

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.293/2005.

Jaipur, this the 25th day of July, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

J.P. Dhawan
S/o Late Shri G. M Dhawan,
Aged about 76 years,
R/o C-226 A Gyan Marg,
Tilak Nagar,
Jaipur-4.

... Applicant.

By Advocate : Shri C. B. Sharma.

Vs.

1. Union of India
Through its Secretary,
Department of Pension and Pensioners Welfare,
Government of India, Ministry of Personnel,
Public Grievances, New Delhi.
2. Salt Commissioner for India,
2-A, Lavan Bhawan,
Jhalana Doongry,
Jaipur 302 004.

... Respondents.

By Advocate : Shri S. S. Hassan.

: O R D E R (ORAL) :

The applicant before his absorption in PSU on 19.2.1973 was Central Government Employee. For the purpose of pensionary benefits, his qualifying service was calculated as 23 years, 7 months and 21 days. The date of commutation of pension is 18.11.1974 and after 15 years, the applicant was restored 1/3rd commuted portion of pension w.e.f. 18.11.1989. It is the case of the

applicant that the basic pension sanctioned at the time of retirement prior to absorption in PSU was Rs.808/- and $1/3^{\text{rd}}$ commuted value of which comes to Rs.269/- whereas he was paid Rs.216/- per month up to 31.12.1995. It is further pleaded ^{that} on account of revision of basic pension w.e.f. 1.1.1996 and as per the judgment rendered by the Hon'ble Andhra Pradesh High Court in CWP No.8532/2003 decided on 24.12.2003, the restorable $1/3^{\text{rd}}$ pension of the applicant comes to Rs.1920/- whereas he is being paid Rs.819/-. Thus, according to the applicant he is entitled to an additional amount of Rs.1101/- w.e.f. 1.1.1996. It is on the basis of these facts the applicant has filed this OA thereby praying that the respondents be directed to honour the verdict of Hon'ble High Court of Andhra Pradesh as rendered vide order dated 24.12.2003 (Annexure A/5), pay the difference of arrear from 18.11.1989 as per calculation shown in Annexure A/6 and to extend benefits with all consequential benefits.

2. Notice of this application was given to the respondents. Respondents have filed reply in which they have stated that the applicant was allowed all the benefits admissible to him as per the Government of India's instructions issued from time to time as would be seen from the bare perusal of Annexure R/1 to R/4. It is further stated that his basic pension was calculated according to 4th and 5th Pay Commission's Recommendations and Dearness Relief on full pension has been allowed as

per the calculations. Thus, the contention of the applicant that the benefit of 4th and 5th Pay Commissions' Recommendations has not been extended to the applicant is not correct. The respondents have further stated that the Society for Welfare of Former Central Government Employees absorbed in Public undertakings, Hyderabad had filed an OA No.1345/2001 before the Hyderabad Bench of the CAT requesting for certain reliefs which were allowed by the Tribunal. The order of the Tribunal was challenged by filing Writ Petition No.8532/2003 in the High Court of Hyderabad and the High Court of Hyderabad vide its order dated 24.12.2003 directed the mode of calculation for 1/3rd of restoration of commuted value of pension by allowing two installments of Interim Relief, Dearness Allowances as appropriate and 40% of Fitness Allowance on full notional pension before arriving at the revised pension as on 1.1.1996. It is further stated that the Society for Welfare of Former Central Government employee absorbed in Public undertakings Hyderabad had filed CP No.760/2005. The Hon'ble High Court vide its order dated 28.9.2005 disposed of the said contempt petition stating that the mode of calculation of pension may be made as per the existing rules and regulations without reference to the mode of calculation adopted by the Division Bench in Writ petition No.8532/2003. Accordingly, the Department of Pension and Pensioners Welfare vide OM dated 2.12.2005 has directed all the Ministries/Departments to take appropriate action for

finalizing restoration of 1/3rd portion of the pension to PSU absorbee in terms of existing rules and regulations in the matter. The respondents have placed a photo copy of the OM dated 2.12.2005 on record as Annexure R/5 and photo copy of order dated 23.6.2005 as Annexure R/6. It is further stated that the Department of Pension and Pensioners Welfare has filed an SLP before the Hon'ble Supreme Court of India and it has already been taken up for hearing. According to the respondents, in the instant case all the benefits admissible from time to time have already been extended to the applicant and as such there is no action to be taken by the answering respondents in view of the aforesaid OM.

3. I have heard the Learned Counsel for the parties and gone through the material placed on record.

4. It is not in dispute that the Andhra Pradesh High court in CWP No.8532/2003 decided on 24.12.2003 has directed the mode of calculation of 1/3rd of restoration of commuted value of pension in the manner indicated above. It is also not in dispute that the said order has been clarified by the Division Bench in Contempt Case No.760/2005. It will be useful to quote the relevant portion of the order which find mention in OM dated 2.12.2005 (Annexure R/5) and thus reads as under :-

"In view of the submission made by the Learned Standing Counsel and in the facts and circumstances

of the case as to the pension of the members of the petitioner-association, without expressing any opinion on the merits of the contempt cases, in order to put a quitus to the lis, we feel it just and proper to modify the mode of calculation of the pension to the effect that the pension has to be calculated in respect of the persons whose representations had been forwarded by the petitioner-Association to the Respondents, as per the existing rules without reference to the mode of calculation as adopted by the earlier Division Bench of this Court in W.P. No.8532 of 2003, within a period of three months from the date of receipt of copy of this order."

5. It is not in dispute that in view of the above modified order of the Hon'ble High court of Andhra Pradesh, the applicant has been paid all the benefits admissible to him from time to time as per the existing rules. It is also not in dispute that the Department of Pension and Pensionary Welfare has filed SLP in the Hon'ble High Court against the order passed by the Division Bench in Writ Petition No.8532/2003 which is stated not to have been finally decided. Thus, the issue whether the pensioners of PSU are entitled to restoration of 1/3rd portion of commuted pension after 15 years from the date of commutation as per the mode of calculation adopted by the Division Bench in Writ Petition No.8532/2003 or they are entitled to the restoration of aforesaid commuted pension as per the existing rules is sub-judice before the Apex Court. Thus, keeping the matter pending will not serve any purpose. Accordingly I am of the view that the present OA can be disposed of with the direction to the respondents that the claim of the applicant regarding restoration of 1/3rd portion of

commuted pension after 15 years from the date of commutation would be regulated based upon the judgment to be rendered by the Hon'ble Supreme Court in SLP filed by the Department of Pension and Pensionary Welfare in CWP No.8532/2003 in R.R. Murthy and Ors. vs. Union of India and Others and in case the judgment of the High Court of Andhra Pradesh in the aforesaid Writ Petition is upheld by the Apex Court, in that eventuality, the respondents will implement the judgment of the Apex Court within two months from the date of disposal of the SLP.

6. With these observations, the OA is disposed of with no order as to costs.



(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./