

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 19th of November 2011)

Hon'ble Mr. Justice B. N. Shukla, Member (J)

Original Application No. 1328 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

S. N. Saigal, S/o Late N.B. Saigla
Aged about 62 years,
R/o 67, GHI, 5th Avenue, Smith Road,
Civil Lines, Allahabad.

Advocate for applicant : Mr. S. S. Sharma.

..... Applicant

Versus

1. Union of India through General Manager,
North Central Railway,
Headquarters Office,
Allahabad.
2. The Divisional Railway Manager,
North Central Railway,
DRM Office,
Allahabad
3. The Senior Divisional Operating Manager,
North Central Railway, D.R.M. Office,
Allahabad.

..... Respondents

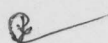
Advocate for Respondents : Mr. P. Mathur.

ORDER

This O.A. has been filed by the applicant for the following main relief:

- (a) To pay commutation of pension immediately after his retirement on medical ground on 17.12.1996 at the age of 55 years instead of w.e.f. 1.3.2002 at the age of 61 years as paid to him.
- (b) For restoration of commuted portion of pension in the year 2011 instead of in the year 2017 due to delay in payment of commutation of pension.
- (c) To pay a sum of Rs. 58,752/- to the applicant, difference of commutation of pension with interest at the rate of 18% per annum from the date it is due on 17.12.96 to the date it is actually paid to the applicant.

2. It is case of the applicant that the applicant is retired railway employee and retired from railway service on 17.12.1996 on medical ground from the post of Guard Mail Express and respondents did not make payment of commuted value of pension w.e.f. 17.12.1996, the date of retirement of applicant on medical ground. It is further pleaded that the departmental disciplinary enquiry was initiated against the applicant in which show cause notice was issued for the punishment and his representation was not considered, that the applicant being aggrieved by the punishment, he filed O.A. No.982/98 by challenging the show cause notice dated 10.6.1997, an action of disciplinary authority in not deciding his representation dated 30.6.1997 and 11.7.1997 and during the pendency of the aforesaid OA the disciplinary authority cancelled the memorandum dated 10.6.1997 proposing a cut of 10% pension for 5 years and the



applicant was exonerated all the charges levelled against him but no action was taken to make the payment of retiral dues and pensionary benefit to the applicant nor his house was released from mortgage by the railway department. That, in O.A. No. 982/98 there are direction to the respondents that all retiral benefits shall be paid by the respondents to the applicant within stipulated time even then respondents did not obey the orders and filed Review Application in the Tribunal. It is further pleaded that the applicant was kept under medical examination from 15.11.1995 to 04.12.1995 and was declared unfit medically to work as Guard and on 11.1.1996 the screening committee examined the applicant for alternative job and the applicant accepted the same but thereafter, applicant was offered lower post than the post he was declared fit by screening committee.

3. In counter affidavit filed on behalf of the respondents it is pleaded that the applicant was retired from Railway Service w.e.f. 21.11.1996 on medical ground and was sanctioned invalid pension and as such he is eligible to commute a fraction of pension upto the extend of 40% of his pension after medical examination and a report of the medical authority as per the provision Rule 19 of Railway Service (Commutation of Pension) Rules, 1993 (Annexure CA-I).

It is further pleaded that departmental proceedings were pending on the eve of his retirement and the applicant was eligible for commutation of only a fraction of pension upto the extent of 40% and that too after finalization of departmental proceeding.

It is also pleaded that applicant did not vacate the railway quarter even after the conclusion of D & AR case and on conclusion of disciplinary proceedings the final pension was sanctioned and the



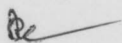
applicant authorised for his payment. It is case of the respondents that Chief Medical Superintendent, Allahabad was advised on 23.01.2001 to arrange for medical examination of the applicant by the appropriate medical authority and the applicant was declared fit for commutation of pension on 18.10.2001 with a loading of one year.

4. Rejoinder affidavit has also been filed almost reiterating the same facts of the OA.

5. Heard learned counsel for the parties at length and also gone through the written submission filed by the learned counsel for the respondents. 1. short point marked in this case is that from which date the applicant entitled to commute value of his pension 2. what will be the amount of commuted value of pension.

6. As regard the first issue, it is an undisputed fact that the applicant was retired from railway service on medical ground w.e.f. 17.12.1996. He applied for commutation of his pension in the year 2001. The Chief Medical Superintendent, Allahabad was requested on 23.01.2001 to arrange for medical examination of applicant by the appropriate medical authority and the applicant was declared fit for commutation of pension on 18.10.2001 with a loading of one year. The photo-copy of the medical report placed at Annexure CA-IV.

7. It is case of the respondents that since the applicant was retired on medical ground as such he was eligible for commutation of his pension after the medical examination as per the proceedings Rule 19 of the Railway Service (Commutation of Pension) Rules, 1993 (Annexure CA-I).



8. It is case of the applicant that in departmental proceedings he was exonerated and the applicant would be entitled to receive the commutation of pension on conclusion of departmental proceedings against him and the commutation must be allowed from the date of retirement and from the date when the disciplinary proceedings were finalized. He has placed reliance on two judgments of CAT, which are as under:-

(i) **Awadhut Vasudeo Waikar Vs. UOI and Ors. in OA No. 294 of 1995,** decided on April 12, 1996. In this case, it was held that commutation of pension must be allowed from the date of retirement and not from the date when the disciplinary proceedings was finalized.

(ii) **R.S. Singh Chauhan Vs. UOI & Ors. in O. A. No. 508 of 1999** decided on 27.11.2000. In this case the same view is up-held as in the case of Awadhut Vasudeo Waikar Vs. UOI and Ors.

9. In both the cases, cited and referred to above the concerned employees had retired on superannuation and not on medical ground. The applicant had filed O.A.No.982/1998, against which the Review Application was filed by the respondents which was decided on 26.08.2003. Plea of the respondents is that after the decision (11.5.2001), the applicant was directed to undergo medical examination as per Rules before the medical Board on 18.10.2001 for payment of commutation of pension with one year loading and thereafter, he has been paid commutation of pension at the purchase value @ $9.81 \times 12 = 117.72$ at the age of 61 years i.e. $2550 \times 12 \times 9.81 = 3,00,186/-$ w.e.f. 01.03.2002.



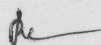
10. It is case of the applicant that he was paid commutation of pension w.e.f. 18.2.2002 on the basis of the age of 60 years + one year of his loading as under:-

- (i) Basic pay Rs. 8475/-
- (ii) 40% commutation of pension i.e. Rs. 2550/-
- (iii) Purchase value - $9.81 \times 12 = 117.72$

Grievance of the applicant that he has been paid less amount worth Rs. 58,752/-.

11. As discussed earlier the applicant retired from railway service on 17.12.1996 on medical ground. He was sanctioned invalidated pension in view of the provision, was only entitled to commute his fraction of his pension up to extent of 40% and that too after medical examination. It is case of the respondents that immediately after retirement the applicant was paid authorized provisional pension Group Insurance and Provident Fund, except the commutation of pension and retirement gratuity, which was withheld on the ground of the pendency of the disciplinary case. Nothing was due on conclusion of the disciplinary proceedings and final pension was sanctioned and the applicant was authorised for its payment and accordingly same was immediately released infavour of the applicant. The retirement gratuity of the applicant was withheld in view of the standing instruction and guidelines for not vacating the Railway accommodation provided to the applicant during his service.

12. In the OA plea has been taken from the side of applicant that the administration bore grudge against the applicant because he was Office Bearer of the Union but it has been specifically denied in the



counter affidavit and prima-facie no prejudice and bias attitude of the respondents is proved. In case of Awadhut Vasudeo Waikar Vs. UOI and Ors. (Supra), it was held that the government servant is eligible from commuted value of pension from the date of retirement with interest, but in this case the employee concerned was retired from service on medical ground and this benefit was allowed to the employee after conclusion of departmental proceedings. Annexure CA-I is the photo stat copy of railway instruction under Rule 19 of the Railway Service (Commutation of Pension) Rules, 1993. In this Rule eligibility criteria has been given and it is mentioned therein that *an applicant who (i) retires on invalid pension under Rule 55 of the Railway Pension Rules ii-----*

(iii) is compulsorily retired from service as penalty is granted pension under rule 64 of the Railway Pension Rules

(iv)-----

(v)-----

shall be eligible to commute a fraction of his pension subject to the limit specified in rule 6 after he has been declared fit by the appropriate medical authority.

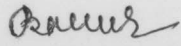
CA-II is a photo-stat copy of the abstract of Rule 13(5) of the Railway service (Commutation of Pension) Rule, 1993 which deals with commutation of pension without medical examination. Thus, differences have been made in the rules regarding commutation of pension after medical examination and commutation of pension without medical examination.

Rs

13. As discussed earlier, the applicant was subject to medical examination and was declared fit for commutation of pension on 18.10.2001 with loading of one year.

14. Qua point No. 2, it is found that the applicant was paid pension w.e.f. 18.10.2001 at the age of 60 years + One year loading period. Pension was calculated to a tune of Rs. 3,00,186/- with reference to the relevant age factor 9.81 on 61 years of age. No error is found in calculating the pension amount.

15. Thus, claim of the applicant is devoid of merit. OA is liable to be dismissed. Accordingly, O.A. dismissed, with cost.


(Justice B. N. Shukla)
Member (J)

Shashi