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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A. NO. 1477/89

DECIDED ON : 3.8.1993

B. K. Anand

... Petitioner

Vs.

Union of India through General
Manager, Northern Railway

... Respondent

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. JUSTICE S. K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B. N. DHUNDIYAL, MEMBER (A)

Shri R. K. Kamal, Counsel for Petitioner

Shri P. S. Mahendru, Counsel for Respondents

JUDGMENT (ORAL)

Hon'ble Mr. Justice V. S. Malimath, Chairman —

This case has come to us on a reference made by the Bench consisting of Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J) and Hon'ble Mr. P. C. Jain, Member (A), on the ground that the following questions deserve consideration at the hands of a larger Bench :-

- "(1) How far a retiree having been permanently absorbed in a public sector undertaking or autonomous body and having opted for 100% commutation of pension before 1.1.1986, although the actual payments have been effected after 31.12.1985 is covered by the orders contained in O.M. No.2/1/87-PIC-1, dated 16.4.1987 issued by the Department of Pension and Pensioners' Welfare?
- (2) Is the clarification contained in O.M. dated 8.3.1988 issued by the same source to be taken as a modification of the original order dated 16.4.1987 and, if so, how far would it be applicable to a retiree as at (1) above?
- (3) Can the clarification which is specified in an unambiguous language, even if it amounts to modification of the original orders, be ignored in a type of case like this?"

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2. At the outset, it is necessary to make it clear that though the issues referred require to be ^{answered by} ~~settled by~~ the Full Bench, it is not disputed that the entire case stands referred to the Full Bench for its decision. It is on that basis that we have heard the arguments of the counsel on both sides. The relevant facts necessary to understand the arguments of the parties may be stated as follows.

The petitioner, Shri B. K. Anand, was holding the post of Deputy Signal & Telecommunication Engineer in the old scale of Rs.1500-2000 in the Northern Railways. His date of birth is 8.3.1932. He went on deputation to the Indian Railway Construction Company Limited (for short IRCON), a public sector undertaking, for a period of three years. He sought permanent absorption in the IRCON which was agreed to by the Northern Railways. The petitioner was permanently absorbed in the IRCON by order dated 16.11.1984 (Annexure A-1) with effect from 31.7.1983. It is the petitioner's case that he submitted the settlement papers including his request for securing 100% commutation by way of terminal benefits as per Annexure A-2 dated 14.12.1984. It is his case that so far as the gratuity amount is concerned, the same was paid to him on 19.3.1986. There was some delay in the matter of granting 100% commutation which needed medical examination of the petitioner. The petitioner was ultimately medically examined on 10.4.1986 and the Chief Medical Officer signed his certificate on 29.4.1986. The commutation amount was paid to the petitioner on 26.5.1986. The petitioner's grievance is that he has been denied the benefit of the liberalised pension scheme order dated 16.4.1987 by which the pension structure was modified and a higher rate of pension was prescribed. It is the case

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of the petitioner that for the purpose of commutation of the petitioner's pension the benefit of the liberalised pension scheme should have been given to him. It is his further complaint that there was inordinate delay in paying him the gratuity amount and leave encashment and that, therefore, he should be paid interest for the delayed period. It is also his case that he is entitled to a sum of Rs.5000/- by way of group insurance which has not yet been paid. He claims that the said amount should be paid with interest.

3. The respondents have denied the claim of the petitioner and have asserted that the commutation of pension was rightly done. They maintain that the benefit of the liberalised pension scheme sanctioned under the order dated 16.4.1987 is not payable to the petitioner. So far as the delay in paying the gratuity amount and leave encashment is concerned, the explanation is that it is attributable to administrative problems. Nothing is stated as to why the group insurance amount of Rs.5000/- due to the petitioner has not been paid.

4. The principal contention which requires examination in this case is as to whether the petitioner is entitled to the benefit of the liberalised pension scheme sanctioned vide order dated 16.4.1987. The respondents have proceeded on the basis that the petitioner having received, by way of terminal benefits, equal to 100% of pension by way of commutation, is not entitled to the benefit of the liberalised pension scheme. The petitioner relies upon an earlier judgment of the Principal Bench of the Tribunal rendered in O.A. No. 317/88 decided on 7.12.1990. That decision no doubt supports the case of the petitioner. The referring Bench has expressed disagreement with the view taken in the said decision, which is the reason for the case being referred to the larger Bench.

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5. The liberalised pension scheme was sanctioned by the President as per order dated 16.4.1987 in the light of the decisions taken on the recommendations of the Fourth Pay Commission. The primary object of the said order is to grant certain benefit to the pensioners. It is not necessary for us to advert to all the clauses in the said order, as most of them are applicable to the retired Government servants who were drawing or were entitled to pension or family pension as on 31.12.1985. We are concerned in this case with the person who was a Government servant that took retirement and stood absorbed in a public sector undertaking w.e.f. 31.7.1983, and obtained a one time lump sum terminal benefit equal to 100% of the pension. What governs the case of the petitioner is paragraph 10 of the order dated 16.4.1987 which reads as follows :-

"10. The cases of Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies will be regulated as follows:

(a) PENSION

Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, their pension will be updated in terms of these orders. In cases where the Government servants have drawn one time lumpsum terminal benefits equal to 100% of their pensions, their cases will not be covered by these orders.

(b) FAMILY PENSION....."

It is not disputed by the learned counsel appearing on both sides that this is the clause which governs the case of the petitioner, as he was a Government servant who went on permanent absorption in a public sector undertaking, namely, IRCON. It is also not disputed that the petitioner drew one time lumpsum terminal benefits equal to 100% of his pension. It is also not disputed that the claim for 100% commutation by way of terminal benefits was made by the petitioner vide

his application dated 14.12.1984, though the actual commutation was paid to him on 26.5.1986. The contention of the learned counsel for the petitioner, Shri Kamal, is that the petitioner was an existing pensioner as on 31.12.1985 and was, therefore, entitled to the benefit of the liberalised pension scheme dated 16.4.1987. It is his case that the pension of the petitioner should be revised on the strength of the said order and the said revised pension taken into account for the purpose of commuting his pension by way of 100% terminal benefit. It is clear from para 10 of the order that it is a self-contained code in the matter of granting benefit of the revised pension scheme dated 16.4.1987, so far as the Government servants who have been permanently absorbed in public sector undertakings or autonomous bodies and continue to draw pension separately from the Government are concerned. The first part of clause (a) of para 10 makes it clear that every Government servant who is absorbed in public sector undertaking or autonomous body and has continued to draw pension separately from the Government, is entitled to the benefit of the liberalised pension scheme sanctioned vide order dated 16.4.1987. An exception has been carved out in respect of Government servants who have been permanently absorbed in public sector undertakings or autonomous bodies that they have drawn one time lumpsum terminal benefits equal to 100% of their pension. Such persons are made ineligible for the benefit of the order dated 16.4.1987. The question for examination is as to whether the petitioner is covered by the latter part of clause (a) of paragraph 10. Admittedly, the petitioner is a Government servant who was entitled to draw pension from the Government consequent upon his being absorbed in public sector undertaking. He did exercise the option in favour of

receiving one time lumpsum terminal benefits equal to 100% of the pension in lieu of pension. The claim in this behalf was made on 14.12.1984. It took some time to process the papers and ^{the} commutation was sanctioned and paid on 26.5.1986. The contention of Shri Kamal is that the petitioner would have become ineligible for the benefit of the order dated 16.4.1987 only if the 100% commutation amount was paid on or before 31.12.1985. He maintains that the petitioner continued as a pensioner until commutation amount was paid to him on 26.5.1986. As he must be regarded as an existing pensioner on 31.12.1985 he contends ^{that} the benefit of the order dated 16.4.1987 cannot be denied to him. This ^{precise} question was examined and an order clarifying the position was passed on 8.3.1988 bearing No.2/1/87-P&P(PIC). Paragraph 4 of the said order, which is relevant, reads as follows :-

"4. Apart from the question of regulation of cases of pensioners in receipt of more than one pension, referred to above, clarifications have been sought from different corners on some more aspects. The correct position in these cases is indicated below against each :

<u>Points for clarification</u>	<u>Clarification</u>
(1)	
(2) Whether the orders dated 16th April, 1987 will be applicable to Central Govt. Employees who have been absorbed in public sector undertakings from a date prior to 1.1.86 and opt for or have opted for 100% commutation but in whose cases the commutation amount has not been paid before 1.1.1986.	The orders dated 16th April 1987 will not apply to the retirees who have been absorbed in public sector undertakings or autonomous bodies from a date prior to 1.1.86 and have opted or may opt for 100% commutation of pension even if the commutation value has not been paid to them before 1.1.86. Their pension will not be revised in terms of O.M. dated 16th April, 1987 and the commutation value will be based on the original amount of pension admissible under the pre 1.1.86 provisions."

This clarification is a complete answer to the petitioner's contention. The clarification in clear terms says that the

benefit of the order dated 16.4.1987 will not be available to retirees like the petitioner who were absorbed in public sector undertakings or autonomous bodies from a date prior to 1.1.1986 and have opted or may opt for 100% commutation of pension, even though the commutation value is paid to them after 1.1.1986. The case of the petitioner is fully governed by the clarification. The petitioner is a retiree from the Government service who was absorbed in the public sector undertaking before 1.1.1986. He opted for 100% commutation of the pension on 14.12.1984 and the actual payment of the commutation amount was made after 1.1.1986. Hence, there cannot be any doubt that on the basis of the clarification given as above, the petitioner would not be entitled to claim the benefit of the order dated 16.4.1987. The contention of the learned counsel for the petitioner, however, is that the clarification given by order dated 8.3.1988 cannot come to the aid of the respondents as it cannot have the legal effect of amending the order made by the President dated 16.4.1987. It was urged that the order dated 16.4.1987 having been passed by the President it cannot be amended by the Government without the sanction of the President. It was submitted that the order though described as clarificatory, the effect of it is to amend the order dated 16.4.1987. This argument fails to take note of paragraph 2 of the order dated 8.3.1988 which reads :-

"2. The matter regarding pensioners who are in receipt of more than one pension has been further reviewed and the President is pleased to decide that these cases may be regulated in the manner hereinafter indicated."

It is, thus, clear that the order dated 8.3.1988 was also made by the President. The President has clearly ordered that the cases mentioned therein shall stand regulated in

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the manner indicated in the said order. In other words, the President has directed that the benefit of the order dated 16.4.1987 shall be accorded in the manner prescribed by him in the order dated 8.3.1988. As the order of 8.3.1988 has also been made by the President himself who was the author of the earlier order dated 16.4.1987, it is obvious that the earlier order of 16.4.1987 has to be understood and given effect to in the manner directed by the President vide order dated 8.3.1988. In our opinion, what was implied in the earlier order by the President on 16.4.1987 has been made explicit and clarified by the subsequent order made by him on 8.3.1988. Hence, we have no hesitation in holding that paragraph 10 of the order of the President dated 16.4.1987 should be understood and given effect to in the manner indicated in para 4(2) of the order of the President dated 8.3.1988. This being the correct position, we find it difficult to subscribe to the view taken by the Division Bench of the Tribunal in its decision rendered in O.A.317/88. The Division Bench has said that the Government by way of clarification could not have amended the order made by the President. It is obvious that the attention of the Division Bench was not drawn to paragraph 2 of the order dated 8.3.1988 from which it becomes clear that the said order was also made by the President himself and not by the Government. With respect we hold that the decision in O.A.317/88 does not lay down the law correctly, and we reverse the said decision.

6. Consequently, it follows that the petitioner is not entitled to the benefit of the order dated 16.4.1987 in the matter of grant of lumpsum terminal benefits equal to 100% of the pension.

(SC)

7. So far as the gratuity amount paid to the petitioner to the extent of Rs.32,850/- is concerned, we find that there has been an inordinate delay in payment of the same. The order regarding absorption of the petitioner having been made on 15.11.1984 and the petitioner having submitted his settlement papers on 14.12.1984 the gratuity amount should have been paid within a reasonable period. The gratuity amount was actually paid to the petitioner on 19.3.1986. As the petitioner was deprived of the said amount for an unreasonably long period, we consider it just and proper to grant interest from 1.4.1985 till 19.3.1986 at the rate of 12% per annum on the gratuity amount. So far as the leave encashment amount is concerned, ~~it was paid on 25.5.88. As there is a long delay, we direct interest being paid on the leave~~ encashment from 1.4.1985 to 25.5.1988. So far as the group insurance amount is concerned, there is no explanation for not paying the same to the petitioner. Hence, a direction to pay the same with interest is eminently justified. In our opinion, the respondents should have taken steps to realise the group insurance amount to the petitioner within a reasonable period. That not having been done, appropriate direction to pay interest from this date is merited.

8. We may also advert to an argument advanced by the learned counsel for the petitioner that there appears to be some error in the matter of calculating the commutation amount even on the basis that the petitioner is not entitled to the benefit of the Presidential order dated 16.4.1987. No such case has been pleaded in the application. Hence, all that we need say in this behalf is that if there are any errors in calculation, it is open to the petitioner to bring them to the notice of the authorities whereupon it is hoped they would look into the same and correct the errors, if any.

9. In the light of the above discussion, we answer the questions referred to us as follows :-

- (1) A retiree having been permanently absorbed in a public sector undertaking or autonomous body and having opted for 100% commutation of pension before 1.1.1986, although the actual payments have been effected after 31.12.1985, is not entitled to the benefit of the order contained in O.M. No. 2/1/87-PIC-1 dated 16.4.1987.
- (2) The clarification contained in paragraph 4 of the order of the President bearing No. 2/1/87-P&PW(PIC) dated 8.3.1988, governs the cases covered by paragraph 10 of the order of the President bearing No. 2/1/87-PIC-1 dated 16.4.1987.
- (3) The clarificatory order dated 8.3.1988 cannot be ignored and has to be given effect to.

10. For the reasons stated above, this application is disposed of with the following directions :-

- (1) The claim of the petitioner for revision of the commutation amount on the basis of the Presidential order No. 2/1/87-PIC-1 dated 16.4.1987 is hereby rejected.
- (2) The respondents are directed to grant interest at the rate of 12% per annum from 1.4.1985 on the amount of gratuity and leave encashment till the date of their respective payment.
- (3) The respondents are directed to take steps to collect and pay the group insurance amount of

Rs.5000/- within a period of three months from this date. In the event of the said amount not being paid within the said period, the petitioner shall be entitled to receive interest at the rate of 12% per annum on the said sum of Rs.5000/-, from this date till the date of payment.

(4) There shall be no order as to costs.

B. N. Dhoundiyal *S. K. Dhaon* *V. S. Malimath*
(B. N. Dhoundiyal) (S. K. Dhaon) (V. S. Malimath)
Member (A) Vice Chairman (J) Chairman

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