

IN THE SUPREME COURT OF INDIA  
 CIVIL APPELATE JURISDICTION  
 CIVIL APPEAL NO(s). 238-244 OF 2004

UNION OF INDIA AND ANR. Appellant (s)

VERSUS

P.N. NATARAJAN AND ORS.ETC. Respondent(s)

WITH

C.A. No.1868 of 2010 @ SLP(C) NO. 28090 of 2008  
 C.A. No.1873 of 2010 @ SLP(C)...CC NO. 6523 of 2009  
 C.A. No.1874 of 2010 @ SLP(C) NO. 9188 of 2007

O R D E R

1. Delay condoned in S.L.P.(C)...CC NO. 6523 of 2009.
2. Leave granted in the above special leave petitions.
3. Whether the retiral benefits payable to the respondents in terms of the option exercised by them under Section 12A(4)(a) and (b) read with Section 12A(4C) of the Food Corporation of India Act, 1964 (for short "the Act") as inserted and amended by Act Nos. 57/1968 and 12/1977 could be revised and reduced by the appellants pursuant to the audit objection raised after 4 to 7 years of the grant of such benefits is the question which arises for determination in these appeals preferred by the Union of India and another

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against the orders passed by the learned Single Judge and the Division Bench of Kerala High Court.

4. The Food Corporation of India (for short "the Corporation") was established under Section 3 of the Act. The services of the private respondents, who were then working under the Ministry of Food, Government of India were placed at the disposal of the Corporation. Section 12A was inserted in the Act by Amending Act No. 57/1968 to facilitate transfer of the government employees to the Corporation. Simultaneously, an opportunity was given to every transferred employee to opt for

the scale of pay applicable to the post held by him under the Government immediately before the date of transfer or the scale of pay applicable to the post under the Corporation to which he is transferred as also leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government, as amended from time to time, or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation. For the sake of convenient reference, Section 12A (1), (2), (4) and (4C) are reproduced below:-

12A. Special provisions for transfer of Government employees to the Corporation in certain cases - (1)  
Where the Central Government has ceased or ceases to

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perform any functions which under Section 13 are functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates (which may be either retrospective to any date not earlier than the 1st January, 1965, or prospective) as may be specified in the order, to the corporation any of the officers or employees serving in the Department of the Central Government dealing with food or any of its subordinate or attached offices and engaged in the performance of those functions:

Provided that no order under this sub-section shall be made in relation to any officer or employee in such Department or office who has, in respect of the proposal of the Central Government to transfer such officer or employee to the Corporation, intimated within such time as may be specified in this behalf by that Government, his intention of not becoming an employee of the Corporation.

(2) In making an order under sub-section (1), the Central Government shall, as far as may be, take into consideration the functions which the Central Government has ceased or ceases to perform and the areas in which such functions have been or are performed.

(4) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option in writing to be governed,-

(a) by the scale of pay applicable to the post held by him under the Government immediately before the date of transfer or by the scale of pay applicable to the post under the Corporation to which he is transferred,  
(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under

the regulations made by the Corporation under this act, and such option once exercised shall be final:

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Provided that the option exercised under clause (a) shall be applicable only in respect of the post to which such officer or employee is transferred to the Corporation and on appointment to a higher post under the Corporation, he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or employee is officiating in a higher post under the Government either in a leave vacancy or in any other vacancy of a specified duration, his pay, on transfer, shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Department of the Ministry of the Central Government dealing with food or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Department or office subsequent to the transfer to the Corporation or any other officer or employee senior to him in that Department or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

(4C) Where an officer or other employee has exercised an option under sub-section (4), or exercise, or is deemed to have exercised, an option under that sub-section, read with sub-section (4A) or sub-section (4B), to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefits shall be calculated on the basis of the pay and allowances drawn by him in the Corporation."

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5. The private respondents exercised options in terms of clause (a) and (b) of Section 12A(4). They opted for leave, provident fund, retirement and other terminal benefits admissible to employees of the Central Government. All of them retired from service on reaching the age of superannuation. Their pension was fixed keeping in view the option exercised in terms of Section 12A(4)(b) read with Section 12A(4C) and they were paid retiral dues at par with employees of the Central Government. Some of them also applied for and were allowed to commute their pension. In 1996, an audit objection was raised

to the entitlement of the respondents to receive retirement benefits at par with Central government employees. By relying upon the audit objection, the Central Government issued direction for re-fixation of the pension etc. payable to the private respondents on the premise that they are entitled to pension, gratuity etc., on the basis of pay and allowances drawn by them in the service of the Corporation but are not entitled to dearness relief.

6. The private respondents challenged the directive given by the Central Government by filing writ petitions under Article 226 of the Constitution. They pleaded that the option exercised by them in terms of Section 12A(4)(a) and (b) had become final and the same could not be unilaterally altered,

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amended or changed either by the Central Government or the Corporation. In the counter filed on behalf of the appellant No.1 Union of India, it was pleaded that as per the memorandum of settlement entered into between the Unions of the employees and Management of the Corporation, pension and other terminal benefits payable to the writ petitioners (private respondents herein) are to be calculated on the basis of Industrial Dearness Allowance applicable to the employees of the Corporation and not on the basis of Central Dearness Allowance. It was also pleaded that the term "pension" does not include dearness relief on pension.

7. On a consideration of the facts placed before him and arguments advanced by counsel for the parties, the learned Single Judge allowed the writ petitions and declared that the terminal benefits payable to the private respondents in terms of the option exercised by them under Section 12A(4) cannot be reduced by the Central Government. Paragraph 9 of the order passed by the learned Single Judge, which supports the conclusion recorded by him reads thus:

"Section 12A(4) of the Act provides that the employees are entitled to terminal benefits in accordance with

the rules and orders of the central government from time to time, as per the option exercised by them. Admittedly there is no amendment to the Act or the rules. Therefore, the respondents are bound by the provisions of Section 12A(4)(b). Section 12A(4-C) of

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the Act provides that where an officer or other employee has exercised an option under sub section (4), or exercises, or is deemed to have exercised, an option under that sub section, read with sub section (4-A) or sub section (4-B) to be governed by the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Central Government, such benefits shall be calculated on the basis of the pay and allowances drawn by him in the Corporation. Accordingly, pay and allowances were calculated based on the last pay drawn and their terminal benefits were fixed and disbursed to them. Therefore, the respondents are estopped from contending that the petitioners, who were not parties to the settlement, are entitled to only VDA pattern of DA. Learned counsel for the respondents submitted that the petitioners mentioned above, excepting the petitioners in two cases, O.P. No.1642 and 1710 of 1996, have received the arrears calculated on the basis of VDA pattern and as the petitioners have received the said amount, they are estopped from contending that they are entitled to terminal benefits as per CDA. As the amount was wrongly disbursed to the petitioners, they have received the same. That does not mean that they are bound by the decision of the central government to calculate terminal benefits accepting the IDA pattern of scales of pay. In the absence of any amendments to Section 12A(4) of the Food Corporation Act, the petitioners are entitled to get their terminal benefits fixed as per the provisions of Section 12A(4). The respondents have no right to change or reduce the DA or terminal benefits. Therefore, the petitioners are entitled to get the original Petitions allowed."

8. The Division Bench approved the order of the learned Single Judge and dismissed the appeals preferred by the appellants by recording the following observations:

"Admittedly the petitioners thereon opted to Central Government scheme and they had retired without receiving benefits as per Central Government pattern. The appellants herein contend that they will not get

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dearness relief as applicable to Central Government employees as at the time of retirement they were employees of Food Corporation of India. But as per Section 12A(4) in view of their option petitioners are entitled to get their terminal benefits admissible to Central Government employees. These employees were originally Government of India employees at the time of formation of Food Corporation of India. They were given the right for option under Section 12A(4) (a) and (b) and they opted the pattern of Central Government and they are entitled to receive all the benefits of Central Government employees."

9. At the commencement of arguments, Shri A.K. Srivastava, learned counsel for the appellants referred to order dated 17.9.2009 passed by this Court and suggested that disposal of these appeals may be deferred and liberty may be given to the competent authority to pass fresh order in the matter of retiral benefits payable to the respondents after giving them notice and opportunity to make representation, but having found that the Court is not inclined to approve the mechanism of post decisional hearing, learned counsel submitted that the impugned orders are liable to be set aside because the learned Single Judge and the Division Bench of the High Court did not consider the plea of the appellants that in view of the bipartite settlement arrived at between the Unions of the employees and the Management of the Corporation, the respondents are not entitled to the benefits of dearness relief at par with the Central Government employees.

Shri Srivastava

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emphasized that even though the respondents had exercised option for payment of retiral benefits at par with Central government employees in accordance with the rules and orders issued by the Central Government from time to time, they were not entitled to the benefit of dearness relief, which was in the nature of concession given by the employer and the Central Government did not commit any illegality by directing revision of the retiral benefits payable to the private respondents. In support of this argument, Shri Srivastava relied upon the judgment of two Judges Bench of this Court in *Videsh Sanchar Nigam Ltd.v. Ajit Kumar Kar*, (2008) 11 SCC 591. Learned counsel also relied upon the order passed by the learned Single Judge of the Madras High Court in Writ petition No.17378 of 2000, *G. Renganathan vs. The Pay & Accounts Officer, the Central Pension (Accounting Office), Ministry of Finance, Government of India and others* and argued that notwithstanding the option exercised by the respondents in terms of Section

12A(4)(b), the Central Government had rightly directed re-fixation of pension and other retiral benefits payable to the private respondents because while sanctioning pension etc., the concerned authority had, by mistake, added dearness relief which is not admissible to them under the relevant rules.

10. Shri T.L.V. Iyer, learned senior counsel appearing

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for the respondents made a pointed reference to section 12A(4) (b) of the Act and argued that if the option exercised by the respondents is read in the light of Section 14(C), their entitlement to receive the benefits of leave, provident fund and other retiral benefits admissible to the Central Government employees on the basis of pay and allowances drawn by them in the services of the Corporation cannot be questioned. Shri Iyer submitted that the High Court did not commit any error by nullifying the direction given by the Central Government because pension etc. payable to the private respondents were sought to be revised and reduced without giving them notice and opportunity of hearing.

11. We have considered the respective submissions and carefully scrutinized the records. Although, neither the learned Single Judge nor the Division Bench considered the issue of violation of the rules of natural justice, having given serious thought to the entire matter, we are convinced that the retiral benefits payable to the respondents could not be revised to their disadvantage without giving them action oriented notice and opportunity of hearing. By virtue of the

option exercised by them under Section 12A(4)(b) and consequential action taken by the competent authority to fix their pension etc., the private respondents acquired a valuable

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right to accordingly receive the financial benefits and the same could not have been reduced without complying with one of the basic rules of natural justice that no one shall be condemned unearned. The rule of audi alteram partem has been

treated as fundamental to the system established by rule of law and any action taken or order passed without complying with that rule is liable to be declared void - State of Orissa vs.

Dr (Miss) Binapani Dei and others AIR 1967 SC 1269 and Sayeedur Rehman vs. State of Bihar and others (1973) 3 SCC 333.

12. It is not in dispute that before directing revision of the pension etc., payable to the private respondents, the Central Government did not give them action oriented notice and opportunity of showing cause against the proposed action. Therefore, it must be held that the direction given by the Central Government to revise the retiral benefits including the pension payable to the respondents was nullity.

13. Dehors the above conclusion, we are convinced that the action taken by the appellants to revise and reduce the retiral benefits payable to the respondents was ex facie arbitrary, unreasonable and unjustified and the learned Single Judge did not commit any error by declaring that the Central Government did not have the jurisdiction to unilaterally alter/change the option exercised by the writ petitioners under

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Section 12A(4)(b) read with Section 12A(4C).

14. We may now advert to the bipartite settlement on which reliance has been placed by the appellants to justify the directive given by the Central Government for adverse revision of the retiral dues payable to the respondents. Para 7.1 of the memorandum of settlement, the extracts of which has been placed before this Court in the form of Annexure R-4 read as under:

"Pension: In the case of Food Transferee employees who have opted Section 12-A of the Food Corporation Act, 1964 to be governed by the Pension Rules of the Central Government as amended from time to time, Pension shall be worked out as under:

(i) For those retiring during the period 1st August 1983 to 30th March, 1985, employments for purposes of working out pension will be the pay in the revised scale.

In the case of persons retiring prior

to 31 stMay, 1984 emoluments for the period prior to 1st August, 1983 shall be the emoluments which would have been taken into account for the purpose of pension as per the then existing orders.

(ii) For those retiring during the period 31st March, 1985 to 31st December, 1985 emoluments for purposes of pension will be pay in the revised scale and Industrial DA as admissible in FCI on 1st November, 1984.

In the case of persons retiring prior to 31st December, 1985 emoluments for the period prior to 31st March, 1985 shall be the emoluments which would have been taken into account for the purpose of pension as at

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Senior (i) above.

(iii) For those retiring during the period 1st Jan., 1986 to 31st July, 1987 pension shall be worked out with reference to emoluments for purposes of pension as shown in Col.4 and Col.5 of Annexure 17 to 28 whichever is more.

In the case of persons retiring prior to 31 Oct., 1986 emoluments for the period

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prior to 1st Jan., 1986 shall be the emoluments which would have been taken into account for the purpose of pension as at Senior No.(ii) above."

15. A perusal of what has been reproduced above makes it clear that the settlement was applicable to the employees retiring between 1.8.1983 and 31.7.1987. None of the private respondent is shown to have retired during that period. Therefore, the terms of settlement cannot be invoked by the appellants to justify reduction of the retiral benefits payable to them.

16. A reading of the consequential order dated 18.7.1990 (Annexure R-6) issued by the Government of India does give an impression that the settlement is applicable to employees like the private respondents but, in our view, the same cannot be relied upon for the purpose of supporting the directive given for revising/reducing retiral benefits payable to the private respondents because the Central Government is not bestowed with

the power to amend, alter or revise the terms of bipartite settlement.

17. Even if the memorandum of settlement is held applicable to other employees of the Corporation, the same cannot adversely affect the option exercised by the private respondents in terms of Section 12A(4)(a) and (b) read with Section 12A(4C) of the Act. It has neither been suggested on behalf of the appellants nor it can be laid down as a proposition of law that the bipartite settlement arrived at between the Unions of the employees and the Management of the Corporation could take away the right acquired by the respondents as a sequel to exercise of option in terms of Section 12A(4)(b).

18. The judgment on which reliance has been placed by Shri Srivastava has no bearing on the issue raised in these appeals because in that case the Court was not called upon to decide whether the Central Government can pass an order or issue a directive adversely affecting the statutory option exercised by the employees.

19. In the result, the appeals are dismissed. Each of the private respondents shall get cost of Rs.10,000/- from the appellants.

20. Since the appeals have been dismissed, the concerned authorities are directed to release the amount payable to the respondents and other similarly situated persons within a period of three months from today, else they shall have to pay interest to @ 9% per annum from the date of this order.

21. The intervention applications stand disposed of.

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.....J.

(G.S. SINGHVI)

.....J.  
(ASOK KUMAR GANGULY)

NEW DELHI,  
February 10, 2010.

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ITEM NO.105

COURT NO.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 238-244 OF 2004

UNION OF INDIA AND ANR.

Appellant (s)

VERSUS

P.N. NATARAJAN AND ORS.ETC.

Respondent(s)

(With appln(s) for intervention and office report )

WITH  
SLP(C) NO. 9188 of 2007  
(With office report)  
SLP(C) NO. 28090 of 2008  
(With appln.(s) for c/delay in filing SLP and with office report)  
S.L.P.(C)...CC NO. 6523 of 2009  
(With appln.(s) for c/delay in refiling SLP and with office report)

Date: 10/02/2010      These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s)      Mr.    Ashok K. Srivastava, Adv.  
                                 Ms.    Rekha Pandey, Adv.  
                                 Ms.    Sushma Suri, Adv.  
                                 Mrs    Anil Katiyar

                                 Mr. V.K. Verma, Adv.

For Respondent(s)      Mr. T.L.V. Iyer, Sr.Adv.  
                                 Mr. Subramonium Prasad ,Adv

                                 Ms. Indra Sawhney, Adv.  
                                 Mr. Rajiv Mehta, Adv.

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C.A. NO(s). 238-244/2004 etc. contd...  
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UPON hearing counsel the Court made the following

O R D E R

Delay condoned in S.L.P.(C)...CC NO. 6523 of 2009.  
Leave granted in the above special leave petitions.

In terms of signed order, the appeals are dismissed.  
Each of the private respondents shall get cost of Rs.10,000/-  
from the appellants.

Since the appeals have been dismissed, the concerned  
authorities are directed to release the amount payable to the  
respondents and other similarly situated persons within a  
period of three months from today, else they shall have to pay  
interest to @ 9% per annum from the date of this order.

The intervention applications stand disposed of.

(A.D. Sharma)  
Court Master

( Phoolan Wati Arora)  
Court Master

(Signed Order is placed on the file)