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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 852/91.

Dt.of Decision : 30.11.94.

K. Simhadri Rao

.. Applicant.

Vs

1. Union of India, rep. by
the Secretary, Ministry of
Communications,
New Delhi-1.
2. Director General (Posts)
Department of Posts
Dak Tar Bhavan,
New Delhi-1.
3. Chief Postmaster General
Andhra Pradesh Circle,
Hyderabad-1.
4. Union of India, rep. by
the Secretary, Department
of Pension & Pensioner's
Welfare, Nirvachan Sadan,
New Delhi-1.
5. General Manager
Hindustan Cables Limited
(A Govt. of Indian Undertaking)
Hyderabad-500 061.

.. Respondents.

Counsel for the Applicant : Mr. N.RAM MOHAN RAO and for
Mr. T. Jayant, Advocates
Counsel for the Respondents : Mr. N.R.DEVARAJ, Sr.CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, V C)

for Sri T. Jayant

Heard Sri N. Ram Mohan Rao, learned counsel for the applicant and Sri N.R. Devaraj, learned counsel for the respondents.

2. The applicant joined service as Clerk in Central Telegraph office in Andhra Circle on 1-6-1948. He had promotions in due course, and by 1-1-1973 he was promoted as Senior Personal Assistant to PMG, Hyderabad. He was posted as SPA to PMG, Hyderabad. He applied for selection to the post of Executive Assistant in HCL (A Government of India Undertaking), Hyderabad as per advertisement through PMG, Hyderabad. He was selected and appointed to the said post, and by the General Manager, HCL, Hyderabad, as per order 22-9-1982. His permanent absorption in HCL with effect from 1-1-1983 was approved by PMG as per order dated 22-2-1983. Thus, he retired from Central Government service with effect from 1-1-1983 as Senior Personal Assistant consequent upon his absorption in HCL, a Government of India Undertaking. As such he was allowed to commute 100% of his pension and accordingly the applicant got the amount on the basis of 100 per cent commutation of pension. The applicant retired from service in HCL on 31-12-1987 on attaining the age of superannuation.

3. The IV Pay Commission in Para 16 sub para 10 Chapter 16 Vol.II of its report recommended as under :

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"We, however, understand that there are only a limited number of such employees i.e. Central Government employees absorbed in Public Sector undertakings who have received lumpsum amount in lieu of full pension and are deemed to have retired from Government Service from the date of their absorption and cannot be treated as pensioners for consideration of relief on Pension. As recommended for CPF retirees in Chapter 9, Government may consider the feasibility of giving an option to these employees to come over to the Pension Scheme, subject to their refunding the entire amount of terminal benefits received by them at the time of absorption." (Emphasis is supplied).

4. The applicant made representations to the respondents on the basis of the above recommendations of the IV Pay Commission that he ^{may} ~~made~~ be allowed to come under the Pension Scheme and he was ready to refund the entire amount of ^{terminal} ~~10 months~~ benefit received by him at the time of absorption in the Public Sector Undertaking. When the said request of the applicant was not acceded to, this OA was filed praying for a direction to the respondents to permit him to come over to the Pension Scheme subject to his refunding the entire amount of ^{terminal} ~~10 months~~ benefits received by him at the time of absorption in HCL on 1-1-1983, with consequential benefits of the pension scheme.

5. The respondents are relying upon the judgement dated 12-4-1990 of the Supreme Court in the Writ Petition No. 1068/87, and para 10(a) of the OM dated 16-4-1987 to urge that the Central Government had not accepted the recommendation as per para 16 sub para 10 of Chapter 16 Vol.II

of the IV Pay Commission Report and there cannot be any question of discrimination as the officers who were absorbed in the Public Sector Undertakings derived the benefits on the basis of the amount obtained on commutation of 100% of pension and hence the claim of the applicant has to be rejected.

6. The point which has arisen for consideration in Writ Petition.1068/87 on the file of the Supreme Court is as to whether the ^{pension} ~~entire benefit~~ revives on the expiry of 15 years from the date of commutation even in case of 100 per cent commutation of pension. It was ^{filed by Association of} ~~allowed in regard to~~ Government servants retired from service on being absorbed in Public Sector Undertakings. The said point was held against officers by holding that "Commutation does bring certain advantages to the commutes ^{and} ~~when~~ the class of Government officers ^{whom} ~~which~~ the petitioner seeks to represent have derived such benefits. We do not think ~~that~~ there is any basis in the allegations that by not extending ^{the} benefits of this decision of the Court referred to ^{above to} the category represented by the petitioner, there is any infringement of Article 14 of the Constitution".

7. The petitioner therein is Welfare Association of Absorbed Central Government Employees in Public Enterprises. The decision referred to in the above para is the decision in Common causes, a registered society and others vs. Union of India (1987(1)SSC142).

8. It is stated for the applicant that the above judgement of the Supreme Court has no bearing for the claim made in this OA is different from the claim made

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in the said OA. ^{with petition.} But it is stated for the respondents that the principle laid down in the above judgement holds good ^{even} in this OA. Before ^{convenient} diverting to the claim on the basis of violation of Article 14 of the Constitution, it is ~~common thing~~ to refer to the other ground i.e. the recommendation made by the IV Pay Commission to substantiate the claim in this OA.

9. It is true that IV Pay Commission recommended that the absorbed Central Government employees in the Public Sector Undertakings may be given option to come over to the Pension Scheme after refunding ^{terminal} ~~10 months~~ benefits received. But, ⁱⁿ para 10(a) of the OM No.12/1/87-PIC, dated 16-4-1987, it is made clear that Government servants who have drawn one time lumpsum terminal benefits equal to 100 per cent of their pension but on permanent ~~absorption~~ in Public Sector Undertakings/Autonomous Bodies are not entitled to the benefit of the said OM which was issued for implementation of Government decisions on the recommendations of the IV Pay Commission on relaxation of Pension structure for ^{pensioners.} pre 1-1-1986 ~~periods~~. Thus there is force in the contention for the respondents that the recommendations of IV Pay Commission referred to for the applicant was not accepted by the Central Government.

10. Then the next contention for the applicant is that such recommendation of the IV Pay Commission in regard to those who are under CPF Scheme was approved by the Central Government, it is discriminatory when the recommendation of the same Commission in regard to

the Central Government employees who were absorbed in Public Sector Undertakings was not accepted. There is nothing to state that those who are under CPF Scheme and ^{the} those Central Government employees who opted ^{for} 100 per cent of commutation of pension on being absorbed under Public Sector Undertakings are similar in all aspects. It was already held by the Supreme Court in WP.1068/87 that such Central Government Officers who are absorbed in Public Sector Undertakings got certain advantages on opting for commutation of 100 per cent ~~of commutation~~ of pension. It is not even stated for the applicant that even those who are under CPF Scheme got similar advantages. Hence, in the absence of even a plea that those who are under CPF Scheme and the Central Government officers, who opted ^{for} commutation of 100 per cent of pension on absorption ^{over similar} in Public Sector Undertakings, in regard to relevant aspects, the plea on the basis of Article 14 has to be negatived.

11. In the result, the DA is dismissed. No costs./


(R. Rangarajan)
Member(Admn)


(V. Neeladri Rao)
Vice Chairman

Dated : November 30, 94
Dictated in Open Court


Deputy Registrar(J)CC

- To
1. The Secretary, Union of India, Ministry of Communications,
New Delhi-1.
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 2. The Director General(Posts) Dept.of Posts,
Dak Tar Bhavan, New Delhi-1.
 3. The Chief Postmaster General, A.P.Circle, Hyderabad-1.
 4. The Secretary, Dept.of Pension & Pensioner's Welfare,
Union of India, Nirvachan Sadan, New Delhi-1.
 5. The General Manager, Hindustan Cables Limited
(A Govt.of India undertaking)Hyderabad-61.
 6. One copy to Mr. J. Jayant, Advocate, CAT.Hyd.
 7. One copy to Mr.N.R.Devraj, Sr. CGSC. CAT.Hyd.
 8. One copy to Library, CAT.Hyd.
 9. One spare copy.