

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/572/2015

Hyderabad, this the 28th day of January, 2020



***Hon'ble Mr. Ashish Kalia, Member (Judl.)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

K. Simhadri Rao, S/o. K. Satyanarayana Rao,
Aged about 85 years, Retd. Senior Private Secretary to
Chief Postmaster General, A.P. Circle, Hyderabad,
R/o.1-1-385/5 P & T Colony, Gandhi Nagar,
Hyderabad – 500 080.

... Applicant

(By Advocate Mrs. Rachna Kumari)

Vs.

1. Union of India, Rep. by the Secretary,
Ministry of Personnel, PG & Pensions,
(Dept. of Pensioners' Welfare), Sardar Patel Bhavan,
Sansad Marg, New Delhi -110 001.
2. The Union of India, rep. by
The Under Secretary, Ministry of Finance,
(Department of Expenditure), North Block,
New Delhi – 110 001.
3. The Chief Postmaster General,
Andhra Pradesh Circle, Dak Sadan,
Hyderabad – 500 001.
4. The Director of Accounts (Postal),
A.P. Circle, O/o. The Chief Postmaster General,
A.P. Circle, Dak Sadan, Hyderabad – 500 001.
5. The Senior Postmaster (Disbursing Officer),
Head Post Office, Secunderabad – 500 003.
6. The Sub-Postmaster,
G.C. Sub Post Office, Hyderabad – 500 020.

... Respondents

(By Advocates: Mrs. C. Vijaya Laxmi, proxy counsel for
Mr. T. Hanumantha Reddy, Sr. PC for CG)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed for not considering revision of 1/3rd commuted pension and for ordering recovery from pension.



3. Applicant joined the erstwhile P&T Department as Clerk on 1.6.1948 in the pay scale of Rs.60-170 and thereafter on rising to the cadre of Sr. PS in Pay Band 2 with Grade Pay of Rs.4600, applicant joined Hindustan Cables Ltd, Hyderabad (HCL) in 1982 and then, after getting absorbed in the said organisation, retired from Government Service w.e.f 31.12.1982 with additional facility of permitting commutation of full pension as per judgment of the Hon'ble Supreme Court in 1996 (2) SCC 187 on 15.12.1995. Applicant retired on superannuation on 31.12.1987, with no pensionary benefits for the service in PSUs. On retirement from Govt. Service w.e.f 31.12.1982, applicant was granted full pension of Rs.578 under Rule 49 (2) (b) of CCS (Pension) Rules, 1972. A sum of Rs.27,860 towards commuted value of his 1/3rd original pension of Rs.193 and Rs.55,710 towards the balance 2/3rd pension of Rs.385 was paid to him but not as terminal benefits as claimed by Govt, which was also not agreed to by the Hon'ble Apex Court on 15.12.1995. As per provisions existing, the commuted pension is not liable to be restored, including the 2/3rd pension commuted, which was indicated in the absorption order issued under Rule 37 A (1) (b) for those joining Public sector organisation and getting absorbed. On 9.12.1986, the Common Cause judgment [1987 (1) SCC 142] was rendered by the Hon'ble Apex Court wherein it was provided for restoring the pension after 15 years. Govt. permitted this commutation to



only Central Govt. Employees and not to Public Sector employees vide para 4 of OM dated 5.3.1987 on the ground that they have been paid terminal benefits on commuting pension in full and therefore they cease to be Central Govt. pensioners. Hon'ble Supreme Court clarified that para 4 of the OM referred to is not valid and that the restoration of 1/3rd pension also applied to PSU employees. Applicant argues that what applies to 1/3rd pension also applies to 2/3rd pension. Later when the Welfare Association of Absorbed Central Govt Employees in Public Enterprises agitated before the Hon'ble Supreme Court, in WP (C) No. 11855/85, in 1993 Govt. was directed to consider the petitioners case in the light of the judgment delivered in Common Cause judgment. This order of the Hon'ble Supreme Court judgment was not implemented by the Govt., though some Organisations like Railways, Defence permitted commutation of pension upto 55% of pension since Hon'ble Apex Court has not laid down any limit in this regard. Realising its fallacy Govt. withdrew the OM dtd. 31.3.1985. Applicant claims that he has been put to a loss of Rs.1869/month under 6th CPC and Rs.2496 under 5th CPC. As per Doctrine of expectation the applicant has been put to unintended loss. 1/3rd pension restored did not include the revision benefits in full as per the 6th CPC but only a part, thereby denying payment of revision benefits at par with other pensioners in violations of the directions of the Hon'ble Apex Court in their orders dated 1.5.1998, 29.11.2006 and order of the Tribunal in OA 710/2010 dated 27.9.2011. This has led to ordering recovery of Rs.10,000/- from the pension of the applicant since Nov. 2014 for the period from 1.1.2006 taking undue advantage of the judgment of the Tribunal in OA 1513/2013. Applicant states that the order of the Hon'ble Apex Court confirms that

anything other than pension not falling under the definition of pension as per Rule 3 (1) (o) of CCS (Pension)Rules, 1972 should be paid in full, calculated on full pension. Discrimination has been shown in regard to PSU pensioners. The overpayments were assumed to be as such due to wrong application of OM dated 1.9.2008 which is not applicable to PSU pensioners.



4. The contentions of the applicant are that, he being a PSU absorbed pensioner and his retirement has to be considered as Retirement in Public Interest. Govt. cannot make a distinction between 1/3rd and a 2/3rd pensioner. Hon'ble Apex Court has not fixed any limit in regard to percentage of pension that can be commuted. Defence and Railways are allowing higher percentage of pension to be commuted. The order of the Hon'ble Supreme Court filed by the Association of absorbed PSU Pensioners has not been implemented. Without a Presidential order there can be no reduction in pension which is issued only in cases of proven misconduct. Rules 8, 9 of CCS (Pension) Rules 1972 and Rule 10 A of Commutation of Pension Rules have been disregarded. The Armed Forces Tribunal, Kochi has allowed restoration pension in full in OA 34/2011 based on common cause judgment. The action of the Govt. is not in tune with the doctrine of expectation. The recovery from pension is mounting with revision of pension ordered by the successive Central Pay Commissions. Judgment of the Hon'ble Supreme Court in Rafiq Masih case applies to his case squarely in regard to recovery of pension. The parity principle referred to in the judgment of the Hon'ble Supreme Court in the

judgment dated 1.5.1998 has not been applied. Pension should not be reduced for extraneous reasons. There is hostile discrimination in respect of PSU absorbee pensioners. Applicant has cited Order of the Hon'ble Chandigarh Bench of this Tribunal in OA No. 60/434/2019 in support of the contentions made.



5. Respondents confirm in their reply statement that the applicant on his retirement on 31.12.1982 was paid an amount of Rs.83,578/- on 17.10.1983 towards 1/3rd commutation of pension of value Rs.193 and terminal benefits based on 2/3rd pension of Rs.385. After 15 years notional pension of Rs.1240 was fixed after restoring the 1/3rd pension commuted as per Rule 10 of CCS (Commutation of Pension) Rules 1981 in accordance with the orders of the Hon'ble High Court of A.P. in WP No. 8532/2013 dt. 24.12.2003 and Hon'ble Supreme Court dt.24.7.2007 in Review Petition No. 643/2007. Applicant is, therefore not eligible for full pension. Consequent to implementation of 6th CPC recommendations vide Memo dated 15.9.2008, 1/3rd part of the pension as on 31.12.2005 was taken as Rs.2918 instead of Rs.1248 and the restored part payable was arrived as on 1.1.2006 as Rs.7636 instead of Rs.5969. Payment of pension @ Rs.7636 was continued till 31.7.2013. After receiving the authorised pension from the 4th respondent, the error was rectified and pension paid at admissible rate from 1.8.2013. The excess paid amount from 1.1.2006 to 31.7.2013 to the extent of Rs.64,193 had to be recovered, of which Rs.60,000/- has been recovered and the balance recovery has been stayed by the Tribunal. The payment of pension to the applicant was done as per rules. Even the hike in pension was done depending on the age of retired pensioner.

Applicant filed a rejoinder and written arguments which we have gone through in detail.

Respondents number 1 and 2 have not filed the reply, as is seen from the records on file, though the OA was filed in April 2015. First respondent is the nodal ministry in dealing with pensions and the second one is also critical in taking a view in respect of the expenditure aspect of the issue. It is surprising that both the respondents choose not to respond, albeit more than 4 years have lapsed. The applicant is around 90 years old and hence the OA was heard in the interest of justice.

6. Heard both the counsel and perused the pleadings on record.
7. I) The dispute is in regard to restoring full pension of the pensioner who worked for Posts & Telegraphs Department and thereafter retired on 31.12.1987 from a PSU on being absorbed as per rules on the subject. As per the Common Cause judgment of the Hon'ble Supreme Court, pension is to be restored after 15 years. The pensioner being a public sector employee has commuted full pension which was permitted hitherto. After the rendering of the common cause judgment, only 1/3rd of his pension has been restored and the claim of the applicant to restore the remaining 2/3rd pension, was not considered by the respondents.
- II) Hon'ble High Court of Madras in Writ petition 22207 of 2002 dated 2.8.2007 has considered a similar issue and held as under:

“13. Under Section 10 as stated by us earlier, while commutation of pension for the whole or any part of it can be opted by a pensioner based on such terms fixed under the Rules, it will have to be stated that such enabling provision providing for commutation for either part or whole of the pension can only for commutation purposes and that under the guise of commutation, it will not be open for the

Government to once and for all wipe of the very right to restoration of such pension after the expiry of the period of commutation. In fact, Rule 37-A clause (b) though uses the expression the commutation of balance amount of pension namely the 2/3rd of pension, the stipulations contained therein providing for such commutation of 2/3rd pension would be subject to surrendering of the right of Government servant, for drawing the 2/3rd pension would run counter to the very concept of commutation which will not be in consonance with [Section 10](#) providing for commutation of pension alone and not the right to claim pension after the period of commutation.



14. That apart, even if the petitioner was obliged to surrender such a right for the drawal of 2/3rd of his pension by agreeing for the terms contained in Rule 37-A of Pension Rules in as much as such a wholesale surrender of the right to pension as contained in the said Rule conflicts [Section 12](#) of the Pensions Act, it will have to be held that the Rules providing for such surrendering of right in opposition to [Section 12](#) of the Act cannot be permitted to operate. When under [Section 12](#) of the Act, there is a prohibition imposed on the pensioner himself to barter away his right under very many circumstances except as provided under [Section 12-A](#) of the Pensions Act, we are convinced that surrendering of the right for drawal of 2/3rd of Pension after its commutation as provided under Rule 37-A (b) is repugnant to [Section 12](#) and is straight away hit by the prohibition imposed under [Section 12](#). Consequently any action based on Rule 37-A(b) is wholly illegal and therefore the surrendering of rights of the petitioner for drawing 2/3rd of his pension at the time of its commutation to that extent can not operate against his interest. We therefore declare that such surrendering rights by the petitioner at the time of his absorption in the year 1986 while commuting 2/3rd of his pension, was invalid and consequently the petitioner was lawfully entitled for the restoration of his pension after the expiry of the period of commutation of 2/3rd pension. ”

Hon'ble Supreme Court has dismissed the CA No.6048 of 2010 filed by the Govt. of India against the judgment of the Hon'ble Madras High Court cited supra. Consequently, OM dt.23.6.2017 was issued by G.O.I. Paras 7, 8 & 9, which deal with the issue are extracted as under:

“7. Review Petitions No. 465/2017 and No. 472/2017 were filed by Union of India in the Supreme Court against the aforesaid order dated 1.9.2016. Instructions were separately issued to the office of Controller General of Accounts and the Ministry of Civil Aviation vide OM No. 4/34/2002-P&PW (D). Vol. II, dated 21.12.2016 and OM No. 4/34/2002-P&PW (D).Vol.II dated 21.12.2016 respectively, for implementation of the orders of Hon'ble Supreme Court in respect of the petitioner/ respondent pensioners in the aforesaid Civil Appeals, subject to the final outcome of the Review Petitions. The aforesaid Review Petitions No. 465/2017 and No. 472/2017 have been dismissed by Hon'ble Supreme Court on 22.03.2017.

8. The matter has been examined in consultation with the Department of Legal Affairs and the Ministry of Finance (Department of Expenditure). It has been decided to extend the benefit of order dated 02.08.2007 of the Hon'ble Madras High Court and the Order dated 01.09.2016 of the Hon'ble Supreme Court to all similarly placed absorbee pensioners. Accordingly, all such absorbee petitioners who had taken 100% lump-sum amount in lieu of pension on absorption in PSUs/ Autonomous Bodies in accordance with the then existing Rule 37-A and in whose case 1/3 pension had been restored after 15 years, may be

allowed restoration of full pension after expiry of commutation period of 15 years from the date of payment of 100% lump-sum amount.

9. *The absorbee pensioners whose full pension is restored in terms of the above instructions would also be entitled to revision of their pension in accordance with the instructions issued from time to time in implementation of the recommendations of the Pay Commissions, including the 7th Central Pay Commission.”*

III) Further in regard to recovery of commuted value of pension, paras 3

(i) and 4 of the Common Cause judgment read as under:

“3(i) Recovery from pension payable every month towards commuted value of Pension will stop on the completion of 15 years from the date of retirement on superannuation or on the pensioner completing 70 years, whichever is later.

4. *As the position now stands, when a pensioner commutes any part of his pension up to the authorized limit, his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension.”*

IV) Besides, in regard to recovery, the case of the applicant is fully covered by the judgment of the Hon’ble Supreme Court in *State of Punjab & Ors vs Rafiq Masih (White Washer)* dated 18 December, 2014, in Civil Appeal No.11527 of 2014 (Arising out of SLP (C) No.11684 of 2012), wherein it has been held that there shall not be any recovery from the pensioners due to any excess payments made by the pensioners in the following situations:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”



The case of the applicant is fully covered by the above cited judgments. Hence, any recovery made, be refunded and no further recovery be made from the pension of the applicant on grounds of wrong calculation done by the respondents as explained in the reply statement.



V) In regard to Commutation of Pension, legal principle laid down by the Hon'ble Madras High Court makes it clear that full pension has to be restored and on dismissal of the CA No.6048 of 2010 filed against the judgment, the matter has attained finality. In compliance with the said judgment even OM dated 23.6.2017 was issued. Recently, Hon'ble Chandigarh Bench of this Tribunal has also dealt with a similar in OA No. 060/0434/2019 and delivered a verdict in favour of the applicant. Therefore, the working details of the applicant and the revision of pension along with revision benefits that accrued during the commutation period, arrears of pension in accordance with the recommendations of the successive Pay Commissions have to be examined in detail in accordance with legal principles laid down by the superior judicial forums referred to in paras supra, on the issue and thereafter the relief sought by the applicant has to be settled. As sought by the applicant, specific details need to be provided. In view of the aforesaid circumstances, the respondents are directed to examine the relief sought by the applicant and issue a speaking and reasoned order accompanied by the relevant working sheets responding to the elaborate averments made, by extending eligible reliefs based on prevailing rules and in accordance with law. Respondents may also keep in mind para 5 of the judgment of the Hon'ble Supreme Court in Union of India & Ors Vs. Tarsem Singh in Civil Appeal Nos. 5151-5152 of 2008 in case they decide to pay the arrears to the applicant, in accordance with rules and law.

VI) Time allowed to implement the order is 6 months from the date of receipt of a copy of this order. With the above direction, the OA is disposed of. No order as to costs.



(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

/evr/