

7

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
---

O.A. 1199/86

Date of Decision 18-5-89

Smt Shakuntla Sardana  
vs

Applicant

Union of India & Ors

Respondents

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman

Hon'ble Mr. B.C. Mathur, Vice Chairman

For the Applicant

... Shri G.N. Oberoi, Advocate

For the Respondents

... Shri M.L. Verma, Advocate

(Judgement of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman)

The main question in this Original Application is whether the Applicant, who is a widow of an ex-employee of the Central Government is entitled to the amount by way of commutation of pension which had been applied for by her husband but had not been paid to him during his life time. It is mentioned in the Application that Shri V.D. Sardana was holding a civil post of Senior Barrack Stores Officer in the MES under CWE Delhi Cantt and retired on superannuation on 31.12.1982. In the year 1976 he was served with a charge-sheet and disciplinary proceedings commenced but were not concluded by the time he attained the age of superannuation. Shri Sardana expired on 15.2.1985. His widow, the Applicant, filed the present OA on 29.12.1986. She has claimed that her husband was entitled to pray for commutation of pension and the same was pending

-2-

when he retired. Since the matter was not finalised before the death of her husband, the widow was entitled to make a claim as his heir before the Tribunal. It was further stated that after the service of charge sheet on Shri V.D. Sardana, he had been promoted by a regularly constituted DPC from the rank of BSO (Gp. B) to SBSO (Gp A). As such, there was nothing against him till 23.11.79. The proceedings which had started upon a charge sheet dated 27.12.1982 were not concluded by the time he retired from service and consequently the said proceedings lapsed and no further sanction of the President under Rule 9 read with Rule 69 of the CCS (Pension) Rules 1972 to continue the same was ever obtained. She, therefore, claimed -

- (a) gratuity;
- (b) commutation;
- (c) revised pay fixation on promotion to Group A post;
- (d) revision of pensionary and other terminal benefits.

On behalf of the respondents, it was stated that Shri Sardana while working as BSO was entrusted with a work of higher responsibility under the overall guidance of CWE without any effect in his rank and pay. For this, he was not entitled to any officiating allowance. Secondly, the fact that Shri Sardana was allowed to cross Efficiency Bar did not absolve the officer from the irregularities committed in his working earlier.

Shri Sardana was served with a charge sheet on 22.12.1982 before the date of his superannuation in respect of having charged 50 MT cement twice while he was employed as a B.S.O. in the office of G.E. Bikaner. As a result, payment of gratuity and commutation of pension was withheld by CDA(P) Allahabad in compliance with the existing rules. The disciplinary proceedings initiated during the service period continued beyond the date of superannuation till the death of the officer on 15.2.85. Gratuity was withheld in terms of paragraph 69(c) of CCS(Pension) Rules 1972 and commutation of pension was withheld in terms of paragraphs 4, 12 and 13 of CCS(Commutation of Pension) Rules, 1981. Refixation of pay of the officer had been initiated and would be paid. Pensionary and other terminal benefits would be reviewed as soon as refixation of pay was completed. The proceedings in disciplinary case were withdrawn by the Army Headquarters by order dated 6.9.85 and the gratuity withheld earlier was paid to the claimant and the delay in payment was due to the pendency of the disciplinary proceedings. Lastly, it was urged that the Applicant had <sup>not</sup> approached the Tribunal within time ~~allowed~~ allowed by law.

We have heard Shri G.N. Oberoi for the Applicant and Shri M. L. Verma for the respondents. Shri Oberoi urged that the widow was entitled to make an Application

before the Tribunal and was entitled to the commutation of pension once the disciplinary proceedings had been withdrawn in 1985. He admitted that the Applicant has received gratuity and the pay after re-fixation. The only matter that remains now is of commutation of pension.

Shri M.L. Verma urged that the Applicant was not entitled to receive any commutation of pension for in the meantime Shri Sardana had also expired.

Before we proceed with the merits of the case, it will be necessary to consider the question as to whether the Applicant had approached the Tribunal within time allowed by law. In the case of V. K. Mehra vs. Secretary, Ministry of Information (ATR 1986 CAT 203), it was held that the Act does not vest any power or authority in the Tribunal to take cognizance of grievance arising out of an order made prior to 1.11.82. The limitation prescribed under Section 21 empowers the Tribunal to entertain an Application when the grievance in respect of an order made is within three years of the constitution of the Tribunal. Consequently, it was held that the Tribunal has jurisdiction under sub-section (2) of Section 21 to entertain an Application in respect of any order made between 1.11.82 and 1.11.85. It appears that no earlier Application had been made for payment of commuted value of pension

nor was any order passed by the authorities except to say that when disciplinary proceedings were initiated payments like gratuity, commutation and other matters were held in abeyance. The proceedings ceased on its withdrawal after the death of the retired employee.

The Applicant made the Application on 21 August, 86 and the Office of the CDA(P) Allahabad by its order dated 4.9.86 informed the Applicant under Rule 81 of the CCS (Commutation of Pension) Rules that commutation of pension was not permissible in this case. A further letter was written by the Applicant on 21st August, 1986 after she received the amount of gratuity due to her husband. She prayed in this letter for the commuted amount of pension also. The OA was filed on 29th December, 1986. It will thus be seen that it was a matter pertaining to payment of commutation on the date of superannuation of the husband of the Applicant i.e. 31.12.1982. This Application in respect of the grievance for non-payment of commuted portion of the pension should have been filed by 1st November, 1986/ (vide Sec. 21(2) of the Act. It was filed on 29.12.1986. It was, therefore, made beyond the period allowed by law.

The argument of the learned counsel was clear that the cause of action arose on the day the Applicant retired from service i.e. 31.12.1982. The argument was

that on his retirement the disciplinary proceedings could not be continued after 1.1.1983. It was also urged that he was entitled to receive commuted portion of pension w.e.f. 1.1.1983. If that be so, the Application should have been filed by 1.5.85. Even that has not been done. We are, therefore, of the view that the Application was not made within time.

However, we have examined the matter even on merits. In view of Rule 4 of CCS (Commutation of Pension) Rules, 1981, commutation of pension was not permissible in his case -

"4. Restriction on commutation of pension


No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorised under Rule 69 of the Pension Rules of the pension, as the case may be, during the pendency of such proceedings."

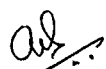
Another factor must be noticed. The Applicant has received the full pension due to her husband upon a refixation of the pay from the date immediately after his retirement i.e. 1.1.1983. That was a clear indication that commutation had not been allowed. Another factor to be noticed is that commutation of pension is

permitted during the life time of the employee. The matter has to be considered and allowed while the retired employee is alive. Since disciplinary proceedings against the employee were continuing which did not come an end until upon his death, the question of agitating now on the commuted value of pension does not arise. We are satisfied there are no merits in the contentions raised by the learned counsel regarding the payment of commuted value of pension of her husband, Shri V.D. Sardana.

Another point that was argued by the learned counsel was that since Shri Sardana had been promoted during the pendency of disciplinary proceedings initiated in 1986, the effect of the disciplinary proceedings was washed away. These facts and the case law cited in support have, in our opinion, no relevance for the disciplinary proceeding which were initiated on 22nd December, 1982 were pending and was the cause of stoppage of pension, gratuity and other retiral benefits.

Having considered the matter, we are of the view that there are no merits in the contentions raised by the learned counsel of the Applicant. This OA is dismissed but we make no order as to costs.

  
(B.C. Mathur)  
Vice Chairman  
18-5-1989

  
(Amitav Banerji)  
Chairman  
18-5-1989