

HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.8128 of 2019

ORDER: (Per Hon'ble Dr.Justice Shameem Akther)

This writ petition is filed under Article 226 of the Constitution of India, seeking to quash the order dated 12.12.2018, passed in O.A.No.625 of 2017 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short "the Tribunal").

2. The petitioners herein are the Union of India and officers of South Central Railway; they were respondents before the Tribunal; the respondent herein was the applicant before the Tribunal.

3. Hereinafter, the parties are referred to as applicant and respondents, as arrayed before the Tribunal in the Original Application.

4. The applicant is an employee of the South Central Railway. For unauthorised absence of the applicant, the respondents imposed penalty of compulsory retirement w.e.f. 21.11.2014. The respondents issued pension payment order of the applicant on 09.11.2016 sanctioning pension payable from 22.11.2014 and fixing the pension at Rs.8,200/- per month. The applicant applied for commutation of 40% pension. As per Railway Service (Commutation of Pension) Rules, 1993, the applicant was subjected to medical check-up by the medical Board. The medical board issued medical certificate on 10.01.2017. The commutation of pension was effected from 22.11.2014 instead of 10.01.2017, the

date when the commutation became absolute. Applicant made a representation on 14.12.2016 for commutation of pension at 40% from 10.01.2017 instead of 22.11.2014 as per Rule 7(1) of Railway Service (Commutation of Pension) Rules, 1993. The respondent No.2 considered the representation favourably and forwarded the same to respondent No.3, but the respondent No.3 rejected the same on 10.02.2017. Respondent No.2 once again sent a revised proposal to respondent No.3 and the same was also rejected on 03.05.2017 by citing Rule 11 of RS (Commutation of Pension) Rules. In response, the respondent No.2 addressed to the respondent No.3 on 15.05.2017 stating that Rule 11 is not applicable, but there was no response from respondent No.3. Hence, the applicant filed O.A.No.625 of 2017 before the Hon'ble Tribunal.

5. The Hon'ble Tribunal by order dated 12.12.2018, allowed the O.A directing the respondents to compute the commutation of pension of the applicant from 10.01.2017 and to pay difference of amount that needs to be paid by commutation of pension as on 10.01.2017. Aggrieved by the said order, the respondents filed this writ petition.

6. Heard Smt.Pushpinder Kaur, learned counsel for the writ petitioners/respondents and this writ petition is disposed of at the admission stage as this Court finds no reason to order notice to the respondent/applicant.

7. Learned counsel for the writ petitioners/respondents would contend that the Hon'ble Tribunal erred in observing that Rule 11 of RS (Commutation of Pension) Rules has no application to the

instant case. The impugned order is contrary to law and facts of the case. The Rules applicable to post 2016 retirees, allowing revised pension benefits to the railway servants who retired/died in harness on or before 01.01.2016 cannot be made applicable in this case, since the writ petitioner retired on 21.11.2014. The benefit of revision of pension was not extended to the persons, who retired prior to 2016 and the Hon'ble Tribunal erred in extending the benefit to the applicant. Learned counsel further argued that the observation of the Hon'ble Tribunal that the critical date to be taken for commutation of pension is w.e.f. 10.01.2017 but not from 22.01.2014, is erroneous. Thus, the learned counsel prayed to allow the writ petition and set aside the impugned order.

8. In view of the above submissions, the point for determination is:

“Whether the impugned order dated 12.12.2018 passed in O.A.No.625 of 2017 by the learned Central Administrative Tribunal, Hyderabad Bench, Hyderabad, is liable to be set aside?”

9. **POINT:** The material placed on record reveals that the applicant had compulsorily retired from service as penalty, and is granted pension under Rule 64 of the Railway Pension Rules. The applicant appeared before the appropriate medical authority, and was given the medical certificate dated 10.01.2017. As per Rule 7(1)(iii) of the Railway Service (Computation of Pension) Rules, 1993, the commutation of pension shall become absolute from the date of certificate i.e, from 10.01.2017. The writ petitioners/respondents calculated the commutation based on the pension drawn on 22.01.2014, which is against the said rule. The 2nd

respondent did write to the 3rd respondent that the commutation has to be effected w.e.f. 10.01.2017 quoting the aforementioned rule. The contention of the writ petitioners/ respondents is that the applicant retired in 2014 and hence 2016 pension rules have no application. Rule 7(1)(iii) of CP Rules, 1993, 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. In the instant case, the medical authority had signed the medical report of the applicant on 10.01.2017. The applicant sought 40% of commutation of pension from 10.01.2017 i.e, from the date of issuance of medical certificate.

10. In tune with Rule 7(1)(iii) of CP Rules, 1993, which lays down that the commutation of pension will become absolute as per the date of medical certificate i.e, 10.01.2017, the Rules that prevail as on 10.01.2017 have to be applied and incidentally they pertain to Post 2016 Pensioners. Further, it is also relevant to state that the Hon'ble Tribunal had dealt with similar issue in O.A.No.963 of 2005 and the order passed by it was upheld by the Hon'ble High Court of Andhra Pradesh in Writ Petition No.7896 of 2012 vide order dated 06.02.2013, which reads as follows:

“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."

11. The aforementioned order attained finality. All the contentions raised on behalf of the writ petitioners are unsustainable.

12. Under these circumstances, the Hon'ble Tribunal is justified in passing the impugned order and directing the respondents to compute the commutation of pension of the applicant from the date, commutation has become absolute i.e, 10.01.2017 and pay

any difference of amount that needs to be paid by the commutation of pension as on 10.01.2017 and to implement its order within three months from the date of receipt of its order. So, the impugned order is neither perverse nor illegal and does not warrant any interference.

13. The Writ Petition is devoid of merits and is accordingly, dismissed. Pending Miscellaneous Petitions, if any, shall stand closed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

Date: 19.07.2019
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