

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 942 of 2002

with

Original Application No. 2459/2002

New Delhi, this the 11th day of July, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

OA No. 942/2002

Shri B.K. Gupta
Insurance Commissioner (Retd)
ESI Corporation
R/o B-1/A DDA MIG Flat Mayapuri,
New Delhi-110 064.

-APPLICANT

OA No. 2459/2002

1. Ramesh Chandra
Joint Director (Retd.)
ESI Corporation,
Kotla Road, New Delhi
R/o H-2 Finehome Apartments,
Mayur Vihar, Phase-I,
New Delhi.
2. Satish Chandra, Director Medical
Hq. (Retd.),
R/o C-44, Green Park, 1st Floor,
New Delhi.
3. Shashi Prabha, Medical Commissioner (Retd.)
R/o C-44 Green Park, 1st Floor,
New Delhi.
4. Bhagwati Prasad, Insurance Commissioner
(Retd.)
R-6/110 Raj Nagar, Ghaziabad (UP).
5. Dayal Chandra, Assistant Director Vig.
(Retd.)
R/o 152 Surya Niketan Anand Vihar,
New Delhi.
6. P.C. Sharma, Director (Retd.)
R/o C-4/169-B Lawrence Road,
New Delhi-110 035.

APPLICANT
~~REPRESENTATIVE~~

(By Advocate: Shri Badridass Sharma)

Versus

1. Chairman, Standing Committee,
Employees State Insurance Corporation,
Shram Shakti Bhavan,
New Delhi-1.
2. Director General, Employees State Insurance
Corporation,
Kotla Road,
New Delhi-110 002.

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3. Secretary, Government of India,
 Ministry of Personnel, Public Grievances
 and Pensions,
 Department of Pension and Pension
 Welfare,
 New Delhi. . . Respondents

(By Advocate: Ms. Geeta Luthra)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Jud)

By this common order I will decide two OAs which have raised common question of law and facts.

2. The applicant in OA 942/2002 impugns an order dated 3.10.2001 issued by respondent No.2 for recovery of an amount of Rs.7221/- towards the excess amount of commuted value of pension.

3. Facts in brief are that the applicant retired on 30.9.97 as Insurance Commissioner from the office of Director General, ESI Corporation. He was sanctioned pension and was allowed commutation of 33.1/3% of the pension. Thereafter recommendations of 5th Commission came into force and as per the recommendations of the Vth Pay Commission, the respondent No.3 revised the entitlement of commutation of pension from 33.1/3% to 40% vide order dated 27.10.1997 and the same was made applicable to the employees who retired on or after 1.1.1996. So based on that respondents revised the amount of commutation of pension and paid an amount of Rs. 3,15,181/- to the applicant on 10.3.1998. Respondent No.2 also revised his monthly pension which came to Rs.5271/-. Respondent No.3, Government of India, Ministry of Personnel, Public Grievances and Pensions

thereafter issued a clarification and directed that options may be called for payment of 40% commutation of pension and also those who had availed earlier commutation of pension not exceeding 33.1/3% may be given benefit of commutation based on age of next birth-day without medical examination.

4. After the recommendations of the Vth CPC the pay of the applicant was revised in the scale of 18400-22400 from pre-revised scale of Rs.5900-6300 and he was sanctioned an amount of Rs.5288/- being the pension and Rs.1255/- arrears of commutation of pension. Similarly commutation was further revised vide order dated 4.3.99 and an amount of Rs.15,581/- towards arrears was paid to the applicant. Thereafter respondents had been writing letter to the applicant to give his option of commutation of pension of 40%.

5. Applicant submits that he has already given his option but at the asking of the respondents he submitted another option to facilitate the completion of records. Now the applicant received an order of recovery towards the excess amount paid to him and stating that he has been paid an amount of Rs.4,61,914/- towards the commutation value of the pension whereas he was entitled to Rs.4,54,696/- only and thus Rs.7221/- was to be recovered. The said recovery is being impugned.

6. To assail the same the applicants submitted that the applicant had retired at the age of 58 years and his age at next birthday was 59 years for the purpose of commutation of pension. The commutation factor 10.46 was

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applied on taking the age as next birthday. Now after the second option given and taking the aged as next birthday as 62 years and commutation factor as 9.98 is being applied which is wholly arbitrary, unjust and illegal as the applicant had already been allowed commutation of value on his next birthday was already allowed the commutation factor of 10.46 and now the respondents want to take the next birthday after second option for applying commutation factor.

7. It is further stated that commutation of value was issued on 4.9.1998, therefore, in the case of applicants the question was to pay him arrears of commuted value of pension with reference to such value paid earlier and the value payable subsequently on the basis of the revised pension fixed on the revised pay.

8. It is further stated that the applicant was paid arrears on 9/10.3.1998 and since he had been allowed commutation of 40% so there was no question of giving any fresh option but the same was obtained from him only for the purpose to complete the record. For that purpose they cannot reduce the amount by taking different commutation factor.

9. As regards OA 2459/2002 is concerned, there are six applicants in this case. Applicant No.1 was issued order dated 15.6.2001 for recovery of an amount of Rs.4505/- towards the amount of commuted value of pension. Similarly in respect of applicant No.2 an order for recovery of an amount of Rs.10,666/- in respect of applicant No.3 an order was issued for recovery of an

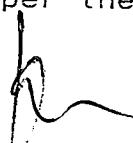
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amount of Rs.9749/-, in respect of an amount of Rs.9793/- in respect of applicant No.4, in respect of applicant No.5 an amount of Rs.4841/- and in respect of applicant No.6 an order was issued for recovery of an amount of Rs.5010/- towards commutation of pension. Accordingly, it is prayed that the orders of recovery be stayed and the applicants be payed interest at the rate of 18% per annum.

10. The OA is being contested by the respondents. The respondents pleaded that the commutation factor is calculated with respect to the next birthday of the applicants from the receipt of the fresh application.

11. It is further stated that the Ministry of Personnel and Pensioner's Welfare Office, Government of India, issued Memorandum No.F.US/96/97/PNPW-Part I dated 27.10.1997 for enhancing the percentage of commutation from 1/3rd to 40%. The respondents No.2, i.e., ESIC allowed commutation upto 40% on suo moto basis. Fresh option in respect of applicants were received in OA 2459/2002 in the months of February/March, 2001. Thus in the case of applicants commutation factor corresponding to the age of next birthday was applied on balance portion of commutation and thus excess amount paid is ordered to be recovered.

12. All the six applicants were paid in excess of the entitled amount. Thus various amounts were to be recovered from the applicants as per the orders issued for recovery.



13. It is further submitted that the Government clarified the query of ESIC in September, 1998 and October and November, 2000 that fresh option is required while working out the commutation value for the revised commutation amount. This factor is dependent upon the date of receipt of fresh application/option for calculation of the amount payable.

14. The action taken by the answering respondents was purely in accordance with the rules/instructions/clarifications issued in this regard by the concerned Ministry/Department. The respondent No.2, i.e., ESIC has not enacted Rules and Regulations on its own. On the contrary the applicants have not fulfilled the mandatory requirements and thus the reduction in the commutation factor cannot be wrongly blamed on the department.

15. That the department of P&W clearly states that a fresh application is necessary and that commutation factor corresponding to the age on the next birthday with reference to the date of receipt of the application for commuting the differential only has to be taken into account. The respondent No.2 has not interpreted the Rules and Instructions to the disadvantage of the applicants.

16. I have heard the learned counsel for the parties and gone through the records of the case.



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17. The short question is whether the applicants who have become eligible to commute the fraction of their pension to 40% after they had already received commutation of pension upto 33.1/3%, the difference in commutation is to take place from the date of their second option or the first option given for commutation of pension is sufficient and whether on the commutation of pension upto 40% the next date of birth is to be taken from the date of second option or it shall relate to the first option exercised by the applicants at the time of initial commutation of pension.

18. The counsel for the applicants has relied upon Rule 5 of the CCS (Pension) Rules, 1981. Rule 5 of the said rules prescribe that a Government servant shall be entitled to commute lump sum payment, a fraction not exceeding one-third of his pension which has been substituted 40% from 1.1.1996 and the applicant should fill in the form of commutation in Form 1 or Form 1-A and shall indicate the fraction of pension which he desires to commute and may either indicate the maximum limit of one-third of pension or such lower limit as he may desire to commute are also prescribed as per the rules. The applicants in this case had retired on 30.9.97 in the case of OA 942/2002. However, at that time the report of the 5th Pay Commission has not come into force and the applicants were allowed only commutation of 33.1/3% the possible maximum at that time. So after the acceptance of the report of the 5th CPC the applicants have become eligible for commutation of 40% of the commutated value of pension and accordingly the applicants were allowed but the department realising mistake that the second

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commutation should have been allowed by asking for a fresh option and for calculating the factor of age from the next date of birth when the second commutation was allowed for differential amount for which there was different factor for calculating the commutation of pension. The learned counsel for the applicants submits that the applicants were not obliged to give second option and the first option given by them was sufficient for the purpose for grant of the differential of commutation of pension also whereas the respondents submit that the applicants were under an obligation to furnish second option also.

19. Both the parties relied upon Rule 5 and 6 of the CCS (Pension) Rules.

20. The perusal of the Rules 5 shows that Government servant is entitled to commutation for a lump-sum payment of fraction. The amendment to the rules shows that it has been made with retrospective effect. Even the recommendation from 5th pay Commission also shows that all those employees who had retired are entitled to commute a maximum of 40% w.e.f. 1.1.1996. itself meaning thereby that the Government servant who had retired on or after 1.1.1996 had become eligible to commutation of maximum pension upto 40% and in this case since the applicant had already been given the benefit of commutation of pension without asking for the second option as if the commutation had been calculated on the same basis on which the 1/3rd commutation was allowed and the department had now starting recovery as if the department wants to calculate from the date when the



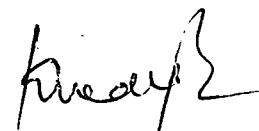
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applicants were asked to give a second option. In my view a combined reading of the Rules 5 and 6 do not envisage a second option. The option once exercised becomes final and since the rules have been amended with retrospective effect so the applicants were entitled to get commutation of 40% on the same basis as they were given 33.1/3%.

21. Even otherwise if applicants had been paid some amount in excess because of erroneous calculation on the part of the respondents the respondents cannot recover the same as the applicants are entitled to 40% commutation w.e.f. 1.1.1996 itself.

22. I find that the respondents cannot recover the amount which has already been paid to the applicants as they are entitled the commutation of pension at the rate of 40% w.e.f. 1.1.1996.

23. In view of the above, OAs have to be allowed. Accordingly, the OAs are allowed and the impugned orders of recovery are quashed. The above directions may be complied with within a period of 3 months from the date of receipt of a copy of this order.


(KULDEEP SINGH)
MEMBER(JUDC)

/Rakesh