

Central Administrative Tribunal, Principal Bench

O.A.No.3095/2004

New Delhi, this the 23rd day of March, 2007

Hon'ble Mr. L.K.Joshi, Vice Chairman (A)
Hon'ble Mr.Shanker Raju, Member (J)

O.A.No.3095/2004

Shri K.L.Dhall & anr.

....Applicants

(By Advocate: Shri Ashwani Bhardwaj)

Versus

UOI & others

....Respondents

(By Advocate: Shri Rajesh Katyal)

1. To be referred to the Reporters or not? *yes.*
2. To be circulated to other Benches of the Tribunal or not? *yes.*

L.K. Joshi

(L.K. Joshi)
Vice Chairman (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.3095/2004

Hon'ble Mr.L.K. Joshi, Vice Chairman(A)
Hon'ble Mr.Shanker Raju, Member(J)

New Delhi, this the 23rd day of March, 2007

1. Shri K.L. Dhall,
S/o Late Shri Ramji Dass Dhall,
R/o Flat No.19, Block E-2,
Pocket - 3, Sector - 15,
Rohini, Delhi-110 085
2. Welfare Association of Central Govt. Officers,
(CAD) absorbed in PSU (Regd.),
Through its General Secretary Shri K.L. Dhall,
Having its registered office at :
House No. 19, Block E-2,
Pocket - 3, Sector - 15,
Rohini, Delhi-110 085

..... Applicants

(By Advocate: Shri Ashwani Bhardwaj)

Vs.

1. Union of India,
Through Secretary to the Government of India,
Ministry of Personnel, Public Grievances & Pensions,
112, North Block,
Central Secretariat,
New Delhi-110001
2. The Additional Secretary to the
Government of India,
Ministry of Personnel, Public Grievances & Pensions,
(Department of Pensions & Pensioner's Welfare),
Lok Nayak Bhawan, Khan Market,
New Delhi-110003
3. Secretary to the
Government of India,
Ministry of Civil Aviation,
'B' Block, Rajiv Gandhi Bhawan,
New Delhi-110003

..... Respondents

(By Advocate: Shri Rajesh Katyal)

ORDER

Mr. L.K. Joshi, Vice Chairman (A)

The Applicants in this case are Welfare Association of Central
Government Officers (CAD) Absorbed in PSU (Regd.) and Sh. K L Dhall,

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General Secretary of the above Association. The relief they are seeking is restoration of hundred per cent pension, which they had commuted at the time of absorption in National Airports Authority of India (NAAI) after completion of 15 years from the date of its commutation. They are impugning the Pension Payment Order (PPO) issued by the Regional Pay and Accounts Office of the Ministry of Civil Aviation and Tourism by which only one-third pension has been commuted.

2. The Applicants were employees of the Government of India in the Civil Aviation Department (CAD). On the creation of NAAI in 1985, the GOI decided to place the services of the employees of CAD with NAAI without option and without any deputation allowance being available to them. On 15th September 1989 notice of absorption in the regular service of NAAI under Section 13(3) of the NAAI Act 1985 was given to these employees and they were asked to give their options in the form, which was enclosed with the notice by 29th September 1989. Paragraph 2 of the terms and conditions dealing with pensionary benefits is as follows :

"2. Pensionary Benefits

(a) The permanent Govt. servants shall have an option to retain the pensionary benefits available to them under the Govt. rules or be governed by the rules of the National Airports Authority. This option shall also be available to quasi-permanent and temporary employees after they have been confirmed in the NAA.

(b) The Govt. servants who opt to be governed by the pensionary benefits available under the Govt., shall at the time of their retirement, be entitled to pension etc. in accordance with the Central Govt. rules in force at that time.

(c) The permanent servants with less than 10 years service, quasi-permanent employees and temporary employees who opt for the rules of the NAA shall be entitled to an amount equal to provident fund contribution for the period of their service under the Govt. upto the date of permanent absorption in the NAA with simple interest at 6% per annum as opening balance in their CPF account with the NAA.

(d) The permanent Central Govt. servants who have completed 10 years or more of service and who opt for the retirement benefits of NAA will receive pro-rata retirement benefits for the service

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rendered under the Govt. These will be regulated as follows:-

- (i) Employees will have an option either to draw pro-rata pension monthly or to draw a lump sum amount in lieu of 100% pro-rata pension.
- (ii) Where the employees opt in favour of monthly payment of pro-rata pension, the same shall be allowed to be draw with effect from the date of permanent absorption in NAA. No part of pro-rata pension will be allowed to be commuted either at the time of permanent absorption or any time there after.
- (iii) In case of employees who opt in favour of a lump sum amount in lieu of 100% pro-rata pension, the lump sum value shall be worked out on the basis of table prescribed under the CCS(Commutation of Pension) Rules, 1981.
- (iv) In the case of employees covered by clause (ii), the retirement gratuity and for those covered by clause (iii) above both retirement gratuity as well as lump sum commuted value shall be paid on the expiry of a period of 7 years from the date of permanent absorption. The amounts however, can be paid earlier in the event of death/ retirement/ resignation/discharge from service.
- (v) The amounts of retirement gratuity and lump sum value in lieu of pension mentioned in clause (iv) above shall remain with the Govt., and earn interest at the rate prescribed for General Provident Fund deposits from the time for the period they remain with the Govt."

3. The form for option for pension benefits gave the following three options

"(a) Draw prorata pension monthly or

(b) to draw lumpsum amount in lieu of 100% prorata pension or

© to be governed by the pensionary benefits available under the Govt. of India at the time of my retirement in accordance with Central Govt. Rules in force at that time."

The Applicants opted for the option (b) "to draw lumpsum amount in lieu of 100% prorata pension".

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4. The pension benefits of the persons getting absorbed in Public Sector Undertakings (PSU) are governed by Rule 37 and 37-A of the CCS (Pension Rules) 1972. The Rules are quoted below because these are highly nuanced for this case :

"Rule 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 State Bank of India Government or in or under a Body control or financed by the Central Government or a State Bank of India 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 or deemed to have elected, and from such date may be determined, in accordance with the order of the Central Government applicable to him.

Explanation: Date of absorption shall be:-

(i) In a case of Government employee joins a Corporation or a company or body on immediate absorption basis, the date on which he actually joins the corporation or company or body;

(ii) In case a Government employee initially joins 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

1) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in Joint sector undertakings, who under the joint control of Central Government and State Government /Union territory Administration under the joint control of two or more State Governments/ Union Territory Administrations.

2) 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 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.

Rule 37-A: Payment of lump sum amount to person on absorption in or under a Corporation, Company or body.

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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 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."

5. A careful reading of the Rule 37-A will show that under 37-A(1)(a) payment of lump sum amount of one-third of the pension admissible to the government servant is permitted to him/her on application and terminal benefits of the remaining two-thirds is permitted under Rule 37-A(1)(b) "*subject to the condition that the government servant surrenders his right of drawing two-thirds of his pension*" (emphasis ours). On 9.12.1986, the Hon'ble Supreme Court of India (SC), in writ petition numbers 3958-61 of 1983, in the **Common Cause: A Registered Society and Ors. V. UOI** directed the Government of India to restore one-third of the commuted pension 15 years after its commutation. The Department of Pension and Pensioners Welfare (P&PW) issued an OM No. 34/2/86-P& PW dated 5.03.1987 restoring one-third of commuted pension after 15 years of commutation. It included paragraph 4 by which the employees of PSUs were precluded from the purview of this OM. The paragraph is as follows:

"4. Central Government employees who got themselves 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."

6. The Hon'ble Supreme Court in its judgement dated 15.12.1995 in

Welfare Association of Absorbed Central Government Employees in

Public Enterprises & Ors. V. UOI and Anr. with P V Sundararajan &

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Anr. V. UOI in writ petition no. 567 of 1995 quashed condition 4 from the OM dated 5.03.1987. This was deleted by OM no.4/3/86 P & PW(D) dated 30.09.1996.

7. The Department of P & PW issued an OM dated 5.07.1989 on the subject of settlement of pension term etc. in respect of government employees transferred en-masse to central PSUs. In the above cited OM paragraph 1(d) reads as follows:

"1. d) The permanent Central Government Servants who have completed 10 years or norms of service and who opt for the permanent benefits of a PSU/Autonomous Body will receive, pro-rata retirement benefits for the service rendered under the Government. These will be regulated as follows:-

- i) Employees will have an option either to draw pro-rata pension monthly or to draw a lump sum amount in lieu of 100% pro-rata pension.
- ii) Where the employees opt in favour of monthly payment of pro-rata pension, the same shall be allowed to be drawn with effect from the date of permanent absorption in a PSU/Autonomous Body. No part of pro-rata pension will be allowed to be commuted either at the time of permanent absorption or any time thereafter.
- iii) In the case of employees who opt in favour of a lump sum amount in lieu of 100% pro-rata pension, the lump sum value shall be worked out on the basis of table prescribed under the CCS (Communication of Pension) Rules 1981.
- iv) In the case of employees covered by clause (ii), the retirement gratuity and for those covered by clause (iii) above, both retirement gratuity as well as lump sum commuted value shall be paid on the expiry of a period of 7 years from the date of permanent absorption. The amounts, however, can be paid earlier in the event of death/ retirement/ resignation/ discharge from service.
- v) The amount of retirement gratuity and lump sum value in lieu of pension mentioned in clause (iv) above shall remain with the Government, and earn interest the rate prescribed for general Provident Fund deposits from time to time for the period they remain with the Government."

The Applicants opted for the option 1(d)(iii).

8. The learned Counsel for the Applicant would contend that the Applicants are not governed by Rule 37-A but by the provisions of the OM no. 4/18/87-P & PW(D) and further that these two are different and have to

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be read differently. Under Rule 37-A of 1972 Rules, employees getting 100% commutation of pension had to surrender their right of drawing two-thirds of their pension. It has been forcefully argued that there is no such condition in the above cited OM dated 5.07.1989. The employees were never asked to surrender their rights of drawing two-thirds of their pension. The only condition, it is contended, is given in paragraph 1(d)(iv) of the OM of 5.07.1989, which reads :

"1(d)(iv) In the case of employees covered by clause (ii), the retirement gratuity and for those covered by clause (iii) above, both retirement gratuity as well as lump sum commuted value shall be paid on the expiry of a period of 7 years from the date of permanent absorption. The amounts, however, can be paid earlier in the event of death/ retirement/ resignation/ discharge from service."

9. It is further added that the Applicants were also never given the option of commuting one-third of pension. In this context attention has been drawn to the letter dated 22.09.1989 by the Under Secretary, Ministry of Civil Aviation & Tourism to the Chairman, NAAI paragraph 1(d)(i) reads as follows : "i) Employees will have an option either to draw pro-rata pension monthly or to draw a lump sum amount in lieu of 100% pro-rata pension." This clearly shows the difference between the two. Moreover, it is pointed out that under the provisions of the OM dated 5.07.1989 the employee would get retirement gratuity and commuted amount after seven years, whereas under Rule 37-A the amount would be given immediately on absorption, which amplifies the difference between the two. It has further been contended that realising the import of restoration of commuted value, the Government withdrew the facility of commutation of 100% pension by OM no. 4/42/91-P&PW(D) dated 31.03.1995. The relevant paragraph of the above cited OM is as follows :

"3. The proposal to review the existing terms and conditions of absorption had been under consideration of the Govt. for quite sometime past. The President is now pleased to (sig) that the existing terms and conditions of absorption shall stand partially modified to the extent indicated below :-

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- i) The existing facility of receiving capitalization value equivalent to 100% commutation of pension on absorption shall stand withdrawn;
 - ii) The existing facility to draw pro-rata monthly pension from the date of absorption (with option to commute 1/3rd pension wherever admissible shall continue to exist."

10. The learned counsel for the Respondents has vehemently contended that there is no difference between Rule 37-A and the DOP&T OM of 5.071987, which have to be read in harmony. An argument has been advanced that both rely for calculation on commutation table. It is contended that the judgement in P V Sundararajan (supra) is confined only to one-third portion of commuted pension and not the rest. In this context reliance has been placed on the order of the Tribunal (Madras bench) in **K Ganesan V. UOI and Anr** in OA No. 471 of 2001 in which it has been held as follows :

"In view of the above position, we hold that on surrendering their right of drawing two thirds of their pension, the right to restoration of the two thirds pension after expiry of 15 years automatically gets extinguished.

8. With regard to the plea of the applicant that when 1/3rd pension has been restored after the expiry of 15 years it should equally apply to 2/3rd pension as well, we are not inclined to agree with the said submission made by the applicant in view of our reasoning set forth in the preceding paragraph. As mentioned earlier, those who had commuted their 2/3rd of the pension they formed a distinct group and they did so under different conditions as has been obtaining at the relevant point of time. It is not as if they agreed to do so without any knowledge or without any compensation. They did so even though they had the option of drawing the pro-rata pension. Further they were paid lumpsum amount by way of full commutation of the entire pension. We, therefore, hold that the applicant along with similarly placed persons constitute a different and separate group and cannot claim parity with those who had opted to commute a portion of the prorata pension. It may be easy to make a statement saying that when 1/3rd pension is restored, why not the 2/3rd as well. Here it must be understood that the conditions under which 1/3rd pension is restored are totally different and therefore there can be no comparison. That apart these issues have already been settled by a catena of decisions of the Apex Court cited supra."

Reliance has also been placed on **Sh. Anant Ramaiah V. UOI**, CAT (Bangalore Bench), OA No. 275/2001 in which it has been held that :

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"Ultimately, Supreme Court held that the benefit of the judgment in Common Cause case could not be available to the persons who have commuted entire pension at the time of absorption in Public Sector Undertaking. The Supreme Court distinguished common cause case by notifying that that was the case in which the employees had commuted one-third of the pension and not entire pension and in those circumstances by relying upon Rule 37A of CCA (CCS) Rules, the court directed to restore one-third of the pension with all the attendant benefits. Further by relying upon the judgment in the Welfare Association case, 1991 2 SCC 265, the Hon'ble Supreme Court was pleased to direct the respondents for restoration of one-third part of the pension with further direction to pay Dearness Relief calculated on the basis of the full pension by observing that those who commuted 100 per cent pension would continue to remain non-pensioners till their pension is restored. Hon'ble Supreme Court further observed that excepting the Dearness Relief the petitioner (applicant herein) would not be entitled to any other benefit."

11. Another argument that has been advanced is that in the OM of 5.07.1989 it has been stated that it be governed by the rules in force, in paragraph 1(b), which is as follows :

"1(b) The Government servants who opt to be governed by the pensionary benefits available under the Government, shall at the time of their retirement, be entitled to pension etc. in accordance with the Central Government rules in force at that time."

It is also argued that paragraph 1(d) is only to regulate the payment of pension.

12. It would be seen from the above that there are substantial differences between the conditions for restoration of commuted pension in Rule 37-A, OM of 5.07.1989 and the conditions of absorption in NAAI. Most important point is about surrendering the right to two-thirds pension, which is a part of Rule 37-A, but such a condition has not been a condition of absorption of the Applicants in NAAI. In P V Sundararajan (supra) the Hon'ble Supreme Court has observed as follows :

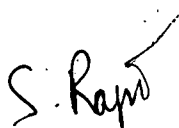
"From the above extracts, it will be seen that a clear-cut distinction is made in Rule 37-A itself between one-third portion of pension to be commuted without any condition attached and two-third portion of pension to be received as terminal benefits with condition attached with it. It follows that so far as commutation of one-third of the pension is concerned, the petitioners herein as well as petitioners in 'Common Cause' case stand on similar footing with no difference. So far as balance of two-third pension is

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concerned, the petitioners herein have received the commuted value (terminal benefits) on condition of their surrendering of their right of drawing two-thirds of their pension."

13. It is clear that ~~where~~^{where} the pensioners have surrendered their right as regards two-thirds pension in P V Sundararajan (supra), whereas in the instant case there is no such commitment. As we have discussed earlier the Applicants had no option for commuting one-third pension. They had to commute 100% pension without being obliged to surrender their right over two-third of pension.

14. Considering the rival contentions we direct the Applicants to submit a fresh representation to the Ministry of Civil Aviation, which would consider the representation/s along with the averments made in this OA in consultation with the concerned Department of Pension and Pensioners Welfare and any other Ministry/ Department of Union Government in the light of our observations in this order within three months of receiving a fresh representation from the Applicants and pass a speaking order on such representation with liberty to the Applicants to take appropriate legal remedy if their grievance survives. No costs.


(Shanker Raju)
Member (J)


(L.K. Joshi)
Vice Chairman (A)

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