

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**Order reserved on: 04.10.2019
Order Pronounced on: 05.11.2019**

ORIGINAL APPLICATION NO. 060/434/2019

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

...

A.S. Gill son of Sh. Ajit Singh Gill, aged about 72 years, date of birth 4.4.1947, r/o 59, Shivalik Enclave, Manimajra, Chandigarh 160101, retired at Mohali, Punjab from Group A service of Department of Telecom, last employment designation Vice Chairman-cum-Managing Director, Punjab Communications Ltd. Mohali, Punjab.

....APPLICANT

(By: Applicant in person)

VERSUS

1. Union of India through Secretary Department of Pensions and Pensioners' Welfare, Ministry of Personnel, Pensions and Public Grievances, Lok Nayak Bhavan, Khan Market, New Delhi-110003.
2. The Secretary, Ministry of Communications & Information Technology, Sanchar Bhavan, 20 Ashoka Road, New Delhi-110001.
3. The Sr. Deputy Director General, TEC, DOT Khurshid Lal Bhavan, Janpath, New Delhi, 110001.

....RESPONDENTS

(By Advocate: Shri Vinod K. Arya)

ORDER**ARCHANA NIGAM, MEMBER (A)**

This Original Application (O.A.) has been filed by applicant A.S. Gill, under Section 19 of the Administrative Tribunal Act, 1985, feeling aggrieved against impugned recovery of Rs. 17, 76,915 from his pension from the date 25.4.1995 to 25.4.2010 and non-payment of interest @ 18% per annum for these excess deductions.

2. The relevant facts of the case are as follows:-

i) The petitioner joined the Department of Telecommunications (DOT) on 19.5.1969. While working in the said Department, he sought deputation to Punjab Communications Limited (PCL) on his own request. He was relieved to join PCL on 08.06.1987 for one year. His deputation was subsequently extended from time to time for a total period of five years. Even after the expiry of five years, he continued working in PCL though there was no extension of his deputation period. As there was no provision for deputation beyond five years, PCL was informed either to revert the petitioner or absorb him permanently on completion of five years. On his own request and volition and with the agreement of PCL, vide order dated 18.03.1994 he was permanently absorbed in PCL retrospectively from 08.03.1993 i.e. date of completing five years on deputation. He was thus deemed to have retired from Government service w.e.f. 8.3.1993. Vide the same letter dated 18.3.1994, the petitioner was given an option either (i) to receive pro-rata monthly pension or (ii) to receive a lump-sum amount in lieu of monthly amount. It was specified that the

option shall be in writing. The option once exercised shall be final. In case no option is exercised within the stipulated period of six month, he would be deemed to have opted in favour of pro-rata monthly pension. In regard to the options the letter clarified as under:

"2. In the event of his option in favour of sub clause (i) of clause (1), he will draw pro-rata pension and retirement gratuity for the service rendered under the Government. He will also be eligible to commute upto 1/3rd of his pension.

3. If he opts in favour of sub-clause (ii) of clause (1) he will receive lumpsum amount in lieu of pro-rata pension and retirement gratuity. The lump sum amount will be calculated by applying the commutation table under the CCS (Commutation of Pension) Rules, 1981 applicable on the date of his cessation of service under the Government. The commutation shall be subject to medical examination. The pension so commuted shall not be restored at any stage. "

ii) This condition had been incorporated in terms of Rule 37A of the CCS (Pension) Rules, 1972. Rule 37 and 37A which deal with pension to government servants on absorption in a Government Undertaking etc. are reproduced below:

"37. Pension on absorption in or under a corporation, company or body.—

(1) A government servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits which he may be elected, or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Central Government applicable to him. Explanation. Date of absorption shall be: (i) in case a government employee joins a corporation or a company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body; (ii) in case a government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government the date from which his unqualified resignation is accepted by the Government.

(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint

sector undertakings, wholly under the joint control of Central Government and State Government/Union Territory Administration or under the joint control of two or more State Governments/Union Territory Administrations.

(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive pro rata.

[4] retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

Explanation.-- Body means autonomous body or statutory body.

37-A. Payment of lump sum amount to persons on absorption in or under a corporation, company or body.—

(1) Where a government servant referred to in Rule 37 elects the alternative of receiving the (retirement gratuity) and a lump sum amount in lieu of pension, he shall, in addition to the (retirement gratuity), be granted: (a) on an application made in this behalf, a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of the Civil Pensions (Commutation) Rules; and (b) terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension to be worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable subject to the condition that the government servant surrenders his right of drawing two-thirds of his pension."

iii) The petitioner exercised the option to receive lump-sum amount vide his application dated 17.6.1994. The petitioner was paid 100% commuted value of pension and DCRG on 25.4.1995. 1/3rd pension of the petitioner was restored w.e.f. 25.4.2010 (after fifteen years) as per CCS Pension Rules, 1972 vide PPO order dated 12.11.2010.

iv) The petitioner submitted representations dated 26.4.2013 and 16.10.2013, followed by a legal notice dated 29.11.2013 calling upon the respondents to restore and revive the pro-rata monthly pension against refund of full commutation amount with interest by him. He also submitted a cheque dated 26.4.2013 for Rs.10,19,732/- drawn

on State Bank of Patiala. He relied on instructions of Government of India dated 31.3.1995 whereby, it had been decided to withdraw the facility of 100% commuted value of pension in case of absorbees (Government servants absorbed in Public Sector Undertakings or Autonomous bodies). These representations were rejected vide communication dated 10.6.2014 and the cheque was returned to the petitioner.

v) The petitioner filed the O.A. claiming reversal of the commutation of full pension w.e.f. 25.4.1995 and to grant him monthly pension. He also claimed that monthly pension for the period from 8.3.1993 to 25.04.1995 which had not been paid to him be released.

vi) The case of the respondents was that the petitioner was absorbed on 8.03.1993 vide DOT's order dated 18.03.1994 under the Rule 37 of the CCS(Pension) Rules. The order of his absorption detailed the conditions of absorption including the option to the petitioner to either receive pro-rata monthly pension or lump sum amount in lieu thereof. He opted for 100% commutation. As per Government of India's decision contained in Appendix-1 Chapter-2, Rule-6(1)(ii) of CCS (Commutation of Pension) Rules, 1981, "the commutation of pension becomes absolute in case of absorption, on the date on which the medical authority signs the medical report in Part-III or form-4".

vii) Further the DOP&PW clarified that "the commuted value of pension is required to be calculated taking into account the date of medical examination, the age next birthday with reference to the date

of medical examination and the factor applicable to such Government servant also with reference to age next birthday after the medical examination".

viii) The Medical Report of the petitioner was signed on 2.12.1994 and he received the commuted amount on 25.4.1995. The decision contained in the Office Memorandum dated 31.3.1995 for withdrawing the existing facility of receiving capitalized value equivalent to 100% of commutation of pension on absorption of Permanent Central/ State Government employees in Central of State Public Undertakings was of prospective application. Rule 37A which contained that provision was abolished vide notification dated 25.06.1997. Hence it was argued that withdrawal of 100% commutation order issued by the Department of Pension and Pensioner's Welfare vide OM No.4/42/91-P&PW(D) dated 31.03.1995 was not applicable to the case of the petitioner. Restoration of 1/3rd pension to the petitioner was done w.e.f., 25.04.2010 as per CCS (Pension) Rules, 1972 and there was no infirmity with the same.

3. It is averred by the Applicant that basic pension of the applicant was increased from Rs, 1,976 to Rs 5,905 from 1.1.1996 as per 5th CPC, then to Rs. 23,050 from 1.1.2006 as per 6th CPC and then Rs. 61,050 from 1.1.2016 as per 7th CPC, which he is drawing with dearness relief. On 25.4.1995, Rs. 1,976 was commuted from his pension for 15 years. Corresponding total commuted amount was Rs. 3,55,680 from this Rs. 3,55,680 interest @ 4.75 per annum plus insurance amount based on his medical health and age was deducted

for entire period of 15 years and balance amount of Rs. 3,27,700 was paid to him as commutation loan.

4. It is stated that as per the extant rule applicant was also granted commutation of 100% of his pension w.e.f. 25.4.1995 for receiving lump-sum amount of Rs. 3,27,700 in lieu of his monthly pension. His 1/3 commuted pension was subsequently restored w.e.f. 25.4.2010 at Rs. 8391 plus admissible DA. Later his full pension was also restored at Rs. 23,050 plus admissible DA w.e.f. 25.4.2010 in terms of O.M. dated 23.6.2017. All pension arrears w.e.f. 25.4.2010 has also been paid. The applicant is presently in receipt of monthly pension of Rs. 61,050 plus admissible dearness relief, the pension he had commuted 100% on 25.4.1995 by receiving lump-sum amount.

5. According to the applicant, from 25.4.1995 to 25.4.2010 i.e. 15 years the respondents ought to have deducted from his pension only amount of Rs. 1,976 and pay him residual pension only but they deducted whole of payable pension and did not pay him pension, at all for 15 years; and this way made excess recovery of Rs. 17,76,915.

6. In support of this relief the applicant has taken following grounds:

7. Applicant has referred Rule 37-A dated 9.7.1973 made for excess recovery from absorbee pensioners, Central Govt. Ministries, and departments used different Rules/OMs.

8. The applicant has also referred to the judgment of Apex Court in Common Cause(a registered society) & Ors vs Union of India, (1987) 1 SCC 142, where the Apex court examined commutation having net benefit exceeding due to addition of years of credit. It is argued that judgment does not allow excess recovery by pro rata

increase in Commuted Amount with every increase in Basic Pension and Dearness Relief of the pensioners, which has been done in his case. This judgment quashed in general all provisions in Rules/OMs etc. without specifying ipso facto quashed Rule 37-A of CCS (Pension) Rules 1972. This judgment came into force w.e.f. 1.4.1985, while applicant's commutation was done w.e.f. 24.5.1995, hence excess recovery of Rs. 17,76,915 from his pension has been done in violation of law. The applicant has also placed reliance on the judgment of Hon'ble Apex Court in the case of D.S. Nakara & Ors vs UOI 1983 (1) SCC 305.

9. The applicant also drew the attention of the Bench to the O.M. No. 4/34/2002-P&PW (D) dated 23.6.2017 (Annexure P-30) with the O. A.

10. The applicant also filed C.M. no. 15681 of 2017 in CWP NO. 16071/2016 before Hon'ble High Court with a prayer that as per O.M. No. 4/34/2002-P&PW (D) dated 23.6.2017 (Annexure P-30) with the O. A. The Hon'ble Supreme Court has declared Rule 37-A of CCS (Pension) Rules, 1972 as void ab-initio being repugnant to the Pension Act, 1871. It is further stated that on plain reading of DOP & PW's O.M. NO. 4/34/2002-P& PW (D) dated 23.6.2017 (Annexure) - 30) it is evident that it has been issued after dismissal of Civil Appeal No. 6048 of 2010 and 6371 of 2010 filed by the Government against judgment dated 2.8.2007 in Writ Petition NO. 22207 of 2002 in the matter of K. Ganesan vs UOI & Ors.

11. The Hon'ble Supreme Court directed for restoration of 2/3 pension of Shri K. Ganesan. A similar direction was also issued by the Hon'ble Supreme Court in the matter of Shri K.L. Dhall.

12. The respondents have filed their written statement contesting the claim of applicant. It is stated that the applicant joined Department of Telecommunication (DOT) on 19.05.1969. While working in Telecom Engineer Centre (TEC), DOT, the applicant sought deputation to Punjab Communications Limited (PCL) on his own volition and he was relieved to join PCL vide DOTs letter no.391/24/87-STG.III dated 08.06.1987, initially for one year. The deputation of the applicant to PCL was subsequently extended from time to time for a total period of 5 years. After five years of deputation, neither the applicant nor the PCL (borrower) approached for extension of his deputation period. However, on completion of six years deputation, the applicant persuaded PCL (borrower) to request for another extension, which was not agreed to by the respondents as there is no provision of deputation beyond five years. It was informed by the respondents to PCL (borrower) to either revert the applicant to DOT or to absorb him permanently on completion of 5 years deputation. Accordingly, on his own request and volition, with the agreement of PCL, the applicant was permanently absorbed in PCL retrospectively from 08.03.1993 i.e. on completion of his five year period of deputation, vide DOT order no.391-24/97-STG.III dated 18.03.1994(Annexure P-3). Therefore, the applicant was deemed to have retired from Government Service w.e.f.08.03.1993. The applicant was also asked to opt for either (i) to receive pro-rata monthly pension or (ii) to receive lump sum amount in lieu of monthly pension. This option was afforded to the applicant as per Government of India's instructions contained in Department of Personnel & Training OM No.28016/5/85-Estt.(c) dated 31.01.1986 (Annexure R-1) and OM

no.4(12)/85-P&PW dated 31.03.1987(Annexure R-2). It was made clear to the applicant vide para 3 of the absorption order that option exercised would be final. The applicant exercised option to receive lump sum amount in lieu of monthly pension vide his application dated 17.06.1994 (Annexure R-3).

13. It is further stated that the Order for payment of lump sum amount i.e. 100% commuted value of pension and DCRG for Rs.3,27,700 and Rs.66,600 respectively, along with pension calculation sheet were sent on 17.04.1995 to TEC by the DOT for payment. Accordingly, payments for 100% commuted value of pension and DCRG were made to the applicant on 25.04.1995. Restoration of 1/3rd pension of the applicant was also done w.e.f. 25.04.2010 as per CCS (Pension) Rules, 1972 vide PPO no.113-8/94(106)/TEC dated 12.11.2010 (Annexure R-4) in accordance with DOP&PW OM no.4/79/2006-P&PW(D) dated 06.09.2007 (Annexure R-5). The applicant was absorbed on 08.03.1993 under Rule 37 of CCS(Pension) Rules, 1972, vide DOTs order dated 18.03.1994 (Annexure P-3 of the OA), which shows conditions of absorption of the applicant in PCL including the option to either receive pro-rata monthly pension or lump-sum amount in lieu thereof. The applicant has taken 100% commuted value of pension and DCRG on the basis of his absorption w.e.f. 08.03.1993. The OM dated 31.03.1995 (Annexure P-6) is not applicable in the case of the applicant.

14. It is submitted by the respondents that they have decided to implement Hon'ble CAT's order dated 01.06.2016. In compliance with the above order of the Hon'ble CAT, DOT issued a letter dated 19.09.2016 conveying approval of Secretary (T) for payment of

pension of the applicant for the period from 08.03.1993 to 25.04.21995 with 6% interest on the amount of pension. This amount was paid to him by TEC vide Cheque No.579344, dated 29.09.2016. It is further submitted that the applicant then filed Review Application No.060/00033/2016 before CAT Chandigarh Bench against the order dated 01.06.2016 in OA No.060/1069/2015. The said RA was rejected by the Hon'ble CAT, as not maintainable, vide order dated 04.07.2016. It is further submitted that the applicant then filed CWP No.16071/2016 before Hon'ble Punjab and Haryana High Court against the orders dated 01.06.2016 and 04.07.2016 of Hon'ble CAT, Chandigarh in OA No.060/1069/2015 and RA No.060/00033/2016, raising the same issues i.e. seeking quashing the orders of commutation of full pension and Rule 37-A of CCS (Pension) Rules, 1972, excess recovery of commutation loan etc. It is further submitted that during the pendency of CWP No.16071 of 2016, the Government of India issued OM No.4/34/2002-P&PW (D), dated 23.06.2017 (Annexure-P-30 with the OA) whereby full pension was restored to all absorbee pensioners who had taken 100% lump-sum amount in lieu of pension on absorption in PSUs/Abs in whose case 1/3 pension had been restored after 15 years after expiry of commutation period of 15 years from the date of payment of 100% lump-sum amount. It is further submitted that the applicant also filed C.M. No.15681 of 2017 in CWP No.16071/2016 before Hon'ble Punjab & Haryana High Court with a prayer that as per OM No.4/34/2002-P&W (D), dated 23.06.2017, the Hon'ble Supreme Court has declared Rule 37-A of CCS (Pension) Rules, 1972, as void ab initio being repugnant to the Pension Act, 1871. He alleged that

under the said provision, respondents had made excess recovery of Rs.38,65,929/- from him. Out of this they have paid Rs. 20,89,014 but are still withholding Rs.17,76,915 without citing any valid rules/rhyme or reason.

15. The applicant sent a number of representations wherein he contended that administration grossly erred in lump sum payment after the scheme was withdrawn on issuance of OM dated 31.03.1995 and desired suo-motu corrective action without waiting for litigation. The applicant further demanded to review his entire case and revive his pension from the date of absorption in PCL. The respondents vide letter no.40-06/2003-Pen (T) dated 26.05.2014 (Annexure R-6) conveyed the decision that the request of applicant cannot be acceded. Later vide his representation dated 03.06.2014, the applicant raised the issue of non-payment of his pension from 08.03.1993 to 25.04.1995 and reversal of 100% commutation already dispensed with by DOP&PW w.e.f. 31.03.1995 which was suitably replied to the applicant vide respondent letter no.40-4/2004-Pen(T) dated 11.08.2014 (Annexure R-7). Further the DOP&PW clarified that the commuted value of pension is required to be calculated taking into account the date of medical examination, the age next birthday with reference to the date of medical examination and the factor applicable to such Government servant also with reference to age next birthday after the medical examination. In the case of the applicant, the Medical Report was signed on 2nd December 1994. As such, withdrawal of 100% commutation order issued by the Department of Pension and Pensioner's Welfare vide OM no.4/42/91-P&PW(D) dated 31.03.1995 is not applicable to the case of the applicant.

16. It is stated that during the pendency of CWP No. 16071 of 2016 filed by the applicant before Hon'ble Punjab and Haryana High Court against the order of this Tribunal the Govt. of India issued O.M. No. 4/34/2002-P&w (D) dated 23.6.2017 (Annexure P-30) with the O.A. whereby full pension was restored to all absorbee pensioners who had taken 100% lump-sum amount in lieu of pension on absorption in PSU/Abs in whose case 1/3 pension had been restored after 15 years after expiry of commutation period of 15 years from the date of payment of 100% lump-sum amount. Accordingly, full pension of the applicant was restored at Rs. 23,050 w.e.f. 25.4.2010 and it was also revised to Rs. 61,050 w.e.f. 1.1.2016 consequent to 7th CPC vide PPO No. 113-8/94 (106)/TEC, dated 17.8.2017 (Annexure R-12).

17. We have heard the learned counsel appearing on behalf of respective parties and carefully gone through the pleadings available on record and given our thoughtful consideration to the entire matter.

18. Arguments advanced by the applicant himself and learned counsel for the respondents were heard. The applicant narrated the background of the matter and emphasized that commuted value of his pension on 100% basis was paid on 25.04.1995 was incorrect. At that time the Apex Court had already set aside the provision of 100% commutation of pension and the Government of India issued orders in this regard effective from 31.03.1995. Accordingly, the payment of 100% commutation of pension was illegal and he therefore:

(i) Seeks in relief the refund of the excess recovery of Rs 17,76,915

(ii) Seeks to be compensated for the delay in this payment of refund by way of payment of Interest @18percent for the delayed period.

19. During the course of final hearing in the matter, the respondents have provided across the Bar, a copy of O.M. dated 23.6.2017(which was taken on record), issued by Ministry of Personnel, Public Grievances & Pensions on the subject restoration of full pension of absorbed pensioners in view of order dated 1.9.2016 of Hon'ble Supreme Court in Civil Appeal NO. 6048/2010 and Civil Appeal No. 6371/2010. It has been stated in Para 3 that "the option to draw a lump sum amount in lieu of pensions was withdrawn vide this Department's O.M. NO. 4/42/91-P & PW (D) dated 31st March, 1995. Accordingly, the erstwhile Rule 37-A was omitted from the CCS (Pension) Rules, 1972 vide Notification NO. 4/42/91-P & PW (D) dated 25.06.1997."

20. Quoting the judgment of Hon'ble High Court judicature of Madras, in the case of Sh. K. Ganesan, (an officer in the office of Controller General of Accounts), the Apex Court has held that surrendering of the right for drawal of 2/3rd of Pension after its commutation, as provided under Rule 37-A (b) was repugnant to Section 12 of the Pension Act, 1871 and the petitioner was lawfully entitled for the restoration of his pension after the expiry of the period of commutation of 2/3rd pension. The Hon'ble High Court accordingly directed restoration of 2/3rd pension and payment of arrears accordingly.

21. In a judgment of CAT Ernakulum Bench in the case of P.J. Abraham vs. Financial Advisor & Chief Accounts Officer and Ors.

Decided on 19th July, 2016, the legal aspects of the case of K. Ganesan's as observed by His Lordship Justice F.M. Ibrahim Kalifulla has been quoted, which is as below.

"11. Though we made our anxious consideration to the decisions reported in 1991 (2) SCC 265 (Welfare Assn. Of Absorbed Central Government Employees v. Union of India), 1996 (2) SCC 187 (Welfare Association of Absorbed Central Government employees in Public Enterprises v. Union of India), AIR 1998 SC 2862 (Welfare Associn. Of A.C.G.E. in P.E. v. Arvind Verma) and AIR 2000 SC 3387 (P.V. Sundara Rajan v. Union of India), is none of the decisions, the question as to the prohibition imposed under Section 12 of the Pensions Act to surrender once own right of a pensioner was never considered. In paragraph-13 of the decision of the Honourable Supreme Court reported in AIR 2000 SCC 3387, the Honourable Supreme Court while holding that the absorbees who had commuted 100% pension, continue to remain non-pensioners made clear, such position would be prevalent only till their pension is restored. Therefore, when in the case on hand, when the petitioner who also sought for 100% commutation of pension at the time of his absorption in BHEL in the year 1986, in the light of the decision of the Honourable Supreme Court reported in 1996 (2) SCC-187 (Welfare Association of Absorbed Central Government Employees in Public Enterprises v. Union of India), he was fully entitled for the benefits granted to the Government servants in the common cause case in so far as it related to 1/3 rd pension commuted by him. By virtue of such a declaration of law made by the Honourable Supreme Court which made it clear that the petitioner was nevertheless a pensioner, it will have to be held that as a pensioner, he would be entitled for the protection under Section 12 of the Pension Act, 1871 in so far as it related to surrendering of his rights as provided under Rule 37-A of the CCS Pension Rules."

22. Referring to the provisions of Sections 10 & 12 of Pension Act, 1871 it was further held:

"12. Section 12 of the Pensions Act, 1871 reads as under:

'12. Assignments etc., in anticipation of pension to be void. All assignments, agreements, sales and securities of very kind made by the person entitled to any pension, pay or allowance mentioned in Section 11 in respect of any money not payable at or before the making thereof on account of such pension, pay or allowance or for giving or assigning any future interest therein are null and void.'

13. Under Section 10 as stated by us earlier, while commutation of pension for the whole or any part of it can be opted by a pensioner based on such terms fixed under the Rules, it will have to be stated that such enabling provision providing

for commutation for either part or whole of the pension can only for commutation purposes and that under the guise of commutation, it will not be open for the Government to once and for all wipe of the very right to restoration of such pension after the expiry of the period of commutation. In fact, Rule 37-A clause (b) though uses the expression the commutation of balance amount of pension namely the 2/3 rd of pension, the stipulations contained therein providing for such commutation of 2/3rd pension would be subject to surrendering of the right of Government servant, for drawing the 2/3 rd pension would run counter to the very concept of commutation which will not be in consonance with Section 10 providing for commutation of pension alone and not the right to claim pension after the period of commutation."

23. Referring to the pensioners surrender of right for drawal of 2/3 rd of his pension by agreeing for the terms contained in Rule 37-A of Pension Rules which amounted to a wholesale surrender of his right to pension, the Court in that case ruled:

'14.When under Section 12 of the Act, there is a prohibition imposed on the pensioner himself to barter away his right under very many circumstances except as provided under Section 12-A of the Pensions Act, we are convinced that surrendering of the right for drawal of 2/3 rd of Pension after its commutation as provided under Rule 37-A (b) is repugnant to Section 12 and is straight away hit by the prohibition imposed under Section 12. Consequently any action based on Rule 37-A(b) is wholly illegal and therefore, the surrendering of rights of the petitioner for drawing 2/3 rd pension at the time of its commutation to that extent can not operate against his interest. We therefore, declare that such surrendering rights by the petitioner at the time of his absorption in the year 1986 while commuting 2/3 rd of his pension, was invalid and consequently the petitioner was lawfully entitled for the restoration of his pension after the expiry of the period of commutation of 2/3 rd pension.'

24. The case of the applicant has also been examined by the Hon'ble Punjab and Haryana High Court in C.W.P. No.16071/2016 decided on 12.03.2019, in which Hon'ble Justice Harinder Singh Sidhu, has highlighted the issue concerning the pension of Central Government employees absorbed in public sector undertakings

(absorbees) have been examined by Hon'ble Supreme Court from time to time and held as under:-

"Issues concerning the pension of Central Government employees absorbed in public sector undertakings (absorbees) have been examined by Hon'ble Supreme Court from time to time. It all started with the decision of Hon'ble Supreme Court in *Common Cause v. Union of India*, (1987) 1 SCC 142 which was a petition under Article 32 of the Constitution filed by Common Cause, a registered society and three retired government servants praying to strike down certain provisions of the Central Civil Services (Commutation of Pension) Rules, 1981. As per the Rules then prevalent when a pensioner commuted any part of his pension up to the authorised limit (which in the case of civilians was upto one-third while in the case of defence personnel, it was up to 43 per cent in the case of officers and up to 45 per cent in respect of other ranks) his pension was reduced for the remaining part of his life by deducting the commuted portion from the monthly pension. The contention of the petitioners was that the lump sum amount paid at the time of commutation gets adjusted by about 10 or 12 years and therefore, the Government must be directed to restore the commuted portion of one-third pension. It was also urged that there had been a substantial improvement in the life expectancy of the people in India, hence there was no justification for denying the restoration of the commuted one-third portion of pension after its adjustment in a period of 10 or 12 years. During the pendency of the case the Union of India agreed to restore the commuted portion of the pension in regard to all civilian employees at the age of 70 years or after 15 years, whichever is later, and agreed to make this effective from 1-4-1986. The Court directed that it is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It would be sufficient that on the expiry of fifteen years from the period of retirement such restoration would take place. It was directed to be made effective from 1-4-1985.

25. The Union of India while giving effect to the above judgment denied the same benefit to the absorbees by inserting para 4 in the OM dated 5-3-1987 which read as follows:

"Central Government employees who got themselves absorbed under Central Public Sector Undertakings/autonomous bodies and have received/or opted to receive commuted value for 1/3rd of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension are not entitled to any benefit under these

orders as they have ceased to be Central Government pensioners."

26. In Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India, (1996) 2 SCC 187, the association of absorbed Central Government employees sought quashing of the said para 4 which provided that the Central Government employees who got themselves absorbed under Central public sector undertakings/autonomous bodies and have received/or opted to receive commuted value for one-third of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension are not entitled to any benefit under the said orders as they have ceased to be Central Government pensioners.

27. The Hon'ble Court in its decision considered the scope of Rule 37-A of the CCS (Pension) Rules, 1972 and held that in so far as commutation of one-third of the pension is concerned, the absorbees as well as petitioners in "Common Cause" case stood on similar footing with no difference. So far as the balance of two-third pension is concerned, the absorbees had received the commuted value (terminal benefits) on condition of their surrendering of their right of drawing two-thirds of their pension which was not the case with the petitioners in "Common Cause" case. Thus the denial of benefit given to "Common Cause" petitioners to the absorbees violated Articles 14 and 16 of the Constitution. It was held that the reasoning for restoring one-third commuted pension in the case of "Common Cause" petitioners equally applies to the restoration of one-third

commuted pension in the case of the absorbees. The impugned para 4 in OM dated 5-3-1987 was quashed."

28. The Hon'ble Supreme Court in judgment declined to interfere with the orders dated 2.8.2007 in Civil Appeal NO. 6048/2010 of Hon'ble High Court of judicature of Madras, The matter was accordingly dismissed by the Hon'ble Supreme Court.

29. Subsequently, the matter was examined by the Government of India afresh in consultation with the Ministry of Legal Affairs and Ministry of Finance and it has been decided to extend the benefit of the judgment dated 2.8.2007 of the Hon'ble Madras High Court and the order dated 1.9.2016 of the Hon'ble Supreme Court to all similarly placed absorbed pensioners who had taken 100 lump sum amount in lieu of pension on absorption in PSUs/Autonomous Bodies in accordance with the then existing Rule 37A and in whose case 1/3 pension had been restored after 15 years, may be allowed restoration of full pension after expiry of commutation period of 15 years from the date of payment of 100% lump-sum amount. The absorbed pensioners whose full pension is restored in terms of the above instructions would also be entitled to revision of their pension in accordance with the instructions issued from time to time in implementation of the recommendations of the Pay Commission including 7th CPC.

30. In view of the very clear mandate of the Honorable Apex court as above, which has been enunciated in the Department of Pension and Pensioners Welfares O.M. dated 23.6.2017, we are of the opinion that the relief being sought by the applicant is admissible .Accordingly, the Respondents are directed to deal with the claim of

the applicant for refund of excess recovery from his pension from 25.04.1995 to 25.04.2010 in terms of the provision of OM dated 23.06.2017 of the department of Department of Pension and Pensioners Welfares and pass necessary orders within a period of four weeks' from the date of receipt of a copy of this order. Any arrears payable in terms of the above shall also be payable to the applicant within a period of four weeks thereafter.

31. Applicant has also sought the relief of grant of interest @ 18% per annum on excess recovery made from 25.04.1995 to 25.04.2010. In this regard, we have perused the judgments of the Hon'ble Apex Court, wherein it has been established that where any payment is delayed on account of administrative reasons and there is no fault on the part of the applicant, then it is justifiable to hold that the applicant is entitled to payment of interest. Accordingly, interest @ 6 per cent on the excess recovery made from the applicant's pension from 25.04.1995 to 25.04.2010 is directed to be paid within a period of three weeks' thereafter.

32. Accordingly, the OA is allowed as stated above. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

'SK'