A COMMANDER HEAD QUARTER
CALCUTTA AND ORS.
v.
CAPT. BIPLA BENDRA CHANDA

NOVEMBER 5, 1996

B [B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

Service Law:

C *Pension—Commissioned Officer in Defence—Retired in May 1982—As per rules then existing, only 2/3rd of pre-commissioned service was counted for the purpose of pension and a minimum period of qualifying service provided for earning pension—Appellant found ineligible for pension—Rules revised w.e.f. 1.1.1986 and full pre-commissioned period taken into account for purposes of pension—Claim for benefit under revised* D *rules—Held, the revised rules which come into operation w.e.f. 1.1.1986 were not given retrospective effect—Respondent cannot be made retrospectively eligible for pension by virtue of the revised rules.*

State of West Bengal **v.** *Ratan Behari Dev,* **[1993] 4 SCC 62, relied on.**

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D.S. Nakara and Ors. **v.** *Union of India,* **[1983] 2 SCR 165 and** *M.C. Dhingra* **v.** *Union of India and Ors.,* **[1996] 7 SCC 564, distinguished.**

F *Krishna Kumar and Ors.* **v.** *Union of India and Ors.,* **[1990] 4 SCC 207 and** *Indian Ex-services League and Ors. Etc.* **v.** *Union of India and Ors. Etc.,* **[1991] 1 SCR 158, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14172 of 1996.

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From the Judgment and Order dated 6.7.94 of the Calcutta High Court in F.M.A.T. No. 2419 of 1992.

P.P. Malhotra, Wasim A. Qadri and Ms. Anil Katiyar for the H Appellants.

Bijan Ghosh for the Respondents. A

The following Order of the Court was delivered :

Heard the counsel for both the parties.

Leave granted. B

This appeal is preferred against the judgment of 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 C for earning pensionary benefits. A minimum period of qualifying service was also provided for becoming eligible for pension. On the basis of the said Rule, the respondent was found ineligible for 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 D 1, 1986] based upon the recommendations of the Fourth Pay Commission. One of the features of these Rules was that full precommissioned service was to be taken into count for working out the qualifying service required for earning pensionary benefits. In others 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- E 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 and Ors.* v. *Union of India,* [1983] 2 SCR 165, which order has been F 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 G 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. That 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 H

A 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, 1986 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 B 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. This cannot be.

The decision in *D.S. Nakara* has indeed been explained by two subsequent Constitution Bench decisions of this Court in *Krishna Kumar* C *and Ors.* v. *Union of India and Ors.*, [1990] 4 SCC 207 and *Indian Ex-Services League and Ors. Etc.* v. *Union of India and Ors. Etc.*, [1991] 1 SCR 158. In the latter 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 D may also refer in this connection to the observations in another decision of this Court in *State of West Bengal* v. *Ratan Behari Dev,* [1993] 4 SCC 62, to the following effect:

> "...It is open to the State or to the Corporation, as the case E 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 may be, F 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 effect from which the Regulations framed, or amended, as the case G 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 H 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. Dhingra* v. *Union of India and Ors.*, [1996] 7 SCC 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. A

For the 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. B

R.P. Petition dismissed. C