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Central Administrative Tribunal
Principal Bench: New Delhi.
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Regn.No.OA-317/88

Date of Decision: 7.12.90.

Shri M.S.Venkatachalam

.... Applicant.

Vs.

Union of India & Ors.

.... Respondents.

For the applicant

.... Shri R.K.Kamal,
Advocate.

For the respondents

.... Shri S.N.Sikka,
Advocate.

CORAM: Hon'ble Shri S.P.Mukerji, Vice-Chairman(Admn.)
Hon'ble Shri G.Sreedharan Nair, Vice-Chairman(Judl.)

JUDGEMENT

(Delivered by Hon'ble Shri S.P.Mukerji)

In this application dated 24.2.1988 filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who had been working as Estimator in the grade of Rs.700-900/- in the Civil Engineering Department of South-Eastern Railway and later permanently absorbed with effect from 1.3.1983 in the Rail Indian Technical & Economics Service Ltd.(RITES), a Public Sector Undertaking owned by the Ministry of Railways, has prayed that the respondents be directed to revise his pension upwards in terms of O.M. dated 16.4.1987 (Annexure A-1) with effect from 1.1.1986 and revise the lump-sum amount payable on commutation on the basis of the revised pension alongwith 15% interest.

2. The brief facts of the case are as follows: As stated earlier, the applicant was permanently absorbed with effect from 1.3.1983 in RITES by orders issued by the South Eastern Railways on 19.2.1985. In accordance with the pension payment order issued on 12.3.1986, his pension relating to his service under the Ministry of Railways was fixed at Rs.462/- per month with effect from 1.3.1983. On the application of the applicant, the entire pension was ordered to be commuted by the order dated 24.7.1986 and the commuted amount was paid on 20.9.86. The applicant's claim is that he should be given the benefit of revised pension with effect from

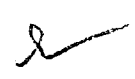
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1.1.1986 till the date of commutation alongwith the enhanced value of the commuted pension. He is relying upon the order of the Ministry of Personnel dated 16.4.1987 (Annexure-A-1) stating that in accordance with para 3.1 (a) being in receipt of pension on 31.12.1985, he comes within the definition of 'existing pensioner' whose pension was liable to be increased with effect from 1.1.1986. He has reckoned that his revised pension with effect from 1.1.1986 would be raised to Rs.1055/-. His representations drew no response. According to him, since he was drawing pension from 1.3.1983 right upto 20.9.86 as an 'existing pensioner' his pension also is liable to be revised with effect from 1.1.1986. His argument is that since the pension payment order in his favour was issued on 12.3.86, even though he had formally retired with effect from 1.3.1983, his status between these two dates was that of a retired pensioner entitled to the revision of pension like any other pensioner. The commutation amount given to him on 20.9.86 is also to be based on the revised pension.

3. According to the respondents, the applicant applied for pension alongwith the other documents on 5.3.1985 and the pension payment authority was issued on 14.3.1986 granting a monthly pension of Rs.463/-. This pension was allowed to be drawn by him from 1.3.1983 till 20.8.1986. In the meanwhile, on applicant's application he was paid the commutation value equal to 100% of his pension and thus he ceased to be a Railway employee or pensioner with effect from 1.3.1983, "although he could be able to draw pension upto 20.9.1986, that is the date on which the cent percent commuted value of pension was received by him with effect from 1.3.1983." Thus, he has no claim of revised commuted value of pension and interest or enhanced ^{pensionary} benefits with effect from 1.1.1986. They have also referred to para 10(a) of the O.M. dated 16.4.1987 (Annexure A-1) in accordance ^{with which when} ~~on which~~ a retired Government servant ^{s have} ~~have~~ drawn one time lumpsum terminal benefits equal to 100% of their pensions, their cases ~~for~~

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for revised pension will not be covered by these orders. They have also referred to a clarification issued by the Department of Pension & Pensioners' Welfare in their O.M. dated 8th March, 1988, in accordance ^{with} ~~of~~ which the order of 16th April, 1987 will not apply to those pensioners who are absorbed in Public Sector Undertakings prior to 1.1.1986 and have opted or may opt for 100% commutation of pension even if the commutation value has not been paid to them before 1.1.1986. The respondents have conceded that the pension payment authority could be ~~only~~ ^{be} issued on 14.3.1986 and the commuted value paid on 20.9.1986. Their argument is that because of the payment of the full commuted value of the pension, he ceased to be a pensioner after 1.3.1983.

4. In the rejoinder, the applicant has stated that the respondents have admitted that he drew pension with effect from 20.9.1986 and therefore, he falls within the definition of 'existing pensioner'. He has challenged the clarification dated 8.3.1988 which was issued after this application had ^{been} ~~was~~ filed with the Tribunal, to manipulate a decision in this case and build up defence of the action taken by the respondents. He has urged that since he was given pension with effect from 20.9.1986, it cannot be denied that he was a pensioner on 31.12.1985 ^{also}.

5. We have heard the arguments of the learned counsel of both parties and gone through the documents carefully. The benefit of the revised pension, available under the O.M. dated 16th April, 1987 (Annexure A-1), is admissible to 'existing pensioners'. The definition of 'existing pensioner' as given in para 3.1(a) of the O.M. of 16th April, 1987 reads as follows: -

"Existing pensioner' or 'Existing Family pensioner' means a pensioner who was drawing/entitled to pension/family pension on 31.12.1985. For purposes of updating family pension it also covers members of family of employees retired prior to 1.1.1986 and in whose case family pension has not been commenced as the pensioner is/was alive on 31.12.1985."

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As regards those Central Government employees who have been permanently absorbed in Public Sector Undertakings, the revision of the pension will be governed by para 10(a),

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:

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- (a) 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."

Reading the aforesaid two paras ^(3 and 10) together, one gets the impression that an 'existing pensioner' who was drawing pension as on 31.12.1985, even though he had been absorbed in a Public Sector Undertaking, would be entitled to get revised pension with effect from 1.1.1986. An exception has been made in the cases of those pensioners permanently absorbed in Public Sector Undertakings who had commuted 100% of their pension, if they had commuted their entire pension with effect from a date earlier than 1.1.1986, ^{In that event} they ceased to be 'existing pensioners' and therefore, the question of revising their pension in accordance with the aforesaid O.M. does not arise. The clarification issued by the Ministry of Personnel and Public Grievances in their O.M. of 8th March, 1988 relevant to the case reads as follows: -

Points for clarification

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 or have opted for 100% commutation but in whose case the commutation amount has not been been paid before 1.1.1986.

Clarification

The orders dated 16th April, 1987 will not apply to the retirees who have been absorbed in public sector undertaking 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 OM dated 16.4.1987 and the commutation value will be based on the original amount of pension admissible under the pre-1.1.86 provisions.

6. It appears to us that the clarification simply states that a pensioner absorbed in public sector undertaking before 1.1.1986 and who opted for 100% commutation of pension before that date will not be entitled to the benefits of the O.M. dated 16th April, 1987. If he had opted for 100% commutation before that date, even if the actual payment of commutation value of pension was effected after 1.1.1986, ^{his case will not be covered by the O.M.} it could never be the intention of the Government to deprive the existing pensioner ^{of the benefit of revised pension} who continued to draw pension even after 1.1.1986 and commuted the same like the applicant before us after that date. It is axiomatic that a clarification of an order is not intended to modify the order but to make the intendment of the original order more specific and clear. Since, the O.M. of 16th April, 1987 allows revised pension to the pensioners absorbed in Public Sector undertakings who continued to draw pension immediately before and after 1.1.1986 and had not ^{the} got pension dissolved by 100% commutation on 1.1.1986, the clarification cannot deprive them of the originally intended benefits.

7. The respondents have not denied that the applicant was granted monthly pension right from 1.3.1983 to 20.9.86. On the other hand, they ^{in their reply} have more than admitted the same by their repeated averments that "on his retirement a monthly pension of Rs.462/- and the said pension was drawn by him upto 20th September, 1986. #..... thus he ceased to be a Railway employee or pensioner any longer w.e.f. 1.3.1983, although he could be able to draw pension upto 20.9.1986 i.e. the date on which the cent percent commuted value of pension was received by him,....."

Again in the counter affidavit, they have stated that:

"Thus he ceased to be a pensioner from the said date although he could be able to draw pension upto 20.9.1986."

By the very force of circumstances, the pension payment order was admittedly issued on 14.3.1986 retiring the applicant on a pension of Rs.462/- with effect from 1.3.1983 and

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Accordingly this pension was drawn by him upto 20th September, 1986, the question of the applicant applying for commutation in 1983 does not arise. Pension which has already been received retrospectively cannot be logically commuted with prospective effect. Commutation of pension is ~~the~~ capitalising ^{the} value of the ^{future} pension at the time of commutation with reference to what the pensioner ^{is} likely to receive on future dates depending upon his health, present age and the statistical expectation of how ^{long} ~~would~~ ^{is} he likely to live. The state of health and age of the applicant in 1983 cannot be relevant for commutation of his pension in 1986. The learned counsel for the applicant indicated that for commutation of his pension in 1986, he was medically examined in 1986 itself, and this ^{is} what was natural and possible. He could not have been medically examined in 1986 in order to determine his state of health in 1983. Accordingly, it will ^{be} illogical if not absurd to say that in 1986 the applicant got his pension commuted from 1983. Such an argument may lead to ~~funny~~ results. Even the successor of a pensioner who ^{has} died could ~~claim~~ commuted value of pension with reference to the life and state of health of the deceased pensioner with reference to a past year. We would not like to dilate the dimension of absurdity ^{pregnant in} ~~pregnatory~~ such an argument and ~~perception~~.

8. In the conspectus of facts and circumstances, we allow the application declaring the applicant as an 'existing pensioner' as contemplated in O.M. dated 16th April, 1987 and direct the respondents to refix the pension of the applicant with effect from 1.1.1986 in accordance with the O.M. dated 16th April, 1987 with all consequential benefits including redetermination and payment of the ^{balance of the} commuted value of the revised pension on the date the same was granted.

9. There shall be no order as to costs.

(G. Sreedharan Nair)
Vice-Chairman (Judl.)

(S.P. Mukerji)
Vice-Chairman (Admn.)