CASE NO.:
Appeal (civil) 4356 of 2006

PETITIONER:
P.K. Kapur \005Appellant

RESPONDENT:
Union of India and Others \005Respondents

DATE OF JUDGMENT: 01/02/2007

BENCH:
Dr. Arijit Pasayat & S. H. Kapadia

JUDGMENT:
J U D G M E N T

KAPADIA, J.

By filing writ petition in the Delhi High Court, petitioner (appellant herein), a retired Lieutenant Colonel (Time Scale), sought weightage of 8 years to be added to the actual qualifying service as also enhancement of percentage of disability, in short, he asked for refixation of the pension.

The facts giving rise to the writ petition are as follows.

In 1962 appellant was commissioned as an officer in Indian Army. This was during National Emergency created by Chinese invasion. He was an officer in the Sikh Light Infantry.

In 1965 while fighting in Jammu and Kashmir sector against Pakistani troops appellant got a shell injury in his left shoulder. After war, he was retained in service, granted permanent commission and allowed to work till 30.11.89 when he was released on superannuation on completion of 51 years of age after putting in qualifying service of 26 years. Before his retirement appellant was subjected to examination by the Medical Board which assessed the appellant’s war injury disability at 30%, permanent for life.

During the period 30.11.89 to 25.10.99 the appellant was given 8 years weightage (in years) to be added to his qualifying service in order to compute his service pension. He was also notified for war disability pension for which he was paid arrears with effect from 30.11.89.

At this stage, it may be noted that the Report of the Fourth Pay Commission came on 30.10.87. As stated above, appellant retired on 30.11.89. When he retired, in 1989, he was allowed weightage of 5+3 (in years) in order to protect his pension. He was entitled to weightage of 5 but since his pension fell below that payable to a Major he was given an additional weightage of 3. At the relevant time, till Fifth Pay Commission Report, there was integrated pay scale in existence. Appellant was entitled to 5 years weightage under the Fourth Pay Commission, however, because of integrated pay scale his pay became less than a Major in the Indian Army with 5 years weightage admissible to Lieutenant Colonel in the Time Scale (TS). Therefore, in order to protect his pay he was given an additional weightage of 3 years so that his pension remained more

than that of a Major. Appellant enjoyed the benefit of 8 years weightage for 10 years between the date of his retirement on 30.11.89 and 25.10.99. However, after Fifth Pay Commission Report appellant was informed that calculation of pension will be done on the basis of last rank held by him and on the basis of revised pay scale introduced under Fifth Pay Commission Report with effect from 1.1.96. With the revision in pay scale appellant was given the original weightage of 5 years because after the Report of the Fifth Pay Commission the salary structure was so revised under which the pension payable to a Lieutenant Colonel (TS) became more than the pension payable to a Major and consequently the protected weightage of 3 (8-5) stood withdrawn. This has been challenged by the appellant.

As stated above in the writ petition, the appellant also claimed enhancement of percentage of disability. According to the appellant, under Government of India, Ministry of Personnel, vide Circular No.45/22/97-P&PW(C) dated 3.2.2000, the percentage of disability stood enhanced from 30% to 50% in case of junior officers in the armed forces who were in service on 1.1.96. Appellant contended that he was also entitled to such enhancement and that Government of India was not entitled to discriminate in this regard junior officers who retired before 1.1.96 and those who are in service on or after 1.1.96.

Both these challenges failed as can be seen from the impugned judgments of the High Court in W.P. (C) No.268/2001 dated 8.11.2004 and Review Petition No.438/2004 dated 15.12.2004. Hence, this civil appeal.

Appellant appeared in-person. On the first point he submitted that he was given a weightage of 8 for 10 years between 1989 and 1999 and there was no reason for reducing the weightage from 8 to 5 after the Report of the Fifth Pay Commission. He submitted that on account of the above reduction in weightage he has suffered a monetary loss of Rs.445 per month. He submitted that the policy of the Government giving weightage, to be added to the actual qualifying service rendered for computation of service pension, was arbitrary and discriminatory having no nexus with the object sought to be achieved, namely, equal opportunity of earning full pension. He submitted that other Ranks except that of Lieutenant Colonel (TS) are given the benefit of 58 years for computation of pension by adding the weightage of number of years to the prescribed retirement age and thus he was not given equal opportunity of earning full pension in relation to other Ranks. This, according to the appellant, was discriminatory. The appellant further submitted that there was no reason for Government of India to prescribe different weightage for different Ranks. He submitted that fixation of 5 years weightage in his case for computation of service pension was against the basic object having no rational relation with the object of enabling him to get 33 years of qualifying service to earn full pension which has been denied due to comparatively early retirement age in relation to his civil counterparts and in relation to senior service officers. Thus, according to the appellant, the policy of fixing different weightages for different Ranks was arbitrary and violative of Article 14 since the said policy fails to comply the twin tests, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that

differentia must have a rational relation to the object sought to be achieved by the Act. In this connection, the appellant placed reliance on the judgment of this Court in the case of B.S. Nakara v. Union of India \026 AIR 1983 SC 130. Appellant submitted, in this connection, that the standard length of qualifying service for entitlement of full pension has been fixed at 33 years for all civilian and service officers. Previously it was not so. Previously it depended upon the Rank in question. Appellant submitted that, however, now the retirement age of the service officers varies from 50 to 52 years, in the case of junior officers, compared to their civilian counterparts who retire at the age of 58 years and as compared to senior officers in the Army who retire at the age of 60. In order to remove this disparity, according to the appellant, weightage was granted in terms of number of years to be added to the actual qualifying service rendered so that junior officers get equal opportunity of benefit of 33 years of service for entitlement of full pension. Appellant submitted that reducing the weightage in his case from 8 years to 5 years, after the Report of the Fifth Pay Commission, was discriminatory as he is deprived of equal opportunity of earning full pension admissible on completion of 33 years of service. In this connection, he has placed reliance on a table/chart submitted by him in the special leave petition paper book at page 29. Placing reliance on this chart, he submitted that all other Ranks in the Army are getting benefit of 58 to 60 years of qualifying service for pension by an addition of weightage comprising of the number of years whereas in the case of Lieutenant Colonel (TS) the qualifying service on addition of 5 years weightage comes to 56 years for pension and, therefore, the impugned policy in O.M. No.1(S)/87/D dated 30.10.87 was totally arbitrary and violative of Article 14 of the Constitution. He submitted that the appellant who retired as a Lieutenant Colonel in the time scale got the benefit of 5 years of service (51+5) while other junior and senior Ranks got the benefit of 58 to 60 years for pension.

We do not find any merit in the above submission made by the appellant on the first point for the following reasons.

Firstly, under O.M. dated 30.10.87 the expression "qualifying service" has been defined to mean actual qualifying service rendered by an officer plus a weightage (in years) appropriate to the last Rank held by the officer subject to the total qualifying service including weightage not exceeding 33 years. It is interesting to note that under the said O.M. dated 30.10.87 Lieutenant Colonel (TS) in the Army, Commander (TS) in the Navy and Wing Commander (TS) in the Air Force are all given weightage of 5. Further, the very definition of the word "qualifying service" in the O.M. dated 30.10.87 indicates that the weightage (in years) is given appropriate to the last Rank held. In other words, weightage has a nexus with the Ranks. Further, the definition of the word "qualifying service" also indicates that there is a ceiling/outer limit placed on the amount of pension payable which will not exceed the total qualifying service of 33 years. Applying this O.M. to the facts of the present case we find that appellant was all throughout entitled to weightage of 5 but at the relevant time when he retired in 1989 there existed what is called as integrated pay scale. The consequence of the integrated pay scale was that with 5 years weightage the appellant was entitled to

pension the quantum whereof was less than that of a Major. To protect his pension, the appellant was given a weightage of 3 additional points (in years). At this stage, it may be clarified that the appellant retired on 30.11.89 after completing actual qualifying service of 26 years. With the weightage of 8, the total qualifying service became 34 and, therefore, in effect he was given a weightage of 7 because, as stated above, under the O.M. dated 30.10.87 the qualifying service could not got beyond the ceiling of 33 years. However, with the coming into force the Fifth Pay Commission, Government of India had to refix the pension because under the Report of the Fifth Pay Commission there was a revision of pay scale introduced with effect from 1.1.96 for the Rank of Lieutenant Colonel and other Ranks. Further, after the Fifth Pay Commission the integrated pay Scale system was abolished and a separate pay scale was provided for Lieutenant Colonel (TS) with 5 years weightage which was there even under the Fourth Pay Commission. The result was that the appellant's pay scale was revised under the Fifth Pay Commission which was the basis for qualifying pension. Consequently, the pension of Lieutenant Colonel (TS) even with the weightage of 5 years became more than the pension admissible to Major with the weightage of 8 years. In this connection, a chart has been submitted by the Union of India which indicates Rs.6400/- per month to be pension for a Major with 33 years service including 8 years weightage whereas pension admissible to Lieutenant Colonel (TS) with 31 years of qualifying service including 5 years weightage to be Rs.6905/- per month. Therefore, after the Fifth Pay Commission, on account of increase in the pay scales, pension admissible to Lieutenant Colonel (TS) with 31 years of service including 5 years weightage is more than the pension admissible to a Major with 33 years service including 8 years weightage. Therefore, there is no loss to the appellant as alleged. Appellant claims 8 years weightage even after Fifth Pay Commission under which his salary has been revised. He claims weightage of 8 to be added to the actual service rendered by him so that his qualifying service becomes 33 and he claims accordingly a pension at the rate of Rs.7350/- per month whereas he is entitled to Rs.6905/- per month. Therefore, there is no loss suffered by the appellant as alleged. Appellant is getting pension which is more than that of the Major, therefore, he is not entitled to 8 years weightage. However, he has been given a weightage of 5 years. In other words, the protected weightage of 3 points is removed because after Fifth Pay Commission he earns pension more than that of the Major which was not there during the period 1989 to 1999. Secondly, it is well settled in law that Article 14 permits class legislation and not classification based on intelligible differentia which distinguishes those that are grouped together from others and that differentia must have a rational relation to the objects sought to be achieved by the Act. In the case of Union of India v. P.N. Menon and others \026 (1994) 4 SCC 68, this Court has held that pay revision can invite a cut-off date. In matters of pay fixation it is the pay commission which is entitled to take into account various parameters depending upon the nature of posts, the pay scales attached to those posts, the duties attached to those posts, the qualifications attached thereto, the manner of calculating the retirement benefits etc. Both under Fourth Pay Commission and Fifth Pay Commission the weightage of 5 is retained. Appellant was always entitled to weightage of 5. He was given the weightage of 3 additional points only

to protect his pension. This protection was given because his pension was falling below the pension admissible to a Major. Under Fourth Pay Commission the Government followed integrated pay-scale system whereas under Fifth Pay Commission not only the pay scales stood revised but a separate pay scale was prescribed for Lieutenant Colonel (TS). The pay scale so prescribed was the basis for computation of the pension. Be that as it may, even assuming for the sake of the argument that Article 14 was applicable, the O.M. dated 30.10.87 clearly shows that the weightage had nexus with the last Rank and the period of 33 years qualifying service was an outer limit of qualifying service for calculating pension. Further, the weightage of 5 is given under the said O.M. to Lieutenant Colonel (TS) in the Army, Commander (TS) in the Navy and Wing Commander (TS) in the Air Force. Therefore, weightage (in years) was given under the said O.M. to the equivalent Ranks in Army, Navy and Air Force. Therefore, there is no violation of Article 14 of the Constitution.

Now, coming to the second challenge concerning "enhancement of percentage of disability", appellant has submitted that Government of India had vide O.M. dated 3.2.2000 enhanced the percentage of disability for Armed Forces officers including junior officers in service on or after 1.1.96. Since, the appellant retired on 30.11.89 this enhancement of percentage of disability was not admissible in the case of the appellant. Appellant submitted that there was no reason for denying enhancement of percentage of disability to junior officers in the Indian Army who retired prior to 1.1.96. Fixation of this cut-off date of 1.1.96, according to the appellant, is arbitrary, irrational and violative of Article 14 of the Constitution. Appellant submitted that one of the facets of Article 14 is that it eschews arbitrariness in any form. Appellant submitted that this Court in the case of Nakara (supra) has observed that Article 14 condemns discrimination in any form. He submitted that there is no rational for excluding officers from the benefit of enhancement merely because they stood retired prior to 1.1.96. Appellant, therefore, submitted that O.M. dated 3.2.2000 should be made applicable to officers who have retired even prior to 1.1.96.

We do not find any merit in the above arguments. As stated above, appellant stood superannuated from the Indian Army on 30.11.89. He was entitled to war disability pension. He has been paid arrears on that basis on and from 30.11.89. Under Government of India letter No.PC 1(2)/97/D (Pen-C) dated 16.5.2001 the rate of war injury element for hundred per cent disability in battle casualty cases has been prescribed. It is in accordance with the rates mentioned in para 11.2 of the letter of Government of India No.1(2)/97/D (Pen-C) dated 31.1.2001. Under O.M. dated 3.2.2000 the benefit of enhancement of percentage of disability, and not the rates, is given to officers who were in service on or after 1.1.96. This enhancement is from 30% to 50%. Appellant claims this enhancement from 30% to 50% in his case also. However, O.M. dated 3.2.2000 states that the said enhancement shall be applicable only to those officers who stood invalided out of service. This provision is not applicable to the appellant who retired on superannuation prior to 1.1.96. Appellant was not invalided out of service. He completed his normal tenure of service. The benefit of enhancement is given to those officers who stood invalided out of service because their

tenure of service got cut due to invalidment on account of disability or war injury. Therefore, the appellant does not fall in the category of invalidment. The Government is always entitled to classify officers who stood retired vis-'-vis the officers whose tenure of service got reduced due to invalidment. These are two distinct and separate categories. Hence, there is no violation of Article 14 of the Constitution.

It is lastly urged by the appellant that he has not been paid war injury pension at the current rate. In this connection, he submitted that under the rules for casualty pensioners invalidation from service is a necessary condition for the grant of disability pension. If a person is released from service in a lower medical category then what he was at the time of recruitment, he would be treated as invalided from service. Appellant contended that he was released in a lower medical category from service on 30.11.89 then what he was at the time of recruitment and, therefore, he should be treated as invalided from service with effect from the date of release for the purpose of grant of disability pension.

We do not find any merit in the third submission. Appellant retired on 30.11.89 on superannuation. He was never invalided. He now claims to be invalided out of service. Having stood retired from service after completing full tenure of service, appellant cannot now claim that he was invalided out of service. The concept of invalidment applies to cases in which the tenure of service is cut short due to invalidment on account of war injury or disability. The concept of invalidment does not apply to cases where an officer completes his tenure of service and retires on attaining the age of superannuation. Therefore, there is no merit in the third contention raised by the appellant.

For the aforestated reasons, we do not see any merit in this civil appeal and the same is dismissed with no order as to costs.