

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./T.A. No. 956 of 1996 Decided on: 6/2/98

(9)

Chandra Bhan GargApplicant(s)

(By ~~XXXX~~ Applicant in person ~~XXXXXX~~
Advocate)

Versus

UOI & Anr.Respondent(s)

(By ~~XXXX~~ None. ~~XXXXXX~~
Advocate)

CORAM:

THE HON'BLE SHRI K. Muthukumar, Member(A)

~~THE HON'BLE SHRI K. Muthukumar~~

1. Whether to be referred to the Reporter *yes*
or not?
2. Whether to be circulated to the other
Benches of the Tribunal?

[Signature]
(K. Muthukumar)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA. No. 956 of 1996

New Delhi, this 6th day of Feb 1998.

(20)

HON'BLE MR K. MUTHUKUMAR, MEMBER(A)

Chandra Bhan Garg
5/46 Patel Gali
Viswas Nagar
Shahdara
DELHI-110032

... Applicant

By Advocate: Applicant in person.

versus

1. Director
Central Translation Bureau
government of India
Ministry of Home Affairs
Department of Official Language
8th Floor, Environmental House
C.G.O. Complex, Lodhi Road
NEW DELHI.
2. Pay & Accounts Officer
Ministry of Home Affairs (Sectt.)
C-I Hutmants, Dalhausie Road
NEW DELHI.

... Respondents

By Advocate: None

O R D E R

The applicant, a Senior Translator under the respondents, was permanently absorbed in the Employees State Insurance Corporation (hereinafter referred to as ESIC) with effect from 21.4.83. By this date, the applicant had served 25 and odd years of service having joined the government service on 10.7.97. In terms of the orders of his permanent absorption in the ESIC, he was informed that he would be eligible for pro-rata pension and Death-Cum-Retirement Gratuity (hereinafter referred to as DCRG) till the date of his permanent absorption as admissible under the rules applicable to officers of the Central Civil Service in

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force. He was asked to exercise his option within six months from the date of the issue of the letter of his permanent absorption, i.e. 17.9.84 either to receive pro-rata monthly pension and DCRG under the rules or receive pro-rata gratuity and a lump sum in lieu of pension worked out with reference to the commutation tables obtaining on the date from which pension would be admissible to him. He was also informed that in case he opts to receive the pro-rata pension, he would also be entitled to commute a portion of his pension in accordance with the Government of India rules in force. It is an admitted position that the applicant exercised his option vide his letter dated 27.9.84 (Annexure A-4) by which he opted to receive a lump sum amount in lieu of monthly pension. However, the respondents allowed one-third of commutation to the applicant and paid a sum of Rs.26,728.20 whereas he had opted a lump sum amount of his entire pension. He was also paid monthly pension with effect from 31.12.85. Thereafter the payment of monthly pension was stopped and the pro-rata monthly pension paid earlier was also deducted from the lump sum amount of commuted value of his entire pension which was paid on 25.1.89. Aggrieved by the deduction of entire amount of monthly pension upto 31.12.85, he filed OA.No.193/90. This OA was disposed of by the Tribunal with a direction to the respondents to entertain the representation submitted by the applicant on the basis of the calculated sheet submitted by him and in case the claims are not accepted the respondents were directed to pass a speaking order in this behalf.

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Respondents accordingly disposed of the representation by a speaking order on 5/6.11.95 which is impugned in this application and is a subject matter of the present dispute. In the meanwhile, the applicant had also filed a CP which was, however, discharged as the respondents had, in the meanwhile, passed the aforesaid speaking order.

The short point raised by the applicant in this case is that in accordance with the provision of para-14 of the Government of India O.M. dated 8.4.76 (Annexure A-3), he is entitled to claim the monthly pension from the date of his retirement till the date of payment of commuted value of entire pension. The date of retirement was 21.4.83 and he received the commuted value of pension on 25.1.89. Till the commutation become absolute on the date on which the medical board signed certificate in his favour, he claims that he is entitled for monthly pension from that date and, therefore, entitled to receive his monthly pension as per the rules and in support of this, he is relying on a judgment in one M. L. Mittal Vs UOI & Ors. decided by the Jaipur Bench of this Tribunal.

The respondents in the counter reply contend that as per the terms of the applicant's absorption, he would be eligible to receive pro-rata retirement benefits from the earliest date from which he could have become eligible for voluntary retirement had he

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continued in government service or from the date of his permanent absorption in the ESIC, whichever is later. Under the government rules, the applicant would have become eligible for pro-rata retirement benefits only on completion of 30 years of service in terms of Rule 48 of the CCS.(Pension) Rules, 1972. It was also made clear in his terms of absorption that he would not be entitled to the benefits of voluntary retirement scheme under Rule 48A of the aforesaid Pension Rules by which voluntary retirement was permissible on completion of 20 years of qualifying service. Under the terms of absorption, the applicant became entitled to the benefits of pro-rata retirement only with effect from the date he completes 30 years of service under Rule 48 of the aforesaid Pension Rules which, in his case, was with effect from 9.7.87. No doubt, he was absorbed in the ESIC on 21.4.83. However, he would be entitled to the benefits of pro-rata retirement only with effect from 9.7.87. When it was found that he was paid the commuted value of one-third of his pension and monthly pension before it became due i.e. 9.7.87, the payment of monthly pension was stopped as such payment was found to be irregular and contrary to the rules and the said amount was deducted from the lump sum pension amount to which he was entitled on the basis of the option on his absorption. In other words, the respondents contend that the applicant was not entitled to pro-rata retirement benefits before the due date, i.e. 9.7.87 and thereafter any payment made inadvertently

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was, *prima facie*, premature and was therefore recovered. In the light of this, the respondents contend that the question of payment of monthly pension from 21.4.83 as claimed by the applicant, did not arise and, he was given a detailed and speaking order in this behalf by the impugned order dated 5/6.11.95 on the directions of the Tribunal. The respondents also have raised a question that the present application is hit by the principle of *res-judicata* as the applicant had already agitated this matter when he filed OA.No.193/90.

I have heard the learned counsel for the parties and have perused the records.

In regard to the preliminary objection of the respondents that the present OA is hit by *res-judicata*, this contention is not accepted. Looking to the orders passed by the Tribunal in OA.193/90, it cannot be said that the matter agitated in this application has been decided in the aforesaid OA. The applicant does get a cause of action on the basis of the disposal of his representation by the respondents in pursuance of the orders of the Tribunal in the aforesaid case. As regards the other contentions raised by the applicant, I find that it is an admitted position that the applicant was absorbed in the ESIC with effect from 21.4.83. It was made clear in the orders of absorption that he would be entitled to pro-rata pension and DCRG from the date he would become eligible for voluntary retirement had he

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continued under the Government or from the date of his permanent absorption in ESIC whichever was later. It is also an admitted position that the applicant would have completed 30 years of service under the government on 9.7.87. In terms of Rule 48 of the CCS (Pension) Rules which are applicable to the applicant, he would be entitled to retirement benefits, only on completion of 30 years of service. It was also made clear that Rule 48A of the aforesaid Rules will not be applicable in his case under which pension becomes payable on voluntary retirement after 20 years of service. In terms of the option exercised by him, he was to receive pro-rata gratuity and a lump sum amount in lieu of his pension worked out with reference to the commutation table obtaining on the date from which pension would be admissible and the commuted value would become payable. There is no dispute about the fact of such option. The respondents, however, inadvertently paid pro-rata monthly pension which was another alternative option available to him and which he had not availed of. Instead he had opted for a lump sum amount in lieu of pension. When the respondents came to know that he would be entitled to only a lump sum amount in lieu of pension, they realised their mistake and recovered the monthly pension after allowing him the lump sum amount admissible to him. In regard to his entitlement of lump sum amount as per the commutation table obtained on the date from which the pension would be admissible to him. The applicant strongly relies on para.14 of the Appendix annexed as Annexure A-3. This rule deals

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with case of government servants who opt for or are automatically governed by the alternative (b) in para.11 therein. Alternative (b) in para.11 is same as was given by the applicant as his option, viz. receiving the gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation tables obtaining on the date from which the commutation value are payable. Para.14 is reproduced below:

"In the case of Government servants who opt for or are automatically governed by the alternative (b) in para.11 above, the payment of monthly pension will commence from the due date pending their medical examination in accordance with the provisions of the Civil Pensions (Commutation) Rules. The Commutation shall become absolute and the title to receive the commuted value shall accrue on the date on which the Medical Board (Authority) signs the medical certificate." ... (emphasis added)

The question for consideration in this case, is when, the payment of monthly pension will commence from the due date pending the medical examination in accordance with Civil Pensions (Commutation) Rules.

The question of commutation of pension will arise only when the applicant becomes entitled to draw his pension from a particular date. Even though he might have got absorbed on 21.4.83 he had opted for lump sum payment lieu of pension from the date it became due. It goes without saying that he could not get any lump sum payment prior to the date from which his monthly pension would have ordinarily become due. Since the lump sum amount is in lieu of such pension, the monthly pension would have ordinarily become due



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and admissible under the CCS (Pension) Rules when he would have normally completed 30 years of service. Before that, the Government would have no liability towards payment of pension to him. It is not as though he will become straightway entitled to pro-rata pension immediately on his absorption. This was made clear in his terms of absorption itself which stipulate that he would be eligible for pro-rata pension from the earliest date from which he would have become eligible for voluntary retirement had he continued under the Government or from the date of his permanent absorption in the ESIC whichever was later. Admittedly the date from which the pro-rata pension was disbursable to him was only with effect from the date he completed 30 years of service, i.e. 9.7.87. It is only from that date, he has a right to receive the lump sum amount in lieu of such pension with reference to the commutation table. The respondents, in their reply to his representation which is impugned in this case, have stated that the applicant was due his monthly pension only from 9.7.87 from which date only he would also become entitled to commute his pension when he was medically examined. It is clearly stated by the respondents that his first medical examination in 1985 was clearly premature as he would not be entitled to commutation when he did not become entitled to monthly pension earlier in 1985. His medical examination was specifically held on 15.12.87 when he was medically examined after pensionary benefits became due to him on 10.9.87 on completion of 30 years of service. Thus, from the statement of the

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respondents, it is obvious that the applicant became entitled to full commuted value of pension after he was medically examined on 15.12.87. Therefore, the claim of the applicant that he would be entitled to monthly pension from the date of his retirement on 21.4.83 till the date of commuted value of pension, is not sustainable. Admittedly, he would have become entitled to monthly pension only from 10.7.87 and he was paid the commuted value of pension from 15.12.87 when he was stated to have been medically examined and from that date the commutation should be treated to have become absolute and, therefore, he was entitled to receive the commuted value of pension on the date the medical examination was held, i.e. 15.12.87 and certificate signed by the medical authority. If at all, he would be entitled to pro-rata monthly pension only from 10.7.87. In the circumstances, while rejecting his claim for pro-rata pension from 21.4.83, it is held that the applicant is entitled to receive his pro-rata monthly pension from 10.7.87 to the date on which the medical authority signed the medical certificate on the basis of the medical examination stated to have been held on 15.12.87. The applicant has not raised any controversy about the date of medical examination and the date when the certificate was signed and it is, therefore, to be taken as correct date upto which he will be entitled to the pro-rata monthly pension. Thus, the applicant is entitled to receive monthly pro-rata pension from

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10.7.87 to the date of certification by the medical authority following the medical examination held on 15.12.87 and it is ordered accordingly.

This application is disposed of on the above lines. There shall be no order as to costs.

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(K. Muthukumar)
Member (A)