IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF PUNJAB AND HARYANA, AT CHANDIGARH

Date of Decision: September 09, 2015

Letters Patent Appeal No. 789 of 2013

P.C. Jain ---Appellant

Versus

Union of India and others ---Respondents

Letters Patent Appeal No. 71 of 2013

M.C. Singla ---Appellant

Versus

Union of India and others ---Respondents

Letters Patent Appeal No. 80 of 2013

L.R. Singla ---Appellant

Versus

Union of India and others ---Respondents

Letters Patent Appeal No. 109 of 2013

The Oriental Bank Retired Officers Association (Regd.)---Appellant

Versus

Union of India and others ---Respondents

Letters Patent Appeal No. 110 of 2013

The Punjab & Sind Bank Retired Employees Welfare Association

---Appellant

Versus

Union of India and others ---Respondents

Letters Patent Appeal No. 388 of 2013

The Punjab & Sind Bank Retired Officers Association (Regd.)
---Appellant

Versus

Union of India and others ---Respondents

CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri H.C. Arora, Advocate, for the appellant
(In LPA No. 789 of 2012).

Shri Raman B. Garg, Advocate for the appellant
(In LPA No. 80 of 2013).

Shri B.B. Bagga, Advocate for the appellants
(In LPA Nos. 71, 109, 110 & 388 of 2013).

Shri Brijeshwar Singh Kanwar, Senior Standing Counsel, for Union of India (Respondent No.1).

S/Shri Aalok Jagga, K.S. Riar, R. Kartikeya and Jagat Arora, Advocates for other respondents.

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1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Can a set of retired employees claim parity, as regards retiral benefits, with another set of employees of the same rank retiring at a later date, by invoking Article 14 of the Constitution of India?, is the riddle that craves resolution in the instant intra court appeals brought by retired employees/officers and associations of retired employees/officers of various banks (here-in-after referred to as 'the appellants'), under Clause X of the Letters Patent to assail the correctness of judgment dated April 16, 2012 whereby the learned Single Judge has answered the question against the

appellants by dismissing the civil writ petitions brought by them.

02. The appellants claim to have retired between January 01, 1986 to October 31, 2002 from various banks and grievance put forth by them in the writ petitions was that there has been no updation of their pension in the manner contemplated at the time when pension scheme was introduced in the year 1995 pursuant to a settlement reached between the bank employees and the Management (through Indian Banks' Association or say IBA) on October 29, 1993.

03. Let us first have an overview of the history of the case. Prior to the year 1993 employees of various banks operating in the country were not allowed pension and, instead they were allowed to subscribe to Contributory Provident Fund. On October 29, 1993 a Memorandum of Settlement (here-in-after referred to as 'the settlement') was entered into between the management of the banks represented by the IBA and representatives of workmen Union and the officers Union/Association whereby it was agreed to introduce pension scheme for employees of the banks in lieu of Contributory Provident Fund. Based upon the settlement the banks formulated their respective pension schemes in the year 1995. Originally the pension schemes were made applicable to all employees who had retired from November 01, 1993, but later, through independent notification, the schemes were made applicable also to those who had retired from January 01, 1986 onwards.

04. Appellants' grievance is that no updation of their pension has been allowed in terms of Clause 12 of the settlement and that though Clause 56 of the pension scheme provided for allowing pension to them on the lines of Central Civil Services Rules 1972 or Central Civil Services

(Commutation of Pension) Rules, 1981 and Reserve Bank of India Pension Regulations but the pension scheme which periodical updation of the pension with reference to the increase in scales of pay coming through various Pay Commissions' recommendations has not been allowed to them. According to the appellants, talks of the Management with the Union representatives have not properly addressed the claims of persons who had retired prior to the coming into force of the pension scheme with the result that amongst the class of pensioners, there are persons, who were drawing higher pension, although they had occupied lower posts to the persons who had retired before 1993. In some of the talks, it had transpired that the cost of servicing pension was sought to be raised from 18.2% to over 20% if the updation was required to be done, but it could not be accepted by the Union representatives.

05. In the counters submitted on behalf of the respondents claim of the appellants was resisted on the ground of delay and latches and, in addition, it was stated that grant of pension to the bank employees is governed by the pension scheme of 1995 framed under Section 19(2)(f) of the Banking Companies Acquisition and Transfer of Undertaking Act, 1970/1980, on the basis, and by incorporating the provisions, of the settlement dated October 29, 1993, and the appellants cannot claim pensionery benefits in terms of pension scheme of Reserve Bank of India and/or Central Government pension schemes because the pensionery liability of the Government towards retired Government servants is treated as revenue expenditure and gets the necessary budgetary allocation whereas the pension schemes in public sector banks are in lieu of the management’s

contribution towards Contributory Provident Fund and work on the principle of funding out of profits earned by the banks. It was also stated that even the Reserve Bank of India has withdrawn the order of updation of pension and the matter is pending adjudication before Bombay High Court. Further, according to the respondents, the retired bank employees are compensated for the rise in Consumer Price Index and Clause 17 of the settlement provides that if there is any difference of opinion regarding interpretation of any of provisions of the settlement, the matter would be taken up at the level of IBA and All India Bank Employees Association for discussion and settlement.

06. After hearing the parties and on examination of the materials available on record, learned Single judge, vide judgment dated April 16, 2012, dismissed the writ petitions by observing as under:

> "*10. It is set out through the written statement itself that the decision was communicated in the year 2005, but the writ petitions came to be filed more than 3 years in CWP No. 6233 of 2008 and more than 5 years later in the batch of writ petitions in CWP No. 12211 of 2010. No explanation has been given in the petitions as to why the petitioners had not immediately approached this Court. I am merely stating this in the passing that the petitioners could not have come to the High Court for enforcement under Article 226 when they could have only pressed for better rights through negotiations in the manner that the settlement talks provided. It would be open for the petitioners to make the demands for parity if they are so advised and use their bargaining skills through their associations and press for the reliefs though the mechanism provided under the Industrial Disputes Act. There existed no vested right now for the petitioners to claim the benefits in the manner sought.*
>
> *11. All the writ petitions are consequently dismissed, however, subject to the above observations*."

07. We have heard learned counsel for the parties besides examining

the documents available on record.

08. It has been strenuously argued on behalf of the appellants that the learned Single Judge has not correctly appreciated Clause 12 of the settlement where-under it was agreed between the employees association and IBA that updation in pension would be allowed on the lines as are in force in Reserve Bank of India; and Clause 56 of the pension scheme providing for bringing in corresponding provisions in Central Civil Services Pension Rules, 1972 wherever the pension scheme of the banks is lacking or is ambiguous. According to the learned counsel for the appellants failure of the respondents to allow updation in pension of the appellants has resulted into a very anomalous situation because various employees of the banks who had been occupying lower posts as compared to the ones held by the appellants, but retired later than the appellants, are drawing pension much more than what the appellants are getting which is contrary to the dictum of the judgments ***V. Kasturi v. Managing Director, State Bank of India, Bombay and another, 1998(4) S.C.T. 662 : (1998) 8 Supreme Court Cases 30*** that invoked the decision of the Constitutional Bench of the Hon'ble Supreme Court in ***D.S. Nakara v. Union of India-(1983) 1 SCC 305*** and ***Union of India and another v. SPS Vains (Retd.) and others, 2008(4) S.C.T. 453 : 2008(9) SCC 125***. By referring to the minutes of the meeting of Small Committee on Pension held on March 26, 1994 wherein it was, inter alia agreed that 'formula for updation of pension should be on the lines of same given in Reserve Bank Pension Scheme. Any change therein should be introduced only after mutual agreement', it has been argued that inspite of acceptance of the said formula the respondents have failed to honour it even

though such a settlement is binding on the parties under Section 18 of the Industrial Disputes Act, 1947.

09. *Per Contra*, on behalf of the respondents reliance has been placed upon ***State of West Bengal v. West Bengal Government Pensioners Associations-2002(1) S.C.T. 773 : 2002(2) SCC 179***, to show that referring to the application of principles evolved in D.S. Nakara's case (supra), the Hon'ble Supreme Court held that the Constitutional Bench in Nakara case (supra) did not strike down the definition of "emoluments" nor did it lay down that the same amount of pension must be paid to all persons retiring from Government service irrespective of their date of retirement, rather D.S. Nakara (supra) directed parity in the principle of calculation of pension and not parity in the actual quantum of pension payable. It has also been argued on behalf of the respondents that Clause 12 of the settlement only defines the scope of future negotiations and does provide for updation in pension whereas Clause 56 of the pension scheme is attracted only to the situations where the pension regulations are ambiguous or need some clarification and this Clause cannot be used to supply what has been omitted in the Pension Scheme. On behalf of the respondents reference has also been made to ***Union of India v. S.R. Dhingra and others, 2008(1) S.C.T. 579 : 2008(1) R.A.J. 596 : (2008) 2 Supreme Court Cases 229***, wherein the Hon'ble Supreme Court, while dealing with the disparity of pension payable to certain railways staff where certain running allowance had been taken into account for pension and other benefits for persons, who had retired after January 01, 1986, but the same was not to be taken into account for pre-1986 retirees, observed that when two sets of employees of the same rank

retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated.

10. No other or further point has been urged on either side.

11. Learned Single Judge rejected appellants' plea based on ***V. Kasturi v. Managing Director, State Bank of India, Bombay and another*** and ***Union of India and another v. SPS Vains (Retd.) and others*** (supra), in the following manner:

> *"8. These two decisions must be understood in the context of the well known exceptions to Nakara jurisprudence. The fixation of the cut off date for application of certain pension rules could not be stated to be arbitrary and that between the same class of pensioners, the fact that the benefit of increased scale could apply to persons, who had retired after a particular date is not also anathema to law. Different mode of calculation will be impermissible but there could be sufficient constraining factors like the financial outlay, availability of resources etc. for giving certain benefits to be effective from a particular date only, which cannot be available to all pensioners, who had retired before that date. The excepted situations have been brought through several decisions of the Hon'ble Supreme Court and they are relied on by the respondents. All the averments that would answer the petitioners' claim, in my view, would be a Supreme Court's ruling in* ***State of West Bengal v. West Bengal Government Pensioners Associations-2002(1) S.C.T. 773 : 2002(2) SCC 179****, where the Hon'ble Supreme Court was dealing with West Bengal Services (Revision of Pay and Allowances) Rules of 1990. That was a case where pay scales were revised w.e.f. a particular date and retirees prior to the date sought for a claim to pension equal to those covered under the revision of pay scales. Referring to the application of principle in D.S. Nakara's case, the Court held that the Constitutional Bench in Nakara did not strike down the definition of "emoluments"not did it lay down that the same amount of pension must be paid to all persons retiring from Government service irrespective of their date of retirement. Nakara decision directed parity in the principle of calculation of pension and not parity in the actual quantum of pension payable. If the formula adopted for computation of pension of all pensioners*

was the same, namely, 50% of the last pay drawn by the incumbent before retirement, the fact that those who had retired prior to the date of revision of pay scales could not avail themselves of the revised pay scales recommended through the 4th Central Pay Commission could not be said to be discriminatory. The case in West Bengal Government Pensioners Associations presented the following facts which are very similar to the case in hand. The pre-1986 retirees were not entitled to recalculation of pension on the basis of revised pay scales. Consequently, the formula for calculation for pre- 01.01.1986 and post-01.01.1986 retirees, namely, 50% of the last pay drawn though remained the same, actual pay scales themselves did not get periodically upgraded for computation of pension for persons, who had retired before 01.01.1986. It was in that context that the Hon'ble Supreme Court held that so long as there was homogenous principle of method of calculation of pension, it could not be stretched as far as to seek parity in the actual pension realized also irrespective of the date of retirement and the date when the increased scales of pay were made applicable owing to Pay Commission recommendations. The same view also has been expressed by the Hon'ble Supreme Court in ***State of Punjab and others v. Amar Nath Goyal and others- 2005(3) S.C.T. 770 : 2005(6) SCC 754****, that considered the issue of a cut-off date that allowed for an increased ceiling of gratuity of persons, who had retired after a particular date. The Court said that a policy decision to restrict the benefit to persons after a particular cut-off date on the basis of financial implications for the implementation of such a decision ought not to be taken as a discriminatory action. This judgment was applied in a still later judgment in* ***State of Punjab and others v. Swaranjit Kaur and others in Civil Appeal No. 9148 of 2011, decided on 01.11.2011*** *while rejecting a similar claim for increased retiral benefits for persons, who had retired before a particular cut-off date. In* ***Union of India v. S.R. Dhingra and others, 2008(1) S.C.T. 579 : 2008(1) R.A.J. 596 : (2008) 2 Supreme Court Cases 229****, the Hon'ble Supreme Court observed, while dealing with the disparity of pension payable to certain railways staff where certain running allowance had been taken into account for pension and other benefits for persons, who had retired after 01.01.1986, but the same was not to be taken into account for pre-1986 retirees, in para 25 as follows :-*

"25.It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the

> *ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or homogeneous group. Hence Article 14 has no application. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment....."*

12. Reliance placed on ***V. Kasturi v. Managing Director, State Bank of India, Bombay and another*** (supra) by learned counsel for the appellants, in our view, is totally misplaced. In this case the appellant had joined the respondent State Bank of India as an officer on October 22, 1963. In the year 1979 the respondent Bank framed the pension scheme under Regulation 45 of the State Bank of India Officer (Determination of Terms and Conditions of Service) Order of 1979. The State Bank of India also had framed State Bank of India Employees Pension Fund Rules in exercise of powers conferred by Section 50 of the State Bank of India Act. The appellant became a member of the said Fund as required of him while joining the service of the Bank. He resigned from the Bank service on July 31, 1984. By that time he had completed 20 years and 9 months of pensionable service. At the time of his resignation, which was treated as voluntary retirement, he was held not entitled to get pension under the aforesaid Rules as the eligibility requirement for earning pension as per Rule 22(1)(c) of the said Rules was to the effect that the employee should have retired from Bank service after 25 years of pensionable service. Placing reliance on a number of decisions of this Court and especially the constitution Bench decision of this court in D.S. Nakara's case (Supra) it

was contended on behalf of the appellant that the appellant who had completed 20 years of pensionable service at the time be retired after his resignation, formed the very same class of Bank employees who retired after completing 20 years pensionable service and hence they all had to be treated uniformly; that pension was not a bounty but was a reward for meritorious past service and once the eligibility for earning the said pension after completion of 20 years of pensionable service became available to an employee, whether he retired at one point of time or other, would not make any difference. All such employees formed the same class. Hence, it was not open to the respondent authorities to deny the appellant pensionery benefits only on the ground that when he retired in 1984 after his resignation, even though he had completed 20 years of pensionable service by then, the then existing pension rules did not render him eligible to earn pension, when subsequently the said rules were relaxed for this very class of employees with effect from September, 1986. Hon'ble Supreme Court formulated a question, "Whether the appellant was entitled to get the benefit of amended Rule 22(1) (c) of the Rules from 20th September, 1986 onwards?" and after an in-depth analysis of the facts and circumstances of the case, as also judgment in D.S. Nakara's case (supra), answered the question against the appellant by holding as under:

> "*For supporting the aforesaid claim of the appellant, learned counsel for the appellant vehemently contended that all the Bank employees who had completed 20 years of meritorious pensionable service by the time of retirement or resignation from Bank service, would form one class and if that is so, the moment rule 22(1)(c) get amended the pension scheme which had already applied in the case of appellant being a member of the said scheme from the inception of his bank service can be said to be not a new scheme but it can be said to be*

conferment of an additional advantage available to all the members of the very same scheme and if all such pensioners similarly situated being members of the same class namely, employees retiring after having completed 20 years pensionable service, were treated differently on the specious plea that only those who retire after the cut-off date of 20th September, 1986 would get pension and not those who retired earlier though having completed 20 years of pensionable service, a clear case of hostile discrimination would result. The employees like the appellant who had retired earlier can be said to be arbitrarily being denied the benefit of the pension scheme which got further amended for the benefit of the very same class of employees. This action on the part of the Bank would therefore, remain violative of Article 14 of the constitution of India.

On a close look of the relevant provisions of the Rules it is not possible to agree with this contention. The appellant, in order to earn pension under rule 22(1) sub-clause (c) as amended in 1986 has to satisfy the following twin conditions:

i)At the time when the amended sub-clause (c) applied i.e. from 22nd September, 1986, he should be a member of the pension fund:

ii)He should have by then completed 20 years of pensionable service, and should have put forward his requisition in writing for availing the benefit of the said provision.

Unless both these conditions are satisfied the amended clause (c) of rule 22(1) cannot apply in his case. We have to note that the service bio-data of the appellant contra indicates the applicability of those two conditions. He was not a member of the fund on 21st September, 1986. He had ceased to be a member of the fund on his retirement in 1984. As laid down in the definition of the term "member"the concerned employee should be in service of the Bank and he should have been admitted to the membership of the fund. So far as the admission into the membership of the fund is concerned, the appellant has not satisfied the requirement inasmuch as he was a member of the fund but the second requisition of the definition was not fulfilled by him in 1986 as he was not in service of the Bank on 20th September, 1986 when clause 22(1)(c) as amended came into force. Consequently the first condition for applicability of the amended clause (c) of rule 22(1) did not apply to the facts of the present case.

Consequently, the question of compliance of the second condition that he should have completed 20 years of pensionable service would pale into insignificance as even though he had completed 20 years of pensionable service when he ceased to be a Bank employee in 1984 he did not come within the beneficial sweep of rule 22(1) clause (c) as amended, as he was not a member of the pension fund in 1986 as he had ceased to be a member of the fund after 31st July, 1984. He was, therefore, out of the sweep of the pension fund scheme on 20th September, 1986 when rule 22(1)(c) got amended. The very opening part of rule 22(1) lay down that a member should be entitled to pension under the Rules if he satisfies the conditions laid down in the said Rule but if he is not a member on the relevant date, the question of his being covered by any of the clauses of the said rule would not survive at all. Thus on the very scheme of the Rules and the amended provision of sub-rule (c) of rule 22(1) the appellant's case would fail and consequently he would not be entitled to claim any benefit from the aforesaid amended provision even prospectively from 20th September, 1986 as he was not at all covered by the said provision on that date. We may also note that the second requirement for the applicability of rule 22(1)(c) as amended in that after having completed 20 years of pensionable service the concerned member of the fund irrespective of age i.e. even being less than 50 years of age can invoke the benefit of the said provision by making a request in writing for getting proportionate pension. Even if such request is made it is in the hands of the Executive Committee of the Central Board of the Bank to accept such a request or not as seen from rule 15. Any officer who leaves the service without such sanction would forfeit all the claims under the fund for pension. Consequently occasion for an employee who is a member of the fund to make a request in writing to the Bank for getting the benefit of pension scheme as per rule 22(1)(c) as amended would arise provided such an employee has completed 20 years of pensionable service and has obtained the right under the amended sub-clause (c) of rule 22(1) to make his request in writing. Thus, even the second condition for applicability of rule 22(1) sub-clause (c) as amended would presuppose that the concerned member of the fund having completed 20 years of service must be in a position at the time of retirement to make his request in writing for getting the benefit of the said provision such an mentality would arise only on and from the date on which the said amended provision came into force. Meaning thereby those employees like the appellant who had ceased to be

members prior to the said date and who might have completed 20 years of service in past will not be able to invoke the amended cause (c) rule 22(1) at any time after their earlier retirement. Thus even the second condition of giving a requisition in writing would not be available to such employees like the appellant. It is also axiomatic that when the appellant resigned on 31st July, 1984 at the age of 44 years there was no occasion for him to give any such written request for proportionate pension as in those days clause (c) in amended form was not available for being invoked by him. The second condition for applicability of the amended clause (c) of rule 22(1) must of necessity therefore, mean that only those employees who were even less than 50 years of age and who retired on and after 20th September, 1986 having then completed 20 years of pensionable service could invoke the said amended provision by requesting in writing. The appellant did not and could not comply with this second condition for invoking amended clause (c) of Rule 22(1).

We must also keep in view rule 26 of the pension Rules which clearly shows that when a person enters the Bank service, he becomes a member of the fund and agrees to be governed by the Rules of the scheme. He becomes the beneficiary of the trust fund if he satisfies all the requisite conditions of the pension fund. If he is not a beneficiary of the fund at the time when he retires, as it happened in the case of the appellant in 1984, no benefit under the said scheme of the fund would be available to him subsequently as he will be out of the class of beneficiaries. Consequently, no question of his being given any discriminatory treatment vis-a-vis other existing beneficiaries under the scheme of the fund that were already in Bank service as members of the fund on 20th September, 1986 when the beneficial provisions of the amended rule 22(1)(c) came into force, would at all survive for consideration."

13. In ***Union of India and another v. SPS Vains (Retd.) and others***, (supra), prior to revision of the pay scales from January 01, 1996 the running pay band from Lieutenant to Brigadier, irrespective of promotion, introduced on the basis of the Fourth Pay Commission's recommendations, was Rs. 2300-100-3900-EB- 150-4500-EB-5100. The rank pay that was fixed was Rs. 200/-, 600/-, 800/-, 1000/- and 1200/- for the ranks of

Captain, Major General, Lieutenant Colonel, Colonel and Brigadier, respectively. While a Major General was given a starting salary of Rs. 6700/- on the basis of the recommendations of the Fourth Pay Commission, a Brigadier could draw Rs. 5,100/- and additional rank pay of Rs. 1200/- making a total of Rs. 6300/-. Consequently, a Major General always drew higher pay than a Brigadier and the pension payable to officers on the basis of the recommendations of the Fourth Pay Commission was calculated on the basis of salary drawn during the last 10 months prior to retirement. Even on such basis, a Major General always drew more pension and family pension than a Brigadier, a feeder post for the promotional rank of Major General. Acceptance by the Government of the recommendations of the Fifth Pay Commission created a situation where-under Brigadiers began drawing more pay than Major Generals and were, therefore, receiving higher pension and family pension than Major Generals because in view of the recommendations of the Fifth Pay Commission, a Brigadier was given a pay scale of Rs. 15350-450-17600 together with rank pay of Rs. 2,400/- whereas a Major General was given a pay scale of Rs. 18400-500-22400. In other words, the maximum pay in the pay scale of Brigadier was 17,600/- and the minimum pay in the pay scale of Major General was Rs. 18,400/-. Inasmuch as, no rank pay was provided for beyond the rank of Brigadier, the minimum pay provided for a Major General became less than that of a Brigadier who may have reached the maximum point in his scale. Consequently, on retirement, the pension of a Brigadier became more than that of a Major General, since rank pay was also taken into consideration for the purpose of calculating pension and family pension. The pension of a

Major General thus became Rs. 9,200/-, while that of a Brigadier was Rs. 9,550/-. This anomaly, when pointed out, prompted the Government to step up the pension of Major Generals who had retired prior to January 01, 1996, from Rs. 9,200/- to Rs. 9,550/- giving them the same pension as was given to Brigadiers. Before the High Court it was urged on behalf of the writ petitioners, who at the time of their retirement had held the rank of Major General or Air Vice Marshal, that while the writ petitioners and others similarly placed officers who had retired prior to January 01, 1996 were given the same pension as that of a Brigadier, those officers of similar rank who had retired after January 01, 1996 were given pension according to clause 12(c) of Special Army Instructions, as a result whereof they were getting much higher pension and family pension than the writ petitioners, despite being of the same rank. It was pointed out that by virtue of the aforesaid Special Instruction the initial pay of an officer promoted to the rank of Major General would be fixed at the stage next above the pay notionally arrived at by increasing his pay, including rank pay of Brigadier, by one increment in the revised scale at the relevant stage. Before the High Court it was further urged that such differentiation between officers holding the same rank on the date of retirement was wholly erroneous and violative of the provisions of Article 14 of the Constitution of India. It was in these facts and circumstances that this Court allowed the writ petition and directed the respondents to fix minimum pay scale of the Major General above that of the Brigadier and grant pay above that of a Brigadier as has been done in the case of post January 01, 1996 retirees and consequently fix the pension and family pension accordingly. This direction was upheld by

the Hon'ble Supreme Court. It is, thus, seen that facts and circumstances of the case in ***Union of India and another v. SPS Vains (Retd.) and others*** (supra) were totally different from the facts and circumstances of the case in hand. Therefore, reliance placed on this judgment by the appellants also is misplaced.

14. In ***D.S. Nakara v. Union of India*** (supra), by a Memorandum dated May 25, 1979 the Government of India had liberalized the formula for computation of pension in respect of employees governed by the Central Civil Services (Pension) Rules, 1972 and had made it applicable to employees retiring on or after March 31, 1979. The formula introduced a slab system for computation of pension. By another Memorandum issued on September 28, 1979 it extended the same, subject to certain limitations, to the Armed Forces' personnel retiring on or after April 1, 1979. Petitioners 1 and 2 who had retired in the year 1972 from the Central Civil Service and the Armed Forces' service, respectively, and petitioner No. 3, a registered society espousing the cause of pensioners all over the country, challenged the validity of the above two memoranda in so far as the liberalization in computation of pension had been made applicable only to those retiring on or after the date specified and the benefit of liberalization had been denied to all those who had retired earlier. Earlier to introduction of the liberalized pension scheme average emoluments of 36 months' service provided the measure of pension because the pension was related to the average emoluments during 36 months just preceding retirement. By the liberalized scheme it was reduced to average emoluments of 10 months preceding the date. The pension scheme was liberalized with a view to giving a higher

average to provide for average emoluments with reference to last 10 months' service. Coupled with it, a slab system for computation was also introduced and the ceiling was raised. Stipulation of a particular date for application of the liberalized scheme was to result in a situation where if the pensioners who retired after the specified date were to get pension on the basis of average of pay drawn during the past ten months and on the basis of slab system while the pensioners who had retired prior to the specified date had to earn pension on the average emoluments of 36 months' salary just preceding the date of retirement. In such a situation, the average in respect of the latter category naturally would be lower and they would be doubly hit because the slab system as now introduced was not available and the ceiling was at a lower level. It was in these circumstances that the Hon'ble Supreme Court ruled as under:

> "*It was very seriously contended, remove the event correlated to date and examine whether the scheme is workable. We find no difficulty in implementing the scheme omitting the event happening after the specified date retaining the more humane formula for computation of pension. It would apply to all existing pensioners and future pensioners. In the case of existing pensioners, the pension will have to be recomputed by applying the rule of average emoluments as set out in Rule 34 and introducing the slab system and the amount worked out within the floor and the ceiling*." (Underlining by us)

15. It is evident from a reading of the judgment in D.S. Nakara (supra) that the Hon'ble Supreme Court mandated parity as regards the formula for computation of pension and the judgment does not lay down a rule that the pension of all retirees must be updated so as to bring it on par with the employees retiring on later dates.

16. Principles laid down in D.S. Nakara (supra) have been defined

and their limits restated by the Hon'ble Supreme Court by several pronouncements.

17. ***Krishena Kumar v. Union of India and others, 1990(4) SCC 207***, is a decision of the Constitution Bench in which it is held that the notification setting a cut off date for exercising an option to either be covered by the Provident Fund scheme or the pension scheme could not be struck down by applying the ratio of D.S. Nakara. The reasons for distinguishing D.S. Nakara were broadly two fold, namely, that the fixation of the cut off date was based on a rational principle and that the persons covered by the Provident Fund Scheme and those covered by the Pension Scheme did not form a homogeneous class so that the basis for applying Article 14 of the Constitution of India between the two groups was not there. This decision highlights the fact that a cut off date of granting service benefits may not necessarily tantamount to a violation of Article 14 of the Constitution of India and would be upheld by the Courts if there is some reasonable explanation in support of that date.

18. Similarly in ***Union of India v. P.N. Menon and others, 1994(4) SCT 91 (SC) : 1994(4) SCR 68*** an Office Memorandum introduced a scheme to treat a portion of the dearness allowance as pay in respect of government servants, who retired on or after September 30, 1977. This was challenged as being discriminatory via-a-vis those who had retired prior to September 30, 1977. The challenge was negatived by the Hon'ble Supreme Court saying:

> "*Fixing 30.9.1977 as the cut-off-date, which date was fixed when the price index level was 272, cannot be held to be arbitrary. The decision to merge a part of the dearness allowance with pay, when the price index level*

> *was at 272, appears to have been taken on the basis of the recommendation of the Third Pay Commission. As such it cannot be held that the cut-off date has been selected in an arbitrary manner. Not only in matters of revising the pensionery benefits. But even in respect of the revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits*."

19. IIlustrative of another aspect of the Nakara principle, is the decision in ***Commander Head Quarter, Calcutta and Others v. Capt Biplabendra Chanda, 1997(1) SCT 435 (SC): 1997(1) SCC 208***, which lays down that the requirement of equality prescribed by D.S. Nakara (spra) did not extend to a new retiral benefit but was limited only to an upward revision of an existing benefit. It was held, therefore that a person who was not entitled to receive pension on the date of his retirement could not claim a grant of pension because of a subsequent change in the criteria of eligibility for such grant. [See also ***Union of India and Others v. Dr. Vijaypurapu Subbayama, 2000(4) SCT 672 (SC): 2000(7) SCC 662.***]

20. In ***Union of India v. S.R. Dhingra and others, 2008(1) S.C.T. 579: 2008(1) R.A.J. 596: (2008) 2 Supreme Court Cases 229***, the Hon'ble Supreme Court, while dealing with the disparity of pension payable to certain railways staff where certain running allowance had been taken into account for pension and other benefits for persons, who had retired after January 01, 1986, but the same was not to be taken into account for pre-1986 retirees, observed as follows:

> "*25. It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or homogeneous group. Hence Article 14 has no application. The employer can validly fix a cut-off date*

> *for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment.....*"

21. In view of the above, it has been rightly observed by the learned Single Judge that different mode of computation of pension is impermissible but there could be sufficient constraining factors like the financial outlay, availability of resources etc. for making certain benefits to be effective from a particular date only, which cannot be made available to all pensioners, who had retired before that date. Appellants, in our considered view, cannot question the fixation of cut off date for applicability of the Pension Regulations as the Hon'ble Supreme Court in the case of ***Government of Andhra Pradesh and Ors. Vs. N. Subbarayudu and Ors., 2008 (4) SCALE 117*** has held that Courts should, normally, not interfere with cut off dates as they are policy decision which fall within the domain of the executive authority. The relevant observations of the Supreme Court in the aforesaid judgment are reproduced hereinbelow:

> "*4. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab and Ors. v. Amar Nath Goyal and Ors.: (2005) III LLJ 759 SC).*
>
> *5. No doubt in D.S. Nakara and Ors. v. Union of India: (1983) ILLJ104SC this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has*

> *considerably watered down the rigid view taken in Nakara's Case (supra), as observed in para 29 of the decision of this Court in State of Punjab and Ors. v. Amar Nath Goyal and Ors. (supra).*
>
> *6. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.*
>
> *7. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide State of Bihar v. Ramjee Prasad : [1990]2SCR468, Union of Indian and Anr. v. Sudhir Kumar Jaiswal: (1995) ILLJ 1773 SC, Ramrao and Ors. v. All India Backward Class Bank Employees Welfare Association and Ors.: (2004) ILLJ 1061 SC, University Grants Commission v. Sadhana Chaudhary and Ors.: (1997) IILLJ272SC, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.*
>
> *8. As has been held by this Court in Divisional Manager, Aravali Golf Club and Anr. v. Chander Hass and Anr.: 2007(14)SCALE1 and in Government of Andhra Pradesh and Ors. v. Smt. P. Laxmi Devi: AIR2008SC1640 the Court must maintain judicial restraint in matters relating to the legislative or executive domain."*

22. It is not in dispute that unlike budgetary allocation for disbursement of pension to retired Government employees, for payment of pension to the retired employees of the banks a fund called “Employees Pension Fund” has been constituted out of the contribution by the Bank at the rate of ten per cent per month of the pay of the employee; (b) the

accumulated contributions of the Bank to the Provident Fund and interest accrued thereon up to the date of such transfer in respect of the employees; (c) the amount consisting of contributions of the Bank along with interest refunded by the employees who had retired before the notified date but who opt for pension in accordance with the provisions contained in the regulations; (d) the investment in annuities or securities purchased out of the moneys of the Fund and interest thereon; (e) amount of any capital gains arising from the capital assets of the Fund; (f) the additional annual contribution made by the Bank in accordance with the provisions contained in regulation 11 of the regulations; (g) any income from investment of the amounts credited to the Fund; and (h) the amount consisting of contribution of the Bank along with interest refunded by the family of the deceased employee. The Employees Pension Fund has been created in terms of the bipartite settlement dated October 29, 1993 arrived at between the IBA and bank employees association and the regulations framed in terms of the settlement do not provide for updation of pension. However, the retired bank employees are being compensated for rise in Consumer Price Index (for short, 'CPI'). Even in D.S. Nakara (supra) the Hon'ble Supreme Court drew a clear line between the retirees from Government service for whose pension a budgetary allocation is made and the retirees of such public sector undertakings which allow pension to their employees in lieu of the management's contribution towards the Provident Fund or say pay pension out of a fund created for the purpose as in the case in hand. The Hon'ble Supreme Court observed:

> "*Let us clear one misconception. The pension scheme including the liberalised scheme available to the*

> *Government employees is non-contributory in character. It was not pointed out that there is something like a pension fund. It is recognised as an item of expenditure and it is budgeted and voted every year. At any given point of time there is no fixed or predetermined pension fund which is divided amongst eligible pensioners. There is no artificially created fund or reservoir from which pensioners draw pension within the limits of the fund, the share of each being extensive with the available fund. The payment of pension is a statutory liability undertaken by the Government and whatever becomes due and payable is budgeted for. One could have appreciated this line of reasoning where there is a contributory scheme and a pension fund from which alone pension is disbursed. That being not the case, 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. Therefore, there is no question of dividing the pension fund. Pension is a liability incurred and has to be provided for in the budget. Therefore, the argument of divisions of a cake, larger the number of sharers, smaller the share and absence of residue and therefore by augmentation of beneficiaries, pro rata share is likely to be affected and their absence making relief impermissible, is an argument born of desperation, and is without merits and must be rejected as untenable.*"

23. Clause 12 of the settlement and Regulation 56 of the pension schemes, in our well-thought view, do not advance case of the appellants. Learned Single Judge, while dealing with Clause12 and Regulation 56 observed as under:

> "*4. The point that has to be examined is whether the ex-employees, who were governed by the Pension Regulations of 1995, could seek for the application of Reserve Bank of India's regulations or the Central Civil Services Pension Regulations by reference to the residuary clause in the Regulations of the year 1995 and the outcome of the talks indicating certain proposals between the employees and the Management. The petitioners' claim is sourced to Clause 12 of the terms of the settlement between the Bank and the Management on*

29.09.1993 and Regulation 56 of the Pension Scheme that had been drawn up subsequent to the talks. Clause 12 reads as under:-

"12. Provisions will be made by a scheme, to be negotiated and settled between the parties of this settlement by 31st December, 1993 for applicability, qualifying service, amounts of pension, payment of pension, commutation of pension, family pension, updating and other general conditions etc. on the lines as are in force in Reserve Bank of India."

This clause was one of the terms that the Bank had agreed before the scheme was actually brought into force. It shows what the parties had contemplated that they would do including updation and other conditions on the lines that were in force in Reserve Bank of India.

When the Regulations actually were introduced after further rounds of talks, it only provided through a residuary clause 56 that read as follows :-

"56. Residuary provisions: In case of doubt, in the matter of application of these regulations, regard may be had to the corresponding provisions of Central Civil Services Rules 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees with such exceptions and modifications as the Bank, with the previous sanction of the Central Government, may from time to time determine."

It can be noticed that the Bank Regulation was not making any incorporation of either the Central Civil Services Rules or the Reserve Bank of India Pension Regulations but merely provided that in the matter of application of these regulations, regard could be had to the provisions with such exceptions and modifications when there existed any doubt in the manner of the application of the regulations. This Regulation 56 could not, therefore, be treated as making possible certain benefits which the Reserve Bank of India's Regulations or the Central Civil Services Pension Regulations provided for."

24. A perusal of Clause 12 of the settlement makes it abundantly clear that it only provides for further negotiations as regards "*applicability, qualifying service, amounts of pension, payment of pension, commutation of*

pension, family pension, updating and other general conditions etc." and cannot be read to provide for updation of pension. Similarly, Regulation 56 deals with a situation where a doubt arises in the matter of application of the pension scheme and mandates to clear that doubt by referring to the "*corresponding provisions of Central Civil Services Rules 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees with such exceptions and modifications as the Bank, with the previous sanction of the Central Government, may from time to time determine.*". No such doubt is shown to exist as could necessitate a reference to corresponding provisions of Central Civil Services Rules 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees. Thus Regulation 56 cannot be treated to confer certain benefits upon the appellants, which the Reserve Bank of India's Regulations or the Central Civil Services Pension Regulations provided for. Further, Clause 17 of the settlement provides that if there is difference of opinion with regard to interpretation of any of the provisions of the settlement, the matter can be taken up at the level of IBA and All India Bank Employees Association for discussion and settlement. Presumably this clause impelled the learned Single Judge to observe that it would be open for the appellants to make demand for parity if they are so advised and use their bargaining skills through their associations.

25. Ad finem, a word about minutes of meeting dated March 26, 1994 of the Small Committee on Pension whereby it is said to have been accepted that formula for updating pension should be on the lines of same given in Reserve Bank's Pension Scheme. Discussions held and agreements

reached in this meeting, in our view, are nothing more than parleys preliminary to the final decision which came in the form of pension scheme of 1995. Therefore, the minutes cannot vest the appellants with a right to claim parity with employees of Reserve Bank of India. It may be hastily added here that it is the specific stand of the respondents in the written statement that even Reserve Bank of India has withdrawn the order of updation of pension and the matter is pending adjudication before Bombay High Court. This assertion has not been disputed by the appellants by filing a replication to the written statement.

26. Thus, viewed from all possible angles, appeals are found to carry no substance and are, therefore, dismissed.

27. In the peculiar facts and circumstances of the case parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 09, 2015
adhikari