IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1805 of 2014
Date of decision: 22.09.2015

Om Parkash ......Petitioner(s)

Versus

Union of India & others ......Respondent(s)

CWP No.1806 of 2014

H.L. Pardesi ......Petitioner(s)

Versus

Union of India & others ......Respondent(s)

CORAM:- HON'BLE MR.JUSTICE M. JEYAPAUL
HON'BLE MR.JUSTICE DARSHAN SINGH

1. **Whether reporters of local newspapers may be allowed to see judgment? Yes**
2. **To be referred to reporters or not? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

* * *

Present: Mr. N.P. Mittal, Advocate,
counsel for the petitioner(s).

Mr. Suvir Sehgal, Sr. Panel counsel with Mr. Dhamandeep Dhir, Advocate for respondent No.1.

Mr. D.R. Sharma, Advocate,
for respondents No.2 and 3.

DARSHAN SINGH, J.

1. This order shall dispose of both the Civil Writ Petitions i.e.

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CWP Nos.1605 and 1606 of 2014 as the same have arisen out of a common impugned order dated 30.10.2013 (Annexure P-7) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called 'the Tribunal') and similar questions of law and facts are involved therein. However, for the sake of convenience, the facts are being taken from CWP No.1605 of 2014.

2. CWP No.1605 of 2014 under Articles 226/227 of the Constitution of India has been filed by petitioner-Om Parkash for issuance of a writ in the nature of certiorari, mandamus or any other suitable writ, order or direction quashing the impugned order dated 30.10.2013 passed by the learned Tribunal in the original application No.390/PB/2011 with a further direction to respondents No.1 to 3 to release the commuted value of the special allowance to him as per the Central Civil Services (Pension) Rules, 1972 (hereinafter called 'the Pension Rules').

3. That petitioner-Om Parkash was appointed as Group A-Officer in the Department of Telecom, Government of India and thereafter, absorbed by the respondent-BSNL as Chief Accounts Officer, Hoshiarpur w.e.f. 1.10.2000. He retired on attaining the age of superannuation on 31.8.2003 from the post of Chief Accounts Officer (Telecom) Hoshiarpur. As per the notification dated 5.10.2005, the petitioner was directed to give option about his absorption in respondent-BSNL to which he opted and presidential order was issued in his favour qua his absorption in BSNL. Initially, the special leave was payable @ 25% over and above the emoluments in CDA

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pay scale subject to ceiling of ₹ 6,000/- per month w.e.f. 1.10.2000 in respect of the officers of DOT absorbed in BSNL vide notification dated 4.10.2005 but later on, through the order dated 29.9.2008, the special allowance was payable @ 36% instead of 25%. That according to Para 7.2.1 of the aforesaid order, the officer had an option for encashment of the full special allowance based on the commutation formula as prescribed in the Pension Rules, 1972, during service or it will be paid on cessation by BSNL/MTNL services. The petitioner retired on attaining the age of superannuation on 31.8.2003 and Special Allowance Scheme was formulated by respondent No.1 in September, 2008. So, the petitioner is entitled for the payment of commuted value of Special Allowance along with interest @ 12% per annum. It is further pleaded that the commuted value of the pension payable to the retiree is separate and had nothing to do with the commuted value of the special allowance as contained in the order dated 29.9.2008 (Annexure P-1). It is further pleaded that the OA filed by the petitioner has been illegally dismissed by the learned Tribunal vide impugned order dated 30.10.2013 by misinterpreting Annexure P-1. It is also pleaded that the similar concession has already been granted to the other co-retirees of the petitioner. Hence, these petitions.

4. The respondents contested the claim of the petitioners (Om Parkash in CWP No.1805 of 2014 and H.L. Pardesi in CWP No.1806 of 2014) on the ground inter alia that in the order Annexure

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P-1, it was mentioned that the Special Allowance could be drawn only once by way of option. It could not be drawn twice by getting the amount of Special Allowance @ 36% commuted while in service and again to get it at the time of cessation from the services of the BSNL under the Pension Rules. The petitioners first time submitted representations dated 9.10.2010 and 12.7.2010 respectively for paying them 36% Special Allowance w.e.f. 1.10.2000. Accordingly, their case was considered as per their representations and they were paid a sum of ₹ 54,950/- and ₹ 43,960/- respectively in lieu of payment of the special allowance on 24.11.2010 as per Para No.7 of the Policy. The claim of the petitioners for commutation of Special Allowance towards pensionary benefits is not permissible under the Policy as clarified vide letters dated 24.11.2010 and 23.6.2011. It is further pleaded that the petitioners are not entitled to release the commuted value of Special Allowance in addition to the arrears of Special Allowance already paid to them.

5. The OAs filed by the petitioners were dismissed by the learned Tribunal vide impugned order dated 30.10.2013.

6. Aggrieved with the aforesaid order, the present writ petitions have been filed.

7. We have heard Mr. N.P. Mittal, Advocate, counsel for the petitioners, Mr. Suvir Sehgal, Sr. Panel counsel with Mr. Dhamandeep Dhir, Advocate for Union of India, Mr. D.R. Sharma, Advocate, for respondents No.2 and 3 and have meticulously gone through the paper books.

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8. Initiating the arguments Sh. N.P. Mittal, learned counsel for the petitioners, contended that this fact has not been disputed that the Special allowance was allowed to the petitioners as per the Policy of the respondent-Department. The said allowance was payable @ 36% over and above the emoluments in CDA pay scales. He further contended that though the payment of the Special Allowance has been made to the petitioners but the commuted value of Special Allowance has not been paid to them for which they were entitled. He contended that as per para 7.2.1 of Scheme Annexure P-1, the encashment of full special allowance was permissible on the commutation formula as prescribed in Pension Rules, 1972. He contended that the learned Tribunal has misinterpreted the provisions of the Scheme. The commutation of the pension and commutation value of Special Allowance are totally different matters. So, there is no question of any double payment as observed by the learned Tribunal.

9. He further contended that various other co-retirees and colleagues of the petitioners have already been granted this concession/benefit to which the petitioners are also entitled. But their claim has been wrongly declined by the respondents and the learned Tribunal.

10. Learned counsel for the respondents contended that the petitioners were only entitled to draw the arrears of the Special Allowance admissible to them which have already been released in November, 2010. The petitioners were not entitled for commutation

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of the Special Allowance. He contended that the commuted value of Special Allowance released to some of co-retirees of the petitioners was based on the erroneous interpretation of the guidelines by the Punjab Circle. Para 7.2.1 did not permit for payment being made twice on the same account i.e. through arrears and through commutation of the amount of the Special Allowance. Thus, learned counsel for the respondents contended that there is no legal infirmity in the impugned order passed by the learned Tribunal and claim of the petitioners has no merit.

11. We have duly considered the aforesaid contentions.

12. This fact has not been disputed by the respondents that as per Annexure P-1, the petitioners were entitled for the Special allowance w.e.f. 1.10.2000 till the date of their superannuation. It is also not disputed that on the basis of representations submitted by petitioners for paying the special allowance, they have already been paid a sum of ₹ 54,950/- and ₹ 43,960/- respectively as Special Allowance on 24.11.2010. Now the petitioners are claiming the commuted value of the Special Allowance.

13. Para No.7.2.1 of the scheme/order Annexure P-1 dated 29.9.2008 reads as under:

> *"7.2.1. Officers shall have an option for encashment of full SA based on the commutation formula as prescribed in CCS (Pension)Rules, 1972 during service or it will be paid on cessation of BSNL/MTNL service. In the event of encashment*

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of SA by serving absorbed officer no further payment of SA will be made. There shall be no link between SA and terminal benefits payable in terms of CCS (Pension) Rules. SA shall not form part of the future pay revision and shall continue as per the above scheme. The aforesaid option for encashment of SA is permitted provided the BSNL and MTNL ensure that the amount of SA, despite its being encashed, is factored in while working out the 50% ceiling on perks and allowances prescribed by DPE in each case.”

14. The position was further clarified by the Government of India, Ministry of Telecom Communications & IT Department of Telecommunications (Absorption Cell) vide letter dated 13.8.2009. The relevant paragraph thereof reads as under:

“3. However, in this context, it needs to be appreciated that the Special Allowance has been allowed to the absorbed Group 'A' officers primarily to ensure that on migration from CDA pay scales to IDA pay scales, they get a minimum increase of 36% in their emoluments (subject to laid down conditions). Since it has categorically been laid down through aforesaid provision that there shall be no link between SA and terminal benefits payable in terms of CCS (Pension) Rules, there would be no

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stream of income of an absorbed Group 'A' officer, after retirement, on account of SA. Hence, the question of encashing the SA in addition to monthly payment of SA does not arise. An absorbed officer should either get Special Allowance on month to month basis, or he should get it encashed, at his option, during service. Whenever, encashment is allowed in a case in which monthly payments have been made, the latter payments will have to be adjusted against the amount of encashment being sanctioned. Payment of Special Allowance to an absorbed Group 'A' officer on month to month basis and also allowing him to encash it during service or after retirement (without recovery of monthly Special Allowance already paid to him) amounts to double payment of Special Allowance and is, therefore, in violation of the instructions on the subject of SA issued by this Department."

15. As per the above clarification, there is no link between the Special Allowance and terminal benefits payable in terms of the Pension Rules. So, the question of encashing the Special Allowance in addition to the monthly payment of Special Allowance does not arise. An absorbed officer can either get the Special Allowance on month to month basis or he can get it encashed at his option, during the service. Whenever encashment is allowed in a case in which

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monthly payments have already been made, the latter payment will have to be adjusted against the amount of encashment being sanctioned. It has been further clarified that payment of Special Allowance to an absorbed Group 'A' officer on month to month basis and also allowing him to encash it during service or retirement (without recovery of the monthly special allowance paid to him) will amount to double payment of Special allowance which is in violation of the instructions issued on the subject by the Department.

16. Learned counsel for the petitioners has referred to the clarification dated 30.9.2011 issued by the Government of India, Ministry of Communications & Information Technology, Department of Telecommunication (Absorption Cell) but even in this clarification, it has been categorically mentioned that the contents of Para No.7.1, 7.2 and 7.2.1 of the General Terms and Conditions of the above said letters dated 29.9.2008 and 22.9.2011 shall remain unchanged and continued to be applicable. So, this clarification no where provides that a retiree shall be entitled to commuted value of the special pension in addition to the encashment of the Special Allowance already received by him. The commutation is an advance payment on account of payments which may accrue to an employee over the coming years. Some part of the pension is allowed to be commuted and to be added as lumpsum in advance. This proposition cannot apply to the special allowance admissible to the absorbed Group 'A' officers as per the Instructions issued by the Government of India. Mere this fact that due to some erroneous interpretation of these

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instructions, some benefit has been wrongly granted to certain co-retirees, will not make the petitioners entitled to that claim as this Court cannot perpetuate the wrong committed by the officers of the respondents by misinterpreting the scheme.

17. Thus, keeping in view our aforesaid discussion, the petitioners are not entitled for the commuted value of the Special Allowance. Thus, we do not find any illegality in the impugned order passed by the learned Tribunal.

18. Consequently, the present writ petitions have no merit and the same are hereby dismissed.

(M. JEYAPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

September 22, 2015
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