

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.604/2004.

Wednesday this the 5th day of October, 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

T.Balakrishnan, S/o Ramankutty,
Retired Sub Postmaster, Angadipuram,
Residing at Thaliyil House, Vengara P.O.
Kannur - 670 305. Applicant

(By Advocate Shri P.C.Sebastian)

Vs.

1. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram,
Pin - 695 033.
2. The Assistant Chief Accounts Officer (Pension),
Office of the Director of Accounts (Postal),
Kerala Circle, G.P.O.Complex,
Thiruvananthapuram, Pin - 695 001.
3. The Union of India represented by
Secretary, Ministry of Communications,
Department of Posts, New Delhi. Respondents

(By Advocate Mrs. Mariam Mathai, ACGSC)

The application having been heard on 5.10.2005,
the Tribunal on the same day delivered the following:

ORDER (oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER


The applicant, while working as Sub Postmaster Angadipuram was granted pension at the rate of Rs.860/- consequent on his compulsory retirement on 27.2.1995. He has applied for commutation of pension on 22.8/1996 and after medical examination he was sanctioned a lumpsum of Rs.35,899/- being commutation value calculated at the rate of 1/3rd of his pension of Rs.860/- which was paid to him on 8.5.97. Pursuant to the recommendations of the Vth Pay Commission, by order dated 29.11.1997 his pension was revised and fixed at Rs.2613/- retrospectively from 1.1.96. He, thereafter, applied for revision of commutation value under Rule 10 of CCS (Commutation of Pension) Rules and his claim was rejected. Aggrieved, he has filed O.A.901/00 before this Bench

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of the Tribunal and vide order dated 19.3.2003, the said O.A. was disposed of directing the respondents to consider the applicant's case afresh under Rule 6 of (Commutation of Pension) Rules. The respondents have taken the matter before the Hon'ble High Court of Kerala in O.P.No.18375/2001 and that O.P.was happened to be allowed as per judgement dated 7.11.2001, against which the applicant has filed a Review Petition No.16/2002 and the same was allowed by the Hon'ble High Court directing the respondents to reconsider the case of the applicant. On 21.11.2003, the applicant was sanctioned Rs.73,429/- being difference of commutation value on revision of commutation with reference to the revised pension. But a sum of Rs.46083/- was ordered to be recovered on the plea that applicant's pension stood reduced to Rs.2327/- retrospectively w.e.f. 8.5.97 resulting overpayment. The recovery being illegal he submitted a representation to the 2nd respondent, which was rejected by order dated 23.12.2003 and the applicant made a petition to the 1st respondent which was also rejected by order dated 21.11.2003. Aggrieved by the action on the part of the respondents the applicant has filed this O.A.seeking the following main reliefs:

- i) to call for the files leading to the issue of Annexures A-5, A-7 and A-9 ad quash Annexures A7 and A-9 in full and A-5 to the extent it orders to reduce applicant's pension retrospectively from 8.5.97 and to recover a sum of Rs.46083/- (Rupees Forty six thousand and eighty three only)
- ii) to declare that applicant is entitled to have his pension reduced consequent on payment of the commuted value only from the date of payment of the commuted value pursuant to Annexures A-5 and to direct the 2nd respondent to refund the recovered amount of Rs.46083/- (Rupees Forty six thousand and eighty three only) with interest as deemed reasonable to this Hon'ble Tribunal.

2. The respondents have filed a detailed reply statement, a Calculation Sheet and also an additional statement contending that, the O.A. is not maintainable as per Chapter V of the Pension Rules but does not include extra pension, and the amount by whatever name called, granted by the Govt. to a pensioner "as a compensation for higher cost of living". The applicant was granted a pension of Rs.860/- on 27.2.95 and as a result of introduction of Vth Pay Commission report from 1.1.96, all the pensioners' pension were consolidated on notional basis as on 1.1.96, in order to make available the same percentage of Dearness Relief to all the pensioners from 1.1.96. Thus the consolidated



pension of the applicant came to Rs.2613/- and the same cannot be taken for commutation of pension. He was given the commuted value on getting the Medical Report, on the basis of age at next birthday certified by the competent medical authority taking into account the commutation factor and a fraction of pension of Rs.860/- not exceeding $1/3^{\text{rd}}$ as maximum under intimation to the retired official. The applicant was given the commuted value of pension on 8.5.97 on the basis of the pension drawn on the pre-revised scale i.e.before 1.1.96. Thereafter the applicant was paid commutation value taking into account the pension actually drawn on 8.5.1997 as directed by the Hon'ble High Court of Kerala in R.P.No.16/2002 in O.P. No.18375/2001. Accordingly the applicant was made a payment of Rs.73,429/-, after recovering an amount of Rs.46,083/- from the said amount, being the overpayment of pension @ Rs.585/-p.m.from 8.5.97 upto 30.11.03. The payment being subject to Rule 10 of the CCS(Pension) Rules, the applicant was paid the difference between the commuted value determined with reference to the enhanced pension and the commuted value already authorized. For the second stage of commutation, no medical certificate was required, since it was not treated as fresh commutation and was therefore, made without further medical examination. Accordingly, the commuted value of pension was calculated taking into account the date of medical examination, the age next birthday with reference to the date of medical examination and the factor applicable to such government servant with reference to the age of next birthday after the medical examination. Since the above amount was paid to the applicant only in November 2003, the applicant had already received a part of the commuted amount which was reduced from the total amount. This is in accordance with the Government of India's decision contained in G.Letter dated 28.5.1990 according to which, the restoration of the whole commuted portion of pension will be made after 15 years reckoned from the date of original commutation, recovery was lawful and correct and the same was made in accordance with Rule 10 of the CCS(Commutation of Pension) Rules 1987. In the additional statement filed by the respondents they have given a detailed calculation sheet and submitted that, according to the calculation sheet the whole of the commuted portion of pension of the applicant will be restored on 8.5.2012.



3. Shri P.C. Sebastian, learned counsel appeared for the applicant and Mrs. Mariam Mathai, ACGSC appeared for the respondents.

4. I have heard the counsel on both sides and have gone through the pleadings, materials and evidence on record. Counsel for the applicant argued that, as per Rule 6 of CCS (Commutation of Pension) Rules and also Rules 9 & 10 of the said rules, the respondents are not justified in making a recovery. The reduction should have come into effect only from the date of calculation of payment of the amount.

5. Learned counsel for the respondents on the other hand argued that, the applicant is receiving double payment, because of certain fortuitous circumstances and his pension should have commuted only in 2003, and he was drawing the enhanced pension from 1997 to 2003 without any commutation and therefore, what is sought to be recovered is, the excess amount that has been paid to him.


6. Learned counsel for the applicant has brought to my notice the Rule 6 of the CCS (Commutation of Pension) Rules 1981, especially Clause (i)(a) and Clause 2 of the said rules:

“(a) in the case of an applicant who is drawing his pension from a treasury or Accounts Officer, the reduction in the amount of pension on account of commutation shall be operative from the date of receipt of the commuted value of pension or at the end of three months after issue of authority by the Accounts Officer for the payment of commuted value of pension, whichever is earlier, and”

(2) In the case of an applicant referred to in Rule 9 or Rule 10, the commuted value is paid in two stages. The reduction in the amount of pension shall be made from the respective dates of the payments as laid down in Clause (a) or Clause (b) of the Proviso to sub-rule (1),”

7. He has also drawn my attention to Rule 10 of CCS (Commutation of Pension) Rules, 1981 which is reproduced below:

“10. Retrospective revision of final pension:




An applicant who has commuted a fraction of his final pension and after commutation his pension has been revised and enhanced retrospectively as a result of government's decision, the applicant shall be paid the difference between the commuted value determined with reference to enhanced pension and the commuted value already authorized. For the payment of difference, the applicant shall not be required to apply afresh:

Provided that in the case of an applicant who has commuted a fraction of his original pension not exceeding rupees (two thousand) after being declared fit by a Civil Surgeon or a District Medical Officer and as a result of retrospective enhancement of pension, he becomes eligible to commute an amount exceeding (two thousand) rupees per mensem, he shall be allowed the difference between the commuted value of (two thousand) rupees per mensem and the commuted value of the fraction of the original pension without further medical examination. The commutation of any further amount beyond rupees (two thousand) per mensem shall be treated as fresh commutation and allowed subject to examination by a Medical Board."

8. He has further drawn my attention to the Government of India's decision which is also quoted below:

"(1) Effective date of reduced pension on account of upward revision of commutation.-- a point has been raised in regard to the date from which reduction in pension on account of the upward revision of commutation of pension would be effective. Rule 6 provides that reduction in the amount of pension on account of commutation shall become operative from the date of receipt of commuted value of pension by the pensioner or three months after the date of the issue of the authority asking the pensioner to collect the commuted value of pension by the Accounts Officer, whichever is earlier. Accordingly, in such cases the reduction from pension will be made from the date of receipt of the revised commutation value of pension by the pensioner or three months after the issue of the authority by the accounts Office asking the pensioner to collect the revised commuted value of pension, whichever is earlier."

9. Quoting these rules, counsel argued that the applicant who was drawing the commuted fraction of his final pension for which he need not apply afresh and that the reduction in the amount of pension on account of commutation shall be operative from the date of receipt of the commuted value of pension or at the end of three months after issue of authority by the Accounts Officer for the payment of commuted value of pension, whichever is earlier.

10. Thus, on going through the rules position, it is evident that, the reduction in the amount of pension on account of commutation shall be operative, only from the date of
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receipt of the commuted value of pension, or at the end of three months after issue of authority by the Accounts Officer.

11. In the case on hand, the second commutation has been made in November 2003, and going by the said rules, I am of the view that, the reduction/recovery of the amount of pension on account of commutation, shall be effective from that date only.

12. As per the calculation made by the respondents and the position that has been argued by the counsel that, this was given effect from the date of orders of the Hon'ble High Court of Kerala in 2003. By that time the applicant had already drawn pension which otherwise should not be done in his case. Therefore, according to the respondents, the applicant was drawing the difference in pension on commuted value and his full pension for the period, which cannot be faulted and it cannot be recovered. The whole of the commuted portion of the pension of the applicant will be restored on 8.5.2012.

13. At this juncture, counsel for respondents has submitted that, this calculation is made on restoration of the whole commuted portion of pension reckoning from the date of original commutation, and as shown in the last portion of the Calculation Sheet, it falls on 8.5.2012 (i.e. 15 years from the date of commutation) at Rs.871/-. It will be restored as per restoration rules. It is also submitted that, if the applicant has no objection for extending that period and if the applicant agrees that, if commuted portion of pension is extended for the period which the applicant is drawing the full pension, in addition to the commutation, the respondents may be permitted to adopt such a recourse. Applicant's counsel submitted that, he has no objection for extension of time as stated in additional statement..


14. In the conspectus of facts and circumstances, the excess amount that has sought to be drawn by way of recovery is not justified as per rules, and therefore, that has to be refunded, since he has not received any such amount. Let it be done. I quash Annexures A7& A-9 and Annexure A-5 to the extent it reduces the pension from 8.5.1997. This

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Court makes it clear that, the respondents are at liberty to take appropriate action as far as the extension of commuted value of pension is concerned. Appropriate orders may be passed within three months from the date of receipt of a copy of this order.

15. O.A. is disposed of as above. In the circumstances, no order as to costs.

Dated the 5th October, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER