

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

**Original Application Nos.21/1005/2018
with
Original Application Nos.21/1008/2018**

Date of Order: 18.07.2019

Between:

O.A.No.1005/2018:

V.V.T.Char
S/o V.A.Acharya
Aged about 74 years, Gr. `B`
Occ: Sub Divisional Engineer (Retired)
O/o Divisional Engineer Trunks
Telephone Bhavan, Saifabad, Hyderabad
R/o 10-282, VPC 416, Vasanthapuri Colony
Malkajgiri, Hyderabad – 500 047. Applicant

AND

1. Union of India rep by the Secretary
Department of Telecommunications
Sanchar Bhavan, 20 Ashoka Road
New Delhi.
2. The Principal Controller of Communication Accounts
AP Circle, Sanchar Lekha Bhavan
Chikkadpally
Hyderabad – 500 020.
3. The Principal General Manager
Hyderabad Telecom District
BSNL Bhavan, Adarshnagar, Hyderabad. ... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar.
Counsel for the Respondents ... Mr.Laxman representing Mrs.K. Rajitha,
Sr.CGSC for Rs.1 & 2 and Mr.K. Shankar
Rao, SC for BSNL.

O.A.No.1008/2018:

K. Rama Koti Reddy
S/o Late K. Anji Reddy
Aged about 76 years, Gr.`B`
Occ: Sub Divisional Engineer (Retired)
O/o Principal General Manager
BSNL, Hyderabad Telecom District
Hyderabad.
R/o H.No.16-11-20/10/1, Flat No.404
TNR's Royal Palace, Saleemnagar, Hyderabad-36. ... Applicant

AND

1. Union of India rep by the Secretary
Department of Telecommunications
Sanchar Bhavan, 20 Ashoka Road
New Delhi.
2. The Principal Controller of Communication Accounts
AP Circle, Sanchar Lekha Bhavan, Chikkadpally
Hyderabad – 500 020.
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BSNL Bhavan, Adarshnagar, Hyderabad. ... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar.
Counsel for the Respondents ... Mr. Laxman representing Mrs.K. Rajitha,
Sr.CGSC for Rs.1 & 2 and Mr.K. Shankar
Rao, Addl. CGSC.

CORAM:

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

ORDER (Common)

2. The OAs are filed challenging the restoration of commuted pension on two different dates. The issue and the relief sought being one and the same, involving the same respondents, a common order is issued. For the sake of convenience, Tribunal has taken the facts of OA No.1005/2018.

3. Applicant has voluntarily retired from the respondents organisation on 1.11.2002. Pension and Pensionary benefits were accordingly paid on the basis of Central Dearness Allowance on 31.1.2003. Thereafter Pension, DCRG, Commutation value were revised on 14.9.2011 based on IDA pay scales and a revised Pension Payment Order (in short PPO) was issued on 28.12.2016. A Corrigendum to the revised PPO was thereafter issued on 28.6.2018, indicating the date of restoration of commutation of pension as 30.1.2018 for the commuted portion of Rs.2050/- and 17.9.2019 for the commuted portion of Rs.3035/-. Thereby two dates have been introduced for restoration of commuted amount instead of 30.1.2018 as per norms.

Applicant represented to the Pension Adalat wherein request was rejected on 16.8.2018 by citing Rule 10-A of CCS (Commutation of Pension) Rules, 1981. Aggrieved, OA has been filed.

4. The contentions of the applicant are that normally a rule will have prospective and not retrospective application. Hence, Rule 10-A of CCS Rules shall not be applicable to the applicant since he has retired before its introduction. Further, Pension being a property under Article 300-A, it cannot be deprived without following due process of law. Fixing two dates for restoration of commutation is violative of Articles 14 and 16 of the Constitution of India.

5. Respondents state in the reply statement that at the first instance, commuted pension of Rs.2,57,316/- was paid on 31.1.2003 and, hence, the commuted portion of pension of Rs.2,050/- will be restored after 15 years, i.e. on 31.1.2018. Initially, commuted pension was paid based on CDA scale on 31.1.2003 and later, on revision of pension based on IDA scale, the difference of commutation of pension of Rs.1,23,638/- was paid on 17.9.2004. Therefore, the difference of commuted value of Rs.985/- will be restored on 17.9.2019 after the lapse of 15 years. As per CCS (Commutation of Pension) Rules, 1981, where commutation of pension leads to reduction in the second or subsequent month, 15 year period will be reckoned from the date of commutation. Further, as per Rule 6(2) of CCS (Commutation of Pension) Rules, when the commuted value is paid in two stages, reduction of amount of pension shall be made from the respective dates of payment of commuted value paid.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The dispute is all about restoration of commuted value of pension on two different occasions, which was necessitated due to revision of pension. Applicant was paid a sum of Rs.2,57,316/- towards commutation of pension on 31.1.2003 based on CDA scale leading to a reduction of pension to the extent of Rs.2,050/-. Thereafter, based on IDA scales, pension was revised and, therefore, another sum of Rs.1,23,638/- was paid towards difference of commutation of pension on 17.09.2004, leading to the consequent reduction of pension to the extent of Rs.3,035/-. Applicant's contention is that as per Rule 10 of CCS (Commutation of Pension) Rules, 1981 the restoration of pension has to be done after 15 years from the date of retirement irrespective of the commutation of pension on subsequent occasions. To resolve the dispute, a close reading of Rule 6 and Rule 10-A of CCS (Commutation of Pension) Rules is necessary and, hence, the same are extracted hereunder:

(II) In this regard, Rule 6 (2) of CCS (Commutation of Pension) Rules, 1981, states as under:

“6. Commutation of pension to become absolute—

(1) The commutation of pension shall become absolute in the case of an applicant referred to –

(i) in sub-rule (1) of Rule 13, on the date on which the application in Form 1 is received by the Head of Office ;

(i-a) in sub-rule (3) of Rule 13, on the date following the date of his retirement ;

(ii) in Chapter IV, on the date on which the medical authority signs the medical report in Part III of Form 4 ;

Provided that –

(a) in the case of an applicant who is drawing his pension from a treasury or Accounts Officer, the reduction in the amount of pension on account of commutation shall be operative from the date of receipt of the commuted value of pension or at the end of three months after issue of authority by the Accounts Officer for the payment of commuted value of pension, whichever is earlier, and

(b) in the case of an applicant who is drawing pension from a branch of a nationalized bank, the reduction in the amount of pension on account of commutation shall be operative from the date on which the commuted value of pension is credited by the bank to the applicant's account to which pension is being credited.

(c) in the case of an applicant governed by sub-rule (3) of Rule 13 in whose case the commuted value of pension becomes payable on the day following the date of his retirement, the reduction in the amount of pension on account of commutation shall be operative from its inception. Where, however, payment of commuted value of pension could not be made within the first month after the date of retirement, the difference of monthly pension for the period between the day following the date of retirement and the date preceding the date on which the commuted value of pension is deemed to have been paid in terms of Rule 49 of the Central Government Accounts (Receipts and Payments) Rules, 1983, shall be authorized by the Accounts Officer.]

(2) In the case of an applicant referred to in Rule 9 or Rule 10, the commuted value is paid in two or more stages, the reduction in the amount of pension shall be made from the respective dates of the payments as laid down in Clause (a) or Clause (b) of the proviso to sub-rule (1)."

Further, Rule 10-A of CCS (Commutation of Pension) Rules, 1981, which speaks about retrospective revision of final pension, reads as under:

"[10 A. Restoration of Commuted Pension –

The commuted amount of pension shall be restored on completion of fifteen years from the date the reduction of pension on account of commutation becomes operative in accordance with rule 6:

Provided that when the commutation amount was paid on more than one occasion on account of upward revision of pension, the respective commuted amount of pension shall be restored on completion of fifteen years from the respective date(s)]"

Therefore, as per the above Rules, restoration of pension has to be effected after 15 years from the date of commutation of pension at each stage.

(III) Respondents, under the rules cited supra, have issued orders to restore commuted pension on two dates depending on the date on which reduction of Pension was effected. In contrast, applicant claims that as per DOPT's OM dated 22.8.1990, commutation of pension will be effected after lapse of 15 years from the date of retirement. Para 3 of the said OM, on which the learned counsel for the applicant banked upon, is extracted here under:

“3. With a view to ensuring that the decision regarding restoration of the commuted portion of pension is uniformly applied in all cases according to its true intendment, it is clarified that the 15-year period for restoration may be reckoned from the date of retirement itself only in cases where commutation of pension was/is simultaneous with retirement. In other words, cases where payment of the commuted value of pension was/is made during the first month of retirement leading to appropriate reduction on account of commutation in the first pension itself will be deemed to be falling in this category. In all other cases, i.e., where commutation of pension led/leads a reduction in the second or subsequent month, the 15 year period will be reckoned i.e., from the date on which reduction in pension on account of commutation became/becomes effective.....”

The above clarification makes it crystal clear that if the commutation is sought on the date of retirement or within a period of one month from the date of retirement, then restoration of pension will be effected from the date of retirement. If the commutation was granted in the second or subsequent month, then the restoration of pension will be from the date of reduction of pension on account of commutation will be reckoned. Hence, this clarification does not in any way come to the rescue of the applicant.

(IV) Applicant has also referred to the Clarification given by the Department of Posts, vide their letter dated 28.5.1990, supporting his claim. However, the nodal and competent Ministry to give the Clarification on the issue is DOPT. Hence, the Clarification given by DOPT holds good.

(V) Applicant has also raised another issue claiming that Rule 10-A was introduced on 2.9.2008 whereas the applicant has retired on 1.11.2002. Therefore, Rule 10-A, which has prospective application, is not applicable to the applicant's case retrospectively. In support of this assertion, applicant has relied on the observations of the Hon'ble Supreme Court in Karnail Kaur & Ors v State of Punjab & Ors, (Civil Appeal No.7424 of 2013, dated 22.1.2015), which reads as under:

“28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending act which affects the procedure is presumed to be retrospective, unless amending act provides otherwise.”

(emphasis laid by this Court)

Applicant claims that he acquired a substantive right in regard to commutation of pension under Rule 10 of CCS pension rules, which is reproduced below:

“10. Retrospective revision of final pension –

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 Government's decision, the applicant shall be paid the difference between the commuted value determined with reference to enhanced pension and the commuted value already authorized. For the payment of difference the applicant shall not be required to apply afresh:

Provided that in the case of an applicant who has commuted a percentage of his original pension not exceeding rupees six thousand after being declared fit by a Civil Surgeon or a District Medical Officer and as a result of retrospective enhancement of pension, he becomes eligible to commute an amount exceeding six thousand rupees per mensem, he shall be allowed the difference between the commuted value of six thousand rupees per mensem and the commuted value of the percentage of the original pension without further medical examination. The commutation of any further amount beyond rupees six thousand per mensem shall be treated as fresh commutation and allowed subject to examination by a Medical Board.”

In the said Rule, nowhere it was mentioned as to how restoration of pension has to be done when it is commuted twice as is seen in the present case. Applicant does acquire a substantive right to commute pension whenever there is pension revision. That right to commute the pension whenever there is pension revision has not been denied by the respondents. Therefore, the citation relied upon by the applicant is not relevant.

VI) Besides, applicant has also banked upon the observation made in **P. Mahendran & Others v State of Karnataka & Others**, AIR 1990 SC 405, by the Hon'ble Supreme Court in support of his contentions as under:

“5. It is well settled rule of construction that every statute or statutory Rules is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein

showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have not control over the subject matter.”

Applicant claims, that from the above observations of the Hon’ble Supreme Court, Rule 10-A cannot be made applicable to the case of the applicant since it has not been spelt out in the said Rule as to whether it will have retrospective effect. The Rule, therefore, will have prospective effect. However, the above observation of Apex Court has been made in the context of selection of candidates in regard to employment and whereas the present case is about commutation of pension. Therefore, not relevant.

VII) In contrast, Hon’ble Supreme Court has held that statutory rules can be applied with retrospective effect, as under, in **BSNL** v. **Mishri Lal**, (2011) 14 SCC 739 : (2014) 1 SCC (L&S) 387 at page 742:

“11. Rules under Article 309 can be changed even during the subsistence of the old rules. As held in *Raj Kumar v. Union of India* [(1975) 4 SCC 13 : 1975 SCC (L&S) 198 : AIR 1975 SC 1116] (vide SCC para 2), “rules made under the proviso to Article 309 of the Constitution are legislative in character, and therefore can be given effect to retrospectively”. Thus, the rules under the proviso to Article 309 are constitutional rules, not like rules under a statute. Hence they have the same force as a statute, though made by the executive.

12. It is well settled that the legislature can legislate retrospectively vide *M.P.V. Sundararamier & Co. v. State of A.P.* [AIR 1958 SC 468], *J.K. Jute Mills Co. Ltd. v. State of U.P.* [AIR 1961 SC 1534], *Jadao Bahuji v. Municipal Committee, Khandwa* [AIR 1961 SC 1486], *Govt. of A.P. v. Hindustan Machine Tools Ltd.* [(1975) 2 SCC 274 : AIR 1975 SC 2037], *Nandu Mal Girdhari Lal v. State of U.P.* [1993 Supp (1) SCC

338], etc. Hence, the approach of the High Court, in our opinion, was totally incorrect.”

Rule 10-A has been framed under Article 309 of the Constitution of India and, therefore, it is legislative in nature with retrospective effect. If such a clause is not available then pensioners would take advantage of commuting pension at the fag end of the stipulated period of 15 years, say for e.g. 14 years 6 months from the date of retirement and thereafter seek restoration of commuted pension after the lapse of 6 months without fully repaying the amount commuted to the Govt. The logic of keeping 15 years for restoration of commuted pension is that the 1/3rd pension permitted to be commuted can be repaid in 12 years and some sum towards interest could be recovered in another 3 years. Therefore, if commuted pension is restored within 15 years, then the whole exercise will go against the very concept of commutation of pension. Hence, seeking commutation of pension after 15 years from the date of retirement or initial date of pension reduction of pension irrespective of the pension being commuted on any number of occasions subsequently, defies logic and goes against the very grain of commutation. Such an effort if made, as in the present case, is only to seek an unintended benefit.

VIII) Before parting it must also be mentioned that the common cause judgment of 1987 delivered by the Hon'ble Supreme court, based on which the concept of commutation was grounded, indeed meant 15 years from commutation but used the term "retirement". However, in subsequent decisions, the word used is 15 years after commutation. Therefore, even the legal principle is clear in regard to the time span of 15 years to be completed for restoration of commuted pension after each date of commutation.

(IX) Therefore, in view of the aforesaid discussion, action of the respondents in fixing two dates for commutation of pension is as per rules in vogue and the legal principle laid by the Hon'ble Supreme Court, in the case cited supra. Both the Original Applications are devoid of merit and merit dismissal. Accordingly, they are dismissed with no order as to costs.

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

Dated, the 18th day of July, 2019

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