

Central Administrative Tribunal
Hyderabad Bench
Hyderabad

OA No.021/32/2017

Date of C.A.V.: 26.02.2020

Date of pronouncement: 05.03.2020

Hon'ble Mr. B. V. Sudhakar, Member (A)

1. The Society for the Welfare of Former Central Government Employees Absorbed in Public Sector Undertakings, (Reg. No.1152/2003), Represented by its President, Sri B. Veeraswamy, S/o Late Shri B. Bapaiah, Aged about 81 years, Retired Section Officer, Defence Accounts, New Delhi.
2. Sri P. Sambasiva Rao S/o Sobhanachalam
Aged about 67 years, Retired Assistant Audit Officer (Commercial) O/o Accountant General, Audit-I, A.P., Hyderabad. .. Applicants

(By Advocate: Ms. Rachana Kumari)

Vs.

1. The Union of India represented by the Secretary Ministry of Personnel, AR., PG & Pensions (Dept. of Pensions & Pensioners' Welfare)
Sardar Patel Bhavan, Sansad Marg
New Delhi – 110 001.
2. The Secretary, Ministry of Law and Justice
Union of India, New Delhi – 110 001.
3. The Secretary, Ministry of Finance
(Department of Expenditure), Union of India
North Block, New Delhi – 110 001.





4. The Dy. Comptroller & Auditor General of India, (Admn.)
O/o The Comptroller & Audit General of India
Feroz Shah Road, New Delhi – 110 001.

5. The Controller General of Defence Accounts
Allahabad, U.P.

6. The Principal Accountant General (G&SSA)
A.P. & Telangana, Saifabad, Hyderabad – 500 004.

7. The Accountant General (A&E)
A.P. & Telangana, Saifabad, Hyderabad – 500 004.

8. The Chairman, Railway Board
Rail Bhavan, Raisina Road, New Delhi – 110 001.

9. The Director General, Posts
Department of Posts, Dak Bhavan
Sansad Marg, New Delhi – 110 001.

10. The Director General, Postal Accounts
New Delhi – 110 001.

11. The Chief Postmaster General
T.S.Circle, Hyderabad – 500 001.

12. The Chief Postmaster General
A.P.Circle, Vijayawada. ... Respondents

(By Advocate:Smt. K. Rajitha, Sr. CGSC, Shri V. Vinod Kumar, Sr. CGSC and Shri N. Srinivasa Rao, SC for Railways)

ORDER

2. The OA is filed aggrieved by the inaction of the respondents in treating the applicants, who were inducted and absorbed into the service

of Public Sector Undertakings till the date of their superannuation, in public interest, with no pension-scheme in respective PSUs and denying the Pensionary benefits as given to other Central Government Pensioners, despite the Judgements of the Hon'ble Supreme Court in favour of the applicants.

3. Brief facts of the case are that the applicants are mostly members of the Central Subordinate Civil Services, having retired prematurely, in public interest, on their induction into the service of Public Enterprises/PSUs. In view of the facts mentioned in Para 4 of the OA, the applicants pray for the following relief(s):

“(1) to call for records pertaining to restoration of 2/3rd pension as ordered by the Hon'ble Supreme Court as well as Hon'ble High Court of Madras and the orders passed by the Hon'ble Tribunals of Hyderabad/Ernakulam Benches and direct the Respondents to consider the cases of the applicants herein for grant of the similar reliefs as granted by the Judicial fora supra, duly directing the Respondents to immediately extend the benefit of Hon'ble Supreme Court's judgement/order dated 1-9-2016 and restore the two-thirds commuted pension of the Applicants retrospectively from the respective dates of complete repayment of commuted value with interest, as similarly placed pensioners on the same footing without any difference, as Ganesan in whose case the Hon'ble Supreme Court has directed for restoration of 2/3rd commuted pension after the requisite period of commutation;

(2) to direct the Respondents to issue revised Pension Payment Orders to the Applicants fixing their pension as 50% of the minimum of the pay in the respective pay band plus Grade Pay of the post from which they left the respective posts at the time of retirement from their departments, subject to the Respondents duly re-fixing the revised pensions from the date of retirement onwards from Government service till date as per different CPCs, statutory



regulations, and Hon'ble Supreme Court judgments in their case so far, subject to the minimum pensions payable under the Rules, as in the case of all other pensioners without discrimination and fix pensions accordingly as per VII CPC, paying in full the arrears thereby becoming due;



(3) to direct the Respondents refund in full, all excess deductions made from their pension dues all along, with interest at 24% on the excess collections already made from the applicants through the period;

(4) to direct the Respondents that the Applicants' pensions should be refixed taking into account what they would have drawn as regular pensioners but for their absorption in PSUs, duly paying all the consequential arrears that will become due on such re-fixation with 24% interest as prayed above;

(5) to direct that the Applicants should be brought on to the VII CPC Benefits with effect from 1-1-2016 on par with other pensioners, as stated above, with no distinction whatsoever in making payment of the revision and attendant benefits in this connection with other pensioners.

(6) With all the consequential benefits."

4. Heard both the learned counsel and perused the pleadings on record, including the written arguments submitted by the learned counsel for the applicants.

5. At the very outset, the learned counsel for the applicants has drawn attention of this Tribunal to the Order passed in OA No.572/2015 by a Division Bench of this Tribunal and submits that the issue involved in this OA is same as the one in OA 572/2015, referred to above. The said OA was disposed of on 28.01.2020 with the following observations:

"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."

6. Following the same, the present OA is disposed of with a direction to the respondents 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 relief(s) based on prevailing rules and in accordance with law. Respondents may also keep in mind para 5 of the judgement of the Hon'ble Supreme Court in **Union of India & Ors v. 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. Time allowed to implement the above direction(s) is 5 months from the date of receipt of a copy of this order.

7. With the above direction, the OA is disposed of. There shall be no order as to costs.

(B. V. Sudhakar)
Member (A)

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