

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th November, 2011.

+ W.P.(C) 2856/2011

% UNION OF INDIA Petitioner
Through: Mr. MK. Bhardwaj, Adv.

Versus

P.A. ROSHA Respondent
Through: Mr. Anil Mittal, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 11.11.2010 of the Central Administrative Tribunal allowing OA No.1508/2010 preferred by the respondent under Section 19 of the Administrative Tribunals Act, 1985 and directing the petitioner to extend the benefit of amended (with effect from 14.09.1983) Rule 8(9) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 to the respondent and fix the pension of the respondent from the said date on the basis of 33 years of qualifying service. The respondent was also held eligible for interest at the rate of 6% per

annum on the arrears of pension. The petition also impugns the order dated 21.04.2011 of the Tribunal dismissing the review application filed by the petitioner.

2. The respondent was an Officer of the 1948 batch of the Indian Police Service (IPS) who retired on 30.06.1981. The OA was filed by him assailing the order dated 05.04.2010 of the Ministry of Home Affairs rejecting his representation claiming benefit of the amendment supra. The respondent, at the time of retirement on superannuation, had completed qualifying service of 32 years 9 months and 16 days. The amendment to the Rule provided for the qualifying service to be calculated in six monthly periods with a fraction of less than three months to be not taken into account and any period between three months and six months to be treated as six monthly period in calculating the total qualifying service. It is not in dispute that if the said amendment were to be applied to the respondent his qualifying service for computation of pension would be counted as 33 years.

3. The Tribunal relying on *UOI Vs. SPS Vains (Retd.)* (2008) 9 SCC 125 upheld the claim of the respondent.

4. The contention of the petitioner is that the amendment was prospective and not applicable to those government servants such as the respondent who retired before 14.09.1983. It is also contended that ***SPS Vains*** (supra) was a case of revision of pensionary benefits and is not applicable to the facts of the present case. It is yet further contended that the claim of the respondent was barred by time. The Tribunal has also recorded that the counsel for the petitioner herein had conceded the matter to be covered by ***SPS Vains***. The said part of the order is also challenged. It is contended that no such concession was made and rather it was the contention of the counsel for the petitioner that the matter is not covered by ***SPS Vains*** but by ***UOI Vs. P.N. Menon*** JT 1994 (3) SC 26.

5. We may mention that the Supreme Court in ***D.S. Nakara Vs. UOI*** (1983) 1 SCC 305 finding the increased liability on the government to be not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the new scheme observed that homogenous class cannot be divided when there was no discernible rational principle and struck down the eligibility for liberalized pension scheme of

“being in service on the specified date and retiring subsequent to that date” as violative of Article 14 and unconstitutional. We have satisfied ourselves that the additional financial burden on the petitioner in complying with the impugned order will be minimal. The Supreme Court again in *V. Kasturi Vs. Managing Director, SBI* (1998) 8 SCC 30 held that if the person retiring is 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 the new formula of computation of pension subsequently brought into force as he would be a member of the very same class of pensioners and such benefit cannot be denied to him on the ground that he had retired prior to the date on which the additional benefit was conferred.

6. Insofar as the plea of limitation is concerned, pension being a recurring benefit, the question of limitation did not arise. However, the respondent could have claimed arrears of increased pension in terms of the

order only for three years prior to the institution of the OA and not since the amendment in the year 1983.

7. Accordingly, while upholding the finding of the Tribunal of the pension payable to the respondent being required to be computed on the basis of 33 years of qualifying service, we clarify that in consequence thereof, the respondent would be entitled to arrears of pension only for a period of three years prior to the filing of the OA and with effect from the date of filing of the petition onwards. The petition is disposed of in the said terms.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

NOVEMBER 28, 2011

‘gsr’