IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADERSH

Writ Petition Nos.25597, 42128, 44734, 45227 of 2016 & 671,

8328, 9486, 36769, 37183 and 37189 of 2017

W.P.No.25597 of 2016

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 oathers

… Petitioners

Vs.

A. Venkata Rao, S/o late A. Venkateswara Rao,
aged 74 years, Occ: Retired Audit Officer,
R/o H.No.12-2-828/A/24, Amba Gardens,
Mehdipatnam, Hyderabad and another

.. Respondents

JUDGMENT PRONOUNCED ON : 13-11-2017

HON'BLE SRI JUSTICE : V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE : M. GANGA RAO

1. Whether Reporters of local Newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/ Journals? : Yes

3. Whether their Ladyship/Lordship wish to see the fair copy of the judgment? : Yes

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE SRI JUSTICE M. GANGA RAO**

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aged 74 years, Occ: Retired Audit Officer,
R/o H.No.12-2-828/A/24, Amba Gardens,
Mehdipatnam, Hyderabad and another

.. Respondents

#W.P.No.42128 of 2016

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 others

… Petitioners

Vs.

K.V. Ramana Murthy, S/o late Narasimha Murthy,
Aged 81 years, Occ: Retired Senior Audit Officer,
R/o H.No.10-1-18/51, Shyam Nagar,
AC Guards, Hyderabad and another

.. Respondents

#W.P.No.44734 of 2016

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 others

… Petitioners

Vs.

A.V. Prasada Rao, S/o late Ramanaiah,
Retd. Senior Audit Officer, aged 74 years,
R/o House No.12-2-828/A/23, Amba Gardens,
Mehdipatnam, Hyderabad and another

.. Respondents

#W.P.No.45227 of 2016

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 others

… Petitioners

Vs.

B. Surya Rao, S/o late Kedareswarudu,
Retd. Senior Audit Officer, aged 74 years,
R/o House No.9-4-84/64, Kakatiya Nagar,
Hyderabad and another

.. Respondents

#W.P.No.671 of 2017

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 others

… Petitioners

Vs.

B. Krishna Murthy, S/o late B.L.N. Rao,
Retd., Senior Audit Officer, aged 73 years,

R/o House No.163, Padmanabha Nagar,
Hyderabad and another

.. Respondents

#W.P.No.8328 of 2017

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 others

… Petitioners

Vs.

V. Prema, W/o K.S. Mohan Rao, aged 84 years,
Occ: Retd. Senior Accountant, R/o H.No.6-3-598/51/7,
Anand Nagar Colony, Khairathabad, Hyderabad
And another

.. Respondents

#W.P.No.9486 of 2017

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 others

… Petitioners

Vs.

D.V. Venkat Rao, S/o late D. Ammanna Sastry,
Aged 80 years, R/o H.No.12-2-823/A/40,
Santhosh Nagar, Mehdipatnam, Hyderabad
And another

.. Respondents

#W.P.No.37183 of 2017

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 others

… Petitioners

Vs.

A.S.Y. Sarma, S/o A.V. Raghavaiah,
Retired Senior Audit Officer, aged 75 years,
R/o H.No.12-2-709/65, Navodaya Colony,
Mehdipatnam, Hyderabad.

.. Respondents

#W.P.No.37189 of 2017

#Between:

The Union of India, represented by Principal
Accountant General (G & SSA), Andhra Pradesh
And Telangana, Hyderabad and 2 others

… Petitioners

Vs.

Y.C. Mastan Rao, S/o late Y. Subba Rao,
Retd. Senior Audit Officer, aged 74 years,
R/o H.No.6-3-596/24/3, Sri Venkatarama
Colony, Khairathabad, Hyderabad

.. Respondents

! Counsel for Petitioner : Mr. B. Narasimha Sarma,
Learned standing counsel

^ Counsel for respondent : Mr. E. Krishna Swamy,
Party-in person

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition Nos.25597, 42128, 44734, 45227 of 2016 & 671, 8328, 9486, 36769, 37183 and 37189 of 2017

ORDER: *(V. Ramasubramanian, J)*

The Union of India has come up with the above writ petitions, challenging a series of orders passed by the Central Administrative Tribunal, allowing the Original Applications filed by a group of Retired Senior Audit Officers and directing the Government to re-fix the pension of the respondents and pay the arrears thereof within a period of three months, as per a decision rendered by the Full Bench of the Central Administrative Tribunal.

2. Heard Mr. B. Narasimha Sarma, learned senior standing counsel appearing for the Union of India and Mr. E. Krishna Swamy, in a dual capacity, both as a party appearing in person in his own case and as a lawyer representing his former colleagues, as he is now a retired Senior Audit Officer turned as a practicing lawyer.

3. The respondents in these writ petitions retired long long ago, in the years 1986, 1991, 1992, 1995, 1997, 2000, 2001 and 2003.

4. The recommendations of the Sixth Central Pay Commission were implemented with effect from 01-01-2006. One of the terms of reference of the Sixth Central Pay Commission was to examine the principles which should govern the structure of pension, death-cum-

retirement gratuity, family pension and other terminal or recurring benefits having financial implications to the present and former Central Government employees appointed before 01-01-2004. The Commission submitted its report on 24-03-2008 and the Government accepted the recommendations broadly subject to some modifications.

5. The detailed recommendations of the Commission and the decisions taken thereon by the Government, were recorded in a Government's Resolution bearing G.I.,M.F.,No.38/37/08-P & PW (A), dated 29-08-2008.

6. In the Annexure to the said Government's Resolution dated 29-08-2008, there was a tabular statement containing the recommendations in column-2 and the decision of the Government in Column-3. Serial No.2 in the said tabular statement contained in the Annexure to the Government of India's Resolution, which is relevant for the present case, reads as follows:

Sl. No.	Recommendation	Decision of Government
2.	Linkage of full pension with 33 years of qualifying service should be dispensed with. Once an employee renders the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. Simultaneously, the extant benefit of adding years of qualifying service for purposes of computing pension/ related benefits should be withdrawn as it would no longer be relevant. (5.1.33)	Accepted

7. Therefore, pension became payable @ 50% of the average emoluments received during the past 10 months or the pay last drawn, whichever was more beneficial to the retiring employees.

8. Contending that the persons who retired before 01-01-2006 and those who retired after 01-01-2006 formed one class of pensioners, but cannot be classified into separate groups and that after the Government of India's Resolution dated 29-08-2008, the notional pay fixation and consequent pension should not be lower than fifty per cent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the scale of pay from which they had retired, a group of pre-2006 retirees filed applications before various Benches of the Tribunal. The Bombay and Patna Benches of the Tribunal rejected the claim and eventually the matter was referred to a Full Bench of the Central Administrative Tribunal at its principal seat, by a reference dated 29-04-2011.

9. By a common order passed in the batch of cases on 01-11-2011, the Full Bench of the Central Administrative Tribunal allowed the applications and issued certain directions. The operative portion of the order of the Full Bench reads as follows:

> "30. In view of what has been stated above, we are of the view that the clarificatory OM dated 03-10-2008 and further OM dated 14-10-2008 (which is also based upon clarificatory OM dated 03-10-2008) and OM dated 11-02-2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 01-01-2006, based on the resolution dated 29-8-2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from

the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs."

10. The Government of India appealed against the said decision of the Full Bench of the Tribunal, but the Special Leave Petitions, the applications for review as well as the curative petitions filed by the Government were dismissed by the Supreme Court.

11. Thereafter on the basis of the decision of the Full Bench of the Tribunal, all the pre-2006 retirees started making representations. The representations were rejected, forcing the respondents to approach the Central Administrative Tribunal. By brief but independent orders passed in all the applications, the Central Administrative Tribunal, Hyderabad Bench allowed all the Applications filed by the respondents herein, forcing the Government of India to come up with the above writ petitions.

12. For the purpose of easy appreciation, we present in a tabular column, the writ petition number, the name of the respondent, the number of the Original Application filed by the respondent before the Central Administrative Tribunal, the date of retirement of the respondent and the prayer made by the respondents in their Original Applications before the Tribunal.

W.P.No.	Name of the respondent	CAT O.A. No.	Date of retirement of respondent	Prayer made in O.A.
25597/2016	A.Venkat Rao, Retd. Audit Officer	021/00518 of 2015	31-01-2001	(i) To declare that inaction of the respondent authority-1 in denying the benefit of the Liberalization of determining the revised

				pension @ Rs.11,300/- p.m. w.e.f. 01-01-2006 is arbitrary, discriminatory, violative of Articles 14, 16 and 21 of the Constitution of India and violative of the law laid down by the Hon'ble Supreme Court; and (ii) Direct Respondent-1, to revise/refix the pension of the applicant @ Rs.11,300/- p.m., w.e.f. 01-01-2006, and pay the arrears of pension from 01-01-2006 till the date of payment of the refixed pension (calculation up to 31-12-2014 enclosed) within three (03) months from the date of receipt of the orders of this Hon'ble Tribunal and pay interest at 12% interest on the delayed payment.
42128/2016	K.V. Ramana Murthy,Retd. Sr. Audit Officer	021/00482 of 2015	31-8-1991	- Do – [revised pension @ Rs.12,408/- p.m.]
44734/2016	A.V. Prasada Rao, Retd. Sr. Audit Officer	021/00568 of 2015	31-8-2000	- Do – [revised pension @ Rs.14,012/- p.m.]
45227/2016	B.Surya Rao, Retd. Sr. Audit Officer	021/00718 of 2015	30-9-2001	- Do – [revised pension @ Rs.14,012/- p.m.]
671/2017	B.Krishna Murthy, Retd. Sr. Audit Officer	021/00716 of 2015	31-12-2003	- Do – [revised pension @ Rs.13,082/- p.m.]
8328/2017	Smt. V.Prema, Retd. Sr. Accountant	021/00401 of 2015	12-8-1986	(i) To set aside the impugned letter/order dated 27-6-2012 and declare the same as arbitrary, discriminatory, violative of Articles 14, 16 and 21 of the Constitution of India and violative of the law

				laid down by the Hon'ble Supreme Court of India; and (ii) - Do – [revised pension @ Rs.7,693/- p.m.]
9486/2017	D.V. Venkat Rao, Retd. Sr. Audit Officer	021/00402 of 2015	30-11-1992	(i) and (ii) - Do – [revised pension @ Rs.11,900/- p.m.]
36769/2017	E.Krishna Swamy, Retd. Sr. Audit Officer	021/00404 of 2015	28-02-1995	(i) To set aside the impugned letter/order dated 17-10-2011 and declare the same as arbitrary, discriminatory, violative of Articles 14, 16 and 21 of the Constitution of India and violative of the law laid down by the Hon'ble Supreme Court of India; and (ii) - Do – [revised pension @ Rs.12,239/- p.m.]
37183/2017	A.S.Y. Sarma, Retd. Sr. Audit Officer	021/00807 of 2015	30-11-1997	(i) and (ii) - Do – [revised pension @ Rs.13,082/- p.m.]
37189/2017	Y.C. Mastan Rao, Retd. Sr. Audit Officer	021/00717 of 2015	31-01-2001	(i) and (ii) - Do – [revised pension @ Rs.13,082/- p.m.]

13. It is seen from the orders passed by the Tribunal that all the orders are identically worded. Every order of the Tribunal runs to five paragraphs. The first paragraph of the impugned orders of the Tribunal, reproduces the reliefs sought by the respondents in their Original Applications. Paragraph 2 of the order of the Tribunal contains the names of the counsel, who argued. Paragraph 3 of the order of the Tribunal contains a statement that in view of the order of the Full Bench of the Tribunal, the O.As filed by the respondents could be disposed of with similar directions, as the facts of the case

are similar to the facts before the Full Bench. Paragraph 4 of the order of the Tribunal contains an extract of the operative portion of the order of the Tribunal. Thereafter paragraph 5 contains the direction issued by the Tribunal to the Government of India to re-fix the pension of the respondents and to pay the arrears thereof within three months.

14. The grievance of the Union of India is that they filed reply affidavits before the Tribunal, raising a specific contention that the pension of each of the respondents was in fact calculated as per the Government of India's Resolutions dated 02-09-2008 and 03-10-2008 and that without reference to the specific stand taken by the Union of India, the Tribunal blindly allowed the Original Applications.

15. But the above grievance of the Union of India appears to be fairly justified. In the last paragraph of the reply filed by the Union of India before the Central Administrative Tribunal in the present batch of cases, the Union of India made a positive claim that they had fixed the revised pension only in accordance with the Government of India's Resolutions dated 02-09-2008 and 03-10-2008. Paragraph 39 of the reply affidavit filed by the Union of India before the Central Administrative Tribunal reads as follows:

> "39. In reply to paras 8 and 9 of the O.A., it is submitted that the applicant is a retired Central Government employee. The amount of pension payable is regulated as per the orders/instructions issued by Ministry of Personnel, Public Welfare (DoP&PW). The revised pension of Rs.11,074/- was calculated as per DoP&PW O.M. Nos.38/37/08-P&PW(A) dated: 02-9-2008 and 03-10-2008 read with O.M. dated: 10-12-2009 which categorically mentioned that the pension of Government servant retiring on or after 01-01-2006 will be calculated based on

> emoluments or average emoluments received during the last 10 months, whichever is more beneficial and that the linkage of full pension with 33 years of qualifying service shall be retiring on or after 01-01-2006 will be calculated based on emoluments or average emoluments received during the last 10 months, whichever is more beneficial and that the linkage of full pension with 33 years of qualifying service shall be dispensed with, with effect from 01-01-2006 instead of 02-9-2008. The revised provisions for calculation of pension in para 5.2 and 5.3 of the O.M. No.38/37/08-P&PW(A) dated: 02-9-2008 shall come into force with effect from 01-01-2006 and shall be applicable to the Government servants retired/retiring after that date. As such the applicant is not eligible for the relief prayed for."

16. But unfortunately, the Tribunal has not adjudicated as to whether the claim made by the Union of India in their reply was correct or not. The Tribunal has presumed that the Government of India's Resolution dated 29-08-2008 followed by the clarificatory Office Memoranda dated 02-09-2008, 03-10-2008 and 10-02-2009, were not implemented.

17. When we pointed out this fact, it was argued by Mr. E. Krishna Swamy learned counsel appearing for the respondents that if the Government of India's Resolution and the Office Memoranda had been implemented, the pension of the respondents would not be what it is. The learned counsel also placed reliance upon the decisions of the Supreme Court in **D.S. Nakara v. Union of India**[1] and **Union of India and another v. SPS Vains (Retd.,) and others**[2].

18. But we do not think that the respondents can any more rely upon the decisions of the Supreme Court in **D.S. Nakara v.**

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[1] 1983 (1) SCC 305
[2] 2008 (9) SCC 125

Union of India and **Union of India and another v. SPS Vains**. This is for the reason that the Bombay and Patna Benches of the Central Administrative Tribunals rejected the claims of the pre-2006 retirees, on the ground that the decisions in **D.S. Nakara** and **S.P.S. Vains** may not apply. The Full Bench of the Central Administrative Tribunal agreed for the reasonings given by Bombay and Patna Benches of the Tribunal, with respect to the decisions of the Apex Court in **D.S. Methara and SPS Vanis**. This can be seen from paragraphs 2 and 11 of the order of the Full Bench of the Central Administrative Tribunal.

19. The relevant portion of the order of the Full Bench (para-2) reads as follows:

> "2. Applicants, who are pre-2006 retirees, are claiming pension at par with post-2006 retirees based on the recommendations of the VI Central Pay Commission, which became effective from 1.1.2006. Considering that the issues involved have great ramifications and in the meanwhile Bombay Bench and Patna Bench of the Tribunal rendered judgments(s) against their cause, the matter was referred to the Full Bench vide order dated 29.04.2011. The grievance projected by the applicants in these OAs are that the employees, who retired prior to 1.1.2006 (specified date) and those who retired thereafter form one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not found on intelligible differentia, which has a rationale nexus with the object sought to be achieved. To substantiate this argument reliance has been placed on the judgment of the Apex Court in the case of D.S. Nakara and others v. Union of India, (1983) 1 SCC 305 and Union of India v. S.P.S. Vains, (2008) 9 SCC 125….."

20 Paragraph 11 of the order of the Full Bench reads as follows:

> "11. Thus, we agree with the reasoning given by the Bombay and Patna Benches of the Tribunal as regards fixation of pension of pre-2006 retirees

at par with post-2006 retirees, based on the decisions of the Apex Court in D.S. Nakara and S.P.S. Vains (supra)."

21. Therefore, it is clear that if the respondents pitch their claim on the basis of the decision of the Full Bench of the Central Administrative Tribunal, they cannot go back to the decisions of the Supreme Court in **D.S. Nakara** and **S.P.S. Vains**.

22. Mr. E. Krishna Swamy, learned counsel for the respondents, then relied upon the decision of a Division Bench of this Court in the **Principal Secretary to Government v. Andhra Pradesh Pensioners Samaj** *(W.P.Nos.16719 and 18490 of 2003 dated 23-12-2003)*. Though in two appeals filed by the Government against the said decision of the Division Bench in Civil Appeal Nos.5367-5368 of 2005, a Bench of the Supreme Court noted the conflict of opinion in two different cases and referred the issue to a Larger Bench, the Larger Bench eventually dismissed the appeals by an order dated 30-04-2014. Therefore, it is contended by Mr. E. Krishna Swamy, learned counsel for the respondents that the issues are already settled in favour of the respondents and there was nothing to adjudicate.

23. But we do not agree. We have already extracted in the tabular statement, the dates of retirement of the respondents and the prayers made by them in the Original Applications. We have also extracted paragraph 39 of the reply affidavit by the Government of India in the Original Applications before the Tribunal.

24. In the light of the stand taken by the Union of India, the Tribunal could not have allowed the Original Applications on the ground that the issue is covered by the decision of the Full Bench of the Tribunal. Each individual case ought to have been examined by the Tribunal to find out what was the benefit extended to the respondents, how the pension was fixed and whether the Government of India's Resolution and the Office Memoranda were implemented. Since the Tribunal has not done the same, we are obliged to set aside the order of the Tribunal and remand the matter back to the Tribunal for a fresh disposal.

25. In view of the above, all the writ petitions are allowed, the orders of the Tribunal are set aside and the matter remanded back to the Central Administrative Tribunal for a fresh examination. There will be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

Date: 13-11-2017
Ksn

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