

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

C.A. 910/96.

Dt. of Decision: 25-09-96.

Smt. T. Krishnaveni

.. Applicant.

Vs

1. The Commissioner of Central Excise,
Hyderabad.
2. The Union of India, Rep. by the
Secretary to the Min. of Finance,
New Delhi.
3. The Chairman of Central Board
of Excise and Customs, New Delhi. .. Respondents.

Counsel for the Applicant : Mr. K. Venkateswara Rao

Counsel for the Respondents : Mr. V. Bhimanna, Addl. CGSGT

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMIN.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Mr.K.Venkateswara Rao, learned counsel for the applicant and Mr.V.Ehimanna, learned counsel for the respondents.

2. The applicant in this O^r is the wife of one late Mr.Manikyala Rao, who retired on 31-12-1991 while working as Superintendent, Central Excise. The applicant was earlier issued with a charge sheet in the year 1988 in connection with the alleged falsification of his community status by him and that charge sheet was pending. It is the case of the applicant that the charges framed against him was enquired late and no order was passed even after the enquiry report is submitted. Hence, he filed OA.377/95 on the file of this Bench praying for a declaration that he is entitled to full pensionary benefits from 1-1-92 with interest at 18% per annum for the delayed payment from 1-1-92 and also for a declaration that the enquiry proceedings started is illegal, arbitrary and discriminatory. While the OA was pending the applicant had expired on 31-8-95. That OA was disposed of on 12-12-95 with a direction to the respondents for fixation of pension as on 1-1-92 and for payment of arrears if any and for family pension from the date of death of the employee. The DCRG accrued to him had ^{also} been ~~also~~ granted by the interim order in that OA dt. 18-7-95 and it is stated that the DCRG amounting to Rs.40,425/- was paid to the applicant herein.

3. The applicant submits that the fixation of pension includes commutation from 1-1-92 and as her husband was paid only the provisional pension he is entitled for commutation from 1-1-92. She applied for commutation of pension of her late husband which was rejected by the impugned order C.No.II/25/22/95 A4 dated 7-5-96 (Annexure-I).

4. This OA is filed for setting aside the impugned order No.C.No.II/25/22/95 A4 dated 7-5-96 (Annexure-I) and for a consequential declaration that the applicant is entitled for payment of commutation amount duly fixing the pension of her husband as on 1-1-92 and payment of commutation as submitted by her husband along with other pension papers well before his retirement declaring the Rule 4 of CCS (Commutation) of pension Rule 1989 as void if necessary.

5. The main contention of the applicant in this OA is that the enquiry was prolonged for no fault of her late husband and is solely due to the respondents inaction in completing the enquiry in time. Even after the enquiry was over no order was passed till the applicant had expired and thus the applicant was deprived of fixation of his final pension. This has resulted in non payment of commutation as per his papers for commutation submitted earlier to his retirement. Had the disciplinary proceedings been conducted in time without delay the applicant would have got the commutation. Hence, it will be irregular and illegal if the commutation is not paid to the applicant herein on the basis of fixing the final pension of her husband on 1-1-92, the date on which he retired from service.

6. Rule-4 of CCS (Commutation) Rules, 1989 states that no Government servant is eligible to commute a fraction of provisional pension authorised under Rule 69 of pension rule or pension during the pendency of judicial proceedings or disciplinary proceedings. As per this rule the applicant is not entitled for commutation as he was undergoing the disciplinary proceedings till his death. However, he was paid the provisional pension from the due date viz., 1-1-92. The only point for consideration in this OA is whether the Rule-4 referred to above is applicable to his case or not, in view of the alleged delay attributed in finalising the disciplinary proceedings by the respondents.

7. Even in the OA.377/95 ~~the~~ similar contention was taken in paying him full pensionary benefits from 1-1-92. But as per the interim direction only the DCRG was to be paid on certain condition. The interim order does not talk about fixation of final pension. Even in the final order in OA.377/95 dated 12-12-95 there is no discussion in regard to the delay on the part of the respondents in finalising the disciplinary proceedings initiated against the applicant though such a contention was raised. As the applicant had died, probably the delay was not discussed and the OA deemed to have been abated. If the learned Member while disposing of that OA had meant fixation of pension as on 1-1-92 including commutation, the same could have been ordered in that OA. But the direction in that OA is very silent. It only directs for fixation of final pension as on 1-1-92 and payment of arrears if any thereon and also the fixation of family pension. Hence, it cannot be said that the direction in OA.377/95 provides for payment of commutation.

8. Provisional pension is paid when the final pension cannot be fixed due to some enquiry proceedings or due to other reasons. In such case the employee gets full provisional pension and when full pension is paid nobody can demand commutation after having received the full pension. The applicant herein has received the full pension till his death. In the present OA, I do not find any details in regard to the delay caused by the respondents in finalising disciplinary proceedings of her late husband. Though the applicant submits that the delay has already been brought on record in OA.377/95 and also in the present OA, I do not find much substance in this submission. Even otherwise I do not see any reason to interfere with the Rule-14 of CCS (Commutation) Rules, 198 as the rule is framed after considering the pros and cons.

9. The CCS (Commutation) Rules of 1989 provides for commutation of part of pension. But that part of commutation cannot be ordered if there is judicial or disciplinary proceedings are pending as per Rule-4 of the said rule. If full pension though provisional is paid, the retired employee cannot demand payment of commutation from the date of his retirement even if the judicial/disciplinary proceedings end in the acquittal of the employee and even if he is prepared to remit back the commuted part of the pension received by him from the date of his retirement till he was acquitted. No provision exists in the rule for commutation of pension as prayed for in this OA. The applicant submits that the Rule-4 referred to above may be declared as void if necessary to grant him the relief of commutation. The only reason given to declare the Rule-4 void is due to the alleged reasoning that the enquiry proceedings were delayed. There is no such provision to declare Rule-4 void on the basis of this allegation. Rule-4 was framed after sufficient thought and declaration of such a rule as void on grounds of delay ⁱⁿ or completion of judicial/disciplinary proceedings in this case is unwarranted and uncalled for. Rule-4 ibid is a reasonable rule for denying commutation if full pension is granted and the retired employee when receiving full provisional pension can have no reasonable hardship. Even if it is commuted from the date of retirement at a later date after the finalisation of judicial/disciplinary proceedings, the hardship if any undergone by the retired employee from the date he retired till ~~the~~ the proceedings are over, cannot be compensated by ordering commutation from the date of retirement at a later date. As a matter of fact it will cause hardship to him as he has to pay back the commuted portion of his pension

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1. The Commissioner of Central Excise, Hyderabad.
2. The Secretary to the Ministry of Finance, New Delhi.
3. The Chairman of Central Board of Excise and Customs, New Delhi.
4. One copy to Mr.K.Mankataswar Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr.W.Bhimanna, Addl.CGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One duplicate copy.

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probably with interest in lumpsum. Hence, I see no reason to declare Rule-4 void in this case due to the alleged delay in finalising the judicial/disciplinary proceedings of the late husband of the applicant herein.

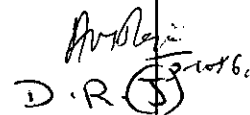
10. In the result, I find no merits in this OA. Hence, the OA is dismissed. No costs.



(R. Rangarajan)
Member (Admn.)

Dated : The 25th Sep. 1996.
(Dictated in Open Court)

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D.R. S.

25/10/96

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Typed By
Compared by

Checked By
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED:

25/10/96

ORDER JUDGEMENT

R.A./C.P./M.A. NO.

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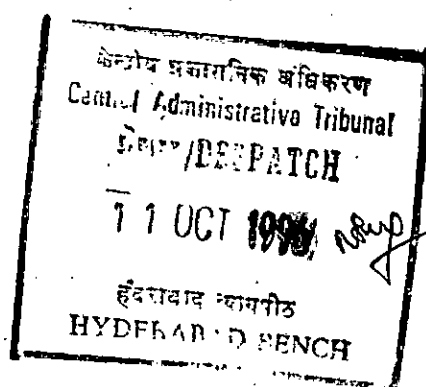
O.A. NO. 910/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

Y.L.KR

II COURT

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