IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.16071 of 2016
Reserved on : January 29, 2019
Date of decision: March 12, 2019

A.S.Gill ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Petitioner in person.

Mr.Puneet Jindal, Senior Advocate with
Mr.Gaurav Rana, Advocate, Amicus curiae.

Mr.Rajvir Singh Sihag, Advocate
for the respondents.

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HARINDER SINGH SIDHU, J.

Challenge herein is to the order dated 01.06.2016 of the Central Administrative Tribunal, Chandigarh Bench in O.A.No. 060/01069/2015 filed by the petitioner and order dated 04.07.2016 dismissing his Review Application.

The petitioner joined the Department of Telecommunications (DOT) on 19.5.1969. While working in the said Department, he sought deputation to Punjab Communications Limited (PCL) on his own request. He was relieved to join PCL on 08.06.1987 for one year. His deputation was subsequently extended from time to time for a total period of five years. Even after the expiry of five years, he continued working in PCL though there was no extension of his deputation period. As there was no provision for deputation beyond five years, PCL was informed either to revert the petitioner or absorb him permanently on completion of five years. On his own request and volition and with the agreement of PCL, vide order dated 18.03.1994 he was permanently absorbed in PCL retrospectively from 08.03.1993 i.e. date of completing five years on deputation. He was thus deemed to have retired from Government service w.e.f. 8.3.1993. Vide the same letter dated 18.3.1994, the petitioner was given an option either (i) to receive pro-rata monthly pension or (ii) to receive a lump-sum amount in lieu of monthly amount. It was specified that the option shall be in writing. The option once exercised shall be final. In case no option is exercised within the stipulated period of six month, he would be deemed to have opted in favour of pro-rata monthly pension. In regard to the options the letter clarified as under:

> *"2 In the event of his option in favour of sub clause (i) of clause (1), he will draw pro-rata pension and retirement gratuity for the service rendered under the Government. He will also be eligible to commute upto 1/3rd of his pension.*
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> *3. If he opts in favour of sub-clause (ii) of clause (1) he will receive lumpsum amount in lieu of pro-rata pension and retirement gratuity. The lumpsum amount will be calculated by applying the commutation table under the CCS (Commutation of Pension) Rules, 1981 applicable on the date of his cessation of service under the Government. The commutation shall be subject to medical examination. The pension so commuted shall not be restored at any stage. xxx xxx xxx"*

This condition had been incorporated in terms of Rule 37A of the CCS (Pension) Rules, 1972. Rule 37 and 37A which deal with pension to government servants on absorption in a Government Undertaking etc. are reproduced below:

> *"37.Pension on absorption in or under a corporation, company or body.— (1) A government servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits which he may be elected, or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Central Government applicable to him.*
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> *Explanation.— Date of absorption shall be:*
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> *(i) in case a government employee joins a corporation or a company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;*
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> *(ii) in case a government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government the date from which his unqualified resignation is accepted by the Government.*
>
> *(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Government/Union Territory Administration or under the joint control of two or more State Governments/Union Territory Administrations.*
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> *(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive pro rata*

retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

Explanation.— Body means autonomous body or statutory body.

37-A. Payment of lump sum amount to persons on absorption in or under a corporation, company or body.—(1) Where a government servant referred to in Rule 37 elects the alternative of receiving the (retirement gratuity) and a lump sum amount in lieu of pension, he shall, in addition to the (retirement gratuity), be granted:

(a) on an application made in this behalf, a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of the Civil Pensions (Commutation) Rules; and

(b) terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension to be worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable subject to the condition that the government servant surrenders his right of drawing two-thirds of his pension."

The petitioner exercised the option to receive lump-sum amount vide his application dated 17.6.1994. The petitioner was paid 100% commuted value of pension and DCRG on 25.4.1995. 1/3rd pension of the petitioner was restored w.e.f. 25.4.2010 (after fifteen years) as per CCS Pension Rules, 1972 vide PPO order dated 12.11.2010.

The petitioner submitted representations dated 26.4.2013 and 16.10.2013, followed by a legal notice dated 29.11.2013 calling upon the respondents to restore and revive the pro-rata monthly pension against refund of full commutation amount with interest by him. He also submitted a cheque dated 26.4.2013 for Rs.10,19,732/- drawn on State Bank of Patiala. He relied on instructions of Government of India dated 31.3.1995 whereby, it had been decided to withdraw the facility of 100% commuted value of pension in case of absorbees (Government servants absorbed in Public Sector Undertakings or Autonomous bodies). These representations were rejected vide communication dated 10.6.2014 and the cheque was returned to the petitioner.

The petitioner filed the O.A. claiming reversal of the commutation of full pension w.e.f. 25.4.1995 and to grant him monthly pension. He also claimed that monthly pension for the period from 8.3.1993 to 25.04.1995 which had not been paid to him be released.

The case of the respondents was that the petitioner was absorbed on 8.03.1993 vide DOT's order dated 18.03.1994 under the Rule 37 of the CCS(Pension) Rules. The order of his absorption detailed the conditions of absorption including the option to the petitioner to either receive pro-rata monthly pension or lump sum amount in lieu thereof. He opted for 100% commutation. As per Government of India's decision contained in Appendix-1 Chapter-2, Rule-6(1)(ii) of CCS (Commutation of Pension) Rules, 1981, "*the commutation of pension becomes absolute in case of absorption, on the date on which the medical authority signs the medical report in Part-III or form-4*". Further the DOP&PW clarified that "*the commuted value of pension is required to be calculated taking into account the date of medical examination, the age next birthday with* *reference to the date of medical examination and the factor applicable to such Government servant also with reference to age next birthday after the medical examination".*

The Medical Report of the petitioner was signed on 2.12.1994 and he received the commuted amount on 25.4.1995. The decision contained in the Office Memorandum dated 31.3.1995 for withdrawing the existing facility of receiving capitalized value equivalent to 100% of commutation of pension on absorption of Permanent Central/ State Government employees in Central of State Public Undertakings was of prospective application. Rule 37A which contained that provision was abolished vide notification dated 25.06.1997. Hence it was argued that withdrawal of 100% commutation order issued by the Department of Pension and Pensioner's Welfare vide OM No.4/42/91-P&PW(D) dated 31.03.1995 was not applicable to the case of the petitioner. Restoration of 1/3rd pension to the petitioner was done w.e.f., 25.04.2010 as per CCS (Pension) Rules, 1972 and there was no infirmity with the same.

The Learned Tribunal agreed with the contentions of the respondents noting that the petitioner submitted his application form for 100% commutation of pension consequent on his absorption in PCL Punjab on 22.8.1994. He appeared before the Medical Board on 2.12.1994. Thereafter, his case was processed for release of the commutation amount, which was released on 25.4.1995. Hence, the office memorandum dated 31.3.1995 did not apply to him. It was held that there was no irregularity in the payment of the amount on account of 100% commuted value of pension to the petitioner in April, 1995.

His plea for grant of benefit of 5 years qualifying service on account of taking early retirement was also not accepted. It was opined that his case was not covered by Rule 48-B of the Civil Services (Pension) Rules as he had not taken voluntary retirement, but had sought absorption in a PSU. The petitioner's claim for pension payment for the period from 8.3.1993 to 25.4.1995 was, however, accepted. It was held that with the retirement of the petitioner w.e.f. 8.3.1993 he was entitled to pension from D.O.T. At his option 100% of the pension was commuted. The commuted value of the pension was paid to him on 25.4.1995. Till the time the commuted value of the pension was paid to the petitioner, he was eligible to get his monthly admissible pension. Thus, the only relief granted to the petitioner was with regard to grant of pension from 8.3.1993 to 25.4.1995 which was directed to be paid along with interest @ 6% per annum. The Review Application filed by the petitioner was dismissed vide order dated 4.7.2016 holding that no case for review was made out.

While the main relief sought by the petitioner for reversal of the commutation of full pension w.e.f. 25.4.1995 cannot be granted and has rightly not been granted by the Tribunal as his commutation of pension had become absolute on his medical examination on 2.12.1994 which was much before the withdrawal of the provision for 100% commutation vide OM dated 31.03.1995. Moreover the petitioner for the first time submitted representations dated 26.4.2013 and 16.10.2013, followed by a legal notice dated 29.11.2013 calling upon the respondents to restore and revive the pro-rata monthly pension against refund of full commutation amount with interest. The plea made by him about eighteen years after receiving the benefit could on no ground have been entertained.

That apart, the grievance of the petitioner has been redressed in a substantial measure by the developments during the pendency of this petition.

A little background would be relevant.

Issues concerning the pension of Central Government employees absorbed in public sector undertakings (absorbees) have been examined by Hon'ble Supreme Court from time to time. It all started with the decision of Hon'ble Supreme Court in ***Common Cause v. Union of India, (1987) 1 SCC 142*** which was a petition under Article 32 of the Constitution filed by Common Cause, a registered society and three retired government servants praying to strike down certain provisions of the Central Civil Services (Commutation of Pension) Rules, 1981. As per the Rules then prevalent when a pensioner commuted any part of his pension up to the authorised limit (which in the case of civilians was upto one-third while in the case of defence personnel, it was up to 43 per cent in the case of officers and up to 45 per cent in respect of other ranks) his pension was reduced for the remaining part of his life by deducting the commuted portion from the monthly pension. The contention of the petitioners was that the lump sum amount paid at the time of commutation gets adjusted by about 10 or 12 years and therefore, the Government must be directed to restore the commuted portion of one-third pension. It was also urged that there had been a substantial improvement in the life expectancy of the people in India, hence there was no justification for denying the restoration of the commuted one-third portion of pension after its adjustment in a period of 10 or 12 years. During the pendency of the case the Union of India agreed to restore the commuted portion of the pension in regard to all civilian employees at the age of 70 years or after 15 years, whichever is later, and agreed to make this effective from 1-4-1986. The Court directed that it is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It would be sufficient that on the expiry of fifteen years from the period of retirement such restoration would take place. It was directed to be made effective from 1-4-1985.

The Union of India while giving effect to the above judgment denied the same benefit to the absorbees by inserting para 4 in the OM dated 5-3-1987 which read as follows:

> *"Central Government employees who got themselves absorbed under Central Public Sector Undertakings/autonomous bodies and have received/or opted to receive commuted value for 1/3rd of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension are not entitled to any benefit under these orders as they have ceased to be Central Government pensioners."*

In ***Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India, (1996) 2 SCC 187,*** the association of absorbed Central Government employees sought quashing of the said para 4 which provided that the Central Government employees who got themselves absorbed under Central public sector undertakings/autonomous bodies and have received/or opted to receive commuted value for one-third of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension are not entitled to any benefit under the said orders as they have ceased to be Central Government pensioners. The Hon'ble Court in its decision considered the scope of Rule 37-A of the CCS (Pension) Rules, 1972 and held that in so far as commutation of one-third of the pension is concerned, the absorbees as well as petitioners in "*Common Cause*" *case* stood on similar footing with no difference. So far as the balance of two-third pension is concerned, the absorbees had received the commuted value (terminal benefits) on condition of their surrendering of their right of drawing two-thirds of their pension which was not the case with the petitioners in "*Common Cause*" *case*. Thus the denial of benefit given to "*Common Cause*" petitioners to the absorbees violated Articles 14 and 16 of the Constitution. It was held that the reasoning for restoring one-third commuted pension in the case of "*Common Cause*" petitioners equally applies to the restoration of one-third commuted pension in the case of the absorbees. The impugned para 4 in OM dated 5-3-1987 was quashed.

The Court also noticed that the Government of India had vide Office Memorandum dated 31.3.1995 withdrawn the scheme of permitting commutation of full pension

It was observed as under:

> ***"13.*** *If after the expiry of 15 years, the pensioners who have opted for one-third commutation, become entitled to restoration of pension on the ground that the lump sum amount paid had got adjusted before the said period as held in "Common Cause" case, there is no good reason for not applying the same to the petitioners who have commuted their*

one-third portion of the pension under Rule 37-A of the CCS (Pension) Rules, 1972 without any commitment for this portion of commutation. Presumably the respondents realising the fallacy have withdrawn the scheme of permitting commutation of full pension by OM No. 4/42/91-P&PW (D) dated 31-3-1995. Para 3 of the Office Memorandum reads as follows:

> *"3. The proposal to review the existing terms and conditions of absorption had been under consideration of the Government for quite some time past. The President is now pleased to … (sic) that the existing terms and conditions of absorption shall stand partially modified to the extent indicated below:*
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> *(a) The existing facility of receiving capitalisation value equivalent to 100% commutation of pension on absorption shall stand withdrawn;*
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> *(b) The existing facility to draw pro rata monthly pension from the date of absorption (with option to commute 1/3rd pension wherever admissible shall continue to exist)."*

14. *This means this issue will not arise in future.*

15. *For the foregoing reasons, we hold that the petitioners are entitled to the benefits as given by this Court in "Common Cause" case so far as it related to restoration of one-third of the commuted pension. Consequently, the impugned para 4 of Office Memorandum dated 5-3-1987 is quashed. The writ petitions are accordingly allowed to the extent indicated above. No costs."*

The Madras High Court in **K. Ganesan Versus Registrar Central Administrative Tribunal Chennai** 2007(17) S.C.T. 810 considered the claim of an absorbee who after his resignation as Deputy Controller General of Accounts (Central Government Service) had joined