THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 06, 2021

\+ W.P.(C) 5761/2019

CHANDAN KUMAR CHATTERJEE

..... Petitioner

Through: Mr. M.L. Sharma, Adv.

Versus

MINISTRY OF COMMUNICATION AND ORS.

..... Respondents

Through: Ms. Arti Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:-

> *"(a) be pleased to Issue a writ of mandamus or any other appropriate writ direction or order directing the respondents to release petitioner's due balance of entire due pensions, admitted as per letter dt 29.11.2017 (annexure P-4) couple with 24% interest quarterly deposits upon it as deemed fit and proper within time bound period in the interest of justice.*
> *(b) be pleased to provide suitable compensation to the petitioner due to mental agony, harassment and frustration created by the action of the respondents to provide complete justice to the Petitioner.*
> *(c)Pass any other suitable order or orders as this Hon'ble Court may deem fit to meet the ends of justice."*

2. At the outset, I may state, that this writ petition was disposed of by this Court on the first date of hearing itself, i.e., May 24, 2019 when this Court directed the respondent No.1 to release the amount as admitted in the letter dated November 29, 2017 with interest @ 9% per annum. Pursuant thereto, the respondents had filed a review petition being 422/2019 seeking review of the order dated May 24, 2019 which was allowed by this Court on January 15, 2020 whereby this Court had restored the writ petition.

3. Suffice would it be to state, the petitioner herein had challenged the order of this court in the review petition dated January 15, 2020 before the Supreme Court. The Supreme Court vide its order dated February 20, 2021 has not interfered with the order but had, in view of the fact, the petitioner is of 82 years of age, requested this Court to take the writ petition for final disposal as early as possible and preferably within three months.

4. Accordingly, I have heard the learned counsel for the parties on March 17, 2021 and proceed to decide the writ petition in terms of this order. The facts as noted from the record are that the respondent No.1 Department of Telecommunication ('DOT', for short) under the Ministry of Communication, is the main employer with whom the petitioner was employed, having been appointed in the year 1965. In 1987 while working in DOT, the petitioner went on deputation to Telecommunications Consultants India Limited ('TCIL', for short) which is a Public Sector Undertaking. In 1993 he was absorbed in TCIL.

5. On August 31, 1994, DOT issued a letter declaring that the petitioner has been absorbed on a permanent basis in TCIL w.e.f. September 01, 1993. Later in the year 1995, the petitioner commuted his

entire pension payable for his service in DOT. The gravamen of his case is that in 1996 when the 5th pay commission, followed by the 6th pay commission in 2006 recommendations were announced and implemented in favour of all government employees including pensioners; the petitioner was not given the benefit of the same, for the period between 1996-2010 insofar as the difference of pension.

6. Mr. M.L. Sharma learned Counsel who appeared on behalf of the Petitioner has argued that there was no denial by the respondents that the petitioner was entitled to retiral benefits for the said period. He argued that despite several personal visits by the petitioner to the concerned departments his dues were not released, despite being given assurances.

7. Mr. Sharma submitted that on January 12, 2010 the pension of the petitioner was restored back to $^1/_3$rd after 15 years from the date of commutation of his pension.

8. The petitioner had filed WP (C) No. 31/2012 before the Supreme Court, which was disposed of on May 01, 2017 in terms of the decision of the Supreme Court in the case of ***Union of India vs. K Ganesan (Dead) By Lr. CA No. 6048/2010,*** decided on September 01, 2016, with a direction that $^2/_3$rd of the pension of the petitioner be restored. On June 23, 2017 respondent No.2 issued a memo wherein it was decided that in terms of the judgment, the pension of the former employees has to be restored to the original amount, after 15 years.

9. Mr. Sharma argued that even on September 02, 2017 the petitioner did not receive the balance of the difference in his pension in terms of the 5th and the 6th pay commission. It is his case that on October 18, 2017 the petitioner received his pension from January 12, 2010 to

September 2017, i.e., Rs. 15,80,887/- as arrears but no payment was released for the period of January 01, 1996 to January 11, 2010.

10. According to the petitioner and so contended by his Counsel that the respondent No. 3 Principal Controller of Accounts, Kolkata admitted the petitioner's claim, vide letter dated November 29, 2017 issued to the DOT, wherein it forwarded the petitioner's case to be considered by the DOT, for releasing the amount due as per the 5th and the 6th pay commission, i.e., the difference in pension and DR amount prior to 2010. Despite having the knowledge of the applicable rules and the judgments of the Supreme Court, DOT chose not to release the amount due to the petitioner.

11. Mr. Sharma contended that the petitioner wrote emails dated April 26, 2018 and May 12, 2018 which were forwarded by the respondent No.2 on May 17, 2018 to the DOT. These emails were then forwarded by the DOT to respondent No.3, Controller of Communication Accounts, Kolkata on June 04, 2018 for appropriate action. He argued that despite admission by the respondents to the fact that the petitioner is a pensioner and the admission made by the respondent No.3 that the petitioner is entitled to the arrears of pension, the benefits have not been released. In this regard he has placed reliance on the judgment of ***Welfare Assn. of Absorbed Govt. Employees in Public Enterprises vs. UOI (1996) 2 SCC 187.***

12. Ms. Arti Bansal learned counsel who appears for all the respondents has argued that the petitioner while working is the DOT got permanently absorbed in TCIL w.e.f. 1993 and at the time of his absorption he was in the pay scale of Rs. 5,900-200-6,500/-, with the last pay being Rs. 6,500/-. Due to his continued service of 27 years, he was

entitled to a monthly pension of Rs. 2,642/-. However, the petitioner opted for 100% commutation of pension as per the rules and accordingly he was paid an amount of Rs. 3,57,741/- as lump- sum on December 30, 1994 and Rs. 24, 293/- on March 02, 1995 in lieu of the monthly pension. Thus, the government had discharged all its future liabilities by paying him one lump sum amount. However, the petitioner was eligible for restoration of $^{1}/_{3}{}^{rd}$ pension on the expiry of 15 years from the date of commutation of pension which was restored on January 12, 2010.

13. She submitted that, the petitioner filed W.P. (C) 31/2012 before the Supreme Court which was disposed of vide judgement dated May 01, 2017, directing that two-third of his pension be restored as directed in the earlier judgement dated September 01, 2016 titled as ***Union of India & Anr. vs. K. Ganesan through LRs C.A. No. 6048/2010.*** In implementation of the said judgement the Department of Pension and Pensioners' Welfare (DoP&PW hereinafter referred to as) respondent No.2 issued an O.M. dated June 23, 2017 whereby the benefit of order dated August 2, 2007 of the Madras High Court in W.P. No. 22207/2002, from which the CA No. 6048/2010 arose before the Supreme Court was extended to all similarly placed absorbed pensioners.

14. As per that extant rules one-third of the pension of the petitioner was to be restored from January 12, 2010 and the same was restored and pension was fixed at Rs. 12,218/- plus admissible DA vide communication dated September 16, 2016 of Pr. CCA Kolkata Telephones (respondent No.3). In terms of the O.M. dated June 23, 2017 his full pension was also restored w.e.f. the same date and pension fixed at Rs. 27,350/- plus admissible DA vide communication dated August 17, 2017. Thereafter, his full restored pension was also revised at Rs.

72,100/- per month plus admissible DA w.e.f. January 01, 2016 in terms of the recommendations of the 7th Central Pay Commission which was approved by the Authority of Pr. CCA Kolkata Telephones (respondent No.3) vide order dated October 6, 2017. Additionally, all arrears of full restoration of pension and revision thereof consequent to the 7th Central Pay Commission amounting to more than Rs. 20 lacs was paid to the petitioner by the said authority.

15. It is the case of the respondents, that the petitioner claimed cumulative arrears of the difference of the pension (with notional pay fixation) w.e.f. January 1, 1996 (5th Central Pay Commission), difference of pension (of notional pay fixation) on 50% merger of DR with pension w.e.f. April 1, 2004, difference of pension (of notional pay fixation) w.e.f. January 1, 2006 (6th Central Pay Commission) and the difference of pension (of notional pay fixation) w.e.f. January 1, 2016 (7th Central Pay Commission). Ms. Bansal contends that the aforesaid issue was raised by the petitioner in his e-mail dated August 11, 2017 addressed to the Director, DoP&PW, respondent No.2; and that this e-mail was then forwarded to DoT vide O.M. August 23, 2017, requesting the DoT to take necessary action for restoration/revision of his pension in accordance with their O.M. dated June 23, 2017. The same issue again raised by the petitioner in his e-mail dated October 15, 2017 addressed to Director, DoP&PW which was again forwarded to the DoT vide O.M. dated October 31, 2017 for them to take action in accordance with that Department's O.M. dated June 23, 2017. DoT vide letter dated September 5, 2017 and letter dated November 14, 2017 requested the Pr. CCA Kolkata Telephones to take further necessary action for restoration of full pension after the expiry of 15 years from date of payment of 100% lump

sum amount i.e. the commutation period in implementation of the judgement dated May 01, 2017 of the Supreme Court in W.P. (C) 31/2012 and to intimate the petitioner of the action taken by that office for restoration/revision of his full pension in terms of O.M. dated June 23, 2017.

16. The respondents contend that in response to the aforesaid communications the Pr. CCA Kolkata Telephones vide letter dated November 23, 2017 informed the petitioner that his pension was fully restored, revised and the arrears were paid to him. The Pr. CCA Kolkata Telephones had also attached a calculation sheet for an amount of Rs. 17,97,752/- on account of the total arrears of pre-restoration pension for the period from January 1, 1996 to January 11, 2010 plus DR in favour of petitioner. The DoT examined the same and it was intimated to the Pr. CCA Kolkata Telephones vide letter dated January 12, 2018 that the petitioner is not entitled to arrears of pre-restoration pension for the period from January 1, 1996 to January 11, 2010 plus DR as calculated because his full pension stood restored on January 12, 2010, i.e., after the expiry of 15 years from the date of 100% of commutation. This information was then intimated to the petitioner by the Pr. CCA Kolkata Telephones vide letter dated January 25, 2018.

17. Ms. Bansal submitted that the petitioner then went on to file the present petition seeking release of the due balance of entire pension that had been admitted as per letter dated November 29, 2017 by the Pr. CCA Kolkata Telephones. She argued, that the petitioner is not entitled to the arrears of pre-restoration pension as prayed for as his pension was to be restored w.e.f. January 12, 2010, i.e., after expiry of 15 years from when the petitioner had availed the 100% commutation of pension. Even

otherwise, the petitioner's one-third pension was restored from January 12, 2010 at Rs. 12,218/- plus admissible DA. Vide O.M. dated June 23, 2017 his full pension stood restored w.e.f. January 12, 2010 at Rs. 27,350/- plus admissible DA. Moreover, his full restored pension was also revised at Rs. 72,100/- per month along with the admissible DA w.e.f. January 1, 2016 in accordance with the recommendations of the 7th Central Pay Commission and all arrears upon full restoration of pension and revision thereof consequent to the 7th Central Pay Commission amounting to more than Rs. 20 lacs paid to him by the Pr. CCA Kolkata Telephones.

18. Having heard the learned counsels for the parties and perused the record, the issue which arises for consideration is whether the petitioner is entitled to the prayer as made in this petition, i.e., a direction to the respondents to release the balance of pension as per letter dated November 29, 2017.

19. In terms of the letter dated November 29, 2017 the respondent No.3, Controller of Communication Accounts has only sought the approval of the DOT for payment of Rs. 17,97,752/- as arrears for pre-restoration pension for the period January 1, 1996 to January 11, 2010 plus dearness relief. The said letter reads as under:

> *"Sub: **P.G. Portal Registration no. DOPPW/P/2017/04230 dated 10/11/2017**-regarding revision of pre-restoration pension and payment of arrears thereof in favour of Sri Chandan Kumar Chatterjee Ex. GM/CTD retired from DOT on absorption in TCIL w.e.f 01/09/1993 **(PPO No. 77133310010341)**.*
>
> *Ref.: DOT/N.D. memo no. 38-48/20l7-Pen(T) dated 14/11/2017.*
> *Regarding Implementation of Judgement of Hon'ble Supreme Court of India in WP(C) No. 31/2012 dated 01/05/2017 and as per para sl. no. 8 and 9 of GOl/DOP&PW O.M. No.*

F.No. 4/34/2002-P&PW(D).Vol.ll dated 23/06/2017, pre-restoration of pension considering pay revision under Vth CPC w.e.f. 01/01/1996 and VIth CPC w.e.f. 01/01/2006 respectively in afore cited case is a unique and exceptional one beyond the normal pension admissible case as per CCS (Pension) Rules, 1972 and CCS (Commutation of Pension) Rules, 1981 respectively.

As Such, an amount of Rs. 17,97,752/- on account of total arrears for pre-restoration pension for the period from 01/01/1996 to 11/01/2010 plus DR arrived at in favour of Sri Chandan Kumar Chatterjee Ex-GM/CTD retired from DOT on absorption in TCIL w.e.f 01/09/1993, as per enclosed calculation sheet is placed herewith for your kind financial approval please, if not otherwise effected.

However, it is intimated that on restoration of commutation after 15 years of life, $^{1}/_{3}{}^{rd}$ portion as pension has already been authorised for Rs. 12218/- p.m. w.e.f. 12/01/2010 (restoration date) plus DR as admissible from time to time vide this office authority dated 16/06/2016. Similarly, full portion for Rs.27,350/- p.m. on restoration w.e.f. 12/01/2010 vide this office authority dated 17/08/2017 and considering pay revision under seventh CPC, pension revision for Rs. 72100/- p.m. we.f. 01/01/2016 vide this office authority dated 06/10/2017 respectively have already been authorised in favour of Sri Chan Kumar Chatterjee (Please refer the enclosed history sheet also).”

20. In response thereto the DOT wrote to the respondent No.3 on January 12, 2018 stating as under:

“…………….

As is apparent from your letter under reference, the restoration of $^{1}/_{3}{}^{rd}$ pension after expiry of 15 years from the date of 100% commutation in respect of Shri Chandan Kumar Chatterjee falls on 12.01.2010, his full pension is also required to be restored from the date itself in terms of DoP&PW’s OM No. 54/34/2002-P&PW(D). Vol. II dated 23.06.2017 and therefore, he is not entitled to arrears of pre-restoration pension for the period from 01.01.1996 to 11.01.2010 plus Dearness Relief, as calculated by your office in the letter under reference.”

21. The decision of the DOT was communicated to the petitioner vide letter dated January 25, 2018.

22. A perusal of the letter dated January 12, 2018 of DOT it is clear that as the restoration of full pension was w.e.f January 12, 2010, the petitioner was not entitled to pre-restoration pension for the period January 1, 1996 to January 11, 2010 plus dearness Relief.

23. Admittedly, the petitioner has not challenged the communication dated January 25, 2018.

24. Be that as it may, since the petitioner has raised the issue that he is entitled to arrears of pension for the pre-restoration period w.e.f January 11, 1996, I proceed to decide the issue.

25. There is no dispute that the petitioner on his absorption in TCIL had decided to commute 100% of the pension. The effect thereof was that the petitioner was paid the complete pension which the petitioner was entitled to at least in the next 15 years.

26. The issue whether a retiree who commutes 100% pension is entitled to restoration of the complete pension after the completion of 15 years is an issue which stood decided by the Supreme Court in Civil Appeal No. 6048 of 2010 on September 1, 2016, and the benefit thereof was extended to the petitioner as well, vide order dated May 1, 2017 in the W.P.(C) No. 31/2012 filed by the petitioner. In fact, the arrears thereof were also released to the petitioner in the year 2016/2017 (first $^{1}/_{3}$ and later $^{2}/_{3}$). Even the pension was revised at Rs. 72,100 per month plus dearness allowance w.e.f January 1, 2016.

27. The plea of Mr. M.L. Sharma was that the petitioner is entitled to the benefit 5th and 6th CPC for the period between January 1, 1996 and

January 11, 2010 and the benefit of higher pension thereof need to be granted to the petitioner post January 11, 2010. This stand of the petitioner is clear from his e-mails dated August 11, 2017 to October 15, 2017.

28. The case of the petitioner in the said e-mails is that the revised PPO need to be issued in the following manner:

> *"i. Pension (as different from Notional Pension) w.e.f. 1/1/1995 @ 7667/- p.m,*
>
> *ii. Pension (as different from Notional Pension) w.e.f. 1/4/2004 @ 11501/- p.m., as.50% D.R. got merged with Pension on 1/4/2004,*
>
> *iii. Pension (as different from Notional Pension) w.e.f. 1/1/2006 @ 27350/- p.m. and*
>
> *iv. Pension (as different from Notional Pension) w.e.f. 1/1/2016 @ 72100/- p.m."*

29. The issue which falls for consideration is no more res integra in view of the Judgment of the Supreme Court in the case of ***P.V. Sundara Rajan and Ors. v. Union of India (UOI) and Ors. (2000) 4 SCC 469*** wherein the Supreme Court which was concerned with a claim of the petitioners therein, who had also commuted 100% pension, was of dearness relief in terms of post-commutation revision, was negated by the Supreme Court by holding in Para 14 as under:

> *"14. The parity claimed by Lt. Col. Malhotra and other absorbers who had commuted 100% pension, in our view, is entirely misplaced. The contention that what is commuted or given up is an amount and not the right to receive pension or right to receive post-commutation revision and attendant benefits including dearness relief on the gross entitled pension on the dates they were granted to other Government pensioners, is only illusory. The decision in the case of State of T.N. and Ors. v. V.S. Balakrishnan and Ors. MANU/SC/1163/1994 :*

(1995)ILLJ1335SC on which reliance was placed by Mr. Gopal Subramanium, Senior Advocate, has no applicability to the point in issue. Those who commuted 100% pension continue to remain non-pensioners till their pension is restored. In Welfare Association Case (supra), persons who commuted the full pension and who will not be given any monthly pension by deeming monthly pension to have been reduced to nil has been treated as a separate category. Those who commute 100% pension are not entitled to the benefit of dearness relief on full pension or other benefits as claimed herein. We also do not find any discrimination in so far as this class is concerned."

(emphasis supplied)

30. I find that the benefit to the petitioner of restoration of 1/3rd pension after expiry of 15 years was initially granted, which was fully restored w.e.f January 12, 2010 in view of the respondent No.2's, Department of Personnel and Pensioners Welfare OM dated June 23, 2017 except the arrears of pre-restoration pension for the period January 1, 1996 to January 11, 2020, which were not granted, rightly in view of the position of law as laid down by the Supreme Court that a retiree is not entitled to the benefits for a period when he was not a pensioner. That apart, I find that on January 12, 2010 the pension of the petitioner was fixed @ 27,350/- and @ Rs.72,100 w.e.f January 1, 2016 (as claimed by him in his emails), which means the benefit of 5th and 6th CPC was given notionally, but the arrears thereof were not given. He got the benefit, from the date when his pension was restored, i.e., January 12, 2010. I do not see any illegality in the action of the respondents.

31. Insofar as the reliance placed by Mr. Sharma, on the judgment of the Supreme Court in the case of ***Welfare Assn. of Absorbed Govt. Employees in Public Enterprises (supra)*** is concerned, the same has no applicability to the case in hand inasmuch as, in that case, the Supreme

Court held, the petitioners are entitled to the benefits as given by the Court in *'Common Cause'* insofar as it relates to restoration of one third of commuted pension, which is not the case in this petition.

32. The writ petition is dismissed. No costs.

V. KAMESWAR RAO, J

APRIL 06, 2021/*ss/jg*