

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 442 of 2017**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Pravat Kumar Sahoo, aged about 64 years, S/o Late Ananta Charan Sahoo, Retired Sr. Audit Officer, office of the A.G. (G&SSA) Odisha, Bhubaneswar and at present residing in Plot No. 4913 (near Houser aNo.EA-12) Baragarh Brit Colony, Bhubaneswar-751018.

.....Applicant

VERSUS

1. Union of India represented by Secretary, Department of Pension & Pensioner's Welfare, Government of India, New Delhi-110001.
2. The Comptroller and Auditor General of India, 9 Deen Dayal Upadhyay Marg, New Delhi – 110124.
3. The Accountant General (G&SSA) Odisha, Bhubaneswar – 751001.
4. Pay & Accounts Officer, Office of the A.G (A&E) Odisha, Bhubaneswar – 751001.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 6.12.2019

Order on : 18.12.2019

**O R D E R**

**Per Mr.Gokul Chandra Pati, Member (A)**

The applicant has filed this OA seeking the following reliefs:-

“(A) To allow the Original Application

AND

(B) To quash the orders of the Respondent No.4 dated 4.11.2016 (as per Annexure No.A/4) and consequently quash the orders of Respondent No.3 regarding payment of CVP dated 9.12.2016 based on commutation factor of 7.862 (as per annexure No. A/5) and reply of A.G.dated 19.5.2017 (as per Annexure A/7).

AND

(C) to issue directions to the Respondents to disburse the commuted value of pension (CVP) to the applicant based on commutation factor of 8.194 as applicable on 1.3.2013.

AND

(D) to order and direct that the cost of litigation be paid by the respondent No.3 to the applicant for causing mental torture and dragging him in to unnecessary litigation.

AND

(E) to issue any other order or orders, direction or directions as the Hon'ble Court deems fit and proper in the interest of justice, equity and fair play for the benefit of the applicant."

2. The applicant was issued a charge sheet by the respondents on 9.8.2012 under the rule 14 of the CCS (CCA) Rules, 1965. While the said charge sheet was pending, the applicant retired from service on 28.2.2013 on superannuation. He was exonerated from the charges on 29.4.2016 (Annexure-A/2) and thereafter, the commuted value of pension (in short CVP), which was not sanctioned due to pending disciplinary proceeding against the applicant, was sanctioned vide order dated 27.4.2016 (Annexure-A/4), with commutation factor of 8.194 which would have been applicable if the commutation of pension would have been sanctioned immediately after retirement on 28.2.2013. But the Pay and Accounts Officer returned the order to the sanctioning authority to revise the sanction of the CVP with a modified commutation factor as per the actual age of the applicant at the time of the sanction.

3. Thereafter, the modified sanction order was issued with the factor of 7.862, taking the age on next birthday to be 64 years (in place of 61 years assumed in earlier sanction) and the PAO was moved vide letter dated 9.12.2016 (Annexure-A/5). The applicant filed an appeal dated 25.3.2017 (Annexure-A/6) to the authorities, which was not considered for the reasons as mentioned in the letter dated 19.5.2017 (Annexure-A/7). Being aggrieved, the applicant has filed this OA.

4. In the Counter filed by the respondents, it is stated that the applicant was paid provisional pension at the rate of 100% of the pension payable under the rule 69 of the CCS (Pension) Rules, 1972 without taking into account the application for the commutation of pension, which was not sanctioned due to pending disciplinary proceeding. Under the rule 6 (1) (i-a) of the above CCS (Commutation of Pension) Rules, 1981, the commutation of pension did not become absolute from the date of retirement of the applicant as he could not be sanctioned superannuation pension due to pending proceeding. On the date of exoneration from charges, i.e. on 29.4.2016, the CVP was correctly calculated taking the age of the applicant as on 29.4.2016, i.e. 63 years. It is further stated that after considering the facts of the case, the respondents have accepted the request of the applicant by modifying the commutation value to 8.194 which was applicable on the date of his retirement and accordingly, the order dated 3.4.2019 (Annexure-R/5) was issued by changing the CVP from Rs.

6,07,198/- to Rs. 6,32,840/- i.e. with additional amount of Rs. 25642/- payable to the applicant subject to recovery from him the excess amount of pension paid to him from 1.3.2013 till he had drawn 100% provisional pension.

5. The applicant has filed the MA No. 368/2019 being aggrieved by the order dated 3.4.2019 relating to recovery, praying the quash paragraph 3 of the said order, which stated that the amount of commuted value of pension at the rate of Rs. 6436/- per month be recovered for the period from 1.3.2013 to the date up to which the applicant had received 100% provisional pension. The respondents have filed Counter to the MA (in short CMA) stating as under:-

“In reply to the averment made by the Applicant in para-8 of the MA, it is humbly submitted that the applicant had been paid 100% of basic pension for the intermediate period from 1.3.2013 to 14.12.2016. In terms of Rule-6(1)(a) of CCS (Commutation of Pension) Rules, 1981, the amount of commuted value of pension at the rate of Rs.6436/- per month is to be recovered from the Applicant for the intermediate period from 1.3.2013 to 14.12.2016 i.e. the period for which 100% of pension had been granted to the Applicant without deducting the commuted portion of pension. In the event of non-recovery of excess amount already paid to the Applicant for the intermediate period from 1.3.2013 to 14.12.2016, the Applicant would have get double benefit of the provision i.e. in one hand, 100% of pension without reduction in the amount of pension on accounts of commutation for the said period and in other hand, the maximum commuted value of pension as applicable for the age at next birthday (61 years) with the scope of restoration period of 15 years from 1.3.2013.”

6. The applicant has filed Rejoinder to the Counter and CMA, stating that the stipulations in para 3 of the order dated 3.4.2019 is contrary to the rule 13(3) of the CCS (Commutation of Pension) Rules and the Department of Pension and Pensioners' Welfare (in short DPPW) OM dated 12.11.1999 (Annexure-A/10), which does not specify any recovery of the pension already paid. It is also stated in the Rejoinder that the applicant will be paid the differential CVP amount of Rs. 25642/- and for that he will have to refund Rs. 2,96,056/- which is the amount of commuted value of pension paid from 1.3.2013 to 14.12.2016. It is stated that it is illogical and contrary to the rule 13(3) and OM dated 12.11.1999 (A/10).

7. Heard learned counsel for the applicant and respondents and perused the pleadings on record. The rule 13(3) of the CCS (Commutation of Pension) Rules, 1981 states as under:-

“(3) A Government servant who is due to retire on superannuation and desires payment of the commuted value of pension being authorized at the time of issue of the pension payment order, shall be eligible to apply for commutation of a percentage of pension along with pension papers prior to the date of retirement provided that –

(a) the Government servant retires on superannuation pension only;

- (b) the application is submitted to the Head of Office in Form 1-A, so as to reach the Head of Office not later than three months before the date of superannuation;
- (c) no such application shall be entertained if the period is less than three months from the date of superannuation of the Government servant; and
- (d) the Government shall have no liability for the payment of the commuted value of pension if the Government servant dies before the date of superannuation or forfeits claim to pension before such retirement.”

8. It is the case of the respondents that the applicant, on his date of retirement on 28.2.2013, was not eligible for superannuation pension under the rule 35 of the CCS (Pension) Rules, 1972 since a disciplinary proceeding was pending against him, for which he was allowed provisional pension under the rule 69 of the said rules. The contentions of the respondents in this regard in para 8 of the Counter have not been specifically contradicted by the applicant in his Rejoinder or in the MA No. 368/2019. The rule 35 of the CCS (Pension) Rules, 1972 states as under:-

“35. Superannuation pension

A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.”

9. It is clear from the rule 35 as extracted above, that the applicant was not sanctioned the superannuation pension when provisional pension was sanctioned in his favour immediately after his retirement due to pendency of the disciplinary proceeding, which cannot be treated as superannuation pension for the purpose of the rule 13(3) of the CCS (Commutation of Pension) Rules, 1981.

10. The applicant has referred to the DPPW's OM dated 12.11.1999 (Annexure-A/10) in support of his case. The said OM states that “where a pensioner is exonerated as a result of departmental proceeding commutation of pension is deemed to have fallen due on the date of retirement as if no proceeding was initiated against him, provided he applied for the same.” In this case, the applicant had applied for commutation of pension at the time of retirement. Hence, after his exoneration from the departmental proceeding on 29.4.2016, his commutation of pension is to be considered from date of retirement as if there was no departmental proceeding against him. In that case, instead of sanctioning the provisional pension to the extent of 100% pension payable from 1.3.2013, it could have been reduced by the commutation value subject to fixation of final pension after finalization of the departmental proceeding against him, since the applicant had applied for commutation of pension. But the respondents had sanctioned 100% of the pension payable as provisional pension from 1.3.2013 and it was paid till 14.12.2016. There is nothing in the OM dated 12.11.1999 (A/10) to support

the applicant's contention that there should not be any recovery if no deduction from the pensioner on account of commutation was carried out, while sanctioning the provisional pension for the period when the departmental proceeding was pending after retirement. Hence, as per the OM dated 12.11.1999 (A/10), although the applicant will be entitled for commutation of pension w.e.f. the date of his retirement, but the said OM will be of no help to the applicant in respect of the recovery of excess pension paid because of payment of 100% of pension as provisional pension without deducting the commutation value.

11. Under the rule 10A of the CCS (Commutation of Pension) Rules, 1981 the reduction of pension on account of commutation will be in force for 15 years after which the original pension will be restored. In this case, the sanction order dated 3.4.2019 (Annexure-R/5) does not mention the date from which there will be no deduction from pension on account of commutation. But since, the commutation has been allowed from the date of retirement of the applicant, there will be no deduction from pension due to commutation after 15 years from the date of retirement. The fact that the applicant had received full pension from 1.3.2013 till 14.12.2016, will imply that the deduction from normal pension of the applicant will be effectively from 15.12.2016 till 1.3.2028, which is less than 15 years if no recovery takes place. Thus the rule 10A of the CCS (Commutation of Pension) Rules, 1981 will be violated.

12. **In view of the discussions above, the contentions of the applicant that he was entitled for commutation of pension from the date of his retirement as per the rule 13(3) of the CCS (Commutation of Pension) Rules, 1981 without recovery of the commutation of pension paid to him from 1.3.2013 to 14.12.2016, are not legally sustainable. In the circumstances, the reliefs prayed for in the OA as well as in the MA No. 368/2019 are not permissible.**

13. However, taking into account the difficulties of the applicant on account of recovery of Rs. 2,96,056/- from the applicant on account of the order dated 3.4.2019, he will have the liberty to represent the respondents/competent authority within one month from the receipt of this order requesting sanction of the commutation of pension from the date on which the applicant was exonerated from the disciplinary proceeding and in case such a representation is received from the applicant, then the respondents/competent authority will consider the same and revise the sanction order dated 3.4.2019 to modify the commutation factor as per the earlier order dated 9.12.2016 (Annexure-A/5) for which no recovery of excess pension paid from 1.3.2013 till 14.12.2016 will be required and the deduction from pension on account of commutation of

pension will be effective for 15 years from the date when the provisional pension has been replaced by the regular pension in this case. The respondents will take such decision refund if any amount has been recovered from the applicant in pursuance of the order dated 3.4.2019, within one month from the date of receipt of the representation from the applicant as stated above.

14. The OA stands disposed of as above with no order as to costs.

(GOKUL CHANDRA PATI)  
MEMBER (A)

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