

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 295/99

21.8.2001
Date of Decision :

M.A.Phillips & Ors. Applicant.

Shri B.Dattamurthy Advocate for the
Applicant.

VERSUS

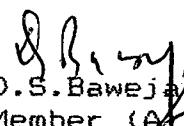
Union of India & Others, Respondents.

Shri S.S.Karkera for Advocate for the
Shri P.M.Pradhan Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library


(D.S. Baweja)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.295/99

Dated this the 21st day of August 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

1. M.A. Phillips
2. S.G. Swami
3. Sonpal Bihari Balmiki
4. Smt. Nirmala Balu
5. Association of Absorbed Central Government Pensioners & Retired Employees of Airport Authority of India, having its office at 10/4, Saurabha Co-op. Hsg. Society Ltd., 116, Andheri-Kurla Road, Andheri (E), Mumbai-400 093.

By Advocate Shri B.Dattamurthy

... Applicants

V/S.

1. Union of India through Secretary, Department of Pension and Pensioner's Welfare, Loknayak Bhavan, New Delhi.
2. The Pay and Accounts Officer, Central Pension Accounting Office, (Department of Expenditure), Ministry of Finance, Trikoot-II, Bhikaji Cama Place, New Delhi.
3. The Senior Pay and Accounts Officer, Civil Aviation Department (Mumbai Region), Juhu Aerodrome, Mumbai.

... Respondents

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

O R D E R

(Per : Shri D.S.Baweja, Member (A))

This OA. has been filed by Association of Absorbed Central Government Pensioners and Retired Employees of Airport Authority of India along with 4 other applicants. The Members of the Association were placed on deputation from the Civil Aviation Department when the International Airports Authority of India was set up on "as is where is basis" in public interest. Later on all such employees were absorbed in the International Airports Authority of India and they were deemed to have retired from Central Government service. They were granted pension based on the qualifying service in the erstwhile Civil Aviation Department. All the applicants opted for full commutation of pension and received the commuted value in lumpsum payment. The Central Government Pensioners governed by the CCS (Commutation of pension) Rules filed a "Common Cause" petition before the Hon'ble Supreme Court seeking restoration of 1/3rd commutation of pension after a period of 15 years from the date of commutation. This prayer was granted by the Hon'ble Supreme Court as per judgement dated 9.12.1986. While implementing the judgement of the Hon'ble Supreme Court, the Department of Pension and Pensioners Welfare as per O.M. dated 5.3.1987 provided that those of the central Government employees who had got absorbed under Central Public Sector Undertakings/Autonomous Bodies and have received/or opted to receive commuted value for 1/3rd of pension as well as

terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension are not entitled to any benefit under these orders as they have ceased to be Central Government Pensioners. Feeling aggrieved by this O.M., the Welfare Association of Absorbed Central Government Employees filed Writ Petition (C) No.11855 of 1985. This Writ Petition was decided as per order dated 15.12.1995 quashing para 4 of the O.M. dated 5.3.1987 holding that these pensioners are also entitled to the benefits as given to the Central Government Pensioners in the "Common Cause" case in so far as it relates to 1/3rd of commuted pension. In pursuance of this judgement of the Hon'ble Supreme Court, the Government issued O.M. dated 30.9.1996 restoring 1/3rd commuted pension to the absorbed Central Government pensioners. The Pay and Accounts Officer, Central Civil Aviation Department while implementing the directions in O.M. dated 30.9.1996 sanctioned pension at the minimum pension of Rs.375/-p.m. effective from 1.1.1986 while restoring 1/3rd commuted pension in view of the fact that the commuted pension fell below the prescribed minimum as per the Department of Pension and Pensioners Welfare O.M. dated 2.1.1987. The payment of the pension to the applicants was started accordingly. However, the disbursing banks suddenly stopped the payment of pension at the minimum pension rate and reduced their pension to 1/3rd commuted value of the pension varying within the range of Rs.5/- to Rs.80/- in the case of affected pensioners. In some cases, the banks concerned have

also initiated action for recovery of excess payment. This action was taken by the banks without any information to the applicants. Feeling aggrieved by this, the applicants have filed this OA. on 17.3.1999.

2. The applicants have sought the following reliefs :-

- (a) To declare that the instructions given by the Central Pension Accounting Office, New Delhi to the designated banks to reduce the pensions and adjust over payments is arbitrary and illegal.
- (b) To hold and declare that the applicants are entitled to receive the minimum pension of Rs.375/- p.m.
- (c) To direct Central Pension Accounting Office for issue of necessary instructions to the designated banks to pay the initially sanctioned restored pension at the prescribed minimum of Rs.375/- till 31.12.1995 and Rs.1275/- from 1.1.1996 effective from the date from which the payment has been stopped along with interest thereon.
- (d) Arbitrary recovery of Rs.3157/- from Smt. Nirmal Balu, Applicant No. 4 be ordered to be refunded with interest at the rate of 18% p.a.

3. The applicants have advanced the following legal grounds in support of their reliefs :-

(a) The applicants were allowed restoration of 1/3rd commuted pension at the minimum of Rs.375/- in terms of O.M. dated 30.9.1996 with payment orders issued in January/February, 1997. Therefore, the subsequent orders dated 13.1.1998 and 14.7.1998 cannot be made applicable to the case of the applicants.

(b) In terms of Rule 70 of CCS (Pension) Rules, pension once authorised after final assessment cannot be revised to the disadvantage of the Govt. servant, unless such revision becomes necessary on account of detection of a clerical error subsequently, any recovery shall not be made unless a notice is served. Before reducing the pension from the earlier sanctioned pension at the rate of Rs.375, no show cause notice has been given to the applicant and therefore the action of the respondents is arbitrary and violative of principles of natural justice.

(c) In terms of the order of the Hon'ble Supreme Court in Writ petition No. 11855/85, the applicants are entitled for restoration of 1/3rd commuted portion of the pension which is to be matched upto the minimum prescribed pension.

(d) In principle, basic minimum pension which is fixed by the Government from time to time, based upon the recommendations of

the Pay Commissions cannot be reduced nor denied to any pensioner being minimum sustaintance amount. It is based on the well accepted fact that the benefits of the commuted amount of pension got neutralised and exhausted after taking into account the rise in the cost of living over 15 years.

(e) Even in the case of compulsory retirement by way of penalty, the rules provide that the pension granted shall not be less than the minimum of Rs.375/-.. The applicants are in a stronger position than any of the employee who is imposed a punishment.

(f) Even in terms of Rule 49-2(B) of CCS (Pension) Rules, minimum pension is admissible to all those whose pension is fixed on pro-rata basis and based on this, the applicants are entitled to restoration of 1/3rd commuted value of pension equal to minimum prescribed pension.

4. The respondents have filed a written statement. The respondents while refering to the same judgements of the Hon'ble Supreme Court and the various O.Ms. of the Department of Pension and Pensioners Welfare as by the applicants submit that on receipt of O.M. dated 30.9.1996, the 1/3rd commuted pension was restored in respect of the applicants at the rate of Rs.375/-, i.e. minimum pension by incorrect reading of the provisions in the O.M. dated 30.9.1996. However, this mis-interpretation of the O.M. was realised when clarifications were advised by the

Department of Pension and Pensioners Welfare as per the O.M. dated 9.4.1997. An immediate action was taken to set right the error committed and the amended Pension Pay Orders were issued and the concerned Banks were also advised for recovery of excess amount paid. The applicants were entitled for restoration of 1/3rd commuted portion of the pension and not at the rate of minimum pension and therefore the action taken was a clerical mistake which could be rectified in terms of Rule 70 of CCS (Pension) Rules. As regards the recovery from Applicant No 4, the respondents submit that because of wrong authority, she was paid an amount of Rs.31,576/-in excess and on receipt of such information from the Bank, the International Airport Authority of India had recovered the said amount from her retirement benefits. Now as per the revision of pension, she is entitled to pension of Rs.425/- plus arrears worked out to Rs.26,854/-. The Bank has already released the payment to her and she is getting the pension of Rs.425/- plus D.A. With these submissions, the respondents submit that the applicants have no case for intervention by the Tribunal and the OA. deserves to be dismissed.

5. The applicants have filed a rejoinder reply reiterating their stand taken in the OA.

6. We have heard the arguments of Shri B.Dattamoorthy, learned counsel for the applicant and Shri S.S.Karkera for Shri P.M.Pradhan, learned counsel for the respondents.

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7. The first issue raised by the applicants is that they are entitled for the restoration of 1/3rd commutation of pension subject to the minimum of pension, i.e., Rs.375/- from 1.1.1986 and Rs.1275/- from 1.1.1996. The restoration of 1/3rd commuted portion of the pension in respect of absorbed employees at par with the other central Government employees was allowed in pursuance of the judgement of the Hon'ble Supreme Court and as per the O.M. dated 30.9.1996 issued thereon to implement the judgement. As brought out by the respondents, due to mis-reading of the O.M., the restoration was done by applying the provision of minimum of pension. However, subsequently the Department of Pension and Pensioners' Welfare as per O.M. dated 9.4.1997 clarified that the restoration of only 1/3rd accumulated pension is to be done and the same is not to be subjected to minimum of pension. This interpretation of the order of the Hon'ble Supreme Court in case of Writ Petition No. 11855/85 has been subsequently confirmed by the Hon'ble Supreme Court in case of Writ petition No. 567/95 and connected Writ Petitions, judgement on which has been delivered on 26.4.2000. A copy of this judgement was produced by the respondents during the hearing. In fact, the respondents through an additional affidavit had made a prayer that hearing of this OA. may be kept pending till the Writ petition before the Hon'ble Supreme Court is decided. On going through this judgement dated 26.4.2000, it is clear that the issue with regard to grant of restoration of 1/3rd commuted pension subject to minimum pension is no longer res integra. The

O.M. dated 14.7.1998 issued by the Department of Pension and Pensioners Welfare which was under challenge has been upheld. Once the issue has been decided by the Hon'ble Supreme Court, this Tribunal cannot go into the merits of the pleadings made by the respondents that they are entitled for restoration of 1/3rd of commuted portion of pension and at the minimum of the pension and record different findings. The counsel for applicant fairly conceded this. Therefore no further deliberation on this relief called for and the applicants are not for the same relief.

8. The second ground of attack on which the counsel for applicants dwelt extensively is that pension once fixed can not be reduced to the disadvantage of the pensioners in terms of Rule 70 of CCS (Pension) Rules. The respondents, however, on the other hand have contested this stating that Rule 70 authorises to rectify the clerical mistake in case the pension has been wrongly fixed. It is contended by the respondents that O.M. dated 30.6.1996 was misinterpreted while restoring 1/3rd commuted portion of pension which was fixed at the minimum of prescribed pension. This was a clerical mistake which could be rectified after the clarification was issued from the Department of Pension and Pensioners Welfare. In the present case as discussed in para 7, it is legally established fact that the applicants are not entitled for 1/3rd commuted pension restored at the rate of minimum pension and therefore the action of the department was against the rules. The applicants cannot be entitled to get a

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benefit which is not due to them as per the extant rules. The respondents were within their right to rectify the mistake detected. Therefore action of the respondents in revising the pension as per the extant rules cannot be faulted and declared illegal. The only issue which needs to be looked at is whether revision of the pension could have been done without giving any show cause notice to the applicants. In the present case, it is admitted fact that no show cause notice was issued to the applicants before the Banks were directed to recover the excess payment and revised pension payment orders were issued. It is conceded that the applicants' contention that there is violation of principles of natural justice has merit. In such a situation where the impugned order is challenged, then in a judicial review impugned order normally would be set aside and liberty given to the respondents to issue a show cause notice and then pass speaking order after considering the reply of the employee. In the present case, I am of the considered view that on facts and circumstances of the case such a course of action is not warranted. The applicants had been allowed restoration of 1/3rd commuted portion of pension at minimum of pension in violation of extant rules laid down by Department of pension and pensioners' Welfare in accordance with the law laid down by the Hon'ble Supreme Court. Issue of show cause notice now will be only an empty formality as the applicants cannot make out any case when the issue is decided by the Hon'ble Supreme Court and the rules in compliance of the judgement of the Hon'ble Supreme Court have

been framed and notified. Any direction if given for restoration of the pension and then give show cause notice will mean restoration of illegal benefit and the Court/Tribunal cannot be a party to the same. In the light of these observations, I do not consider that non issue of show cause notice vitiates the action of the respondents in revising the pension.

9. In the result of the above, I do not find any merit in the OA. and the same is dismissed accordingly. However, to provide some relief to the applicants in getting commuted value of pension, the interim order^{and 7.5.1999} dated 6.5.1999 providing payment of 50% of the admissible pension will continue to operate. The recovery of the excess payment will be effected from the balance 50% of the admissible pension and any other arrears which become admissible to the applicants on the revision in dearness relief in terms of order dated 12.7.2000. The full admissible pension will be restored to the applicants as soon as recovery of the excess payment has been made.


(D.S. BAWEJA)
MEMBER (A)

mrj.