corporation on 17.09.1994 after getting pro-rata pension for the previous service. At that time, he was working as Tradesman-E in the pay scale of

Rs.1400-2300; having regard to the length of service of 13 years and 6 months he was granted a minimum pension of Rs.375/-. After the

implementation of the recommendations of the 5th CPC, the pay scale of Rs.1400-2300 was revised to Rs.4500-125-7000 with effect from

01.01.1996. On the recommendation of Anand Committee, constituted by the Department of Atomic Energy, scales of employees in the technical

categories were revised under Annexure-R5 office order, with effect from 01.01.1996. Thus scale of Rs.1400-2300 was revised to Rs.5000-150-8000

and revised pension was fixed at Rs.1275/-. In accordance with Annexure-A5 OM dated 06.04.2006 the pension of the applicant was revised to

Rs.6750/- in 6th CPC pay band Rs.9300-34800 with grade pay of Rs.4200/-. But it was noticed that the benefits of Anand Committee

recommendations were effective only from 01.01.1996 and the applicant was a pre-1996 retiree. A clarification was sought from the 1st respondent,

thus it was informed that pay scale of Rs.4500-125-7000 is to be treated as equivalent pay scale to the revised pay scale of Rs.1400-2300 in respect

of pre-1996 retirees. Thus the pension of the applicant was revised as per Annexure-R8/A7 OM dated 12.05.2017 and his pension was revised.

According to the respondents, Annexure-A10 judgment of this Tribunal is not applicable in the facts of the case. Referring to the Annexure-A9

representation it is submitted that pension of the Government servant has to be calculated on the basis of the pay he was receiving immediately before

retirement, but not on the pay which was actually not drawn. Thus the OA is sought to be dismissed.

6. The applicant filed a rejoinder. Regarding the preliminary objection it is submitted that the applicant was working under the Nuclear Power Board

under the Department of Atomic Energy and the Atomic Energy Regulatory Board, one of the organisations included in the list of Government

organisations or departments for the purpose of jurisdiction. According to him, pension revision of all pensioners in the grade of Tradesman-E was

done in the pay scale of Rs.5000-8000 irrespective of the option. It is the settled law that by virtue of the revision payment of pension and other

benefits should be granted considering the minimum of the pay scale corresponding to the revised stage at which the pensioner was working at the

time of retirement. Pension of a retired Government servant is determined on the basis of his emoluments and qualifying service at the time of

retirement. The very concept of fixing pension basing on the cut off date is violative of Article 14 of the Constitution as held in D.S.Nakara and

others, quoted supra.

7. Elaborate arguments were addressed by the learned counsel for the applicants and the learned Standing Counsel for the respondents. Argument

notes were filed by both sides.

8. Even though a preliminary objection was raised regarding the jurisdiction of this Tribunal, such an argument was not raised at the time of final

hearing. It is true that NPCIL is not a notified organisation under the Administrative Tribunals Act. At the same time, such an argument does not have

any relevance since the grievance of the applicant is against the 1st respondent under whom he was working till 16.09.1994. The competent authority

to sanction his pension is the 1st respondent, Department of Atomic Energy is a department over which this Tribunal can exercise jurisdiction;

therefore such a contention has no relevance.

9. The respondents have stated that applicant had put in 13 years and 6 months service in the Nuclear Power Board, prior to his absorption in the 2nd

respondent Corporation. Honouring that service, he was granted pension. On 17.09.1994 he was absorbed in the NPCIL. Thereafter by Annexures-

A1 OM and R5 office order, revised scales were introduced in the Nuclear Power Corporation for technical categories of employees. That was done

on the recommendations of a committee and the revision was effective from 01.01.1996. Thus scale of pay of Tradesman-E, Rs.1400-2300, was

replaced by Rs.5000-8000 with effect from 01.01.1996. The applicant claims that he is entitled to get the benefit of the revised pay. Initially, though he

was also treated as having retired in the scale of Rs.5000-8000, later that mistake was rectified and the pension so granted has been reduced and

aggrieved by the reduction, he has approached this Tribunal. According to him, any distinct treatment between the optees of 17.09.1994 and

01.01.1998 is illegal, discriminatory and violative of Article 14 of the Constitution. On the other hand, according to the respondents, the applicant who

opted absorption in the NPCIL on 17.09.1994 is not entitled to get the benefit of salary revision effected under Annexures-A1 and R5, such a revision

was effective from 01.01.1996. Prior to that, the applicant had retired from the service of the Nuclear Power Board.

10. The short question that arises for consideration is whether the applicant is entitled to get the benefit of Annexures-A1 and R5 revision effected

from 01.01.1996. While the learned counsel for the applicant placed reliance on the decisions in D.S.Nakara, SPS Vains, quoted supra, All Manipur

Pensioners Association v. The State of Manipur and others [AIR 2019 SC 3338] and the judgment of the Hon'ble High Court dated 16.12.2016

in WP(C) 21477/2016; but the claim is opposed mainly basing on the decision in K.S.Krishnaswamy and others v. Union of India and another

[(2006) 13 SCC 215]. The learned Standing Counsel has also produced copies of orders of this Tribunal in two OAs and the judgment of the Hon'ble

High Court in OPs(CAT) 60/2019 and 215/2019, all were rendered following Krishnaswamy.

11. The service profile of the applicant is not in dispute. While working as Tradesman-E in the scale of Rs.1400-2300, accepting his option the

applicant was absorbed in NPCIL on 17.09.1994. The hike in the scale of Tradesman became effective only from 01.01.1996. Normal replacement of

scale of Rs.1400-2300 was Rs.4500-7000, whereas by Annexure-A1 and R5 a higher replacement scale of Rs.5000-8000 was granted to the

employees in the category. Even though pension of the applicant was initially fixed taking his replacement scale as Rs.5000-8000, on realising the

mistake, it was revised to Rs.4500-7000, following which Annexure-A6 was issued rescinding Annexure-A3, whereunder his revised pension was

reduced to Rs.5585/- from 01.01.2006. After evaluating the materials and principles governing the field, this Tribunal is unable to find fault with the

respondents in revising the pension of the applicant.

12. As noticed earlier, the applicant had moved over to the service of the NPCIL on 17.09.1994, prior to the revision of pay. A special replacement

scale was introduced effective from 01.01.1996. Much before that, he had opted his absorption in the NPCIL. Naturally, those who opted the date of

absorption on 01.01.1998 were entitled to get the special hike in the pay scale. Applicant who opted to retire from the prior service on 16.09.1994

cannot get the benefit of the hike introduced subsequent in point of time.

13. As rightly pointed out by the learned Standing Counsel, pension is fixed on the basis of the scale of pay held by the pensioner at the time of

superannuation/retirement. Rule 33 of the CCS(Pension) Rules says that the expression 'emoluments' means basic pay as defined in Rule 9(21)(a)

(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement. The expression 'pay' is defined in FR

9(21)(a)(i) as 'the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him

substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre;' So, what is important for fixation of pension is

the pay drawn by the applicant on the date of retirement, that is on 16.09.1994. As adverted to earlier, since he had opted for absorption in the NPCIL

from 17.09.1994, he cannot claim the benefit of the replacement scale introduced through Annexures-A1 and R5 with effect from 01.01.1996.

14. As submitted by the learned Standing Counsel, the dictum in D.S.Nakara stands distinguished in K.S.Krishnaswamy. Krishnaswamy has been

reiterated by the Apex Court in Union of India v. R.Sethumadhavan and another AIR 2018 SC 1891]. In Krishnaswamy, taking note of the

clarifications issued by the Government, the Apex Court has held that what is important is the scale of pay and not the post.

15. It is also important to note that in Krishnaswamy, D.S.Nakara has been distinguished on facts. SPS Vains and All Manipur Pensioners cases

have been decided based on D.S.Nakara, without following Krishnaswamy. Similarly, the Hon'ble High Court has rendered the judgment in WP(C)

21477/2016 without bearing in mind the decision in Krishnaswamy.

16. Here the applicant claims the benefit of subsequent hike given to the scale of pay in post held by him after his retirement. The benefit of that hike

cannot be claimed by him. In Union Of India v. S. R. Dhingra And Others [(2008) 2 SCC 229,]the Hon'ble Supreme Court has observed that,

'when two sets of employees of the same rank retire at different points of time, one cannot claim the benefit extended to the other set on the ground

that they are similarly situated.' According to the Apex Court, though they retired with the same rank, they are not of the same class or homogeneous

group, that Article 14 has no application. Thus the Court drew a distinction from D.S.Nakara etc

17. The applicant had retired on 16.09.1994, in the scale Rs.1400-2300. The normal replacement scale during 5th CPC is Rs.4500-7000; similarly

during 6th CPC it has been raised to Rs.5200-20200 with grade pay of Rs.2800/-. Corresponding level from 01.01.2016 is level 5, at Rs.29200-92300.

From Annexure-A7/R8 OM it is very clear that revision has to be made by notionally fixing the pay in the pay matrix recommended by the 7th CPC in

the level corresponding to the pay in the pay scale/pay band and grade pay at which he retired. In my considered opinion, the applicant is not entitled

to get the benefit of the higher replacement scale granted under Annexure-A1/R5.

18. It is also important to note that, along with the applicant numerous other employees, similarly placed, must have opted to retire from the National

Power Board and were regularised in the Corporation. In other words, the case of the applicant might not have been an isolated instance. The

applicant has no case that any of them were granted pension giving the benefit of Annexures-A1/R5. Allegation of arbitrariness would sustain only if

such employees were given better treatment and the applicant was discriminated against. Conspicuously, no such allegation has been raised.

19. There is no justification in placing support on Annexure-A10 order of this Tribunal. That was rendered in the case of a Railway employee, who is

guided by Railway Services (Pension) Rules. Reduction of pension of such an employee could be done only following the specified procedures as

provided in Rule 90 of the Railway Services (Pension) Rules. The applicant cannot claim any such statutory protection under the CCS(Pension) Rules.

To sum up, the Original Application is bereft of merits and is dismissed. No costs.

(Dated, this the 18th October, 2023)