

PENSIONERS DAY ON 17TH DECEMBER

In India, many DAYS are being observed like Childrens Day, Womens Day, Husbands Day, Elders Day etc.,etc. Many of them are recognized by the Government. In the list of those days you will not find Pensioners Day. But, the Pensioners community in India observes Pensioners Day on 17th December every year.

Significance of 17th December

It was on 17th December 1982 that the Supreme Court of India delivered its landmark judgement in the famous case of D S Nakara & Others Vs Govt of India [Writ Petitions NOs 5939-41 under Art. 32 of Constitution of India.] The case was filed by Mr D S Nakara, who retired on superannuation as Financial Advisor to the Ministry of Defence and Rear Admiral Satyendra Singh who retired from the Armed Forces and 'Common Cause', a society registered under the Societies Registration Act 1986. The judgement was delivered by a five member bench of Supreme Court consisting of the then Chief Justice Mr Y V Chandrachud, J. Mr V D Tulzapurkar, J. Mr D A Desai, J. Mr O Chinnappa Reddy and J. Mr Baharul Islam, the gems of Indian judiciary. It could have been yet another ordinary case but for the most important fundamental issues raised in the affidavit and addressed and disposed by the Court.

Background:

The First CPC (1946-1947) recommended that the age of retirement should be 58 years and pension should be 1/80 of emoluments for each year of service subject to a limit of 35/80 with a ceiling of Rs 8000 per year. Government raised the ceiling to Rs 8100 per year or Rs 675 per month. The IICPC (1957-59) did not change it. The III CPC (1970-73) did not look into the case of past pensioners but recommended some changes for future pensioners. Pension should be fixed at 66/160; for a maximum of 33 years of service. Emoluments should be average of 36 months. Government changed it as average for 10 months. CPC recommended that limit of pension should be raised from Rs 675 to Rs 1000 per month with effect from 29-2-1976. Ministry of Finance issued an order in May 1979 introducing a Liberalized Pension Scheme with some changes. A slab system was introduced for calculation of pension. 50% for the first Rs 1000 of average emoluments, 45% for the next Rs 500 of average emoluments and 40% of balance average emoluments. The ceiling on

maximum pension was also raised from Rs 1000 to Rs 1500. The order was made effective for the civilian pensioners from 31-3-1979. Defence Ministry issued another order making it effective for Armed Forces from 1-4-1979. Thus a **CUT OFF Date** was imposed. Those who retired before the **cut off date** like Mr Nakara and Mr Satyendra Singh continued to get Rs 675 per month as pension and their juniors who retired after the said **Cut off date** got Rs 1500 as monthly pension. Thus an anomaly arose. Mr Nakara and Mr Singh filed the case against this anomaly, caused by imposing CUT OFF Date.

CUTOFFDATEILLEGAL

In the judgement, Honourable Supreme Court declared that such a cut off date is illegal and unconstitutional. It could have ended there. Luckily, Mr Nakara and others in their affidavit raised certain significant basic issues about pension and Supreme Court had to dispose those issues. That made the judgement a landmark one. It became the *magna carta* of Indian pensioners. [Note that Government is introducing such cut off dates again and again in many orders.]

SOME EXTRACTS FROM THE JUDGEMENT:

Some of the observations made by the Supreme Court on basic issues concerning Pension system are sufficient to show how the judgement has become the *magnacarta* for Indian pensioners.

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What is a pension ? What are the goals of pension ? What public interest or purpose, if any, it seeks to serve ? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date ? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

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The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar & Ors. (1) wherein this Court authoritatively ruled that

pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion.

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The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

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The basic contention as hereinbefore noticed is that the pensioners for the purpose of receiving pension form a class and there is no criterion on which classification of pensioners retiring prior to specified date and retiring subsequent to that date can provide a rational principle correlated to object, viz., object underlying payment of pensions.

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A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level.

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From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to [Art. 309](#) and clause (5) of [Art. 148](#) of the Constitution ; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered ; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. ".....

Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. The principle underlying the guarantee is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed.

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Equal laws would have to be applied to all in the same situation and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

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Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the armed forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude.

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Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service

or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

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In the instant case, looking to the goals for the attainment of which pension is paid and the welfare State proposed to be set up in the light of the Directive Principles of State Policy and Preamble to the Constitution it indisputable that pensioners for payment of pension from a class. When the State considered it necessary to liberalise the pension scheme in order to augment social security in old age to government servants it could not grant the benefits of liberalisation only to those who retired subsequent to the specified date and deny the same to those who had retired prior to that date. The division which classified the pensioners into two classes on the basis of the specified date was devoid of any rational principle and was both arbitrary and unprincipled being unrelated to the object sought to be achieved by grant of liberalised pension and the guarantee of equal treatment contained in Art. 14 was violated inasmuch as the pension rules which were statutory in character meted out differential and discriminatory treatment to equals in the matter of computation of pension from the dates specified in the impugned memoranda. (ii) Prior to the liberalisation of the formula for computation of pension average emoluments of the last 36 months' service of the employee provided the measure of pension. By the liberalised scheme, it is now reduced to average emoluments of the last 10 months' service. Pension would now be on the higher side on account of two fortuitous circumstances, namely, that the pay scales permit annual increments and usually there are promotions in the last one or two years of the employee's service. Coupled with it a slab system for computation has been introduced and the ceiling of pension has been raised. Pensioners who retired prior to the specified date would suffer triple jeopardy, viz., lower average emoluments, absence of slab system and lower ceiling.

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Both the impugned memoranda do not spell out the *raison d'être* for liberalising the pension formula. In the affidavit in opposition it is stated that the liberalisation was decided by the government in view of the persistent demand of the employees represented in the scheme of Joint Consultative Machinery. This would clearly imply that the pre-liberalised scheme did not provide adequate protection in old age, and that a further liberalisation was necessary as a measure of economic security. The government also took note of the fact that continuous upward movement of the cost of living index and diminishing purchasing power of rupee necessitated upward revision of pension. When the government favourably responded to the demand it thereby ipso facto conceded that there was a larger available national cake, part of which could be utilised for providing higher security to retiring employees. With this underlying intendment of liberalisation, it cannot be asserted that it was good enough only for those who would retire subsequent to the specified date but not for those who had already retired.

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If removal of arbitrariness can be brought about by severing the mischievous portion, the discriminatory part ought to be removed retaining the beneficial portion. In the instant case, the petitioners do not challenge, but seek the benefit of the liberalised pension scheme. Their grievance is of the denial to them of the same by arbitrary introduction of words of limitation. There is nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having an undesirable effect of dividing a homogeneous class and of introducing discrimination the same can be easily severed and set aside. It is therefore just and proper that the words introducing the arbitrary fortuitous circumstance which are vulnerable as denying equality be severed and struck down. In Exhibit P-1 the words: "That in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date."

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The new rates of pension are effective from 1st April 1979 and will be applicable to all service officers who became/become non effective on or

after that date” are unconstitutional and are struck down with the specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible.

The court is not making the scheme of liberalisation retroactive by its approach. Retroactiveness is implicit in the theory of wages. When revised pay-scales are introduced from a certain date, all existing employees are brought on to the revised scales adopting a theory of fitments and increments for past service. The benefit of revised scales is not limited to those who enter service subsequent to the date fixed for introducing revised scales but is extended to all those in service prior to that date.

Even in the case of the new retiral benefit of gratuity under the Payment of Gratuity Act, 1972, past service was taken into consideration. The scheme of liberalisation is not a new retiral benefit; it is 170 an upward revision of an existing benefit. Pension has correlation to average emoluments and the length of qualifying service and any liberalisation would pro tanto be retroactive in the narrow sense of the term. Assuming the government had not prescribed the specified date and thereby provided that those retiring, pre and past the specified date, would all be governed by the liberalised pension scheme it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force.

There is no question of pensioners dividing the pension fund which, if more persons are admitted to the scheme, would pro rata affect the share. The pension scheme, including the liberalised scheme, is non-contributory in character. The payment of pension is a statutory liability undertaken by the Government. Whatever becomes due and payable on account of pension is recognised as an item of expenditure and is

budgeted for every year. At any given point of time there is no fixed or pre-determined pension fund which is divided amongst eligible pensioners. [195 C-G] (ix) The date of retirement of each employee remaining as it is, there is no question of fresh commutation of pension of the pensioners who retired prior to 31st March 1979 and have already availed of the benefit of commutation.

The discernible purpose underlying the pension scheme must inform the interpretative process and it should receive a liberal construction. (i) Pension is a right; not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension (ii) The pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. (iii) Pension also has a broader significance in that it is a social-welfare measure rendering socio-economic justice by providing economic security in old age to those who toiled ceaselessly in the hey-day of their life. (iv) Pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution.....”

More observations can be quoted. The above Judgement benefited lakhs of pensioners in India. Pension revision of past pensioners became one of the Terms of Reference of IV CPC and all subsequent CPCs only because of it. Past Pensioners are getting parity in pension with the later pensioners now. 7th CPC also suggested parity providing two options. The Option No 1, which is more beneficial to the pensioners, is not yet accepted by the present Government.

These observations of the Supreme Court in the judgement are very relevant even today. There is a Cut Off date of 1-1-2006 for calculation of pension at 50% of the Last Pay Drawn. This anomaly continues even today. There is another cut off date of 1-1-2006 for granting full pension on completion of 10 years qualifying service. It is partially only removed, not fully. Benefit of 78.2% was denied to those who retired before 10-6-2013. We fought and got the anomaly removed.



D S Nakara

22-11-2016.

Let us pay homage to late Shri Nakara who died at the age of 95 years in 2010, Mr Satyendra Singh and Mr. H D Shourie, the brain behind COMMON CAUSE which fought many a public interest litigation cases.

P S Ramankutty