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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2893/2001

New Delhi, this the 7th day of May, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Dr. S.Banerjee
Former Director, NML, Jamshedpur
Hl, Riviresa, 287/3, Baner Road
Baner, Pune - 411 045.

...Applicant

(By Advocate Sh. Chanderkant
proxy for Sh. Umesh Bhagwat)

V E R S U S

Union of India through

1. Council of Scientific and Industrial
Research Anusandhan Bhawan
2, Rafi Marg, New Delhi - 110 001.

2. The Secretary
Ministry of Personnel
Public Grievances, Pension
& Pensioners Welfare, R.No.112
North Block, New Delhi.

...Respondents

(By Advocate Sh. V.K.Rao)

O R D E R

By Shri Shanker Raju.

Applicant in this OA prayed for the following
reliefs : -

(i) The lump sum amount of commuted value of
pension paid to the applicant may be ordered to be
recovered from the petitioner, he may be permitted to
exercise fresh option and be paid pension from the
date of his retirement viz. September 1992 to date,
as laid down by the Hon'ble CAT (PB) New Delhi in its
judgement dated 30-5-2001 in OA No. 1972/2000.

(ii) Alternatively the benefits of DR and also
of pay revision, be restored to the applicant w.e.f.
1-1-1996 or

(iii) The amount of Rs. 192/- paid less as monthly pension be restored retrospectively from September 1992 and the benefit of DR and pay revision be given to the applicant w.e.f. 1-1-1996.

(iv) If it is felt necessary to decide the commutation date on which the payment was made as per the CCS (Commutation of Pension) Rules, 1981, the Respondents may be directed by this Hon'ble Court to pay pension to the Petitioner for the intervening period from the date of retirement to the date of communication as laid down in Rule 88 of the Communication of Pension Rules, 1981 with compound interest @ 18 % p.a. in view of the depreciation of the rupee value as compared to 1992, when this amount was actually due to the petitioner.

(v) Pass such further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. Applicant worked as Lecturer in IIT, Bombay from 13-7-1962 to 20-12-1991. During the period 24-12-1985 to 20-12-1991, having retained his lien in IIT, Bombay joined as Director, CSIR, National Metallurgical Laboratory, (NML) Jamshedpur. On 21-12-1991, applicant was absorbed as Director, NML with the result service of 29.4 years was transferred to CSIR along with retiral benefits and leave due..

3. Applicant retired from CSIR on 7-9-1992 after completion of 30 years continuous service and joined Steel Authority of India Ltd. (SAIL) on 8-9-1992 with the basic salary of Rs. 9500 in the pay scale of 8500-9500 with a DA of Rs. 219 paid by SAIL. Applicant on his retirement from CSIR was offered monthly pension of Rs. 3127/- and on a commutation of his pension, he was paid a sum of Rs. 4,55,924/- on 6-4-93 towards one time settlement in lieu of entire monthly pension.

4. After recommendations of Vth Central Pay Commission through OM dated 14-7-98, provided to those Govt. servants who had drawn lump sum payment on absorption in PSUs/Autonomous bodies, restoration of 1/3 of the commuted pension after 15 years from the date of commutation from 1-1-1996 with attendant benefits in the light of decision of the Apex Court in Welfare Association of Absorbed Central Govt. Employees in Public Enterprises Vs. UOI (1996 (2) SCC 187). Applicant preferred a representation to the respondents drawing their attention to the mistake committed in commuting his pension and had offered refund along with interest to restore the pensionary benefits w.e.f. September 1992.

5. Aforesaid representation was rejected on the ground that option once exercised is irrevocable and final.

6. On subsequent representation, request of the applicant was turned down giving rise to the present DA.

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7. Learned proxy counsel for the applicant by drawing my attention to Rule 6 (1) (c) of the CCS (Commutation of Pension) Rules, 1981, contended that as the pensionary benefits have not been paid to him for the last six months, his case is not covered under the aforesaid provision and as the commutation has not become absolute, relying upon the decision of DB in OA 1972/2000 in Dogar Mal Vs. UOI, it is contended that the applicant is legally entitled to be afforded an opportunity to opt afresh for pensionary benefits with an opportunity to refund back the amount with interest and also to release 6 months DA etc. to him.

8. In so far as limitation is concerned, it is contended that as the pay and allowances constitute the recurring cause of action, in the light of decision of the Apex Court in M.R.Gupta Vs. UOI (1995 (5) SCC 628), claim of the applicant is within limitation.

9. It is further contended that at the time of absorption in PSU, DA was not included and later on add it to the salary, action of the respondents is discriminatory and as the pension of the applicant should have been worked out as Rs. 3319/- He has been paid Rs. 192/- less w.e.f.. September 1992. By insisting upon the date of restoration of 1/3 portion of the commutation from April, 1993, which is the date of payment. Applicant has been deprived of monthly pension from September, 1992 to April, 1993.

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10. On the other hand, respondents contested the OA and Sh. V.K.Rao, Id. counsel vehemently opposed the contentions and stated that on the date of his relieving on retirement w.e.f. 7-9-92, as per the DOPT OM dated 31-1-1986, applicant was offered to exercise within six months the option for pro-rata monthly pension or a lump sum amount in lieu of pension as per the commutation table. Applicant applied and opted for commutation on 17-2-93 which became absolute on 3-3-93 on the date of his medical examination. Accordingly payment was made on 20-5-1993. As the option exercised has become final and was irrevocable, period of 15 years for restoration of 1/3 portion of commuted pension in the case of applicant is to be reckoned from the date of payment i.e. 20-5-1993 and his pension would be restored w.e.f. 21-5-08, as such the relief claimed is pre-mature. As the applicability of decision in Dogar Mal's case is concerned, the same is stated to be distinguishable on the ground that in absence of any medical examination, commutation has not become absolute and the OA was allowed to the extent of permitting the applicant to exercise fresh option. Sh. V.K.Rao, Id. counsel further stated that in so far as alternate benefit of DR, it is stated that the monthly pension of the applicant was rightly calculated as Rs. 3153/- The non qualifying service of about 1 year 5 months and 11 days as extra ordinary leave has not been reckoned with.

11. In so far as relief of benefit of DR and pay revision is concerned, the same could not be restored as the applicant was not in service on

1-1-1996 and as per the decision of the Apex Court supra, absorbees who had commuted 100 % value of their pension shall be treated as non-pensioner during the lock in period of 15 years till restoration of 1/3 of commuted portion of pension. Accordingly the applicant is not entitled for revision of pension recommended by V CPC.

12. As the applicant was relieved from service of CSIR to SAIL on immediate absorption basis on 7-9-92 and the applicant on receiving the commuted value of pension has not objected to the delay in questioning the same after 10 years is certainly barred by limitation. As per calculation of commuted value is concerned, it is stated that as per the next birth date after medical examination on 23-3-93 was applied the commuted value on 9-9-92 as well as 23-3-93 comes out the same as next date of birth is 3-4-93. As lastly it is contended that next payment of monthly pension from September 1992 to April 1993 is concerned, as the issue has never been raised by the applicant, the same is under process.

13. I have carefully considered the rival contentions of the parties and perused the material on record.

14. In the light of decision of Apex Court in common cause case supra in WPC 567/97 in P.V.Sunderrajan & Ors. Vs. UOI decided on 26-4-2000, Apex Court held that who commuted 100 % pension are not entitled to the benefit of DA on full pension and it does not suffer from any discrimination.

Applicant, who on his own exercised the option to opt for lump sum payment and was medically examined on 23-3-93, his commutation has become absolute on that date and as per the CCS (Pension) Rules, 1972 and OM dated 31-1-1986, as the option is irrevocable and final, merely because the DA has not been paid, would not bring the case of the applicant out of the ambit of Rule 6 (1) (c) of the Commutation Rules, 1981. Moreover as per the Apex Court in P.V.Sunderrajan & Ors. case who had opted for 100 % commutation, DA would not be admissible on full pension and other benefits. Applicant who received the commutation on 21-5-93 would get the 1/3 commuted portion of the pension only on 21-5-2002 as per the OM dated 28-9-2000 as well as decision of the Apex Court. In this view of the matter, the grievance of the applicant is premature.

15. In so far as reliance of the applicant on the decision in Dogar Mal's case of DB is concerned, therein the issue was as to which is the date for restoration of 1/3 of the commutation and in the absence of any medical examination, the commutation was not found absolute whereas in the present case as the commutation has become absolute after medical examination of the applicant and payment of commuted value of pension, aforesaid decision would have no application and hence distinguishable. Moreover, in the light of Apex Court's decision, restoration cannot be before 15 years from the date the commutation has attained finality and become absolute. Accordingly the relief of the applicant to permit him to exercise fresh option would not arise.

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16. In so far as the claim of non payment of pension from September 1992 to April 1993 is concerned, as the matter is reportedly not raised by the applicant, the respondents are looking into this and would take appropriate action accordingly.

17. In the result, for the forgoing reasons, I do not find any merit in the present case which is accordingly dismissed. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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