

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/625/2017

**Reserved on: 11.12.2018
Order pronounced on: 12.12.2018**

Between:

R. Sundaram, S/o. N. Ramamurthy,
Aged about 50 years, Occ: Retired OS,
R/o. Plot No. 181, Road No.4, 1st Floor,
T.M. Colony, Mahendra Hills,
Secunderabad – 500 026.

...Applicant

And

1. Union of India, Rep. by General Manager,
South Central Railways, Rail Nilayam,
Secunderabad – 500071.
2. The Chief Personnel officer,
South Central Railway, Rail Nilayam,
Secunderabad – 500071.
3. Financial Advisor & Chief Accounts Officer,
South Central Railway, Rail Nilayam,
Secunderabad.

...Respondents

Counsel for the Applicant	...	Mr. M.C. Jacob
Counsel for the Respondents	...	Mr.S.M. Patnaik, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed for not granting commutation pension from 10.1.2017 as per Rule 7 (1) of part III of the Railway service (Commutation of Pension) Rules 1993.

2. Brief facts of the case are that the applicant joined the respondents Organisation as Booking Clerk and rose to the level of Office Supdt. On

grounds of unauthorized absence he was proceeded against by imposing the penalty of compulsory retirement w.e.f. 21.11.2014. The applicant was issued pension payment order dt.9.11.2016 sanctioning pension payable from 22.11.2014 fixing the pension at Rs.8200/-. The applicant applied for commutation of 40 % pension and as per rules he was subjected to medical check by the medical board which gave the relevant certificate on 10.1.2017. However, commutation of pension was effected from 22.11.2014 instead of 10.1.2017 which is the date when the commutation became absolute. Applicant represented on 14.12.2016 which was considered favourably by the 2nd respondent and forwarded to the 3rd respondent which was rejected on 10.2.2017. The 2nd respondent sent a revised proposal once again recommending the proposal but it was turned down by the 3rd respondent citing Rule 11 of RS (Commutation of Pension) Rules vide lr. dt 3.5.2017. In response, 2nd respondent did write to the 3rd respondent on 15.5.2017 informing that Rule 11 is not applicable but there is no response. Hence the OA.

3. The contentions of the applicant are that as per Rule 19 of RS (Commutation of Pension) Rules an employee who was compulsorily retired from service and granted pension under rule 64 of Railway Pension rules, has to get himself medically examined to be eligible for commutation of pension. The applicant contends that as the medical certificate was signed on 10.1.2017, as per Rule 7 (1) (iii) of the commutation of pension rules, the commutation of Pension shall become absolute from the said date, on which date the medical authority signed the medical report. The respondents calculating the commutation based on the pension drawn on 22.11.2014 is against the rule cited. The 2nd respondent did write to the 3rd

respondent that the commutation has to be effected w.e.f 10.1.2017 quoting Rule 7 (1) iii of Commutation of Pension Rules confirming that the stand of the applicant is correct. However, the 2nd respondent not agreeing to the same quoting Rule 11 of the commutation is irregular, since there is no retrospective revision of pension of the applicant. The commutation value is worked out based on rule 9 of commutation of pension rules, in accordance with the Table of values in appendix applicable to the applicant. The applicant claims that the commuted value that he gets is reduced by taking the date of his compulsory retirement and not the date of medical certificate as per the relevant rule. The applicant further contends that rule 30 of Commutation of Pension rules does support his assertion.

4. Respondents contend that the commutation value was arranged based on the age on the date on which the medical board signed the report. As there was no retrospective revision of pension in the case of the applicant, the case was dealt under Rule 11 of Railway Services (Commutation of Pension) Rules, 1993. The commutation of pension was done as per rule 19 sub rule (iii) of chapter IV of RSRP 1993. The respondents contend that a pensioner can commute fraction of pension due on the date following the date of his retirement and not on the day of Medical Examination. The pension sanctioned on 22.11.2014 has not undergone any change due to implementation of 7th CPC w.e.f 1.1.2016. The applicant is claiming the commutation based the revision of pension as on 1.1.2016. The pensioner has retired in 2014 and hence is a pre 2016 pensioner and the rules for pre and post 1.1.2016 pensioner are different.

5. Heard both the counsel and perused the documents on record. The learned counsel has argued that as per Rule 7 (1) (iii) of RS (Commutation of Pension) Rules the applicant is eligible for commutation from 10.1.2017, the date on which the commutation has become absolute. The learned counsel for the respondents has equally countered it by stating that the applicant is a pre 2016 retiree and rules meant for post 2016 retirees cannot be applied to the applicant and therefore is not eligible for the benefit sought.

6. The issue is more about application of the proper rule to the issue being adjudicated. A reading of each of the rule and its interpretation will throw light on which way the balance of convenience will swing.

a. Rule 6 of the Railway services (Commutation of Pension) Rules 1993, (herein after will be referred to as “CP Rules 1993” for brevity), lays a limit on Commutation of Pension, by stating that a railway servant shall be entitled to commute for lump sum payment of an amount not exceeding forty percent of his pension. Applicant sought 40 % of pension to be commuted.

b. The applicant has been compulsorily retired and hence he has to get medically examined as per Rule 19 (iii) of CP 1993 which states that an applicant who is compulsorily retired from service as penalty and is granted pension under Rule 64 of the Railway Pension Rules shall be eligible to commute a percentage of his pension subject to the limit specified in rule 6 after he has been declared fit by the appropriate medical authority. (Authorities: Railway Board’s letter No. 2011/F(E)III/1(2)/13 dated 14.01.03). The applicant appeared before the appropriate medical authority and was given the medical certificate dated 10.1.2017. The applicant sought 40 percent of commutation of his pension from 10.1.2017, the date of issue of medical

certificate, but the respondents worked it out from 22.11.2014, the date on which he was compulsorily retired. The significance of the date of medical report has been brought out in Rule 7 of the CP rules 1993 as elaborated hereunder.

c. Rule 7 (1) iii of CP 1993 rules states that the Commutation of Pension will become absolute, on the date on which the medical authority signs the medical report in Part III of Form 5.

The medical authority has signed the medical report of the applicant on 10.1.2017 and as per the rule cited the commutation becomes absolute from this date. The commuted value of the pension has to be worked from this date. The methodology of working out the commuted value of the pension has been indicated in Rule 9 of the CP rules 1993 which is extracted and placed below.

“Calculation commuted value of pension:- The lump sum payable to an applicant shall be calculated in accordance with the Table of the values in Appendix applicable to the applicant on the date on which the commutation becomes absolute.”

Here again the rule stresses the fact that commutation will be from the date on which commutation has become absolute. The date on which it has become absolute for the applicant is 10.1.2017.

d. One another rule which highlights the importance of the date of commutation becoming absolute is rule 30 of CP rules 1993 which reads as under:

“Modification in the value specified in the Table- (1) In case the value specified in the Table is modified at any time before the commutation becomes absolute in terms of clause (ii) of sub rule (1) of rule 7, the payment shall be made in accordance with the value so modified.”

The import of this rule is that the pension and value as on the date of commutation will become absolute and this becomes the criteria to allow commutation of the case in question.

e. In case of any doubt in interpreting the CS rules 1993 the competent authority to clarify is the Railway Board as per rule 33 of the CS rules 1993.

f. In contrast the respondents have cited rule 11 of the CS rules 1993 to reject the request of the applicant. Rule 11, which deals with retrospective revision of final pension, stipulates that:-

“An applicant who has commuted a percentage of his final pension and after commutation his pension has been revised and enhanced retrospectively as a result of Railway Board’s decision, the commuted value determined with reference to enhanced pension and the commuted value already authorised. For the payment of difference the applicant shall not be required to apply afresh.”

g. Application of the rules described above makes it clear that the applicant on being compulsorily retired (Rule 19) was medically examined and medical certificate was issued on 10.1.2017, on which date the commutation becomes absolute Rule 7(1)(iii). Therefore the applicant’s commutation of pension should take effect from 10.1.2017. The argument of the respondents that if there was revision of pension after the commutation was effected then the difference of commutation on the revised pension is liable to be paid as per rule 11 of CS Rules 1993. The question is commutation is being effected on 10.1.2017 which is the critical date. At that time (10.1.2017) what was the pension available and of which 40 percent to be commuted has to be arrived at. The question of revision of pension does not arise in this case and hence clause 11 of CS rules 1993 is irrelevant under which the respondents took shelter. Besides, the 2nd respondent has been

repeatedly addressing the 3rd respondent to accede to the request of the applicant based on rule 7 (1) iii of CS rules 1993. However, 3rd respondent banked on a rule which was not relevant. If the argument of the 3rd respondent were to be assumed to be correct, then the very objective of rule 7 (1) iii stating that on the date of medical certificate the commutation would become absolute would be defeated and its relevance will be lost. A rule which is irrelevant is never framed. Further, when there was difference of opinion between the 2nd and the 3rd respondent, it is the Railway Board which is competent to clarify, as per rule 33 of CS rules 1993 and definitely not the 3rd respondent. Another point raised by the respondents is that the rules for the pre and post 2016 pensioners are different and that the applicant being a pre 2016 pensioner, the rules pertaining to pre 2016 pensioners will apply. The question that is being dealt is not about revision of pension but commutation of pension. About commutation of pension rule 7(1) (iii) clearly lays down that the commutation of pension will become absolute as per the date of medical certificate which is 10.1.2017. The rules that prevail on 10.1.2017 will have to be applied and incidentally they pertain to post 2016 pensioners. Thus logically as explained the 3rd respondent has erred in applying the rules. The pension cannot be commuted as on 22.11.2014, the date of compulsory retirement. The 2nd respondent was right in applying the relevant rule. As the value of the pension enhances so does the commutation value. The pension was granted in 2014 and the commutation is being done in 2017, therefore the difference in value. Commutation is for a period of 15 years and thereafter pension gets fully restored. It is just akin to advance payment recovered in instalments in the future because pension is reduced to that value. Therefore it is just a temporary adjustment for a certain interval of time. One another

parallel that can be drawn which supports the contention of the applicant is from the G.O.I instructions issued by Auditor General's U.O No. 610-A/1/152-60 dated 9.8.1960, where in it was clearly stated that commutation rules do not state that the commutable amount is to be calculated with reference to the pension originally granted to the pension. Rules are in favour of the applicant.

H. In addition, similar issue was adjudicated and decided by this Tribunal in favour of the applicant in OA 963/2005 and the same was upheld by the Hon'ble High Court of Andhra Pradesh in WP No. 7896 of 2012 vide order dt. 6.02.2013 and order of the Hon'ble High Court reads thus:

"In this regard, Rule 8 of the Central Civil Services (Commutation of Pension Rules), 1981 is relevant and it reads thus:

"The lump sum payable to an applicant shall be calculated in accordance with the table of the values prescribed from time to time and applicable to the applicant on the date on which the commutation becomes absolute." (emphasis is mine)

In the case on hand, the commutation became absolute after the medical examination of the applicant which took place on 31-01- 2003. In the sanction order issued by the Principal Accountant General (Civil Audit), dated 31-08-2007 it is clearly mentioned that the first respondent was entitled to pro-rate pension of Rs.1,275/- per month from 18-02-2001 i.e. on completion of 30 years of qualifying service. When once the pension amount was fixed at Rs.1,275/- per month from 18-02-2001 and the commutation factor was taken as 11.42 taking the first respondent's age on the relevant date as 56 years, his pension cannot be taken at Rs.165/- per month which was the value in the year 1984. The Government of India's decision communicated in Auditor General's U.O.No.610-A/I/152-60, dated 09-08-1960 also clarifies that commutation rules do not state that the commutable amount is to be calculated with reference to the pension originally granted to the person.

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In the light of the factual matrix obtaining in this case and having due regard to the law laid down by the Apex Court, we have no hesitation, in our mind, to hold that the petitioner authorities had committed an error in calculating the commutation value of the first respondent at Rs.165/- per month on the basis of his pension fixed in 1984 instead of Rs.1275/- per month from 18.2.2001. The Tribunal had

rightly considered these aspects in the proper perspective and allowed the OA directing the petitioner authorities to work out the commutation value on the basis of the first respondent's pension at Rs.1,275/- per month and pay the difference amount within two months from the date of receipt of the order."

Thus to conclude the balance of convenience is in favour of the applicant. The applicant has made out a case which succeeds. The OA is therefore allowed.

7. Hence the respondents are directed to consider as under:

- I) To compute the commutation of pension of the applicant from the date commutation has become absolute ie 10.1.2017 and pay any difference of amount that needs to be paid by the commutation of pension as on 10.1.2017
- II) Time allowed to implement this order is 3 months from date of receipt of this order.
- III) No order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 12TH day of December, 2018

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