A INDIAN EX-SERVICES LEAGUE AND ORS. ETC.

v.

UNION OF INDIA AND ORS. ETC.

JANUARY 29, 1991

B [B.C. RAY, M.H. KANIA, K. JAGANNATHA SHETTY, L.M. SHARMA AND J.S. VERMA, JJ.]

Service—Pension Rules: Pension—Petitioners ex-servicemen—Relief claimed in substance of 'one rank, one pension' on the basis of Nakara's case—Claim proceeds on misreading of Nakara—Rejected.

C

Gratuity—Same Death-cum-Retirement Gratuity to the pre-1.4.1979 retirees as to the post-1.4.1979 retirees sought—Petitions dismissed—Central Civil Services (Pension) Rules, 1972.

D *Dearness allowance—Merger of D.A. Backwards—Claim untenable.*

Petitioners who are ex-servicemen have moved these Writ Petitions under Article 32 of the constitution as a sequal to the decision of this Court in *D.S. Nakara & Ors.* v. *Union of India.* The relief claimed by them, in substance, though not said in so many words is to the effect

E **that the result of the decision in *Nakara* is that all the retirees who held the same rank irrespective of their date of retirement must get the same amount of pension and this should be the amount which was calculated and shown in the appendices to the Memorandum (Ex. P-2) challenged in *Nakara*.**

F **Similarly one of the prayers made in these Petitions is for grant of same Death-cum-Retirement Gratuity to the pre-1.4.1979 retirees as to the Post 1.4.1979 retirees.**

Another claim made was for merger of D.A. backwards. Consequent to the decision in *Nakara* one G.O. No. F. 1(4)82/D (Pension/

G **Services) dated 22.11.1983 in respect of personnel below the commissioned rank and the other G.O. No. 1(4)/82/1/D (Pension/Services) dated 3.12.1983 in respect of Commissioned Officers were issued recomputing the revised pension of pre-1.4.1979 retirees of Armed Forces as on 1.4.1979 according to the liberalised pension scheme dated 28.9.1979 as modified by the decision in *Nakara*. It is these two G.O's**

H **which are under challenge in these petitions.**

Dismissing all the Writ Petitions, this Court,

HELD: In substance, even though learned counsel for the petitioners do not say so, the arguments amount to the claim of 'one rank, one pension' for all retirees of Armed Forces irrespective of their date of retirement. Unless this claim can be treated as flowing from the relief granted in *Nakara*, the relief claimed though differently worded cannot be granted. [166H-167A]

The claim in these petitions is untenable and it proceeds on a mis-reading of the *Nakara* decision. The conclusion of the Constitution Bench in *Nakara* was that the benefits of liberalisation and extent thereof given in accordance with the liberalised scheme have to be given equally to all retirees irrespective of their date of retirement and those benefits cannot be confined to only the persons who retired on or after the specified date because all retirees constitute one class irrespective of their date of retirement for the purpose of grant of the benefits of liberalised pension. To give effect to this conclusion the only relief granted was to strike down that portion of the memorandum by which the benefit of the liberalised pension scheme was confined to only persons retiring on or after the specified date with the result the benefit was extended to all retirees, irrespective of their date of retirement. Once this position from the decision in *Nakara* is borne in mind, the fallacy in the petitioner's contention becomes obvious and their claim based only on *Nakara* is rendered untenable. [167D-G]

According to that decision, pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in *Nakara* and no more. The question for decision is whether the petitioner's claim flows from that decision and there is nothing in *Nakara* to support such claim. There is no scope for enlarging the ambit of that decision to cover all claims by retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different. [168C-D, F, 169B]

Claim for gratuity can be made only on the date of retirement on

A **the basis of the salary drawn then and being already paid on that footing the transaction was completed and closed. It could then be not reopened as a result of the enhancement made at a later date for persons retiring subsequently. [172G-H]**

B **From 1.1.1973 everyone is being paid D.A. in addition to the pension. The reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement and, therefore, there is no ground to include D.A. at a time when it was not paid. [173B]**

C *D.S. Nakara & Ors.* **v.** *Union of India,* **[1982] 2 SCR 165;** *Krishna Kumar and Ors.* **v.** *Union of India & Ors.*, **[1990] 4 SCC 207;** *Smt. Poonamal & Ors.* **v.** *Union of India & Ors.*, **[1965] 3 SCC 345;** *State Government Pensioners' Association and Others* **v.** *State of Andhra Pradesh,* **[1986] 3 SCC 501 and** *Union of India* **v.** *Bidhubhushan Malik & Ors.*, **[1984] 3 SCC 95, referred to.**

D ORIGINAL JURISDICTION: Writ Petition Nos. 13550-55 of 1984.

WITH

Writ Petition Nos. 547-50 and 4524 of 1985.

E (Under Article 32 of the Constitution of India).

G. Viswanatha Iyer, K.L. Rathee, S. Balakrishnan, S. Prasad and S.K. Sinha for the Petitioners.

F Ashok H. Desai, Solicitor General, Arun Jaitley, Additional Solicitor General, Maninder Singh, Ms. Anil Katyar, C.V.S. Rao and Rajan Narain for the Respondents.

The Judgment of the Court was delivered by

G **VERMA, J.** These writ petitions by ex-servicemen are a sequal to the decision in *D.S. Nakara & Others* v. *Union of India*, [1983] 2 S.C.R. 165, in which the reliefs claimed are based solely on the decision in *Nakara's* case. The real point for decision, therefore, is whether the reliefs claimed in these writ petitions flow as a necessary corollary to the decision in *Nakara*. This being the sole basis for the reliefs claimed in these writ petitions, the petitioners can succeed only H if this assumption by them is correct. Writ Petition Nos. 13550-55 of

1984 are by ex-servicemen who retired from a commissioned rank while Writ Petition Nos. 547-50 of 1985 are by those who retired from below the Commissioned rank. Writ Petition No. 4524 of 1985 by an ex-serviceman has been received by post and is substantially to the same effect. Petitioner No. 1 in the first two sets of writ petitions is a Society representing the ex-servicemen while the other petitioners in these writ petitions are ex-servicemen of the three wings of the Armed Forces, namely, Army, Navy and Air Force. In order to appreciate the contentions in these writ petitions, it would be appropriate to first refer briefly to the decision in *D.S. Nakara & Others* v. *Union of India,* [1983] 2 S.C.R. 165.

On May 25, 1979, Government of India, Ministry of Finance, issued Office Memorandum No. F-19(3)-EV-79 whereby the formula for computation of pension was liberalised but made applicable only to civil servants who were in service on March 31, 1979 and retired from service on or after that date. The liberalised pension formula introduced a slab system, raised the ceiling and provided for a better average of emoluments for computation of pension and the liberalised scheme was made applicable to employees governed by the Central Civil Services (Pension) Rules, 1972, retiring on or after the specified date. The pension for the Armed Forces personnel is governed by the relevant regulations. By the Memorandum of the Ministry of Defence bearing No. B/40725/AG/PS4-C/1816/AD (Pension)/Services dated September 28, 1979, the liberalised pension formula introduced for the civil servants governed by the 1972 Rules was extended to the Armed Forces personnel subject to the limitations set out in the Memorandum with a condition that the new rules of pension would be effective from April 1, 1979 and would be applicable to all service officers who become/became non-effective on or after that date. These memoranda were Ex. P-1 and Ex. P-2 in *Nakara.* Consequently, the liberalised pension formula was made applicable prospectively only to those who retired on or after March 31, 1979 in case of civil servants covered 1972 Rules and in respect of Armed Forces personnel who became non-effective on or after April 1, 1979. The result was that those who retired prior to the specified date were not entitled to the benefits of liberalised pension formula in view of the cut-off date of retirement specified in the Memoranda. This led to the filing of the writ petition by ***D.S. Nakara*** and others on behalf of retired civil servants and personnel of the Armed Forces wherein it was contended that differential treatment to the pensioners related to the date of retirement by the revised formula for computation of pension was discriminatory and violative of Article 14 of the Constitution. The question for decision in

A *Nakara* was whether the date of retirement is a relevant consideration for eligibility when a liberalised pension formula for computation of pension is introduced and made effective from a specified date resulting in denial of the benefits of the liberalised pension formula to pensioners who had retired prior to the specified date.

B A Constitution Bench of this Court in *Nakara* after elaborately discussing the concept of pension, summed up the position thus:

> "Pension to civil employees of the Government and the defence personnel as administered in India appeal to be a compensation for service rendered in the past .....
>
> C 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 D 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 heyday 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 E 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 F practical *raison d'etre* 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.
>
> The discernible purpose thus underlying pension G scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see American Jurisprudence 2d. 881)."

H After summing up the concept of pension as above, the Constitu-

tion Bench set out the challenge of the petitioners in that case and indicated that the challenge was merely to that part of the scheme by which its benefits were confined to those who retired from service after a certain date. Even though, undoubtedly the benefit of the scheme is available only from the specified date irrespective of the date of retirement of the concerned Government servants, it was pointed out that all pensioners irrespective of the date of their retirement constitute one class for grant of the benefits of the liberalised pension scheme and no further classification within them is permissible for this purpose with reference to their date of retirement. This was stated thus:

> "If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be wrost off than those who retired later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and *if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory.* ..... The artificial division stares into face and is unrelated to any principle and *whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme.* In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Art. 14 is wholly violated inasmuch as *the pension rules being statutory in character, since the specified date, the rules accord differential and discri-*

A *minatory treatment to equals in the matter of commutation of pension.* A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Art. 14."

(emphasis supplied)

B

The judgment then proceeded to show that there was no difficulty or inequity in granting the benefits of the liberalised pension scheme to all retirees irrespective of the date of their retirement by indicating as under:

C "..... Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive. *Only the pension will have to be recomputed in the light of the* D *formula enacted in the liberalised pension scheme and effective from the date of revised scheme comes into force.* And beware that *it is not* ...w scheme, it is only a revision of *existing scheme.* It ...t a new retiral benefit. It is an upward revision of ...isting benefit. If it was wholly new concept, a new reti... ...enefit, one could have appreciated E an argument that those who had already retired could not except it. ....."

"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* F *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* G *amount worked out within the floor and the ceiling.*

But we make it abundantly clear that arrears are not required to be made (sic) because to that extent the scheme is prospective. *All pensioners whenever they retire would be covered by the liberalised pension scheme, because the* H *scheme is a scheme for payment of pension to a pensioner*

> *governed by 1972 Rules. The date of retirement is irrelevant.* But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. *In case of pensioners prior to the specified date, their pension would be computed afresh and would be payable infuture commencing from the specified date. No arrears would be payable.* And that would take care of the grievance of retrospectivity. *In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised.* ....."
>
> (emphasis supplied)

It was then pointed out that there is absolutely no difficulty in removing arbitrary and discriminatory portion of the scheme which is only the portion confining its applicability to retirees subsequent to the specified date since it could be easily severed. It was held that it would be just and proper to retain the specified date for implementation of the liberalised pension scheme while applying it equally to all pensioners irrespective of their date of retirement requiring the pension of each to be recomputed as on the specified date and the future payments to be made in accordance with fresh computation under the liberalised pension scheme as enacted in the impugned memoranda. Thus all retirees irrespective of their date of retirement were treated as constituting one class entitled to the benefits of the liberalised pension to be recomputed as on the specified date according to the liberalised formula requiring payment to be made prospectively from the specified date of the revised amount. In other words, the benefit of the liberalised pension formula was given equally to all retirees irrespective of the date of their retirement and for this purpose, recomputation was required to be made as on the specified date on the basis of the emoluments payable on the actual date of retirement of each retiree. The ultimate relief granted in *Nakara* is as under:

> "..... 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. Let a writ to that effect be issued....."
>
> (emphasis supplied)

Consequent upon the decision in *Nakara* a G.O. No. F.1(4)/82/D (Pension/Services) dated 22.11.1983 in respect of personnel of the Armed Forces below the Commissioned rank and G.O. No. 1(4)/82/I/D (Pension/Services) dated 3.12.1983 in respect of Commissioned Officers have been issued by the Government of India recomputing the revised pension of pre-1.4.1979 retirees of the Armed Forces as on 1.4.1979 according to the liberalised pension scheme. This re-computation has been made according to the liberalised pension scheme contained in the Memorandum No. B/40725/AG/PS4-C/1816/AD (Pension)/Services dated 28.9.1979, as it stood partially modified by the decision in *Nakara* to implement the decision in *Nakara* giving the same benefit of the liberalised pension scheme to all retirees irrespective of their date of retirement. It is these two G.Os. which are challenged in the present writ petitions. We may now state the contentions raised in these writ petitions.

The Armed Forces personnel retiring from Commissioned ranks were represented by Shri G. Viswanatha Iyer, while the Armed Forces personnel retiring from ranks below the Commissioned rank were represented by Shri K.L. Rathee. The arguments of both of them are substantially the same. According to learned counsel for the petitioners, the result of the decision in *Nakara* is that all retirees who held the same rank irrespective of their date of retirement must get the same amount of pension and this should be the amount which was calculated and shown in the appendices to the Memorandum (Ex. P-2) challenged in *Nakara*. Admittedly, the appendices to that Memorandum specified the computation of pension for different ranks of retirees on or after 1.4.1979 made on the basis of the reckonable emoluments on 1.4.1979. It is also admitted that the reckonable emoluments for corresponding ranks on earlier dates were not the same to provide identical basis for recomputation of pension according to the liberalised pension scheme of pre-1.4.1979 retirees. In substance, even though learned counsel for the petitioners do not say so, the arguments amount to the claim of 'one rank, one pension' for all retirees of the Armed Forces irrespective of their date of retirement. It is also admitted that prior to this liberalised pension scheme, the pension amount of the earlier retirees from the same rank was not the same irrespective of their date of retirement or in other words, the principle of 'one rank, one pension' did not apply earlier. It was stated at the Bar that the demand of 'one rank, one pension' is pending consideration of the Government of India as a separate issue. It is, therefore, clear that unless the petitioner's claim in substance of 'one rank, one pension' can be treated as flowing from the relief granted in

Nakara, the reliefs claimed in these petitions though differently worded cannot be granted. It is for this reason that learned counsel avoided describing the reliefs claimed herein as claim of 'one rank, one pension', even though they were unable to tell us how, if at all, the reliefs claimed in these petitions can be construed differently. A

The learned Solicitor General in reply contended that the impugned G.Os. in the present case were issued in implementation of the decision in *Nakara* and the challenge to them on the basis of *Nakara* decision, is untenable. The learned Solicitor General contended that the petitioner's claim herein arises out of a mis-reading of *Nakara* and the general observations therein have to be read in the context in which they were made. The Learned Solicitor General submitted in all fairness that in spite of this stand of the Government of India if any error in recomputation of the revised pension is pointed out, the Government of India would promptly correct the error, if any, since that is only a matter of calculation. B C

Having heard both sides at length and after giving our anxious consideration to the matter, we have reached the conclusion that the claim of the petitioners in the present writ petitions is untenable and it proceeds on a mis-reading of the *Nakara* decision. D

The conclusion of the Constitution Bench in *Nakara* was that the benefits of liberalisation and the extent thereof given in accordance with the liberalised pension scheme have to be given equally to all retirees irrespective of their date of retirement and those benefits can not be confined only to the persons who retired on or after the specified date because for the purpose of grant of the benefits of liberalisation in pension, all retirees constitute one class irrespective of their date of retirement. In order to give effect to this conclusion the only relief granted was to strike down that portion of the memoranda by which the benefit of the liberalised pension scheme was confined only to persons retiring on or after the specified date with the result that the benefit was extended to all retirees, irrespective of their date of retirement. Once this position emerging from the decision in *Nakara* is borne in mind, the fallacy in the petitioner's contention in these writ petitions becomes obvious and their claim based only on *Nakara* is untenable. E F G

The liberalised pension scheme in the context of which the decision was rendered in *Nakara* provided for computation of pension according to a more liberal formula under which "average emolu- H

ments" were determined with reference to the last ten months' salary instead of 36 months' salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to retirees subsequent to that date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in *Nakara* and no more.

Ordinarily, it would suffice to mention the gist of *Nakara* decision without extensively quoting therefrom. However, we have done so for the reason that the impassioned plea of Shri G. Viswanatha Iyer, learned counsel appearing for the Army Officers which was reiterated with an added emotive appeal by Shri K.L. Rathee, appearing for the remaining ranks of Armed Forces seems to suggest that denial of petitioner's claim amounts to mis-reading the *Nakara* decision and refusal of the logical relief flowing therefrom. It is only to dispel this incorrect impression we have quoted from *Nakara* at some length. We have merely to decide whether the petitioner's claim flows from the decision in *Nakara* and we are unable to find anything in *Nakara* to support such claim.

Nakara decision came up for consideration before another Constitution Bench recently in *Krishena Kumar and Others* v. *Union of India and Others*, [1990] 4 S.C.C. 207. The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that P.F. retirees and pension retirees constitute different classes and it was never held in *Nakara* that pension retirees and P.F. retirees formed a homogeneous class, even though pension retirees alone did constitute

a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in *Nakara,* it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read *Nakara* decision as one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

At attempt was made by learned counsel for the petitioners to confine this meaning of *Nakara* only to civilian retirees. It was contended that the position in the case of ex-servicemen was different. It was urged that for the ex-servicemen, the relevant Memorandum (Ex. P-2) dated 28.9.1979 which contained appendices showing the calculation of pension for each rank had to be equally applied to pre-1.4.1979 retirees since the only portion struck down in the Memorandum was the offending cut-off date confining the grant of the benefits of the liberalised pension scheme to those retiring after the specified date. In our opinion, no such distinction in the case of ex-servicemen can be made. A perusal of the Memorandum dated 28.9.1979 shows that it was the consequent action to liberalisation of the pension formula for civil servants extending the same benefit to the Armed Forces with no further addition. Appendices 'A', 'B' and 'C' to this Memorandum merely indicated the computation of the pension made for each rank according to the revised liberalised pension formula, the rates being calculated on the basis of emoluments payable for those ranks on 1.4.1979 since the Memorandum was confined in application only to service officers retiring on or after 1.4.1979. In that Memorandum, therefore, no occasion arose for computaton of revised pension for pre-1.4.1979 retirees. It is only as a result of the *Nakara* decision holding that the same liberalised pension formula for computation would apply to all pre-1.4.1979 retirees also that the question of re-computation of the pension of the earlier retirees on the basis of the liberalised formula arose and this is what has been done in the G.Os. dated 22.11.1983 and 3.12.1983 challenged in these writ petitions. It is a mis-reading of the Memorandum dated 28.9.1979 to contend that the appendices to that Memorandum became automatically applicable even to pre-1.4.1979 retirees as a result of the *Nakara* decision. That amounts to reading something in that decision which would be contrary to its ratio.

The Memorandum dated 28.9.1979 which was Ex. P-2 in *Nakara* and on which the petitioners' claim rests is as under:

"IMMEDIATE

No. B/40725/AC/PS4(c)/1816/A/D/(Pension/Services)

Government of India/Bharat Sarkar, Ministry of Defence/Raksha Mantralaya, New Delhi, the 28th September, 1979.

To

The Chief of the Army Staff.
The Chief of the Naval Staff.
The Chief of the Air Staff.

Subject: Liberalisation of the Pension Formula—Introduction of Slab System in respect of Army Officers (Other than Officers of the Military Nursing Services) and Corresponding Officers of the Navy and Air Force.

Sir,

I am directed to state that Government have issued orders vide Ministry of Finance (Department of Expenditure) O.M. No. F. 19(3)-EV/79, dated the 25th May, 1979 for determining pension of the Central Government Civil servants on slab system given below:

	Amount of monthly pension
(a) Upto first Rs. 1000 of *average emoluments reckonable for pension*	50% of *average emoluments*
(b) Next Rs. 500 of *average emoluments*	45% of *average emoluments*
(c) Balance of *average emoluments*	*40% of average emoluments*

Consequent upon the introduction of the slab system for determining pension as above, the President is pleased to

modify the rates of pension of Army Officers (excluding the officers of the Military Nursing Services) *and corresponding officers of the Navy and Air Force* as given in A1 3/9/76 and corresponding Naval and Air Force Instructions, and Ministry of Defence letter No. F.1(8)/70/D (Pension/ Services), dated the 17th July, 1975 in the case of rate of pension in respect of Chiefs of Staff, *on the same basis* and the revised rates of pension are as shown in Appendices 'A', 'B' and 'C' respectively, attached to this letter.

2. 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.

3. The Pension Regulations for the three Services will be amended in due course.

4. This issues with the concurrence of the Ministry of Finance (Defence) vide their u.o. No. 2682/Pen of 1979.

Yours faithfully,

Sd/-
(Shiv Raj Nafir)
Under Secretary to the Govt. of India"

(emphasis supplied)

The significant words in this Memorandum after referring to the Memorandum dated 25.5.1979 for determining pension of the civil servants according to the liberalised pension formula on the slab system based on 'average emoluments reckonable for pension' are as under:

> "Consequent upon the introduction of the slab system for determining pension as above, the President is pleased to modify the rates of pension of Army Officers ..... and corresponding officers of the Navy and Air Force .... on the same basis ....."

The above words leave no doubt that by this Memorandum the personnel of Armed Forces were extended the same benefit of liberalised pension formula for computation of their pension as was given to the civil servants 'on the same basis'. The words which follow thereafter indicate that appendices 'A', 'B' and 'C' attached to the

A Memorandum specified the revised rates of pension calculated on the liberalised basis for each rank on the basis of reckonable emoluments payable as on 1.4.1979 since the memorandum when issued confined the benefits of the liberalised scheme only to post-1.4.1979 retirees. There is no scope for reading these appendices torn out of the context of the Memorandum in its original form to which they were B appended. So read, it is obvious that the calculations given in the appendices 'A', 'B' and 'C' to this Memorandum contain the computation according to the liberalised formula for each rank of the three wings of the Armed Forces for post-1.4.1979 retirees only. It follows that a result of the *Nakara* decision when the benefit of the liberalised pension scheme was made applicable even to pre-1.4.1979 retirees of C the Armed Forces, computation according to the liberalised formula for pre-1.4.1979 retirees had to be made in the same manner as it was done for post-1.4.1979 retirees and shown in appendices 'A', 'B' and 'C' to this Memorandum. This was done by the impugned G.Os. dated 22.11.1983 and 3.12.1983.

D 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 may now deal with the remaining contentions. In Writ Petition No. 4524 of 1985, one of the reliefs claimed is for family pension. E It has been pointed out by the learned Solicitor General that provision has been made for the same by the Government of India (Ministry of Defence) in Memorandum No. F.6(2)/85/1689/B/D (Pension/Services) dated 8.8.1985 which has been issued in compliance of this Court's decision in *Smt. Poonamal and Others* v. *Union of India and Others,* [1985] 3 S.C.C. 345). That grievance no longer survives. Other F reliefs claimed in this writ petition by an ex-serviceman are the same as in other writ petitions.

One of the prayers made in these writ petitions is for grant of same Death-cum-Retirement Gratuity to the pre-1.4.1979 retirees as G to the post-1.4.1979 retirees. A similar claim was rejected by this Court in *State Government Pensioners' Association and Others* v. *State of Andhra Pradesh,* [1986] 3 S.C.C. 501 on the ground that the claim for gratuity can be made only on the date of retirement on the basis of the salary drawn on the date of retirement and being already paid on that footing the transaction was completed and closed. It could then H not be reopened as a result of the enhancement made at a later date for persons retiring subsequently. This concept of gratuity being different

from pension has also been reiterated by the Constitution Bench in *Krishena Kumar's* case. With respect, we are in full agreement with this view. This claim of the petitioners also, therefore, fails.

Another claim made is for merger of D.A. backwards also. From 1.1.1973 everyone is being paid D.A. in addition to the pension. The reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement and, therefore, there is no ground to include D.A. at a time when it was not paid. This claim also is untenable.

Learned counsel for the petitioners referred to certain decisions which it is unnecessary to consider at length since they were cited only for reading the *Nakara* decision in the manner suggested by petitioners. The decision of this Court *Union of India* v. *Bidhubhushan Malik and Others*, [1984] 3 S.C.C. 95 by which special leave petition was dismissed against the decision of the Allahabad High Court reported in AIR 1983 Allahabad 209 is also of little assistance in the present case. This Court while dismissing the special leave petition upheld the Allahabad High Court's view that the liberalised pension became operative under the High Court Judges (Conditions of Service) (Amendment) Act, 1976, from 1.10.1974 and applied to all retired High Court Judges irrespective of the date of their retirement and there is no question of payment of arrears of pension for the period preceding 1.10.1974. We are unable to appreciate the relevance of this case to support the petitioners' claim in these writ petitions.

The learned Solicitor General has stated that the impugned G.Os. dated 22.11.1983 (Annexure I) and dated 3.12.1983 (Annexure II) issued by the Government of India (Ministry of Defence) in the present case are based on re-computation of pension of pre-1.4.1976 retirees of Armed Forces according to the liberalised pension scheme consequent upon the decision in *Nakara*. He also added that if any error in computation is pointed out in respect of any particular person or rank or otherwise, the same would be promptly corrected. On the above view taken by us, the prayer made in these writ petitions for quashing these orders has to be rejected. For the same reason, its corollary that the same amount of pension be paid to all pre-1.4.1979 retirees of Armed Forces as to post-1.4.1979 retirees must also be rejected.

Consequently, these writ petitions fail and are dismissed. No costs.

R.N.J. Petitions dismissed