

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 1944/2014

New Delhi this the 14th day of September, 2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

TSR Swamy, Retired Jt. Director,
S/o Late Shri T. Pakash Rao,
Aged about 61 years,
R/o C-601, Manjeera Heights Phase 2,
Chitra Layout, LB Nagar, Hyderabad-500074

(By Advocate: Mr. M.S. Ramalingam)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
South Block, New Delhi-110011
2. Union of India through
The Secretary,
Department of Pensions & Pensioners' Welfare,
Ministry of Personnel, Public Grievances &
Pensioners', Welfare, Lok Nayak Bhawan,
New Delhi-110 003
3. The Director General
WESEE, Ministry of Defence,
West Block V, RK Puram,
New Delhi-110066
4. Office of the Joint Secretary (Training & Chief
Administrative Office
'E' Block Dalhousie Road, '
Ministry of Defence,
New Delhi-110011
5. Principal Controller of Defence Accounts (Pension)
Draupadi Ghat, Allahabad - Respondents

(By Advocate: Mr. Ashok Kumar)

ORDER (Oral)

Dr. B.K. Sinha, Member (A):

The applicant, who took voluntary retirement w.e.f. 31.07.2008, in the instant Original Application, is aggrieved by the manner of determination of the commuted value of pension, which resulted in his getting lesser amount towards commuted value, as compared to other officers having the same pension, who superannuated on the same date, i.e., 31.07.2008. The applicant is further aggrieved by the refusal of the respondents to relax the provisions of rules to remove hardships caused to him vide communication dated 10.06.2013 from respondent no.4.

2. The facts of the case, in brief, are that the applicant was a member of the Armed Forces Hqrs. Civil Services of 1975 Batch, who had been upgraded in situ to the rank of Joint Director. He sought voluntary retirement under Rule 48 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"). While seeking VRS, the applicant chose to exercise option available at sub-rule (1-A) (a) of the Rule 48 of the Pension Rules, which provides for giving less than 3 months notice. Accordingly, the applicant retired w.e.f. 31.07.2008. The

applicant's request for commutation of pension, as averred by the applicant, was processed after stipulated period of three months, i.e., after 30.09.2008. It is the submission of the applicant that this delay occurred to be on account of desire of the respondents to fix his pension under the terms of Revise Pay Rules. The applicant was awarded Rs.8,39,624/-, as the commutation price, in the following manner:-

“(a) Pension awarded	-	20550.00 p.m.
(b) 40% of Basic Pension	-	8220.00
(c) Age Next Birth day	-	57 years (DOB: 18-06-1952)
(d) Commutation factor	-	8.5.12”

3. It is the case of the applicant that younger of the persons retried at the same date will get higher commutation value of pension vis-à-vis those retired at the age of 60 years, i.e., 31.07.2008, drawing the same pension, i.e., Rs.20,550/-. Rule 6 of the CCS (Commutation of Pension) Rules, 1981 clarifies as to when the Commutation of Pension becomes absolute in the following terms:-

“The Commutation of pension becomes absolute when the application in the prescribed form is received by the Head of Office where commutation is without medical examination and on the date on which the medical authority signs the medical report when commutation of pension is sanctioned on the basis of medical examination.”

4. The Voluntary Retirement Scheme of the applicant was sanctioned under the provisions of sub-rule (1-A) of

Rule 48 of the Pension Rules. The applicant further submits that his request for commutation had not been taken up for processing because the requisite notice of three months had not been given. For the sake of clarity, the relevant para 3 of the communication, dated 14.07.2008 is being extracted as below:-

“3. Since the officer has not given the requisite 03 months notice period for voluntary retirement, his application for commutation of pension is to be processed only after the expiry of the normal notice period of 03 months i.e., after 30 Sep 2008.”

5. The argument of the applicant is that his commutation application was processed after expiry of clear-cut period of three months, i.e., 30.09.2008 because the authorities had deliberately waited for new Pension Rules, 2008 to come into operation. Following the implementation of the 6th CPC, the Government had come out with a new table of commutation dated 02.09.2008 containing the revised instructions for regulating pension/gratuity/commutation of pension/family pension/disability pension/ex gratia lumpsum compensation. The basic ground adopted by the applicant is that the State Government has powers of relaxation under Rule 33 of the CCS (Commutation of Pension) Rules, 1981, which read as under:-

“33. Power to relax –

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions, as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms.”

6. The applicant claims that this power should have been exercised in his favour so as to remove the undue hardships, but it was not done. The applicant had approached this Tribunal in OA No.2792/2011, which was disposed of vide order dated 29.01.2013 directing the respondents to dispose his representation. Accordingly, the respondents issued order dated 10.06.2013, which is being impugned in this case. The applicant further submits that the respondents have violated articles 14 and 16 of the Constitution by drawing a distinction within two classes of pensioners, i.e., those who retired through VRS process availing of concession of one month and those, who retired on superannuation on the same date.

7. The respondents have filed a counter affidavit rebutting the averments of the applicant, except those which lie in factual matrix. The respondents submit that

the applicant has sought voluntary retirement. It was considered and his VRS was sanctioned w.e.f. 01.08.2008 under Rule 48 of the Pension Rules by waiving the condition of three months' notice. As already stated, it has been made plain in the letter communicating the acceptance of request of the applicant for VRS that his application for commutation would be processed only on 30.09.2008 after the expiry of three months. The applicant submitted his pension papers after expiry of notice period of three months, which was received on 28.11.2008. The pension of the applicant was fixed at Rs. 20,550/- while the commutation was allowed w.e.f. 28.11.2008, i.e., the date of receipt of his application and payment of Rs.8,39,624/- was sanctioned as commuted value of pension in accordance with rules 6 and 13 of Pension Rules, 1981. In the meantime, the DoP&T OM dated 02.09.2008 had been issued introducing revised table for commutation of value. The applicant then approached this Tribunal in OA No. 2792/2011, which was disposed of on 29.01.2013 giving liberty to the applicant to submit his representation. This was finally submitted on 12.02.2013 seeking relaxation of the rules for applying the old commutation table in the following terms:-

“4. In this connection, I would like to submit that those who superannuate on completion of 60 years of age on the same day and in the same pay scale

received a higher commutation value as compared to me who took voluntary retirement at a much younger age. This is so because of an anomaly in the Rules. A case in point is that of Mr. RS Sehrawat who retired as Joint Director from OMG's Branch, Army Headquarters, LWE Directorate in the same pay scale and basic Pay as me.

5. In the case of Mr. Sehrawat and others who are similarly placed what has happened was that substantial part of their pension was commuted based on the old pension table. Whereas in my case only the revised table was used for commuting the entire portion of the commutable pension. This has thus put me to a loss for not fault of mine.

6. I believed that it was not intention of the Government to cause any hardship while issuing the orders relating to revision of commutation table. Accordingly, I sent a representation on 30 Mar 2010 requesting that my case be examined and my Commuted value of Pension re-fixed so that I get a higher value to which I am eligible."

8. The stand of the respondents is that application of Rule 88 of CCS (Pension) Rules, 1972 was not justified, as this was not case of undue hardships in an isolated case. This would go against the spirit of the rules. Accordingly, the order dated 10.06.2013 was passed rejecting his case.

9. The applicant has also filed the rejoinder reiterating and reaffirming his averments in the OA.

10. We have considered the pleadings of rival parties as also the documents adduced and have patiently heard the arguments advanced by the learned counsels for the parties.

11. The only issue to be decided in the instant case is that whether there has been any violation of Articles 14 and 16 of the Constitution by the respondents in rejecting the representation of the applicant vide order dated 10.06.2013. The commutation value of pension of the applicant vis-à-vis one RS Sehrawat, Joint Director from QMG's Branch, Army Headquarters, LWE Directorate, who retired on the same day, has already been reproduced hereinabove.

12. Rule 88 of the CCS (Pension) Rules, 1972 provides as under:-

“88. Power to Relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules under hardship in any particular case, the Ministry or Department as the case may be, may by order for reasons to be recorded in writing dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms”

13. The logic of the respondents for not acceding the request of the applicant is that applicant had already been communicated that his commutation application would be reckoned after expiry of normal period of three months, i.e. after 30.09.2008. He also accepted the amount of pension.

Therefore, he raised the issue of relaxation in his representation dated 12.02.2013. We fully agree with the contention of the respondents that there is no individual hardship, as the Government servants, who retired on 02.09.2008, are getting commuted pension based on the new commutation table. There is nothing on record from the above narration to show that powers under Rule 88 of the Pension Rules should have been exercised in favour of the applicant. Therefore, we have no hesitation in dismissing this claim as frivolous and one of luxury litigation. However, since the applicant is a pensioner, we desist from the temptation of imposing cost on him. With this order, the OA is dismissed without costs.

(Dr. B.K. Sinha)
Member (A)

(Justice M.S. Sullar)
Member (J)

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