

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Commercial Complex(BDA),  
Indiranagar,  
Bangalore - 560 038

Dated : 17/8/87

APPLICATION NOS 402 & 403 / 87(T)

W.P. NO 3387 & 4416/84

Applicant

Shri C.P. Ohrie

V/s The Dy Secy, M/o Finance & another

To

1. Shri C.P. Ohrie  
1173, HAL II Stage  
Indiranagar  
Bangalore
2. Shri G. Sarangan  
Advocate  
Rex Annexe  
13, Brigade Road  
Bangalore - 560 001

3. The Deputy Secretary  
Ministry of Finance  
Department of Expenditure  
New Delhi
4. The Accountant General-II  
Karnataka  
Bangalore
5. Shri M. Vasudeva Rao  
Central Govt. Sng Counsel  
High Court Buildings  
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/  
~~INTERIM ORDER~~ passed by this Tribunal in the above said  
application on 14-8-87.

Encl : as above

*B.V. Venkatesh Reddy*  
DEPUTY REGISTRAR  
~~SECTION OFFICER~~  
(JUDICIAL)

*Received one copy.*  
*19/8*  
*(M. Vasudeva Rao)*  
*C.G.S.C.*  
*Received of two in*  
*for G. Sarangan Advocate.*  
*including application copy.*  
*4. Vasudeva Rao*  
*17/8/87*

RECEIVED-17/8/87

Diary No. 1010/C.R/S

Date: 21-8-87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY  
.. VICE CHAIRMAN(J)

And

THE HON'BLE VICE CHAIRMAN(A), Shri B.N.JAYASIMHA

APPLICATION NOS. 402 & 403 OF 1987

Shri C.P. Ohrie,  
59 years,  
S/o late Dr. Devi Dayal Ohrie,  
1173, HAL II Stage, Indiranagar,  
Bangalore.

Applicant in  
both the applica-  
tions.

(By Shri G. Sarangan, Advocate for the applicant)

-vs.-

1. The Deputy Secretary  
to Govt. of India,  
Ministry of Finance,  
Department of Expenditure,  
New Delhi.

2. The Accountant General-II,  
Karnataka, Bangalore.

.. Respondents in  
both the Appli-  
cations.

(Shri M. Vasudeva Rao, Standing Counsel for Central-  
Government, for respondents).

These two applications coming on for hearing  
this day, SHRI B.N.JAYASIMHA, HON'BLE VICE CHAIRMAN(A),  
made the following:

O r d e r



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ORDER

Transferred Application No.402/87 is filed by the applicant, who was a member of the Industrial Managment Pool, seeking striking down of para-5 of the Office Memorandum No.F(3)-EV/83 dated 22-10-1983, issued by the Government of India, Ministry of Finance, holding that the applicant is entitled to pension in accordance with the liberalised pension formula, as evolved in D.S.NAKARA & ORS. -vs.- UNION OF INDIA/1982(2) SCALE,224 = 1983 S.C.C.(L&S) 1457. This application has been transferred to this Tribunal under Sec.29 of the Administrative Tribunals Act,1985 ('Act').

2. The applicant joined the Industrial Management Pool in December 1960 and worked under the administrative control of the Bureau of Public Enterprises under the Ministry of Finance. He was deputed to Hindusthan Aeronautics Ltd.,Bangalore (H.A.L.'), in May 1973. In pursuance to the Memorandum of the Home Ministry dated 31-1-1977, the applicant was given an option for getting himself permanently absorbed in the H.A.L. The said communication also stated that the services of the applicant were terminated from the Government of India. The applicant exercised the option and got himself absorbed in H.A.L. with effect from 1-4-1977.



3. Ministry of Finance in a communication dated 28-12-1977, conveyed the sanction of the President for permanent absorption of the applicant, and para(v) thereof reads as follows:

"(v) The officer will exercise an option, within six months of the date of issue of this letter, for either of the alternative indicated below:

(a). Receiving the pro-rata monthly pension and death-cum-retirement gratuity as admissible under (ii)(iii) & (iv) above under the Government of India Rules;

(b). Receiving the pro-rata gratuity and a lump-sum amount in lieu of pension worked out with reference to communication tables obtaining on the date from which pension will be admissible and payable under option orders."

The applicant exercised the option in terms of Clause(b) above, to commute his entire pension. Accordingly, he received Rs.1,31,749-90 being the commuted value of his pension viz., Rs.889/- per month.

Following the judgment of the Supreme Court in D.S.Nakara's case, the Ministry of Finance issued a Memorandum dated 22nd October 1983, bearing No.F-I(3)-EV/83, in which persons who had retired prior to 31-3-1979 and who had opted to commute the entire pension have been excluded from the purview of the additional pension. The applicant contends that this exclusion

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is violative of Article 14 of the Constitution, and he is entitled to Liberalised Pension Rules, if applied, he is entitled to Rs.96/- p.m. as additional pension.

4. In the counter filed, the respondents contend that the application is barred by limitation, and that the applicant had voluntarily opted to commute his entire pension. The applicant had severed his connection with the Government of India, consequent to his permanent absorption in H.A.L. It is further contended that Supreme Court had only held that the pension of the pensioners who were drawing pension as on 1-4-1979, may also be refixed on the basis of 'Slab System' brought out in the Office Memorandum dated 25th May, 1979 so as to remove anomaly between the pensioners or the employees who retired prior to this date and those who retired after that date. As regards commutation of the additional pension, the Hon'ble Supreme Court had stated that no further commutation will be allowed even in cases where additional pension becomes due under the Judgment. The Memorandum of the Ministry of Finance dated 22-10-1983 wherein it was stated that the employees who had got themselves permanently absorbed in Central Public Undertaking prior to 1-4-1979 and had received or had opted to receive full commuted value of their pension, no revision shall take place, is fully in conformity with the judgment of the Supreme Court.



5. We have heard the learned Counsel for the applicant, Shri Sarangan, and the learned Standing Counsel for the Central Government. Shri Sarangan's main argument was that para-5 of the Memorandum dated 22-10-1983, wherein the officers who had commuted their pension fully, were excluded, is discriminatory and arbitrary. Para-5 of the said memorandum reads as follows:

"Central Government employees, who got themselves absorbed under Central - Public Sector Undertakings/autonomous bodies prior to 1-4-1979 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 pension, are not entitled to any benefit under these orders as they were not Central Government pensioners as on 1-4-1979. In cases where only a portion of pension has been commuted, the pension will have to be enhanced in accordance with these orders with effect from 1-4-1979."

Shri Sarangan contends that the classification of officers who had commuted the whole of the pension and those who had commuted part of the pension in two separate groups is discriminatory and violative of Article 14 of the Constitution. He also submitted that although by an earlier memo there was to be a

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pro-rata reduction of the commuted amount from the additional pension, subsequently, the Government of India had issued order that there shall be no deduction of pro-rata of commuted portion - in other words, officers who had opted for commutation of a portion of their pension, are getting full additional pension without any deduction for that part of the pension commuted by them. He therefore urged that even where the officers had opted for commutation of whole of the pension, they cannot be denied the additional pension. The learned Standing Counsel for Central Government stated that when an officer had commuted the whole of his pension, he had severed his connection with the Government and no pension papers are issued to him. Consequent to the receipt of the commuted value, the pensioner had received all his pensionary benefits once and for all and any subsequent changes/benefits given to pensioners continue to receive pension, cannot be applied to the applicant. He, therefore, contended that exclusion of those who had fully commuted their pension cannot be discriminatory or arbitrary.

6. We have considered the rival contentions. It is clear that the applicant had received all his terminal benefits and had commuted his entire pension and received the commuted amount also. With that, he ceased to be on the roll of pensioners and is not in receipt of any monthly pension thereafter.

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As observed in D.S.Nakara's case(1983 SCC(L&S)145), 'pension' means, a term applied to periodic money payments to a person who retires at a certain age considered age of disability. In this case, since the pensioner has already commuted the whole of his pension, he is not in receipt of any periodic money payments and if he is kept in a class apart from such of the pensioners who had commuted only a part of their pension and continued to receive the periodic money payments, it cannot be said that it is discriminatory or that classification is bad. On this ground, we do not find that para-5 of the Memorandum dated 22nd October, 1983 is illegal or arbitrary.

7. Shri Sarangan has also referred to a decision of the Supreme Court, in COMMON CAUSE -vs.- UNION OF INDIA reported in (1987)1 SCC,142, wherein the Court was dealing with the restoration of commuted pension on completion of 15 years from the date of retirement on superannuation or on completion of the age of 70 years. Sri Sarangan's contention was that the applicant also would be entitled to the revival or the restoration of the pension as per these Rules and therefore he has not severed his connection with the Government.

8. As already mentioned, the applicant is not in receipt of any monthly payment as pension and the fact

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that the applicant, if eligible for restoration of pension after he attains the age of 70 years, would not, in our view, alter the status of the applicant. The fact remains that the applicant is not in receipt of any monthly payments and he had received the entire terminal benefits at the time of retirement itself. We do not consider that the applicant can claim the liberalised pension formula, under these circumstances.

It is relevant to mention here that the Supreme Court, in D.S.Nakara's case, had abundantly made it clear that arrears are not required to be paid because to that extent the Scheme is prospective. But the revised scheme would be operative from the date mentioned in the Scheme and would bring under its umbrella all the existing pensioners and those who retired subsequent to that date. In case of pensioners who retired to the specified date, then pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. It was further observed - "There is no question of fresh commutation of pension of the pensioners who retired prior to March 31, 1979 and have already availed of the benefit of commutation. It is not open to them to get that benefit because commutation has to be availed of within specified time limit." These observations would also negative the claim of the applicant for the extension of the benefit to him.



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9. In these circumstances, we find no merit in the case and we accordingly dismiss this application.

10. In Transferred Application No.403/87, the same applicant has prayed for the following reliefs:

- "(a) strike down para 4(a) and 4(b) of the Office Memorandum F.22(8)-EVP/75 issued by the Government of India, Ministry of Finance, Department of Expenditure as being violative of Article 14 of the Constitution of India;
- (b) hold that the petitioner is entitled to relief and ad hoc relief in pension granted by the Government of India from time to time notwithstanding that the petitioner had opted for commutation of pension on retirement from Government of India and for absorption in Public Sector Undertaking;
- (c) issue a writ of mandamus or a direction in the nature of a writ of mandamus directing the respondent to pay to the petitioner the sum of Rs.23,939/- as quantified in para-12 above being the relief and ad hoc relief in pension payable to the petitioner for the period 1-4-1977 to 31-1-1984 and also to pay relief and ad hoc relief in pension for the subsequent period;"

The relief asked for arise only if the claim of the applicant in Transferred Application 402/87 is upheld.

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Since we have repelled the claim of the applicant in that application, as shown above, this application fails and is accordingly dismissed.



No order as to costs.

Sd/-  
(K. S. PUTTASWAMY)  
VICE CHAIRMAN (J)

14/8/78

Sd/-  
(B.N. JAYASIMHA)  
VICE CHAIRMAN (A)

14.8.87

*True copy*

*B. V. Venkatesh Reddy*  
DEPUTY REGISTRAR  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE  
17/8

kms: