

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.62/93

19

New Delhi this the 5th Day of November, 1993.

HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A)

Shri R.B. Saxena
Son of late Sh. Kanwar Bahadur
Resident of D-313, Nirman Vihar
Delhi-110 092.

.... Petitioner

(By Advocate Sh. P.S. Kakkar)

versus

1. Union of India
through Secretary, Ministry
of Personnel,
Deptt. of Pension & Pensioners' Welfare
Nirvachan Sadan,
New Delhi.
2. Principal,
Secretary,
Prime Minister's Office
South Block,
New Delhi.
3. Pay & Accounts Officer(III)
R.K. Puram,
New Delhi.

(By Advocate Sh. N.S. Mehta, Sr. Standing counsel)

ORDER

The applicant Sh. R.B. Saxena is aggrieved by the impugned letter dated 9.11.1992 rejecting his representation for restoration of his commuted pension after the expiry of 15 years from the date of his retirement.

The admitted facts of the case are these. The applicant at the time of his retirement was holding the post of Deputy Director of Estates(Ex-Officio Under Secretary) to the Govt. of India. He retired in the afternoon of 30.4.1974 after attaining the age of superannuation. On 2.4.1975 he was sanctioned commuted pension after medical examination as provided in the rules applicable at that time. On the expiry of 15 years from the date of retirement

on 1.5.1989, the applicant claims to have become eligible for restoration of the commuted portion for his pension. However, he was informed by letter dated 27.7.1989 by the Manager of the Syndicate Bank that the 15 years period for restoration would be calculated from the date of commutation of applicant's pension and not from the date of retirement. A number of representations were submitted by him during the period 1989 to 1990. The impugned letter dated 9.11.1992 reiterated the stand taken by the respondents earlier i.e. the period of 15 years would be calculated from the date of commutation of the pension and not from the date of retirement. The applicant's claim is for Rs.1892/- with interest for the period from 1.5.1989 to 1.4.1990 with 18% interest on delayed payment.

We have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant has argued that his case is covered by the order dated 5.3.1987 issued by the Deptt. of Personnel & Pensioners' Welfare based on the judgement of the Hon'ble Supreme Court in common cause, a Registered Society & Ors. Vs. U.O.I. (AIR 1987 SC 2107). The relevant portion of the afore mentioned circular is extracted below:-

"The question regarding implementation of the Supreme Court Judgement has been under consideration of the Government. After careful examination of the above judgement, the President has now been pleased to decide that only such Central Govt. Pensioners who have commuted a portion of their pension and on 1.4.1985 or thereafter have completed or will complete 15 years from their respective dates of retirement, will have their portion of pension restored."

Sw

12

In para 6 of the above judgement, the Hon'ble Supreme Court observed that 'the age of superannuation used to the 55 years until it was raised to 58 years. This is not necessary to refer to the age of commuted pensioner when the benefit would be restored. It is sufficient to indicate that on expiry of 15 years from the period of retirement such restoration would take place. While agreeing to the 15 years period, the Hon'ble Supreme Court observed that an addition of two years to the 12 year period necessary for the recovery on the basis of years of purchase, justifies the adoption of the 15 year rule. It is admitted by the respondents that a number of officers have received the benefit of restoration of their commuted pension under this circular. However, later on the matter was referred to the Attorney General of India to ascertain the true scope and contents of the judgement and a view was taken that the pensioners would be entitled to have the commuted portion of pension restored on expiry of 15 years from the date of retirement only when commutation was simultaneous with their retirement. In other cases where the commutation is subsequent to the retirement causing thereby a time gap between the two events, the restoration of commuted pension will be 15 years from the date of communication. On this basis a clarificatory circular was issued on 22.9.1990^{6w}. It was mentioned that the earlier circular providing for 15 years from the date of retirement was based on the assumption that the reduction in pension on account of commutation which takes place only after the lump sum payment of commuted amount, may be discontinued after the commuted amount paid in lump sum together notional interest is by and large, fully adjusted by that portion of pension which would not actually paid monthly in view of

6w

13

commutation. It was clarified that the cases for pension of commuted value of pension during the first month of retirement leading to appropriate reduction on account of commutation in the first pension itself will only be eligible for restoration after 15 years of date of retirement. In all other cases, the period will be reckoned from the date of commutation.

The learned counsel for the respondents has also stated that the Supreme Court in their judgement dated 12.4.90 in writ petition No.1068/87 have clarified the date from which the period of 15 years will be reckoned and have stated that "the Writ Petition have the common cause was on behalf of the government servants who had commuted their pension partially and this court for the reasons indicated in the judgement came to hold that on the expiry of 15 years from the date of commutation the entire pension revives. It was argued that this judgement was only reiterated the in the O.M. of 1990 and as held by the Full Bench in R.D. Gupta & Ors. Vs. Union of India & Ors. (Full Bench decision (CAT Vol.II)) such observations attract Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding. Thus, it is not open to this Tribunal to reinterpret the judgement of the Supreme Court in this regard. The learned counsel for the applicant relying on the observation of the Supreme Court in the case of Goodyear India Ltd. Vs. State of Haryana (AIR 1990 SC 781), argued that this judgement of the Supreme Court clearly mentions that the period of 15 years will count after the date of retirement. It was argued that at that time the rules provided for a medical examination which meant that in almost all the cases there was a gap between

BN



the date of retirement and the date of commutation of pension. The observations of the Supreme Court that two years may be added that all such factors to the purchase price was to cover all such exigencies. This is why 2 years were added to purchase price to arrive at the uniform criteria of 15 years. The subsequent interpretation by the government was, therefore, unwarranted. As regards observations of the Supreme Court in the Writ Petition No.1068/87, it was argued that this specific point was not being adjudicated and the case under consideration was of the Govt. employees who were absorbed in the public interest in the PSUS and in whose case the date of retirement was the date of commutation of pension.

The applicant retired on 30.4.1974 and 15 years period as prescribed in the O.M. dated 5.3.1987 expired on 1.5.1989. Even if the observations made by the Supreme Court in its judgement dated 23.4.1990 cited above is taken into account, on 1.5.1989 we have before us only the earlier judgement of the Supreme Court and the O.M. dated 5.3.1987 both of which clearly provided for the period being counted after the date of retirement. Without commenting on validity of the O.M. dated 2.8.1990, it can be said that it will have only prospective application. The respondents have admitted that the cases of a number of pensioners were decided on the basis of the instructions contained in the earlier circular of 5.3.1987 and this is also acknowledged of the para-4 of the circular dated 22.8.1990^{BW} which mentions settled cases need not be reopened. We, therefore, hold that the circular dated 22.8.1990^{BW} clarifying that the commuted portion of the pension would be restored after the

Ln

15

expiry of 15 years from the date of commutation and not from the date of retirement will not be applicable to the case of the applicant.

In view of the foregoing considerations, the applicant is entitled to succeed. The respondents are directed to sanction an amount of Rs.1892/- for the period from 1.5.1989^{B.N.} to 1.4.1990 @ of Rs.172/- P.M. as amount due to him. Interest of 10% shall be payable from 1.4.1990 till the actual date of payment. No costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 5/11/93

Member(A)

/vv/