

JAIPUR ORDER

1. S.B. Civil Writ Petition No.6676/1998 Krishna Murari Lal Asthana Vs. Union of India & Ors.
2. 2. S.B. Civil Writ Petition No.654/2007 Krishna Murari Lal Asthana & Ors. Vs. L.I.C. of India & Ors. Date of Order : 12th January, 2010 HON'BLE MR. JUSTICE M.N. BHANDARI Mr.Abhinav Sharma Ms.Anita Aggarwal,G.C. - for petitioners Mr. Anurag Aggarwal Mr.Manoj Singh Ragav Mr.S.S. Raghav - for respondents BY THE COURT: REPORTABLE

These two writ petitions involve common issues, thus are being heard and decided by this order.

The petitioners are those who retired from the service of Life Insurance Corporation of India (for short 'the LIC of India'). First ground raised by the petitioners and common in both the writ petitions is regarding discrimination in grant of pensionary benefits. It is stated that on 28.6.1995, LIC of India (Employees) Pension Rules, 1995 (for short 'the Pension Rules') were notified. The Pension Rules were made applicable to the employees, who were in service of the respondent Corporation on or after 1.1.1986, on their exercising options to be governed by the Pension Rules and refunding the contribution of provident fund with interest. For those employees, who retired after 28.6.1995, the Pension Rules were made compulsory. Chapter – IV of the Pension Rules provides rates of pension. Rule 35(2) of the Pension Rules provides that if an employee has completed qualifying service of not less than 33 years, then his pension would be 50% of the average emoluments. The grievance of the petitioners is in regard to the grant of dearness allowance, inasmuch as, dearness allowance benefit has been attached on the basic pension and not on the basic pay. To clarify the above, it is submitted that benefit of dearness allowance after revision of the pay scale in the year 1996 was provided as under:-

“Dearness formula”

Basic Pay Rate of DA for every 4 points

- i) Up to Rs.4800 0.35% of pay
- ii) Rs.4801 to 7700 0.25% of 4800 plus 0.29% of pay in excess of Rs.4800
- iii) Rs.7701 to 8200 0.35% of 4800 plus 0.29% of difference between Rs.7700 and Rs.4800 plus

0.17% of pay in excess of Rs.7700

iv) Rs.8201 and above 0.35% of Rs.4800 plus 0.29% of difference between Rs.7700 and Rs.4800 plus 0.17% of difference between Rs.8200 and Rs.7700 plus 0.09% of basic pay in excess of Rs.8200 Aforesaid formula was available till Pension Rules came in the year 1995.

Under the Pension Rules, the benefit of dearness allowance was provided in the following manner:-

Scale of Back pension per month Rate of dearness relief as a percentage of basic pension i) Upto Rs.2400 0.35% ii) Rs.2401 to 3850 0.35% of Rs.2400 plus 0.29% of basic pension in excess of Rs.2400 iii) Rs.3851 to 4100 0.35% of Rs.2400 plus 0.29% of the difference between Rs.3850 and Rs.2400 plus 0.17% of basic pension in excess of Rs.3850 iv) Above Rs.4100 0.35% of Rs.2400 plus 0.29% of difference between Rs.3850 and Rs.2400 plus 0.17% of the difference between Rs.4100 and Rs.3850 plus 0.09% of basic pension in excess of Rs.4100 In view of the aforesaid, benefit of dearness allowance at the first step being 0.35% remains upto basic pension of Rs.2400/- only whereas aforesaid percentage of dearness allowance is allowed on the basic pay upto Rs.4800/-.

To understand the aforesaid difference, a comparative chart was submitted by the petitioners, which is quoted hereunder:- “Comparative Chart” Pay upto Rate of DA/DR Pension Upto 4800 0.35% of pay Upto 2400 From 4801 to 7700 0.29% of pay From 2401 to 3850 From 7701 to 8200 0.17% of pay From 3851 to 4100 Above 8200 0.09% of pay Above 4100.

Perusal of the aforesaid Chart shows that increase in the DA/DR was less for the pensioners because the benefit of DA/DR was reduced to the extent of 50% on proportion basis from the basic pay as an employee having qualifying pensionable service of 33 years or more gets 50% of the pay as pension. Learned counsel for petitioners prayed that slab of dearness allowance should be kept the same as is payable to the employees. In other words, it should not be reduced proportionately to the basic pension.

Thus, first grievance of the petitioners is in regard to reduction of benefit of dearness allowance.

The other issue raised in S.B. Civil Writ Petition No.6676/1998 – Krishna Murari Lal Asthana Vs. Union of India and Others pertains to non-grant of benefit of stagnation increment.

Learned counsel for petitioners, advancing the arguments for first issue, submitted that non-grant of due benefit of dearness allowance to the retired employees is not only arbitrary but

discriminatory in nature. After filing of the writ petition by Krishna Murari Lal Asthana, the LIC itself passed a resolution in its meeting held on 24.11.2001. On realizing the mistake, the LIC decided to sort out the issue by proper remedy, but finally left it to the discretion of the Union of India to take a final decision. If the resolution dated 24.11.2001 is implemented, then grievance of the petitioners can come to an end.

This is more so when the LIC is an independent body constituted under the Act of Parliament and is controlled by its Board.

The Central Government cannot sit on the decision taken by the Board within the framework of the Rules. However, in the present matter, despite the Board's resolution, petitioners have not been given relief for the reason that Government of India has not taken any decision on the aforesaid resolution dated 24.11.2001.

Referring to the provisions of Section 21 of the LIC Act, it was submitted that only in regard to the matter of policy involving public interest, the Central Government may issue guidelines. Thus, aforesaid provision does not bar for implementation of the resolution passed by the Board as it is not otherwise contrary to the public interest. This is more so when the pensioners who retired after 31.7.1997 are getting the benefit of dearness allowance on the basic pay and not on the basic pension, thus pensioners have been divided in two categories in a discriminatory manner. Even the cut off date fixed becomes arbitrary between the two categories of pensioners more so when benefit of dearness allowance was not a new benefit. Thus, any change in the benefit of pension has to be made without a cut off date. The legal position in that regard is quite clear. In view of the catena of judgments of the Hon'ble Apex Court, if there is a change in the benefit of existing pensioners, change has to be made effective to all without a cut off date inasmuch as cut off date in such cases are held to be arbitrary. In a case where pension is allowed for the first time, then a cut off date can be provided. My attention was drawn towards the judgment of the Hon'ble Apex Court in the case of V. Kasturi Vs. State Bank of India reported in AIR 1999 SC 61 wherein aforesaid issue has been dealt with. Same view has been expressed by the Hon'ble Apex Court in the case of Union of India Vs. Dr. Vijayappurapu Subhayamma reported in AIR 2000 SC 3113 and was even reiterated in the case of Subrata Sen Vs. Union of India reported in (2001) 8 SCC 71. In reference to aforesaid judgments, it was urged that there can be no difference in the benefit of dearness allowance to the employees retired before 31.7.1997 and those retired after the aforesaid date.

In reference to Section 21 of the LIC Act, it is submitted that a formal approval of the

Government of India was not required to the Board's decision dated 24.11.2001.

A reference of the judgment in the case of UGC Class-I Officers' Association Vs. University Grants Commissioner reported in 2000 (7) SLR (Delhi) 17 was made apart from the judgment of the Hon'ble Apex Court in the case of HEC Voluntary Retd. Employees Welfare Society Vs. Heavy Engg. Corporation reported in 2006 (3) SCC 708. Therein it was held that a body created under the Act or even the Government agency need not to seek approval of every decision taken by its Board for day-to-day functioning of the Company. In reference to aforesaid, it is submitted that when the Board of Directors have already taken a decision on 24.11.2001, then there is no need of its sanction by the Central Government.

Learned counsel for petitioners has further submitted that there exists anomaly even in regard to the revision of the pay scale. The benefit of revision in the pay scale from time to time was not extended to the pensioners. In view of aforesaid, even an officer retiring in the higher pay scale started getting less pension than to the employee retiring subsequently in lower pay scale. Aforesaid aspect was also considered along with the first issue, by the Board in its meeting held on 24.11.2001 and following decision was taken:-

“Executive Director (Personnel) introducing the subject mentioned that there was three different rates for different groups of pensioners at present depending on their dates of retirement, which cause considerable administrative inconvenience. Chairman pointed out that he has since received a communication from Dr. S. Ram Khanna, Board Member, which refers to his meeting with the Retirees Federation and requested examining the proposal in detailed. The Note is in line with the demands made by the Federation, viz., giving effect to the proposal from 1.11.1993 and upgradation by giving weightage of 11.25% as in the case of in-service employees. Chairman pointed out that these have been considered before placing the matter to the Board and it was felt that the same would increase the financial burden very substantially and may be unaffordable for the corporation.

Chairman pointed out that the implications of the proposal made have been actuarially determined at Rs.51.37 crores and the annual outlay be in the region of 6 to 8 crores. After some discussion the Board approved the proposal and suggested that it should be implemented prospectively and after obtaining Government approval.”

In view of aforesaid decision, the respondent Corporation was under an obligation to implement the decision without further delay as formal approval was not required from the Government. In view of aforesaid, it is prayed that relief claimed in the writ petitions may be granted to the petitioners. The prayer for grant of stagnation increment was not pressed. Per

contra, learned counsel appearing for respondent – Corporation submits that benefit of dearness allowance has been provided on rational basis, thus petitioners are not entitled to any benefit. This is more so when the benefit is as per the Rules. By virtue of the aforesaid, even if retirees are divided in two or three groups for grant of pensionary benefits, it cannot be said to be arbitrary or discriminatory in nature. The Board of Directors took a favourable decision in its meeting held on 24.11.2001, but the Central Government has not granted approval to the same till date. Thus, it could not be given effect.

In view of aforesaid, so far as the respondent Corporation is concerned, it has taken a favourable decision for the employees, but on account of inaction on the part of the Government of India, the Board's decision could not be given effect for redressal of the grievance raised by the petitioners herein. Learned counsel appearing for the Union of India submits that the Board's resolution dated 24.11.2001 is pending decision before the Government of India.

The LIC was otherwise free to take its own decision. Thus, in these circumstances and as per the provisions of the Act, there was no need to send the Board's resolution for its approval by the Government of India. I have considered rival submissions of the parties and scanned the matter carefully. First issue is in regard to non-grant of due benefiting of dearness allowance. It is stated that employees retiring after 31.7.1997 are getting due benefit of pension with dearness allowance whereas those retired prior to aforesaid date are being deprived to get similar benefit. The issue for consideration, thus, remains is as to whether there can be a different method for grant of pensionary benefits for the retirees based on cut off date? The legal position in that regard is quite clear.

In view of the several judgments of the Hon'ble Apex Court, issue regarding cut off date for providing pensionary benefits can be summarized in the following manner:-

- (i) If there are change in benefit of pension then no cut off date can be provided. The benefit on account of change in pensionary benefits would have retrospective effect.
- (ii) If the pension is introduced for the first time, a cut off date can be fixed.

Aforesaid issue has been settled by the Hon'ble Apex Court in various judgments cited by learned counsel for petitioners. In the case of V. Kasturi Vs. State Bank of India (supra), it was held that if a person was eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per new formula. Accordingly, he would be entitled to get similar benefit from the date it is given to other members. Same view has been reiterated in the cases of Dr. Vijayapurapu

Subhayamma (supra), Subrata Sen (supra) and in the case of All India Reserve Bank Retired Officers' Association Vs. Union of India reported in 1992 Suppl. (1) SCC 664. In Paras 9 & 10 of All India Reserve Bank Retired Officers' Association's case, aforesaid issue was decided after referring earlier judgment of the Hon'ble Apex Court in the case of D.S. Nakara Vs. Union of India (AIR 1983 SC 130). Relevant Paras of aforesaid judgment are reproduced hereunder:-

“9. The scheme introduced by the Regulations is a totally new one. It was not in existence prior to its introduction with effect from November 1, 1990.

The employees of the Reserve Bank who had retired prior to that date were admittedly governed by the CPF scheme. They had received the benefit of employer's contribution under that scheme and on superannuation the amount to their account was disbursed to them and they had put it to use also. There can, therefore, be no doubt that the retiral benefits admissible to them under the extant Rules of the Bank had been paid to them. That was the social security plan available to them at the date of their retirement. The Bank employees were, however, clamouring for a pension scheme, firstly on a restricted basis as a third retiral benefit and later in lieu of the CPF scheme. The Central Government had not approved of a pension scheme, as a third retiral benefit. After that proposal was spurned it appears that the employees of the Bank demanded a pension scheme on the pattern of the scheme available to Central Government employees in lieu of the CPF Scheme. This was approved by the Central Government and consequently it was introduced with effect from November 1, 1990 under the Regulations. There can, therefore, be no doubt that if the CPF retirees were not admitted to this new scheme they could not make any grievance in that behalf. They had no right to claim coverage under the new pension scheme since they had already retired and had collected their retiral benefits from the employer. But the moot question is whether it was open to the employer to grant the benefit of the pension scheme to one group of CPF retirees who had retired from Bank service on or after January 1, 1986 and deny the same to all who had retired on or before December 31, 1985. Is this division of CPF retirees discriminatory and violative of Article 14 of the Constitution?

10. Nakara judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalized all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalization and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalization on sound reason and not entirely on the whim and caprice of the State. The underlying

principle is that when the State decides to revise and liberalize an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduced an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme.

That is why in Nakara case this Court drew a distinction between continuance of an existing scheme in its liberalized form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut off date would ordinarily violate the principle of equality in treatment unless there is a strong rational discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. It must be realized that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. This is the reason why this Court in Nakara case drew a distinction between liberalization of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupees value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received a lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends.

This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasized by this Court in Krishena case". Perusal of aforesaid

Paras reveals that there exists difference between introduction of new Scheme then the existing Scheme. In the light of the aforesaid, if the facts of this case are looked into, then it becomes clear that amongst the pensioners there exists discrimination more specifically when the pension has been made admissible to the employees who retired on or after 1.1.1986. In view of aforesaid, there can be no different basis for dearness allowance or other benefits to those retired on or before 31.7.1997. The existing pensioners are entitled for the benefit of dearness allowance with the same measure as is admissible to the pensioners on or after 31.7.1997. The discrimination amongst the pensioners on that count is not permissible and if there exists rule, making discrimination amongst the existing pensioners, it is held to be violative of Articles 14 & 16 of the Constitution of India. The respondent Corporation has already taken up the aforesaid issue in its Board meeting and a resolution was also passed on 24.11.2001 after taking note of the fact that three different rates for different groups of pensioners exist depending upon their dates of retirement. It is not only causing administrative inconvenience but creating anomaly amongst the pensioners also. Accordingly, decision was taken but was made subject to final approval by the Central Government. The question now comes as to whether such Board's resolution requires Central Government's approval or can be implemented at the level of the respondent Corporation itself.

If we look to Section 21 of the LIC Act, things become very clear.

For ready reference Section 21 of the LIC Act is quoted hereunder:- "Section 21. In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government shall be final".

Perusal of the aforesaid Section reveals that it is only in regard to discharge of its functions under the Act, the Corporation shall be guided by such directions of the Central Government, which involve public interest and is otherwise matter of policy. In the present matter, it has not been shown that any guideline was issued by the Government of India as a policy decision in public interest. Thus, the position herein is reverse. It is the Board which passed a resolution and sent it for approval of the Government of India, which cannot be said to be as per Section 21 of the LIC Act. In fact, position would be different if the Government of India would have issued guidelines on policy matters in the public interest. This is apart from the fact that on realizing the mistake, the Board had taken a cautious decision even for administrative convenience. Thus, there was no reason to seek approval because day-to-day decisions are

not required to be sent for approval of the Central Government. The law, in this regard, is settled in view of various judgments cited by learned counsel for petitioners and has not otherwise been debated by learned counsel for the respondent Corporation. Even learned counsel for Union of India had accepted the aforesaid proposition and submitted that it is only a policy decision, that too, involving public interest and not every decision of Board, which needs approval by the Central Government. It is otherwise not made clear as to what is the element of public interest involved herein, if the resolution of the Board is implemented. In fact, implementation of the Board's resolution would take away discriminatory treatment amongst the pensioners apart from keeping the LIC away from the administrative inconvenience.

Thus, in the light of the aforesaid discussion, there cannot be a cut off date for existing pensioners for providing benefits but further fact is that to cure the aforesaid mistake, the Board's resolution should have been given effect to, which will otherwise redress the entire grievance of the petitioners. In the facts and circumstances of the case, I am of the view that resolution passed by the Board of LIC does not need approval of the Central Government thus the Corporation may give effect to its resolution dated 24.11.2001 to avoid discrimination amongst existing pensioners.

In light of the discussion made above, both the writ petitions are allowed. The respondent Corporation is directed to take a decision for implementation of the resolution dated 24.11.2001 passed by the Board. The respondent Corporation cannot provide different criteria for grant of dearness allowance to the existing pensioners based on cut off date i.e. 31.7.1997.

The benefit arising out of the directions above would, however, be considered by the respondent Corporation so that every retired employee may get the same benefit. Costs made easy.