

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1972/2000

New Delhi this 30th day of May 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Dogar Lal (Retd. SO)
Min. of Health & Family Welfare,
New Delhi, 43, Daya Nand Block,
Shakarpur, Delhi.

.....Applicant.

(Applicant in person)

Versus

1. Union of India through
the Secretary,
Min. of Health & Family Welfare,
Nirman Bhavan, New Delhi
2. The Secretary,
Min. of Personnel, Public Grievance
& Pension & Pensioners' Welfare,
Lok Nayak Bhavan, New Delhi
3. The Secretary,
Ministry of Finance,
(Dept. of Expenditure)
North Block, New Delhi
4. The Controller of Accounts (Sectt)
Min. of Health & Family Welfare,
Nirman Bhavan, New Delhi.

.....Respondents.

(By Shri P.H. Ramchandani, Advocate)

O R D E R

By Shri Govindan S. Tampi, Hon'ble Member (A)

Shri Dogar Lal, the applicant has come before this
Tribunal with the following prayers:

"i) The lump sum amount of commuted value of pension
paid to the applicant may be ordered to be
recovered from the Petitioner with normal rate
of interest, he may be permitted to exercise
fresh option and be paid pension from the date
of his retirement to date with the same rate of
interest.

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(b)

ii) Alternatively, the respondents may be directed to maintain status-quo as regards commutation date they may not be allowed to alter their own decision now after a lapse of 17 years .

iii) If it is still 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 commutation - as laid down in the relevant rules, with compound interest at the rate of 18% per annum as the rupee value has depreciated by more than 10 times today as compared to 1981, when this amount was actually due to the petitioner.

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

2. Heard the applicant in person as well as Shri P.H. Ramchandani, learned Sr. Counsel for the respondents.

3. Brief relevant facts are that the applicant, born on 2.6.1927 who joined Govt. service on 28.3.1946, while working as Section Officer, joined Hindustan Zinc Ltd. Udaipur, a PSU on 17.3.1979, where he was subsequently absorbed. He had then completed over 33 years and 11 months. On his absorption he was asked to exercise his option either for receiving pension with Death-cum-retirement gratuity (DCRG) or for receiving gratuity and lump sum amount in lieu



of pension. On his opting for the second the respondents authorised the payment of the dues- lump sum - but without subjecting him to medical examination, as required under Rule 18 of the Commutation of pension Rules 1981. This lacuna was not detected by any one. In the case of those who opt for lump sum payment, commutation becomes absolute on the day , on which medical report is signed. In the instant case the commutation did not become absolute. As in terms of Rule 6, commutation date is the one on which retiree receives the commuted value and before that date he was entitled for getting the regular monthly pension, the petitioner made a request for the monthly pension for the period 15.3.80 to 8.1.81. Thereupon commutation amount was recalculated, with reference to pension applicable on the date of retirement, taking petitioner's next birth day as 2.6.80. Payment of Rs.2048.40 was thus authorised. On their permanent absorption in PSUs, Govt. servants are deemed to have retired and in case they opt for pro-rata lump sum pension in lieu of monthly pension, their 1/3 commuted portion of pension was not restorable like other Govt.servants. But after the decision of the Supreme Court on 15.12.1995, those like the applicants also became eligible for restoration of 1/3 commuted portion of pension, 15 years from that date . This was followed by Govt's OM dated 30.9.96. Keeping in mind the above, and the applicant's commutation date being 15.3.1980, 1/3 of the commuted portion of pension was due to be restored on 15.3.1995, but the respondents permitted it only from 8.1.1996. His representation against this arbitrary decision was rejected by the respondents on 26.6.1997. His fresh representation was also rejected on 22.3.1999. Hence this O.A. The applicant in his oral submission plead that once the Hon'ble Supreme Court has laid down the law, there was no reason the benefit could have been denied to him, especially as

his commutation of pension had not become absolute in the absence of medical report which the respondents had failed to direct.

4. In the reply filed on behalf of the respondents duly reiterated by Sh. P.H. Ramchandani, Sr. Counsel, it is averred that the applicant has no case at all. According to them, the applicant's date of commutation was fixed in terms of Deptt. of Pension and Pensioners Welfare OM dated 22.8.90. Respondents agree that the procedure for conducting the medical examination as required under Rule 6 of CCS(Commutation of Pension) Rules, 1981 was not done and the applicant was allowed commuted value of full pension with reference to his age, ~~on~~ the next birthday (54 years) by applying the commutation factor of 12.03 and again, with reference to the date of his absorption by applying the commutation factor of 12.35, relatable to his next birthday (53 years). It was for the applicant to bring to the notice of the respondents, the lapse, which he had not done. Since he was paid the commuted value of full pension on 8.1.81, commutation became absolute on that date and he was entitled for restoration of commuted value of 1/3 pension, 15 years after that date. He would have been entitled to monthly pension had he been medically examined from the date of his absorption to the date of commutation of full pension. It is further pointed out that the applicant was not entitled to the arrears of pension, from the date of absorption to the date when the commutation became absolute as the prescribed procedure for medical examination had not been gone through.

5. We have carefully considered the matter. The point for determination in this OA relates to the restoration of 1/3 of the commuted value of pension. After the decision

of the Hon'ble Supreme Court in Welfare Association of Absorbed Central Govt. Employees in Public Enterprises & Others Vs Union of India and Anr. as well as P.V. Sundara Rajan & Anr Vs UOI (1996) 33 ATC 188, the issue is no longer in dispute. Hon'ble Apex Court has clearly laid down that central Govt. Servants absorbed in Public Undertaking/Enterprise and deemed to have retired from Government service from the date of such absorption and commuting the entire pension, are entitled to restoration of the one third of the fully commuted pension after the expiry of 15 years. The issue in this case, is to which is the correct date. According to the respondents it would be reckoned with reference to date on which the payment was effected and as per the applicant it is the date of his absorption in the PSU. The difference in this case is of few months. It is evident that the commutation of pension becomes absolute only on the date of his commutation date i.e. 15.3.80 and not from 8.1.81. Restoration of 1/3 of the commuted value should be reckoned w.e.f. 15.3.1995 and the respondents cannot seek to gain advantage of their own mistake of not ordering the medical examination and claim that applicant should suffer for the same. Even otherwise effectively the restoration of 1/3 of commuted value gets advanced by just eight month i.e. January 1996 to March 1995. This is the only manner in which the applicant can be given what is his due.

(A)

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6. In the result the application succeeds and is accordingly allowed. The respondents are directed to recover the lump sum amount of commuted value and he be permitted to exercise fresh option and be paid pension from the date of his retirement to date. This should be done within a period of two months from the date of receipt of the copy of this order.

No costs.

Govindan S. Tampi
Govindan S. Tampi
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Patwal/