

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 501 of 2010

Reserved on 6.2.2015

Pronounced on 20th March, 2015.

Hon'ble Ms. Jayati Chandra, Member-A

D.K. Chakravorty, aged about 76 years, S/o late Sri L.M. Chakravorty, R/o 297/A, 10th Street Mohalla Rajendra Nagar City & District Lucknow.

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through Secretary, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, NER, office of G.M., Gorakhpur, U.P.
3. Deputy Chief Engineer, Gorakhpur Area North Eastern Railway (Pension Drawing Authority) office of Deputy Chief Engineer, Gorakhpur Area, NER, Gorakhpur.
4. Sri R.K. Jain, Chief Manager, Bank of India, Government Business Development Star House, C-5 G Block Bandra Kurla Complex, Bandra (East), Mumbai 400051.
5. Sr. Manager, Bank of India, Aishbagh Branch, Lucknow. \

.....Respondents.

By Advocate : Sri N. Nath.

ORDER

By Ms. Jayati Chandra, Member(A)

In this O.A., the relief(s) has been sought in the following manner:-

- "(a) quash the order dated 11.12.2009, contained in Annexure no.1 passed by the General Manager (P), North Eastern Railway, Gorakhpur and issue a direction to revise the pension from 1.1.1996 upto till date and pay the arrears to the applicant.
- (b) to issue a direction to pay arrears of pension w.e.f. 1.12.1980 to 30.11.1995 amounting to Rs. 2,56,445/-.
- (c) to issue a direction to Opposite party no.4 and 5 to make immediate payment of Rs. 2,78,292/- due to wrong calculation of 4th and 5th Pension Payment Order.
- (d) to issue a direction to pay interest @ 12% per annum.
- (e) to allow this O.A. with costs."

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2. The facts of the case are, that the applicant was a permanent employee of the respondents, who had been sent on deputation to the newly formed organization Rail Indian Technical and Economic Services Ltd. (RITES) w.e.f. 6.2.1979 with lien being maintained in his parent organization (RDSO). Thereafter, it was felt that services of the officers having sufficient experience and skill were necessary for the Public Enterprises, the Government devised measures to induct willing officers to continue in the public enterprises by allowing them to retire from the Government service in "Public Interest". Consequent to their deemed retirement, such absorbed/retired Government servants were offered the facility of commuting $1/3^{\text{rd}}$ of their original pension under Civil Pension (Commutation) Rules and were also offered additional facility of commuting the balance $2/3^{\text{rd}}$ as terminal benefits. The applicant was selected for permanent absorption with RITES and was placed in merit list of six selected candidates as Technical Officers, which was approved by Railway Board letter dated 21.5.1980. The Managing Director of RITES vide letter dated 21.5.1980 required consent of the applicant which was submitted by the applicant on 30.5.1980. He was required to terminate his relationship with the Government prior to his absorption with RITES. The applicant submitted his unqualified resignation for the purpose of absorption in public interest in RITES to General Manager (personnel) through proper channel on 3.9.1980. The resignation was accepted by North Eastern Railway w.e.f. 30.11.1980 vide order dated 6.12.1980 and he was subsequently absorbed in RITES and was retired from service on attaining the age of superannuation.

3. At the time of resignation from NER, he was offered facility of $1/3^{\text{rd}}$ pension to be commuted without any condition and $2/3^{\text{rd}}$ pension as terminal benefits as contained in Rule 37 and 37-A of Central Civil Services (Pension) Rules, 1972 which enumerate the provisions of Rule 54 of Railway Servants (Pension) Rules, 1993. The Hon'ble Supreme Court in its decision dated 9.12.1986 rendered in the case of Common Causes Vs. Union of India & Others reported in 1987 1 SCC 142 held that $1/3^{\text{rd}}$ commuted portion of pension stood restored after 15 years from the date of retirement or on completion of age of 70 years whichever is later. The benefit was to be effective from 1.4.1985. The balance of $2/3^{\text{rd}}$ of original commuted pension was required to be deducted from the consolidated pension for the whole life of the applicant. Several cases

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were filed by Government retirees. Finally, the Hon'ble Supreme Court clarified through several judgments that the pensioners are entitled for 1/3 of commuted portion of pension alongwith all attendant benefits. In other words, the respondents are required to deduct 2/3rd of the original commuted pension only from the notional revised pension arrived at on account of revision of pay scale. In spite of said order of Hon'ble Supreme Court, the respondents are arbitrarily deducting 2/3rd of notional revised amount of basic pension from the total revised payable monthly pension of the applicant. Thereafter, the applicant filed O.A. no. 231 of 2001 before this Tribunal seeking pension fixation w.e.f. 1.12.1980 and restoration of commuted pension accordingly, which was dismissed vide order dated 3.8.2004. Against the order of this Tribunal, the applicant filed Writ petition no. 1582 (S/B) of 2004 before Hon'ble High Court which was disposed of vide judgment and order dated 5.2.2008 with a direction to the petitioner to submit a fresh representation before the competent authority and the competent authority was directed to consider and decide the same expeditiously within a period of three months in accordance with law keeping in mind the law laid down by Hon'ble Supreme Court in the case of Accountant General of Orissa & Another Vs. R. Ramamurthy & Others passed in Civil Appeal no. 5269 of 2006.

4. In compliance of aforesaid order, the applicant submitted a representation on 14.2.2008 to General Manager alongwith a copy of order of Hon'ble High Court. The representation of the applicant was decided vide order dated 11.12.2009. The applicant, thereafter, filed a Review Application before the General Manager on 8.2.2010 which stated to be pending. Hence, this O.A.

5. The respondents have denied the averments of the applicant on the ground that the applicant had submitted his resignation from service of erstwhile respondents w.e.f. 30.11.1980. The resignation of the applicant was accepted vide letter dated 8.12.1980 w.e.f. 30.11.1980 and the applicant was thereafter absorbed in RITES, hence his resignation from the Railways cannot be termed as unqualified under Section 53 of Railway Service (Pension) Rules, 1993. He had got 1/3rd of his pension commuted at the time of resignation and had received 2/3rd of the pension due as terminal benefits. As per Railway Services (Pension) Rules, 1993, 1/3rd portion of commuted value of pension has been

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restored w.e.f. 12.2.1996 after expiry of 15 years from the date of retirement. The instructions for restoration of 1/3rd commuted portion of pension in respect of Government servants who had drawn lumpsum payment on absorption in Central Public Sector Undertakings/Central Autonomous Bodies has been issued from time to time by the Ministry of Railways. Thus, the calculation of 1/3rd commuted portion of pension of the applicant has been done in accordance with Railway Board's circular dated 20.9.2007 and 22.9.2008. Though these circulars the Railway Board has basically endorsed the order passed by the DoP&TPW (Ministry of Personnel) vide their O.M. no. 4/79/2000-P&PW (D) dated 2007, O.M. dated 5.3.1987, 6.4.1987, 27.10.1997 and 14.7.1998. The RBE circular dated 20.9.2007 had been passed on the subject of

The detailed calculation chart of pension of the applicant is as under:-

"Name : Sri Dullal Kanti Chakraborty
 D.O.B. 16.4.1935
 Class of Pension: Retiring (PSU Absorbee)
 D.O.A25.11.1955
 D.O.R30.11.1980
 Q.S. 06-00-25
 LP-750.00 AE = 750 + 202.50 DP = 952.50.
 Pay scale
 III PC 550-750
 IV PC 1600-2660/-
 V PC 5500-9000/-
 VI PC 9300-34800 (Gr. Pay 4200)
 Original Pension as on 1.12.1980 Rs. 361.00
 Full Pension as on 1.12.1986 Rs. 834.00
 Full Pension as on 1.1.1996 Rs. 2537.00

The restored 1/3rd pension as per Rly. Board's letter no. F(E) 111/2005/PN-1/23 dt. 22.9.2008.

Full Pension Rs. 2537.00
 1/3rd of full pension as on 31.12.05 Rs. 845.66/-
 DP on full pension as on 31.12.05 Rs. 1268.50.
 (50% of full pension)
 DA @ 24% of full pension as on 31.12.05 Rs. 608.88
 Fitment weightage @ 40% On Full pension Rs. 1014.80
 1/3 restored pension as on 1.1.06 Rs. 3738.00
 Consolidated Full pension as per VI pay Commission on 1.1.06 Rs. 5735.00
 Minimum 9300 + Grade Pay Rs. 13500.0

Family pension as per VI CPC
 1350 x % Rs. 4050.00
 = F/PN Rs. 4050.00

Note: DR is admissible on full pension of Rs. 5735/-

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Bank : Bank of India
Aishbagh Lucknow
A/c no. 9245"

6. The applicant has filed Rejoinder denying the averments made by the respondents and reiterated the averments made in Original Application. He has also filed full calculation chart through M.P. no. 2110 of 2014 whereby he raised the demand to the tune of Rs. 5,72,122 (subject to verification of accounts). The applicant has also stated that he has been seeking detailed calculation from the respondents so that the amount could be properly reconciled. The respondents have also filed reply to the calculation chart stating therein that the calculation of the applicant has been based on the surmises and conjectures.

7. Heard the learned counsel for the parties and have also perused the pleadings on record.

8. It appears from the various representations, pleadings & calculation submitted by the applicant that he has based his demand on the following grounds:-

(i) He had resigned prior to his absorption in RITES w.e.f. 30.11.1980. This resignation was a mere technicality as this was deemed to be retirement after completing 25 years of pensionable service as per Railway Servants (Pension) Rules. As such, he is entitled for pension payment w.e.f. 1.12.1980 and not from 12.2.1981.

(ii) His medical examination was held on 12.2.1981 and he was paid 100% commuted value of pension ($1/3^{\text{rd}}$ commuted $2/3^{\text{rd}}$ as terminal benefits) and gratuity on 26.10.1981. Hence he is entitled to full pension for the intervening period i.e. from 1.12.1980 to 20.10.1981. He was paid Rs. 864/- as arrears of pension from 1.12.1980 to 12.2.1981.

(iii) Accordingly his entire pension calculation with cascading effect on implementation of the recommendation of the IV, V and VI Pay Commission would require revision.

(iv) He is entitled to the restoration of $1/3^{\text{rd}}$ commuted portion of his pension after 15 years i.e. on 1.12.1995 and not on 12.2.1996 as calculated by the department.

(v) His dues are to be calculated in accordance with judgment rendered in Civil Appeal No. 5269 of 2006.

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9. At this stage, the question of nature of retirement/ resignation (on public interest or otherwise) is only academic as the main issue is the amounts that the applicant is entitled to by the way of retirement benefits. There is no dispute between the parties that the applicant's retirement (by the way of acceptance of his resignation by the respondents) was w.e.f. afternoon of 30.11.1980 and that b) he agreed to receive $1/3^{\text{rd}}$ of his pension as commuted pension (revisable after 15 years) and $2/3^{\text{rd}}$ of the value of pension as terminal benefits. The Railway Service (Pension) Rules, 1993 as produced by the applicant as A-3 are being quoted below:-

"53. Pension on absorption in or under a corporation, company or body- (1) A railway 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 or a State Government or in or under a body controlled or financed by the Central Government or a State 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 to receive retirement benefits, if any, from such date as may be determined, in accordance with the orders of the Railway applicable to him.

Explanation: - Date of absorption shall be-

- (i)
- (ii) (ii) In case a railway employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the railways the date from which his unqualified resignation is accepted by the railways.

54. Payment of lump-sum amount to persons on absorption in or under a Corporation, Company or body:- where a railway servant referred to in rule 53 elects the alternative of receiving the death-cum-retirement gratuity and lump-sum amount in lieu of pension, he shall, in addition to the death-cum-retirement, be granted -

(a) on a 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 Railway Service (Commutation of Pension) Rules, 1993:- and

(b) terminal benefits equal to commuted value of the balance amount of pension left after commuting one third of pension to be worked out with reference to commutation table in appendix to the railway services (Commutation of Pension) Rules, 1993 on the

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date of his resignation subject to the condition that the railway servant surrenders his rights of drawing two third of his pension."

As per the rule of retirement, the applicant is deemed to have become entitled for receipt of pension from the date he retired i.e. 1.12.1980. The fact that he was medically examined on 12.2.1981 and the actual payment to him by the way of commuted portion + terminal benefits was on a later date (26.10.1981) would not mean that (i) he is entitled to receipt of full pension for the interim period or that (ii) his date of restoration of the commuted portion of his pension is to be calculated from the date of receipt/date of decision/ date of medical examination etc.

10. The respondents have paid Rs. 864/- as arrears of pension from 1.12.1980 to 11.2.1981 as per their statement in the impugned order dated 11.12.2009. It is not clear exactly how this amount has been arrived at, but it appears to be based on 1/3rd of the commuted value. If it is the commuted portion then the date as held by the respondents for calculation of 15 years for calculating the restoration of 1/3rd commuted amount cannot be 12.2.1996. If their statement regarding date of restoration of 1/3rd commuted pension is taken to be 12.2.1996, then how is this amount of Rs. 864/- is calculated? Is it the arrears of the entire pension? The whole premise is rather incomprehensive and the respondents have failed to clarify the same.

11. To sum up based on the facts of the case, the applicant's emoluments are to be calculated on the following principle

- (i) 1/3rd value of commuted pension w.e.f. the date of retirement i.e. on 1.12.1981.
- (ii) 2/3rd value of commuted pension as on 1.12.1981 by the way of terminal benefits.
- (iii) Restoration of 1/3rd commuted value of pension w.e.f. 1.12.1995 (15 years after).
- (iv) Restoration of 1/3rd commuted portion of pension in accordance with DoP&TPW order dated 6.9.2007 passed in implementation of Andhra Pradesh High Court judgment dated 24.12.2003 in W.P. No. 8532 of 2003 followed by Hon'ble Supreme Court's judgment dated 29.11.2006 in Civil Appeal no. 5269 of 2006 as endorsed by RBE circular no.

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120/2007 dated 20.9.2007 and as per DOP& PW order no. 4/38/2008-P&PW (D) dated 15.9.2008 as endorsed by RBE circular no. 120 of 2008 dated 22.9.2008.

1.2 Accordingly, the O.A. is partly allowed. The impugned order dated 11.12.2009 is quashed. The matter is remanded to the respondents to recalculate and refix the entire pension as per directions of para 10 above.. The entire calculation memo is also to be made available to the applicant. Any plus or minus adjustment may be made against amounts to be drawn in future by the way of pension/family pension either in lumpsum or by installment as mutually agreed. Based on the revised calculation, the revised PPO may be issued to the applicant. The entire exercise shall be completed within a period of three months from the date of receipt of copy of this order. No costs.



(Ms. Jayati Chandra)
Member-A

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