

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

OA No.4518 of 2018
With
OA No.4706 of 2018

This the 27th day of August, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

OA No. 4518/2018

Suresh Sharma
Retired Additional Controller (Admn.), NTRO
Aged 64+years (senior citizen)
S/o Late Shri O.P. Sharma,
R/o 305, Pink Apartments,
Sector 18 B, Dwarka,
New Delhi-110078
Mobile: 7042338181 & 988678654

....Applicant
(Applicant in person)

VERSUS

1. National Technical Research Organisation
Through its Chairman,
Block-III, Old JNU Campus,
New Delhi-110067
2. Joint Secretary (Admn.)
National Technical Research Organisation
Block-III, Old JNU Campus,
New Delhi-110067
3. Head of Office
National Technical Research Organisation
Block-III, Old JNU Campus,
New Delhi-110067
4. Accounts Officer
Directorate of Audit and Accounts
National Technical Research Organisation
Block-III, Old JNU Campus,
New Delhi-110067

.....Respondents
(By Advocate : Shri Hanu Bhasker)

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 (Applicant in person)

VERSUS

1. National Technical Research Organisation
 Through its Chairman,
 Block-III, Old JNU Campus,
 New Delhi-110067
2. The Chief Controller (Pension)
 Central Pension Accounting Officer (CPAO)
 Ministry of Finance,
 Department of Expenditure,
 Trikoot-II, Bhikaji Cama Place
 New Delhi-110066
3. Joint Secretary (Admn.)
 National Technical Research Organisation
 Block-III, Old JNU Campus,
 New Delhi-110067
4. Accounts Officer
 Directorate of Audit and Accounts
 National Technical Research Organisation
 Block-III, Old JNU Campus,
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(By Advocate : Shri Hanu Bhasker)

O R D E R (Oral)

Since the issues involved in these cases, being related to the reliefs claimed by same very applicant in both the OAs are more or less same, the same are heard and disposed of by

this common order, as by filing these OAs, the applicant is seeking the following reliefs:-

OA No.4518 of 2018

- (i) Declare the action of the respondents in withdrawing Order No. V(B)/Grp-A/19015/PF(29)/2005-3967 dated 01.11.2018 vide their Order No.V(B)/Grp-A/19015/PF(29)/2005-4480 dated 26.11.2018 Order No.V(B)/Grp-A/19015/PF(29)/2005-4480 dated 26.11.2018 and Order No.V(B)/Grp-made basis A/19015/PF(29)/2005-4498 dated 27.11.2018 as manipulative, illegal, *mala fide*, arbitrary and mischievous and quash the same.
- (ii) Declare the action of the respondents in deducting Rs. 6,03,190/- on account of reduction in pension on account for commutation of pension (Paid on 17.8.2018) for the period 01.07.2014 to 31.07.2018 as illegal, arbitrary and thus *void ab initio*.
- (iii) Direct the respondent to immediately restore the Order No.V(B)/Grp-A/19015/PF(29)/2005-3967 dated 01.11.2018 refunding the underpaid amount of Rs. 6,03,190/- to the applicant along with interest thereon @ 12% for the period 17.07.2018 till the date it is refunded.
- (iv) Grant suitable amount as compensation for mental harassment, agony and inconvenience caused by the illegal deduction and subsequent illegal revision in the commutation of pension.
- (v) To allow the O.A. with costs.
- (vi) To pass any further orders as this Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the case.

OA No.4706/2018

- (i) Declare the action of the respondents in issuing impugned letter No. VI/A&A/03/PEN/95/2014/ 1721 dated 21.12.2018 (Annexure A-01) as illegal, *mala fide* & arbitrary and quash the same.

- (ii) To allow the O.A. with costs.
- (iii) To pass any further orders as this Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the case.

2. When these matters were taken up for hearing, applicant appeared in person and insisted and requested to argue himself despite his having engaged his counsel in these matters and hence his request was acceded to by this Tribunal. Accordingly, applicant in person and Shri Hanu Bhasker, learned counsel for the respondents are heard.

3. Applicant submitted that orders impugned in these cases are violative of catena of decision of the Apex Court in various judgments details of which are mentioned in the OAs and the same is also issued in gross violation of the CCS (Pension) Rules, 1972 as well as the instructions issued by the Government of India on the subject.

4. On the other hand, Shri Hanu Bhasker, learned counsel for the respondents by referring to their counter affidavits filed in both the OAs has submitted that applicant retired on 30.06.2014. Pension papers with intimation of three ongoing DEs were received. Provisional pension with approval of competent authority was paid upto 31.07.2018. DEs were completed and final orders issued on 19.07.2018. Orders for issue of PPO for release of regular pension, payment of DCRG and commutation value were received in Directorate of Accounts on 20.07.2018. Accordingly, his case was

processed and after audit verification authority for payment of DCRG and Commutation was issued on 25.07.2018. The commutation was worked out on the basis of calculations in Part III of Form 1-A. Applying the commutation factor of pensioner's age on next birthday (61 years) as on 30.06.14, commutation element Rs. 12,310 for the entire period of provisional pension (01.07.14 to 31.07.18, 49 months paid at full rate) was recovered from the gross commutation of Rs. 12,10,418 and balance Rs. 6,07,228 paid to pensioner through ECS on 16.08.18.

4.1 Counsel further submitted that in compliance of directions issued by this Tribunal vide Para 4 in OA No. 3653/18 dated 26.09.18, the case was re-examined. Despite several letters written by the respondents to the applicant, application for commutation – Form 1 (After finalization of DEs) was not submitted by applicant in terms of Rule 12 (v) and Rule 13 (1) (b) of CCS (Commutation of Pension) Rules, 1981. The applicant instead of following the rule position in this regard challenged the very need of submitting fresh set of forms on conclusion of disciplinary proceedings vide his letter dated 15.10.18. However, taking a lenient view, the commutation factor on his next birthday (65 years) as requested by applicant vide his representation letters dated 17.08.18/15.10.18. Complying with the Hon'ble CAT, PB, New Delhi in the above referred OA, the balance of

commutation (Rs. 77,986) was released vide Order No. V(B)/Grp-A/19105/PF(29)/2005-4480 dated 26.11.18 and Speaking Order issued vide No. V(B)/Grp-A/19105/PF(29)/2005-4498 dated 27.11.18.

4.2 Counsel for the respondents further drew out attention to summary of this case as stated by them in the counter affidavit which are reproduced as under:-

S.No.	Particular
1.	Applicant retired on superannuation on 30.06.14.
2.	On the date of superannuation three Departmental Enquiries (DEs) were ongoing.
3.	The provisional pension at the rate of Rs. 30,775/- p.m. (i.e. 50% of Basic Pay Rs. 61,550/- last drawn) + applicable Dearness Relief; was authorized and paid from 01.07.14 to 31.12.15 (under 6 th CPC).
4.	The provisional pension was revised to Rs. 80,650/- p.m. + applicable Dearness Relief from 01.01.16 onwards (under 7 th CPC) and paid till 31.07.18 with deduction as under:- a) On finalization of first DE on 20.10.17 (10% of monthly pension was withheld two years). b) On finalization of second DE on 29.06.18 (20% of monthly pension was withheld five years). c) On finalization of third DE on 11.07.18 (10% of monthly pension was withheld one years).
5.	After finalization of all three DEs, the Pension Payment Order for payment of pension on regular basis w.e.f. 01.08.18 was issued on 16.08.18 (first regular pension to be paid to applicant through

	CPAO/Pension Paying Bank on 31.08.18). The rate of monthly pension under 7 th CPC is Rs. 80,650/-p.m., subject to recovery/withholding as per final orders of DEs, last recovery/withholding upto 28.06.2023.
6.	Commutation of Pension is permitted to maximum of 40% of basic pension originally granted (Rs. 30,775/-) to the person. Commutation value in this case is Rs. 12,310/- (i.e. 30,775x40%).
7.	Pensioner gets monthly pension as reduced by commutation.
8.	Value of Commutation is worked out as under:- Basic Pension x 40% x 12 x number of years of purchase (based on pensioner age on next birthday 61 years). $30,775 \times 40\% \times 12 \times 8.194 = \text{Rs. } 12,10,418/-$
9.	The pension is commuted and full pension is restored on completion of 15 years from the date of commutation.
10.	The commutation was worked out on the basis of age on next birthday i.e. 61 years and therefore restoration date 01.07.2029 was indicate in PPO.
11.	For commutation of pension, applicant is required to submit the application in Form 1, within one year of finalization of DEs and issue of final orders, which is still awaited from applicant.
12.	The commutation was processed on the basis of application dated 03.07.13. Since the calculations were based on age on next birthday on the date of Superannuation i.e. 61 years, the restoration period of 15 years was counted from 01.07.14 and commutation element (Rs. 12,310

	<p>p.m.) included in provisional pension (paid from 01.07.14 to 31.07.18) was recovered (Rs. 6,03,190) from total commutation and balance Rs. 6,07,228 paid to applicant on 16.08.18. The recovery is not illegal but had to be made to avoid giving double benefit to applicant (one in form of full commutation and other in form of early restoration of full pension).</p>
13.	<p>Complying with the directions of the Hon'ble Tribunal, issued in O.A. No. 3653/2018 on the same subject, the orders dated 26.11.18 were issued to release the payment on the basis of revised calculation of commutation of pension taking the age on next birthday of pensioner i.e. 65 years as on 15.10.18 and Commutation factor of 7.731 prescribed in CCS (Commutation of Pension) Rules, 1981. On this date withholding of pension @ 40% as penalty was in vogue. Therefore the commutation value was worked out as under:-</p> <p>Basic Pension Rs. 30,775 less 40% penalty =Rs. 18,465</p> <p>Commutation @ 40% on Rs. 18,465 is equal to Rs. 7,386</p> <p>Revised Commutation of Pension Rs, $7,386 \times 12 \times 7.731 = \text{Rs. } 6,85,214$</p> <p>Commutation already paid Rs. 6,07,228</p> <p>Balance Rs. 77,986 paid on 29.11.2018</p> <p>The order dated 26.11.18 has been challenged by the applicant by filing OA No. 4518/18.</p>
14.	<p>Since the commutation value has been revised from Rs. 12,310 (40% of full pension) to Rs. 7,386/- (40% of pension after penalty of 40% in</p>

	vogue on 15.10.18). Revision of PPO was issued with approval of Competent Authority on 21.12.18. Pension (Rs. 80,650/-) is unaltered.
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4.3 Counsel for respondents further submitted that the commutation of pension has been done correctly and in accordance with the Rules. The order dated 21.12.18 issued for revision of PPO, has been issued to revise the Commuted Value of Pension in terms of respondents' order dated 26.11.18 and as such the entire O.A. is based on a wrong premise that pension has been revised. He also emphasized that there is no change in the regular Basic Pension, which is fixed @ Rs. 80,650/- (as per 7th CPC) authorized w.e.f. 01.08.18 vide Directorate of Accounts letter dated 16.08.18. As of today, the applicant is entitled to pension of Rs. 41,004/- p.m.. i.e. basic pension Rs. 80,650/- (-) 40% penalty Rs.32,260(-) commutation @ 40% of the Original Pension (After 40% penalty) Rs. 7,386/- which has been clearly indicated in Order dated 21.12.2018.

4.4 Counsel also submitted that in 3 DE proceedings going on against the applicant, the applicant was held guilty of the charges as leveled against him and was imposed the penalty accordingly whereby it was directed that "withholding of 10%, 20% and 10% of the monthly pension for a period of 2 years, 5 years and 1 year respectively with immediate effect" was passed. Accordingly his commutation of pension and other

benefits had to be adjusted accordingly in terms of Rule 12(v) and Rule 13 of CCS (Commutation of Pension), Rule, 1981.

4.5 Counsel also submitted that the applicant has challenged the penalties as imposed upon him in the form of OAs, which are pending adjudication before this Hon'ble Tribunal.

5. Having heard applicant, who appeared in person and learned counsel for the respondents, this Tribunal does not find any illegality at this stage of this matter as clearly pointed out by the learned counsel and the fact that the applicant has already challenged the aforesaid punishments of withholding of 10%, 20% and 10% of the monthly pension for a period of 2 years, 5 years and 1 year respectively with immediate effect passed by the respondents after finalization of the DE proceedings in OAs which are pending adjudication before this Tribunal. However, we make it clear that if in future the applicant succeeds in the pending OAs filed by him against the aforesaid withholding of cuts in pension, he is given liberty to revisit the calculation of computation if so advised, in accordance with law.

6. In the result, these OAs are dismissed for the reasons as stated above. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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