

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA NO. 47 OF 1992

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

(V)

New Delhi, this 30<sup>th</sup> day of October, 1996.

1. R.S. Saxena, r/o C4E/P-II/167  
Janak Puri, Delhi-58.
2. R.P. Jain, r/o 134 Rishab Vihar  
Near Karkar Dooma  
Village, Delhi - 92 ..... Applicants

(By Shri Ajit Pudiserry, Advocate)

Vs.

1. Union of India through the  
Secretary M/o Personnel,  
Public Grievances and Pensions,  
North Block, New Delhi.
2. The Comptroller & Auditor  
General of India, New Delhi ..... Respondents

(By Shri P.H. Ramchandani, Advocate)

ORDER

HON'BLE SHRI R.K. AHOOJA, MEMBER (A)

The applicants who were originally working in the office of the Director of Audit joined the Rural Electrification Corporation (REC for short) on deputation and later on were absorbed in the service of that Corporation. Both the applicants were granted retirement benefits disburseable to them from the date they completed 30 years of service in the Government. Applicant No.1 was absorbed in the REC w.e.f. 23.10.76 and the retirement benefits were paid to him w.e.f. 26.5.85. Applicant No.2 was absorbed in the service w.e.f. 20.1.75 and the retirement benefits were sanctioned w.e.f. 17.7.88. The first grievance of the applicants is that they were entitled to their retirement benefits from the date of absorption in REC and hence they claim the arrears of pension from the date of their absorption to the date from which it was sanctioned. Their

86

second grievance is that the Respondents have wrongly denied them the benefits of liberalised pension rules on the ground that since Applicant No.1 had already secured full commutation of pension, he did not come within the ambit of the definition of Central Government pensioners on the date the liberalised pension rules became effective. (b)

2. The respondents contest the claims of the applicants and submit that the retirement benefits were correctly determined and disbursed to the applicants on the basis of the relevant rules and further that the interpretation of the rules adopted by them has been upheld by the Supreme Court in Civil Appeal No.1124 of 1985 decided on 13.2.1991.

3. We have heard the learned counsels on both sides who have also submitted written arguments which have been taken on record. The case of the applicants in brief is that under Rule 37 of the CCS Pension Rules, a Government employee on permanent absorption is deemed to have retired from the service of the Government and thus becomes entitled to pension as a matter of right for the period of service rendered by him under the Government, from the date of his retirement. The respondents had fixed their pension under the OM No.F.24(12)-EV/66 dated 16.6.67 according to which the ~~pro rata~~ pension, gratuity etc. would be disburseable only from the date the Government servant would have normally superannuated had he continued in Government service. The same Rules were amended by OM No.F.44(8)-EV/71 dated 19.6.72, according to which the terminal benefits would be disburseable either from the earliest date from which the government servant could have voluntarily retired or from the date of absorption in the undertaking/Corporation, whichever is later. The applicants submit that another OM was issued

Dv

on 8th April 1976 (Annexure A) on the subject of permanent transfer of government servants to autonomous bodies. As per para 15 thereof, a govt. servant who is permitted to be absorbed in the public interest in a public sector undertaking or autonomous body is deemed to have retired from government service from the date of his absorption. Para 16 provides that the disbursement of the retirement benefits should be authorised from the date indicated in government's letter allowing the govt. servant to be absorbed in the public sector undertaking or autonomous body. Thus, applicants submit, it is clear that the disbursement of pension became due from the date of absorption and not from the date of either completion of 30 years of service or the earliest date from which the applicants could have sought voluntary retirement. The learned counsel, Shri Ajit Puddiserry also drew our attention, in this context, to the compendium of instructions regarding absorption in public sector undertakings and stated that Central Government employees being absorbed in PSUs permanently are entitled to pro rata pension or commutation thereof from the date of absorption.

4. Shri Ramchandani, Senior Counsel for the Respondents, has firstly urged the dismissal of the application on the ground of laches and limitation since the claim has been made late. The application was filed on 6th January 1992 while the claim for arrears is for the period from 23.10.76 to 26.5.85 in respect of Applicant No.1 and 20.1.75 to 17.7.88 in respect of Applicant No.2. In either case, the claim has been preferred before us much too late. We are not satisfied with the reasons advanced for

On

condonation of delay and we find this claim clearly time barred and therefore do not consider it necessary to further examine this aspect of the applicant's case.

(18)

5. The second grievance of the applicant is for the benefit of the liberalised pension rules. Here, due to the recurring cause of action, limitation would not apply. The respondents say that the OM dated 8.4.1976 (Ann. A) para 4(vii) had specifically prescribed that any further liberalisation of pension rules decided upon by the govt. after the permanent absorption of a Government servant in a public undertaking/autonomous body would not be extended to him. Further, vide OM dated 22.10.1983 (Ann.R-8), Central Government employees who got themselves absorbed under central public sector undertakings/autonomous bodies prior to 1.4.1979 and who had received commuted value for 1/3rd of pension as well as terminal benefits equal to commuted value of balance amount of pension are not entitled to any benefit under the liberalised pension formula as they were not central govt. pensioners as on 1.4.79. Shri P.H. Ramchandani, learned counsel for respondents points out that this provision in the OM dated 22.10.1983 (R-8) was challenged before the Supreme Court which held in Civil Appeal No.1124 of 1985 that such Central Govt. employees who had been permanently absorbed and had got full commutation fall in a different class altogether and are not entitled to claim any benefit granted to Central Govt. pensioners.

6. Shri Ajit Puddiserry, learned counsel for the applicants, on the other hand submits that in the case of Welfare Association of Absorbed Central Govt. Employees in Public Enterprises Vs. Union of India 1995(7) SCALE 295, Supreme Court have held that petitioners who are absorbed in

DN

(19)

public sector undertakings are entitled to the restoration of the 1/3rd of commuted pension, and that in this respect they are on the same footing as the petitioners in the "Common Cause" case. The learned counsel pointed out that the aforesaid case has been decided by a three-Member Bench of the Supreme Court and therefore supersedes the view taken in Civil Appeal No.1124/85 as well as Welfare Association of Absorbed Central Govt. Employees Association 1991(2) SCC 265. He therefore urges that the Supreme Court has now held persons such as the applicant in the present OA to be "Existing Pensioners" who are entitled to the benefit of liberalised pension rules.

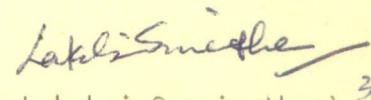
7. We have carefully considered this aspect but are unable to agree with the arguments of Shri Puddiserry. It has been decided in the 1995 case aforesited by the Supreme Court, that the absorbees are on par with the "Common Cause" petitioners in as much as they are entitled to restoration of 1/3rd of commuted pension. It is to be noted that the Apex Court has not, in this judgement, decided in favour of restoration of the remaining 2/3rd pension which has also been commuted. Thus, the absorbees who have received 100% commutation are not brought totally on par with the "Common Cause" petitioners. Further more, restoration of value of 1/3rd pension means restoration of the pension sanctioned and does not imply the revision or enhancement of this pension. To say that in respect of restoration of 1/3rd pension application of Rule 5 of the 1987 OM of the Govt. has been set aside does not mean that para 5 of the 1983 order also goes since the former is concerned with the restoration of the commuted value of a part of pension and the latter deals with the enhancement of pension as per liberalised pension.

N.

rules. The interpretation of the Supreme Court in Civil Appeal 1124/85 in respect of Para 5 of the 1983 order therefore still holds the field. (20)

8. In view of the above discussion, we find no merit in the case of the applicants. The application is accordingly dismissed. No order as to costs.

  
(R.K. Ahooja)  
Member(A)

  
(Smt. Lakshmi Swaminathan) 30/10.  
Member(J)

/avi/