

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) No. 1222/2015**

Reserved on : 16th August, 2018

Date of decision: 17th January, 2019

FORUM OF RETIRED IPS OFFICERS (FORIPSO) Petitioner
Through Dr. Ashok Dhamija and Mr. Alabhya
Dhamija, Advocates.

versus

UNION OF INDIA AND ANOTHER Respondents
Through Dr. Ashwini Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.:

The petitioner, Forum of Retired Indian Police Service (IPS) Officers, is a Non-Government Origination and a non-political forum based, established and registered as a society under the provisions of Societies Registration Act, 1860. Members of the petitioner society are primarily retired Indian police officers including senior citizens aged ninety years or more. Petitioner society, it is stated, is primarily engaged in welfare and getting justice to pensioners.

2. The petitioner vide the present Writ Petition under Article 226 of the Constitution of India has sought following reliefs:-

“(a) Issue an appropriate writ, order or direction, striking down Rule 10A of the Central Civil Services (Commutation of Pension) Rules, 1981 which lays down rule for recovery of the amount of commuted pension for 15 years, and directing the Respondents to reduce the recovery period of the amount of commuted pension for pensioners who retired from the All India Services or from the Central Civil Services-

- from the existing recover period of 15 years to the actual recovery period of the commuted amount [i.e., the “years of purchase” (without interest)] with an addition of two years thereto as held by Hon’ble Supreme Court in the case of ***Common Cause v. Union of India, (1987) 1 SCC 142;***
- OR, alternatively, from the existing recovery period of 15 years to the actual recovery period of the commuted amount [i.e., the “years of purchase” (without interest)] with an addition of the actual period to recover the interest on such commuted amount in accordance with the principle for the recovery of interest levied on Government advances made to Government servants; and directing the Respondents to refund the excess recovery of amount of commuted pension made from the said pensioners to them along with interest.

(b) Pass such other and further order or orders as this Hon’ble Court may deem fit and proper.”

3. The petitioner society had filed Writ Petition (Civil) No. 17/2015 before the Supreme Court of India for similar reliefs, which was allowed to be withdrawn with liberty to approach the appropriate High Court vide order dated 19th January, 2015. In the aforesaid background and noticing that the

petitioner society has espoused cause of retired pensioners, who would find it difficult to approach the High Courts for individual reliefs, we are not inclined to dismiss the present Writ Petition on the ground of *locus standi*. Petitioner society has filed the present petition for and on behalf of its members i.e. the retired pensioners. Accordingly, we reject the contention of the respondents that the present writ petition should be dismissed as it is a public interest litigation relating to service matters.

4. In order to appreciate the controversy and the issue raised, a brief prologue is required. Prior to 1st April, 1985, commuted portion of pension was not restored during the life time of the pensioner. Common Cause, a registered society and three Government servants, had filed a writ petition before the Supreme Court under Article 32 of the Constitution for striking down certain provisions of Central Civil Services (Commutation of Pension) Rules, 1981 and other commutation of pension rules applicable to civilian and defence pensioners. Writ Petition Nos. 3958-61/1983 were decided vide decision reported as ***Common Cause a registered society and Ors. v. Union of India*** (1987) 1 SCC 142, by taking on record the decision taken by the Central Government communicated to the Attorney General vide letter dated 20th March, 1986. Relevant portion of this letter reads as under:-

“I am glad to inform you that government have taken a decision in the matter of recovery from pension towards commuted value of pension. The decision is as follows:

(i) Recovery from pension payable every month towards commuted value of pension will stop on the completion of 15 years from the date of retirement on

superannuation or on the pensioner completing the age of 70 years, whichever is later.

(ii) The formulation will apply to all civilian pensioners in whose case the age of retirement on superannuation is 58 years and the personnel of Armed Forces in whose case the retirement age varies in accordance with the colour service prescribed for the rank (attaining the age of 37/38 years or more).

(iii) Government have taken this decision as an act of goodwill to pensioners and to extend to them some measure of relief in the evening of their lives. It is sincerely believed that there will be no further demand on this issue and that the pensioners will accept the decision of the government without dissent or reservation.

(iv) The decision will take effect prospectively (from April 1, 1986). A distinction has been made in the case of defence employees on the ground that retirement in their case is at an early age and merely with lapse of a period of fifteen years full pension could not be restored. It has also been pointed out that the defence personnel receive in consideration of the exigencies of the service a higher rate of pension as compared to civilian employees.”

Supreme Court in this decision had made observations which we have subsequently referred to and quoted for it is germane to the issue and contentions raised.

5. After the aforesaid decision, Rule 10A was inserted in the Central Civil Services (Commutation of Pension) Rules, 1981, which 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).”

In terms of Rule 10A, a pensioner is entitled to restoration of full pension after 15 years from the date of reduction of pension on account of commutation. If commutation amount has been granted on more than one occasion, it is to be restored on completion of 15 years from the respective date(s).

6. There is no specific provision for restoration of commuted pension in the All India Services (Commutation of Pension) Regulations, 1959. However, provisions for restoration of commuted pension in terms of Rule 10A after fifteen years appear to have been made applicable in view of Rule 2 of All India Services (Conditions of Service-Residuary Matters) Rules, 1980.

7. The petitioner claims that restoration of commutation of full pension after 15 years is arbitrary and lacks a mathematical basis and foundation. Retirement age for central government employees was raised to 60 years with effect from 1st May, 1998. Commutation factor in view of increase in age of retirement would stand reduced from 10.46 applicable at the age of 59 years to 9.81 applicable at the age of 60 years. As per the new

commutation table made effective from 2nd September, 2008 the commutation factor has been downgraded from 9.81 to 8.194 for 60 years. Notwithstanding the aforesaid reduction in the commutation factor, the period for restoration of commuted pension has been retained and continues to be 15 years. Secondly, permissible commutation was increased from 33% of the basic pension to 40% of the basic pension. Thirdly, the respondents for the purpose of commutation i.e. for quantifying the percentage of amount to be paid on commutation, had based the table on interest payable @ 4.75% per annum, which interest was increased/enhanced to 8% per annum in the new table for the retirees with effect from 2nd September, 2008. Fourthly, the commutation provisions have not kept up with time as the life expectancy has increased from 57 years in 1987 to more than 68.5 years at present. Average life expectancy for the relevant group, i.e. the government servants as per WHO statistics is 77 years. Government servants have a much higher life expectancy than the national average. Further the commuted pension is paid to retirees after they clear the medical examination/screening which reduces the risk factor of an early death. In support of the contentions, reference was made to Chapter 136 of the report of the Fifth Central Pay Commission, which had recommended reduction of the period of recovery of commuted pension to 12 years from 15 years. This recommendation, it was argued, was unjustifiably and arbitrarily not accepted by the Central Government, though some State Governments like Kerala, Madhya Pradesh, Orissa and Punjab had permitted restoration of full pension after 12 years of commutation.

8. In order to explain the grievance raised, it would be most appropriate to refer to the arithmetical calculations and computations made by the petitioner challenging the period of 15 years for restoration of commutation of pension. Relevant portion reads as under:-

“Retirees between 1986 and 1995”

The age of retirement during this period was 58 years. This category of retirees have all completed the prescribed period of 15 years for restoration of pension. Since 1.3.1971 and until 31.12.2005, the Commutation Factor (CF) was 10.46 for the 59 year old (age next birth day) retirees and the officially prescribed rate of interest was 4.75% p.a. Commutation allowed was $1/3^{\text{rd}}$ of the basic pay. The basic pension of Secretaries/DGs who superannuated between 1.1.86 and 31.12.95 at the top of their pay scale (Rs.8,000) was fixed at Rs.4,000 and the commuted portion of their pension was Rs.1,67,318 with a deduction of Rs.1,333 per month. The principal amount of Rs.1,67,318 was fully recovered in 10.46 years [$10.46 \times 12 \times 1333 = 1,67,318$].

- If we consider the prescribed interest rate of 4.75% p.a. as simple interest, the total interest works out to Rs.36,250. This is recoverable in 2.27 years [$36250/1333 = 27.2$ months or 2.27 years]. Thus, total recovery period of the commuted amount works out to $10.46 + 2.27 = 12.73$ years. Even after full recovery, the pensioner kept on paying for $15 - 12.73 = 2.27$ years. Thus, excess recovery $= 2.27 \times 12 \times 1333 = \text{Rs.}36,311$.
- If we consider the prescribed interest rate of 4.75% p.a. as compound interest, the total interest works out to Rs.54,750. This is recoverable in 3.42 years [$54750/1333 = 41.07$ months or 3.42 years]. Thus, total recovery period of the commuted amount is $= 10.46 + 3.42 = 13.88$ years. Even after full recovery,

the pensioner kept on paying for $15 - 13.88 = 1.12$ years.
Thus, excess recovery = $1.12 \times 12 \times 1333 = \text{Rs.}17,916$.

Retirees between 1996 and 2005

The age of retirement was raised to 60 years after the 5th Central Pay Commission (CPC). Permissible commutation was also raised to 40% of the basic pay. Those who retired between 1996 and 1998 have already completed the prescribed period of 15 years for restoration of pension. Since 1.3.1971 and until 31.12.2005, the Commutation Factor (CF) was 9.81 for the 61 year old (age next birth day) retirees and the officially prescribed rate of interest was 4.75% p.a. Secretaries/DGs who superannuated between 1.1.96 and 31.12.05 at the top of their pay scale (Rs.26,000), were sanctioned commuted pension amount of Rs.9,18,216 with a deduction of Rs.7,800 per month. The principal amount of Rs.9,18,216 is fully recovered in 9.81 years [$9.81 \times 12 \times 7800 = 9,18,216$].

- If we consider the prescribed interest rate of 4.75% p.a. as simple interest, the total interest works out to Rs.2,12,114. This is recoverable in 2.27 years [$212114/7800 = 27.2$ months or 2.27 years]. Thus, total recovery period of the commuted amount works out to $9.81 + 2.27 = 12.08$ years. Even after full recovery, the pensioner keeps on paying for $15 - 12.08 = 2.92$ years. Thus, excess recovery = $2.92 \times 12 \times 7800 = \text{Rs.}2,73,312$.
- If we consider the prescribed interest rate of 4.75% p.a. as compound interest, the total interest works out to Rs.3,20,367. This is recoverable in 3.42 years [$320367/7800 = 41.07$ months or 3.42 years]. Thus, total recovery period of the commuted amount is = $9.81 + 3.42 = 13.23$ years. Even after full recovery, the pensioner keeps on paying for $15 - 13.23 = 1.77$ years. Thus, excess recovery = $1.77 \times 12 \times 7800 = \text{Rs.}1,65,672$.

Retirees from 2006 Onwards

The age of retirement continues to be 60 years. After the 6th CPC, since 1.1.06, the Commutation Factor (CF) has been downgraded from 9.81 to 8.194 for the 61 year old (age next birth day) retirees, thereby reducing the commuted amount by a whopping 16.5% !!! On top of that, the prescribed rate of interest has been enhanced from 4.75% to 8% p.a. which is an astronomical jump of 68% even in this low interest regime!!! The basic pension of Secretaries/DGs who superannuated on or after 1.1.06 at the top of their pay scale (Rs.80,000) was fixed at Rs.40,000. Their commuted pension amount is Rs.15,73,248 with a deduction of Rs.16,000 per month. As per the old CF of 9.81, they would have been entitled to a commuted sum of Rs.18,83,520. Thus, there is a huge drop of Rs.3,10,272!!! The currently sanctioned principal amount of Rs.15,73,248 is fully recovered in 8.194 years [$8.194 \times 12 \times 16000 = 15,73,248$].

- If we consider the prescribed interest rate of 8% p.a. as simple interest, the total interest works out to Rs.5,10,417. This is recoverable in 2.66 years [$510417/16000 = 31.9$ months or 2.66 years]. Thus, total recovery period of the commuted amount is = $8.194 + 2.66 = 10.85$ years. Even after full recovery, the pensioner keeps on paying for $15 - 10.85 = 4.15$ years. Thus, excess recovery = $4.15 \times 12 \times 16000 = \text{Rs.}7,96,800$.
- If we consider the prescribed interest rate of 8% p.a. as compound interest, the total interest works out to Rs.9,93,007. This is recoverable in 5.17 years [$993007/16000 = 62.06$ months or 5.17 years]. Thus, total recovery period of the commuted amount is = $8.194 + 5.17 = 13.37$ years. Even after full recovery, the pensioner keeps on paying for $15 - 13.37 = 1.63$ years. Thus, excess recovery = $1.63 \times 12 \times 16000 = \text{Rs.}3,12,960$.

The above calculations are only illustrative, applicable to retired Secretary/DG rank officers who retired on or after 1.1.86 at the top of their pay scale and their pension was fixed at the maximum. Calculations can be made similarly for other cases and the results would tally.

I may point out that the interest charged on various Govt advances like House Building Advance, Car Advance, Festival Advance, Marriage Advance etc. is simple interest and not compound. Applying the same policy, the commuted amount of pension was fully recovered with interest in 12.73 years in case of 1st category of retirees (who retired between 1986 and 1995), in 12.08 years in case of 2nd category of retirees (who retired between 1996 and 2005) and in 10.85 years in case of 3rd category of retirees who retired in 2006 or after. There is no justification for the govt to recover anything more than what it has advanced to the retirees.

You are requested to kindly take cognisance of this wrong and modify the period of restoration of commuted pension as under:-

- a) 1st category of retirees (who retired between 1986 and 1995): They have already repaid the entire amount with interest. The excess amount recovered should be refunded to them with the same rate of interest as was charged from them for recovery (i.e. 4.75% p.a.).
- The same policy should be adopted towards those who retired before 1986. Similar calculations can be done in their case.
- b) 2nd category of retirees (who retired between 1996 and 2005): Those who retired 15 years ago have already repaid the entire amount with interest. The excess amount recovered should be refunded to them with the same rate of interest, i.e. 4.75% p.a. For others, the

recovery should be stopped and full pension should be restored after completion of 12.08 years.

- c) 3rd category of retirees who retired in 2006 or after:
The recovery should be stopped and full pension should be restored after completion of 10.85 years.”

9. Issues relating to commutation of pension, factor to be applied, restoration of full or part pension are complex and vexed questions that have been subject matter of several pay commission reports. Actuarial calculations given the numbers involved, apart from financial implications, makes the administrative exercise extremely convoluted and tedious. Sixth Central Pay Commission had examined the pensioners’ request for reduction of years for restoration of pension but after due consideration did not recommend any change in the maximum percentage of commutation allowance or the period of restoration. Similarly, the Seventh Central Pay Commission after examining the question had opined :-

“The Commission notes that prior to Vth CPC, the commutation allowed was one-third. However, there was no restoration. The Supreme Court, vide their judgment dated 09.12.1986, allowed restoration of pension after 15 years. The Supreme Court in its judgment specifically stated that though the amount is recovered in 12 years, yet since there is a risk factor and some of the states are restoring pension after 15 years, the period of restoration is fixed at 15 years. The V CPC in its recommendation increased the percentage of commutation to 40 percent and recommended restoration period at 12 years. But the reduction of restoration period was not accepted by the government. The VI CPC did not recommend any change in the maximum percentage of commutation allowed or in the period of restoration. This Commission also does not recommend any change

either in the maximum percentage of commutation or in the period of restoration.”

10. Commutation of pension is an option and is exercised by choice. It is not mandatory and compulsory for the government servant to seek commutation. Additionally, the government servant has the option to commute a portion of pension upto a maximum of 40% of pension. In other words, a retiree can opt for commutation of lower or a lesser portion of his/her pension. A retiree need not ask for commutation of pension immediately on the date of retirement as option for commutation of pension can be made on a subsequent date. Commutation of pension is by choice and voluntary.

11. Commutation of pension is made as per the table annexed to the Central Civil Services (Commutation of Pension) Rules, 1981 which refers to the age of the person and accordingly commuted value expressed as number of years purchased. Commutation table as substituted vide Office Memorandum dated 2nd September, 2008 and presently applicable reads as under:-

“

Age next Birthday	Commutation value expressed as number of year's purchase	Age next Birthday	Commutation value Expressed as number Of year's purchase	Age next Birthday	Commutation value expressed as number of year's purchase
20	9.188	41	9.075	62	8.093
21	9.187	42	9.059	63	7.982
22	9.186	43	9.040	64	7.862
23	9.185	44	9.019	65	7.731
24	9.184	45	8.996	66	7.591
25	9.183	46	8.971	67	7.431

26	9.182	47	8.943	68	7.262
27	9.180	48	8.913	69	7.083
28	9.178	49	8.881	70	6.897
29	9.176	50	8.846	71	6.703
30	9.173	51	8.808	72	6.502
31	9.169	52	8.768	73	6.296
32	9.164	53	8.724	74	6.085
33	9.159	54	8.678	75	5.872
34	9.152	55	8.627	76	5.657
35	9.145	56	8.572	77	5.443
36	9.136	57	8.512	78	5.229
37	9.126	58	8.446	79	5.018
38	9.116	59	8.371	80	4.812
39	9.103	60	8.287	81	4.611
40	9.090	61	8.194		

[Basis : LIC (94-96) Ultimate Tables and 8.00% interest.]”

A reading of the said table would show that the commutation portion or value is calculated based upon the age on the next birthday. The higher the age on the next birthday, lower is the percentage of commutation value. This would also explain the reason why the commutation factor was effectively decreased from 10.46 to 9.81 when the retirement age in central service was increased from 58 years to 60 years.

12. The respondents have explained that the aforesaid changes were made and the new commutation table was enacted pursuant to the recommendation of the Sixth Central Pay Commission, who had commissioned Centre for Economic Studies and Policy, Bangalore for evolving a new commutation table. Sixth Commission in its report had observed:-

“5.1.35 The Commission received many demands for reducing the period of restoring the full pension to 12 years. As mentioned earlier, the Fifth CPC had recommended such restoration after 12 years. The Fifth CPC had simultaneously recommended revision of the commutation table that was last revised in March, 1971. The commutation table is based on the mortality rates then extant amongst Government pensioners and a concessional rate of interest of 4.75% per annum. Department of Pension and Pensioners Welfare had considered the issue of revision of the current commutation table many times. These reviews revealed that whereas the mortality rates had not increased significantly, the rates of interest had become much higher. Another factor which has to be considered in any revision is that the commutation is now restored after a period of 15 years. Hence, any improvement in the age of life expectancy of Government pensioners beyond 15 years will cease to have any effect on computation of the commutation value. The present commutation table is more advantageous to the retiring employees and till the time, the commutation table is suitably revised to present the correct picture, there may not be any justification for decreasing the period of restoration. The Commission had commissioned the Centre for Economic Studies and Policy, Bangalore for evolving a new commutation table keeping in view all the relevant factors. This table is given in Annex 5.1.2 of the Report. The Government should modify the commutation table being used for purposes of commuting pension, accordingly. All future cases of commutation of pension should be considered as per the revised commutation table annexed to the Report which may be revised periodically by the Government keeping in view the interest rates and the mortality table. Since the commutation under the proposed scheme will be in consonance with the prevailing market rates of interest and the mortality factor, it

should be possible to outsource the entire process of making payment on this account. Accordingly, the Government may consider outsourcing the process of commutation of pension to any PSU Bank/Institution which would extend the commuted amount to the pensioners 335 and get appropriate rate of interest on such amount. Government could extend an interest subsidy on the interest rate so charged, in case the same is found necessary.”

13. The change in the commutation table was after in-depth study by experts. The new table had changed the interest from 4.75% to 8% per annum effective from 2nd September, 2008. Interest @ 8% is not abnormally high or unusual and is irrelevant even today. Interest rates do change and are revised upwards and downwards, albeit have remained ranged between 6 to 9% per annum. Interest as high as 10% has been paid to senior citizens on bank deposits. Increase in retirement age may have resulted in reduction of the commutation factor, albeit the government servants have gained financially from two years of salary. Payment of salary or pension is certainly not a subsidy or largesse, but increase in retirement age can be one of the factors along-with others that the government could take into consideration to fix the figures/amounts mentioned in the commutation table. Salaries of government servants have increased pursuant to recommendations made by the Central Pay Commissions and the retirees accordingly get corresponding benefit of the revised pay scales. In these circumstances, reduction in the commutation factor for the purpose of commutation of pension once the pay scales were revised pursuant to the recommendations of the Sixth Central Pay Commission has to be judged and considered holistically and not by restricting oneself to certain figures and

by ignoring other factors. Introduction of new commutation table was a simultaneous exercise with introduction of higher revised pay-scales. New commutation table was made applicable with effect from 2nd September, 2008 and is not applicable retrospectively.

14. Sixth Pay Commission had recommended periodical revision and review of the new commutation table keeping in view the interest rates and mortality rate. Petitioner has not been able to show change in any of the two factors post the introduction of the new table in 2008 that would justify the prayers made. Seventh pay commission as noticed above had examined the question and did not recommend any change either in the maximum percentage of commutation or period of restoration.

15. Pension rules postulate increase in pension every five years after the pensioner attains the age of 80 years as per the following table:-

“

<u>Age of Pensioner</u>	<u>Additional quantum of pension</u>
From 80 years to less than 85 years	20% of basic pension
From 85 years to less than 90 years	30% of basic pension
From 90 years to less than 95 years	40% of basic pension
From 95 years to less than 100 years	50% of basic pension
100 years or more	100% of basic pension

”

Benefit in the form of increase in pension from the age of 80 years is applicable to all pensioners including those who had commuted their pension. The provision is a part of the entire pension scheme.

16. Increase in life expectancy and its effect on commuted pension cannot be viewed in isolation. Several factors, figures and the entire pension provisions on the whole including cost to the exchequer have to be taken into consideration. Commutation table can take into consideration periodical increase in salary and better saving capacity during service period due to increase and enhanced pay scales. Courts would hesitate and not go by one formula and mathematical calculations on assumption and precept that the formula would be more fair, just and appropriate. There can be many formulas. Calculations are complex, convoluted and a tricky task. Fixation of payment of pension or commutation of pension, etc. are highly difficult and cumbersome exercise which the Court would not like to step into, undertake and even interfere unless there is complete arbitrariness and discrimination that is ex-facie apparent. Courts on perceived wisdom would not declare the table as flawed, acting and preforming the role of an actuarial. Every government, including the Central Government, has to take into consideration their available resources and funds, for any increase and enhancement in pension requires money which may well have to be diverted from other schemes or would result in reduction of funds available for poor, the marginalized and needy.

17. Pension, commutation of pension, etc. are policy matters, which are examined and decided on the basis of recommendations of the Pay Commissions by the authorities. No doubt, an executive order or policy decision is not beyond the scope of judicial review but the Courts do not go into the nitty gritty of the policy to substitute the table by making various computations and calculations, which are possible by different formulas or

by applying a particular formula. Broadly, policy decisions can be subjected to judicial review when they are unconstitutional being *de hors* the provisions of the Act and the Regulations, if the delegatee has acted beyond its power of delegation and if the executive policy is contrary to the statutory or larger policy in matters of price fixation, pay fixation, etc. Courts would not interfere unless formula or method adopted is *per se* and *ex facie* irrational, arbitrary or can be struck down on the four grounds mentioned above.

18. These aspects were kept in mind and highlighted by the Supreme in ***Common Cause*** (supra) when they rejected the contention that the commuted portion of pension would be ordinarily recovered within 12 years, and therefore, there was no justification for fixing period at 15 years. The Supreme Court observed that commutation brings about its advantages as a lump sum amount is received, which amount would have otherwise been paid over a period of time during a person's life-time. The Supreme Court had listed out two clear advantages, namely, availability of the lump sum as pension and the risk factor. We may add another advantage as the commutation of pension is presently untaxed under the Income Tax Act, 1961. This considerably adds to the monetary benefit accruing to the pensioners. Further, the rate of return on the funds invested by the pensioners could vary and depends upon market driven rate of interest. There are schemes for senior citizens in which the rate of returns is high. Computations made by the petitioner do not refer to the return by way of interest that the pensioner would earn. In the aforesaid background the Supreme Court had specifically rejected similar argument observing that

while fixing the commutation period, the Court should not be guided or go by the example of life insurance. The Supreme Court had made the following observations on the said aspects in **Common Cause** (supra) :-

“9. In dealing with a matter of this nature, it is not appropriate to be guided by the example of life insurance; equally unjust it would be to adopt the interest basis. On the other hand, the conclusion should be evolved by relating it to the “years-of-purchase” basis. An addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15-year rule. That is more or less the basis which appears to be equitable. It may be that this would give rise to an additional burden on the exchequer but it would not be heavy and after all it would bring some relief to those who have served the cause of the nation at great sacrifice. We are, therefore, of the view that no separate period need be fixed for the armed forces personnel and they should also be entitled to restoration of the commuted portion of the pension on the expiry of 15 years as is conceded in the case of civil pensioners. And for them too, the effective date should be from April 1, 1985.”

19. We would want most favourable terms for the pensioners, but there are restraints and the field experts and not the Court is the best judge to evaluate on different and somewhat conflicting factors that have to be taken into consideration. This is not to say that courts do not have jurisdiction and aggrieved pensioners/employees if they are unjustly treated cannot be granted relief, but for such interference the Court should come to a firm conclusion that a grave error had crept in which makes the court's interference absolute to do justice. Interference in such matter can result in creating all kinds of problems and cascading effects as these are highly

complexed and difficult matters requiring balancing of various competing interests, which would to some extent include financial resources available.

20. In view of the explanation offered by the respondents, we do not think that the Court would be justified in interfering with the old and the new commutation table. Accordingly, the writ petition has no merit and is dismissed without any order as to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

JANUARY 17th, 2019
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