

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO.060/00344/2014 Date of order:- 30.04.2015

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Yash Paul Sondhi r/o # 219, Notified Area Committee, Mahimajra,
Chandigarh.

.....Applicant.

(By Advocate :- Mr. B.S.Agarwal)

Versus

1. Union of India through the Secretary, Department of Pensions & Pensioners' Welfare, Lok Nayak Bhavan, New Delhi.
2. The Principal Accountant General(Audit), Haryana, Dakshin Marg, Sector 33, Chandigarh.
3. The Assistant General Manager, Central Pension Processing Centre, State Bank of India, Sector 5, Panchkula.

...Respondents

(By Advocate : Mr. I.S.Sidhu, for respondents no.1 & 2.
Mr. R.K.Sharma, for Mr. S.K.Gupta, for respondent no.3).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Yash Paul Sondhi has filed the present Original

Application for quashing the order dated 28.10.2013 passed by

respondent no.2 whereby he has been denied the benefit of liberalization of existing pension scheme i.e. pro-rata of full pension 18.5/20 instead of 18.5./33 with effect from 1.1.2006 on the ground that the applicant is a pre-2006 retiree.

2. Case of the applicant is that he joined the service of respondent no.2 on 12.1.1970. He was relieved of his duties on 12.5.1987 to join on deputation with the Regional Computer Centre, Chandigarh, where he was permanently absorbed on 13.5.1988. The applicant was given pension @ Rs.666/- per month which was pro-rata reduction 18.5/33 of his full pension as he was having less than 20 years of service with the office of respondent no.2. Applicant was restored 1/3 pension on 5.1.2005 which comes to Rs.679/-. On the basis of 6th Pay Commission, the applicant was given pension @ Rs.3244/- per month with effect from 1.1.2006. However, his notional pension was fixed @ Rs.4601/- w.e.f. 1.1.2006 by multiplying old pension of Rs.679/- by 2026 under para 4.1 of Government of India instructions dated 1.9.2008. The applicant has stated that he has been denied the benefit of para 4.2 of instructions dated 1.9.2008.

3. Against the said action of the respondents, the applicant had earlier approached the Tribunal by filing OA No.52/HR/2012 wherein he had sought the benefit of liberalized rule of full pension for

qualifying service of 20 years with effect from 1.1.2006 instead of 33 years. The said OA was disposed of on 22.8.2013 by directing the respondents to consider the case of the applicant for grant of pension on pro-rata basis for 18.4 years of service by passing necessary order within a period of two months from the date of receipt of copy of order. However, respondent no.1 again rejected the claim of the applicant vide order dated 28.10.2013. The applicant has relied upon an order dated 30.7.2013 (O.A.No.2461 of 2012) by the Principal Bench of the Tribunal. The applicant has also relied upon a judgment passed by the Hon'ble Apex Court in the case of **P.V.Sundara Rajan & Another versus Union of India & Ors.** decided on 26.4.2000.

Hence the present OA.

4. Pursuant to notice, the respondents have filed their written statement wherein they have stated that as per OM dated 10.12.2009 issued by the Government of India, pensioners were allowed full pension i.e. 50% of the emoluments or average emoluments received during the last ten months which is more beneficial to a government servant for service of 20 years to those retiring with effect from 1.1.2006, but the said benefit was not extended to the pre-2006 pensioners. As the applicant was a pre-2006 pensioner, his pension was revised as per OM dated 15.9.2008 which prescribes revision of 1/3rd commuted portion of pension in respect of government servant

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who had drawn lump sum payment on absorption in PSUs/Central Autonomous Bodies. They have stated that para 4.2 of OM dated 1.9.2008 does not apply in case of the applicant as he had drawn one time lump sum terminal benefit entitled to the restoration of 1/3rd commuted portion of pension as per judgment dated 15.12.1995 passed by the Hon'ble Apex Court. They have relied upon a judgment passed by the Hon'ble Apex Court in the case of State of Punjab versus Amar Nath Goel & Ors. decided on 11.8.2005 (C.A.No.129 of 2003) wherein it was held that the cut-off date fixed by the Government for revision of pension is on a very valid ground, namely, that of financial constrains and has rejected the contention of the petitioners that fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14 of the Constitution of India. The Supreme Court has further held that if any new cases are filed by the retirees challenging the cut-off date, the judgment may be brought to the notice of Tribunal so that the cases are dismissed at the admission/preliminary hearing. The applicant is a pre-2006 retiree, as such, full pension after completion of 20 years of qualifying service does not apply in his case. They have thus prayed for dismissal of the OA.

5. The applicant has filed a rejoinder by generally reiterating the averments made in the OA.

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6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. At the outset, we note that the case of the applicant is not a case of a normal pensioner. Firstly, he had commuted 100% of pension at the time of retirement from government. Secondly, he is a permanent absorbee in a public sector undertaking, but is continuing to draw pension separately from the government; and thirdly, he has retired much before 1.1.2006. Therefore, the applicability of government instructions/circulars with regard to restoration of his pension has to be viewed in the light of these three facts.

8. The applicant's first claim is that he should be given the benefit of the provisions of circular No.38/37/08-P&PW(A) dated 10.12.2009 which provides that the linkage of full pension with 33 years of qualifying service shall be dispensed with w.e.f. 1.1.2006 instead of 2.9.2009 and in the light of this provision, his pro-rata calculation should be not 18.5×33 but 18.5×20 . It will be appropriate to reproduce the relevant part of the circular as follows :-

"Subsequently, it was clarified vide O.M.No.38/37/08-P&PW(A) dated 11.12.2008 that pension of Government servant retiring on or after 1.1.2006 will also be calculated based on the emoluments or average emoluments received during the last 10 months, whichever is more

beneficial to him but his pension would continue to be proportionate to the pension on completion of 33 years of qualifying service. Para 5.4 of this Department's O.M.No.38/37/08-P&PW(A) dated 2.9.2008 was modified to that extent.

2. This matter has been reconsidered by the Government. In partial modification of the instructions/order issued in this respect, it has now been decided that linkage of full pension with 33 years of qualifying service shall be dispensed with , with effect from 1.1.2006 instead of 2.9.2008. The revised provisions for calculation of pension in para 56.2 and 5.3 of the OM No.38/37/08-P&PW(A) dated 2.9.2008 shall come into force with effect from 1.1.2006 and shall be applicable to the Government servants retired/retiring after that date. Para 5.4 will further stand modified to that extent".

The reading of this circular makes it clear that the linkage of full pension with 20 years and not 33 years of qualifying service shall be applicable to those government servants who have retired on or after 1.1.2006. The applicant had retired in 1988 and, therefore, his contention that his pension calculation should take into account pro-rata calculation based on 20 years of qualifying service is clearly untenable.

9. The applicant's second claim flows from para 4.2 of Government of India circular no.38/37/08-P&PW(A) dated 1.9.2008. This provision reads as follows :-

"4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale".

Therefore, the applicant's claim is that in no case, his pension can be fixed at lower than 50% of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay-scale from which the pensioner had retired. However, he has disregarded the provision (a) pension of the same circular which is specific to such government servants who have been permanently absorbed in Public Sector Undertaking, but continue to draw pension from the Central Government. Such cases are not entitled to the provisions of this circular. The relevant portion is quoted below:-

"(a) Pension

Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, the pension of such absorbees will be updated in terms of these orders. In cases where the Government servants have drawn one time lump sum terminal benefits equal to 100% of their pensions and have become entitled to the restoration of one-third commuted portion of pension as per Supreme Court judgment dated 15.12.1995, their cases will not be covered by these orders".

Here is the case where the applicant was drawing pension separately from the Government though he was permanently absorbed in public sector undertaking. Further, he had already commuted 100% pension at the time of his retirement. Therefore, the benefit of para 4.2 is not admissible to him. The applicant has placed reliance on an order dated August 16, 2013 passed by the Ernakulam Bench of the Tribunal in O.A.No.715 of 2012 (**M.O.Inasu versus Union of India & Ors.**)

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which was according to him was upheld by the Hon'ble Supreme Court. However, he has omitted to mention that this was the case where the applicant had not commuted his 100% pension at the time of retirement. The cases referred to in the judgments belong to those persons who had not commuted 100% of their pension. These cases have been considered as separate class of cases and cannot be given the same benefit and they cannot be considered at par with the persons who are getting pension in a normal sense. The judgment passed by the Hon'ble Supreme Court in the case of **P.V.Sundara Rajan & Another versus Union of India & Ors** decided on 26.4.2000 (A-3) where the Hon'ble Court has held as follows :-

"The parity claimed by Lt. Col. Malhotra and other absrobes who had commuted 100% pension, in our view, is entirely misplaced. The contention that what is commuted or given up is an amount and not the right to receive pension or right to receive post-commutation revision and attendant benefits including dearness relief on the gross entitled pension on the dates they were granted to other government pensioners, is only illusory".

→ The applicant has not been able to show any circular, which clearly indicates that the provisions on which he is relying on, are applicable to a pensioner who has commuted 100% of his pension at the time of retirement and who has been absorbed in a public sector undertaking, but continues to draw pension from the Central Government. The arguments made by the applicant are neither convincing nor are

they supported by any orders/circulars of the government in this regard.

10. We are therefore, not inclined to interfere in this matter and the OA is accordingly dismissed. No costs.

Uday Kumar Varma
(UDAY KUMAR VARMA)
MEMBER (A).

Dated:- April 30, 2015.

Kks

Sanjeev Kaushik
(SANJEEV KAUSHIK)
MEMBER (J)