

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1561/2003

This the 20th day of January, 2004

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HON BLE SH. SHANKER RAJU, MEMBER (J)

G.S.Mathur
DGM (Retd.),

(Heavy Vehicles Factory, Avadi
Ministry of Defence, Department of Defence Production)
r/o A-32, Upkar Apartments
Mayur Vihar, Phase-I
Delhi.

(By Advocate: Sh. B.S.Mathur)

Versus

Union of India through

1. Secretary
Ministry of Defence
Deptt. of Defence Production
South Block,
Delhi-110001.
2. General Manager
Heavy Vehicles Factory
Avadi (Chennai).
3. Chief Controller of Defence Accounts (Pensions)
Draupdighat
Allahabad-211014.
4. Treasury Officer,
Bilaspur
(Chhatisgarh)

(By Advocate: Sh. R.V.Sinha)

ORDER

Applicant impugnes respondents order dated 7.11.2000 denying condition of 1/3rd of his pension w.e.f. 15 years to be completed from 1982.

2. Applicant has sought the following reliefs:

(2)

- (a) Release of his monthly pension @ Rs.526/- per month, which has already been sanctioned to the applicant by the Respondents, from 18.8.1982 til 5.4.91 i.e. the date on which payment of lump sum amount was authorized by the respondents.
- (b) Payment of interest @ 18% on the outstanding pro rata monthly pension with effect from 18.8.1982 till the date the applicant receives the full outstanding amount of his monthly pro rata pension.
- (c) Issue directions to the Respondents to restore 1/3rd commuted value from the date the applicant completed 15 years i.e. with effect from Septemeber 1997.
- (d) Payment of all arrears of the restored commuted value alongwith interest @18%.
- (e) Any other relief which the Hon'ble CAT (PB) may deem fit under the facts and circumstances of the case.

3. Applicant joined as a Civilian Officer in the Indian Navy and went to deputation under Ministry of Defence on 16.7.74. Applicant was later on absorbed w.e.f. 22.2.78 and on that day he exercises option. Applicant was offered the post of Deputy Manager (Materials) in Bongaigaon Refinery, a Govt. of India's Undertaking. In pursuance thereof applicant was relieved from Heavy Vehicles Factory on 14.8.80.

4. Applicant had opted for receiving gratuity and lump sum amount in lieu of pension as per Ministry of Finance OM dated 8.4.76 and requested to process the pension papers.



5. Absorption of the applicant in the Refinery was approved on 12.11.87 w.e.f. 18.8.82. A fresh option was sought from the applicant either to receive prorata monthly pension with DCRG or a lump sum amount. Applicant remanded the respondents to work out his pensionary benefits in lieu of his option.

6. Respondents vide letter dated 20.9.89 affirmed that the applicant was eligible for prorata pension and a fresh option was exercised.

7. A detailed proforma with option form was forwarded to the applicant on 1.3.90 which was completed and returned by the applicant on 30.4.90.

8. During this interregnum period applicant joined BALCO, a Govt. of India enterprise on 26.5.83 and retired on 26.4.99.

9. By a letter dated October 1990 respondents had sanction payment of DCRG and payment of prorata pension @ Rs.526/- w.e.f. 18.8.82 until grant of 100% commutation of pension.

10. On 19.11.90 a medical examination before the Board was conducted which was held on 2.3.91.

11. By a letter dated 16.3.91 respondents had sanctioned the amount of Rs.81,585/- as the commuted value of pension and issued a PPO.

12. Applicant on 7.4.99 requested for restoration of 1/3rd of commuted value since he had completed 15 years from the date of commutation, i.e., 18.8.82 which was turned down on the

(a)

ground that as the commutation was sanctioned in March 1991 the restoration would take place only after March 2006. This gives rise to the present OA.

13. Counsel of the applicant contends that withholding of retiral benefits which is to be claimed as a Fundamental Right is not sustainable in the light of decision of Apex Court in Dr. Uma Aggarwal vs. State of U.P. reported in 1999 (3) SCC 438. It is stated that delay of 9 years in sanctioning lump sum payment is not attributable to the applicant and is rather attributable to the respondents without any valid cause.

14. Learned counsel stated that non-receipt of prorata monthly pension though it was sanctioned in November 1987 entails interest.

15. Referring to Govt. of India's instructions dated 12.7.2000 it is stated that as the applicant had completed 15 years from the date he opted for retirement and lump sum payment in lieu of monthly payment, restoration of commuted pension to the extent of 1/3rd would be over in 1997 denial of which is not sustainable in law.

16. In the light of decision of Apex Court in case of Vijay L. Mehrotra vs. State of U.P. reported in JJ 2000 (5) SC 111 on delayed payment of retiral benefits, if the delay is unexplained and not attributable to the retired employee then interest is to be awarded.

17. We find from the record that the request of the applicant for permanent absorption has been effected by an order dated 12.11.87 and thereupon he exercises option on 3.8.88. Thereafter he has been asked to complete prorata pension



documents vide letter dated 1.3.90. Another option sought resulted in a letter addressed to the applicant on 31.10.90 directing him to approach Trasury Officer at Bilaspure. Applicant on account of his illness and the other medical grounds had not approached. This cannot be an intentional delay on the part of the respondents to work out the prorata pension papers. As such the respondents cannot be burdened with an interest as there is no attributable delay on their part.

18. In so far as restoration of 1/3rd of commuted value of pension is concerned, though the commutation was not applicable to PSU/autonomous bodies but in the light of the decision of the Apex Court in WP(C) No.576/99 decided on 26.4.2000 office memorandum dated 12.7.2000 provides restoration of 1/3rd of commuted portion of pension after 15 years from the date of commutation or 1.4.85 whichever is later. Applicant had filled up the forms for commutation and was medically examined and since he received full commutation in June 1991 restoration of 1/3rd of commuted pension would be effected after 15 years from the date of commutation, i.e., receipt of 100% commutation.

19. The request of the applicant to allow commutation from 1982 cannot be countenanced as the rules provide medical examination and grant of an order commuting the portion which is to be the date of commutation. In 1982 applicant had not filled up the concerned pension papers including commutation as the commutation has been finalised in 1991. The claim of the applicant to accord him commuted value from September 1997 cannot be sustained.



20. In the result for the foregoing reasons, I find no merit in the OA. The same is accordingly dismissed.

S. Raju

(SHANKER RAJU)
Member (J)

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