

Central Administrative Tribunal
Principal Bench

CA-2466/94

10

New Delhi, the 14th February, 1996.

Hon'ble Shri R.K. Ahooja, Member (A)

Shri K.P. Anjaneyulu
S/o Sh. Sachidanand Rao
Executive Engineer(SW)
Central Warehousing Corpn.
4/1, Khelgaon Marg, Hauz Khas,
New Delhi. 110016..

.. Applicant

(Advocate: Sh. K.K. Rai)

versus

1. Union of India:through
Secretary, Min. of Defence
Raksha Mantralaya,
New Delhi.

2. Engineer-in-Chief
Army Headquarters,
Engineering Branch
New Delhi.

3. The Chief Engineer
Navy No.9
ISRO Area,
Vishakhapatnam-8.

4. The Controller of Defence
Accounts and Pension
Allahabad, (UP)

.. Respondents

(Advocate: Sh. VSR Krishna)

ORDER

Hon'ble Shri R.K. Ahooja

The applicant has come before the Tribunal challenging the validity of the commuted pension paid vide order dated 13.9.1993 and the subsequent rejection of his representation vide the order dt. 6th June, 1994 by the respondents.

DR

2. The applicant had initially joined as Supdt. in the MES, Military Engineering Service on 13.5.1964. After three years he was declared quasi-permanent. In due course he applied for the post of Asstt. Engineer in Central Warehousing Corporation, hereafter referred to CWC, and joined there on 8.7.78. He was allowed to retain his lien in the MES for three years i.e. from 7.7.78 to 7.7.81. He sought pensionary benefits from the MES and upon his request being denied, he approached the Tribunal in OA-636/91. Vide its Order dt. 7.4.92, the Tribunal held the applicant entitled for pension and other retiral benefits. Though the amount due to the applicant had to be intimated within one month from the date of receipt of the copy of the Order of the Tribunal, the respondents could do so only through a letter dt. 22.3.1993. The amount due and shown in that letter was Rs.62,377.00. Thereafter, orders were issued by Min. of Defence for regularising the absorption of the applicant in CWC and also indicating the procedure for releasing the terminal benefits to the applicant and allowed a period of six months to the applicant to exercise his option either to receive monthly pension or commuted

J2

pension. The applicant alleges that the concerned officers never complied with the above directions in as much as they did not inform the applicant regarding the liberalisation of pension w.e.f. 1.1.86. The applicant was asked to appear before the Medical Board for medical examination on the basis that he would be entitled to full commuted pension. The medical report was signed on 10.8.93 and thereafter the respondents/paid an amount of Rs.35,572/- on account of capitalisation of pension calculated on the basis of the coefficient of 12.05 corresponding to age next birthday taken as 54. On the other hand the applicant represented on 3.8.95 that he would be entitled to the arrears of pension w.e.f. 9.7.81 to 13.7.93 and the commuted amount thereafter based on a minimum pension of Rs.375/- prescribed w.e.f. 1.1.86/ which came to a total of Rs.1,02,079/-. Further representation made by the applicant was rejected and hence the present application.

3. The respondents in reply have stated that as the applicant failed to exercise option within six months of the receipt of the letter dt. 23.4.93, he was entitled only to the full commuted pension on the date of his final abrogation of lien from MES, i.e., 8.7.81. They have submitted that the amount has been correctly calculated on that basis

JW

and the applicant having opted for the full commuted value is not entitled to any pension till the date of the payment of the commuted amount.

4. They have also denied that there was any ~~delay~~ on their part or that they had not kept the applicant informed of his option. As to the advantage of the liberalised pension rules made effective from 1.1.86, they contend that it was for the applicant to keep track of Govt. orders and provisions beneficial to his cause.

5. I have heard the 1d. counsel on both sides and have gone through the pleadings and relevant rules. There are only two questions ^{firstly,} to be answered/whether the applicant has exercised an option and secondly whether the commutation of pension has been done correctly. As for the first point, the 1d. counsel for the applicant ~~could~~ has argued that the applicant/exercised an option only after the respondents had informed him of the benefits accruing to him ~~except~~ or two alternatives which had not been done in the present case.

I find however that the applicant had, from the very beginning, sought full commutation of pension and this is also reflected in the order of this Tribunal in DA-636/91.

12

14

The relevant portion is as under:

" Since the applicant has not exercised any option regarding the mode of payment of pro-rata pension within the specified period as laid down in the instructions, the applicant shall be eligible as already claimed by him for pro-rata pension in one lumpsum amounts in lieu of pension and gratuity and leave salary as due. These amounts that will be due to the applicant shall also be intimated by the respondents to the CWC and the applicant within one month from the date of receipt of the copy of this order."

6. The Min. of Defence order dt. 23.4.93

(Annexure A-7) also clearly states that the applicant will exercise an option within six months * of the date of issue of this letter for either of the alternatives indicated below" (Emphasis supplied). It is nowhere the case of the applicant that he exercised option within the stipulated time. Hence, there is no doubt that the applicant is eligible only to the alternative of receiving the pro-rata gratuity and lumpsum amount in lieu of pension worked out with reference to the commutation table, obtaining on the date from which pension will be admissible and payable under the option orders.

Jh

7. The second question regarding the commuted amount can also be answered with reference to the aforesaid letter of Min. of Defence. The lumpsum amount of pension has to be worked out with reference to the commutation table on the date of admissibility of pension which in this case is 9.7.81. Furthermore it is provided in para-7 that any further liberalisation of pension rules decided upon by the Govt. of India after the date of absorption will not be extended to the applicant. Thus any liberalisation of pension after 9.7.81 is also not admissible. However the calculation of the commuted value of pension does appear to have certain defects. This has been done with reference to the date of medical examination and his age on the following date of birth. The medical examination was done in 1993 while the applicant became due to receive the amount on 9.7.81. The applicant argues that he is entitled to the pro-rata pension from 9.7.81 to the date of medical examination. He further argues that in his case pro-rata pension is allowed in terms of the Govt. of India Order which can no longer be Rs.276/- as calculated but will become Rs.375/- from 1.1.86 since that was the maximum pension. Hence the net commutation has to be done on the basis of Rs.276/- concluded but on Rs.375/-. I have already/xxxx that he was not entitled to payment of pro-rata pension nor to the benefit of liberalised pension rules subsequent

Ok

to the date of his absorption in a public sector undertaking. It does not mean however that he should on the one hand be denied the benefits of liberalised benefits and on the other he should ~~not~~ be penalised for the inaction of the respondents in completing the various formalities over a period of 12 years. At the very least he is entitled to the payment of interest on the amount which was due to him in 198~~0~~.

8. The respondents have taken the plea that they could not undertake the work of awarding pensionary benefits to him since it was only on the basis of Tribunal's orders in OA-636/91 that the applicant became entitled to such benefits. The applicant had to approach the Tribunal only because the respondents wrongly denied his dues and hence he cannot be held responsible for the delay.

9. Accordingly, I hold that pensionary benefits as calculated by the respondents will carry a rate of interest of 18% from a date six months after the date on which these became due i.e. 9.7.81 until the amount was actually paid to him. The respondents will calculate the amount of interest due to him and pay the same within a period of three months.

10. The application is thus partially allowed with the above directions. No order as to costs.

R.K. Ahonja
(R.K. Ahonja)
Member(A)