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In the Bombay High Court

Case No : Writ Petition No. 19 of 2001

Anthony C. Monteiro APPELLANT

Vs

Government of Goa and Another RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Central Civil Services (Commutation of Pension) Rules, 1981 — Rule 28, 6(1), 8
Central Civil Services (Pension) Rules, 1972 — Rule 37A, 37A(1)

Citation : (2006) 3 ALLMR 687 : (2006) 5 BomCR 272

Hon'ble Judges : Lavande A.P., J;Britto N.A., J

Bench : Division Bench

Advocate : M.S. Usgaonkar and G. Kale, for the Appellant; M.S. Joshi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Britto N.A., J.—The short question for our consideration in this petition, is whether the petitioner is entitled to minimum pension of Rs. 375/-, as per Clause 7.1 r/w Clause 10(a) of the Revision of Pension for Pre 1986 Pensioners, introduced vide Office Memorandum (O.M.) No. 2/1/87-PIC-I dated 16-4-1987 and followed by the respondents. The said clauses read as follows:

Minimum Pension/Minimum Family Pension: -7.1 Where the consolidated pension/ family pension in terms of paragraph 6 works out to an amount less than Rs. 375 the same shall be stepped up to Rs. 375. This will be regarded as pension/family pension with effect from 1-1-1986. In the case of pensioners who are in receipt of more than one pension, the floor ceiling of Rs. 375 will apply to the total of all pensions taken together.

10. The cases of Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies will be regulated as follows:

(a) Pension: Where the Government servants on permanent absorption in public sector undertakings/ autonomous bodies continue to draw pension separately from the Government, their pension will be updated in terms of these Orders. In cases where the Government servants have drawn one time lump sum terminal benefits equal to 100% of their pensions, their cases will not be covered by these Orders.

2. There is no dispute that the petitioner was in Government service in the Department of Animal Husbandry and Veterinary Services, as Junior Stenographer and went on deputation to Goa Meat Complex as Senior Stenographer on 8-6-1977 and thereafter was absorbed their vide O.M. dated 14-9-1983 from 1-6-1981, and, was held entitled for retirement benefits as Jr. Stenographer for his service from 1-2-1965 to 31-5-1981.

3. The respondents'' contention is that the petitioner has already been paid all pension benefits as admissible under the Rules. The petitioner approached this Court with Writ Petition No. 104/1992, which was disposed of by a Division Bench of this Court by Judgment dated 20-2-1998. The petitioner was given an opportunity to place his case in respect of his claim for commutation and terminal benefits at minimum pension of Rs. 375/- and also the application for withdrawal subsequently made by him, in that connection. The Deputy Director of Pensions (respondent No. 4), was required to hear the respective parties and take a decision and in case it was felt necessary by him, he was free to make a further reference, giving all the facts of this case, to the Central Government, and, in case it was not considered necessary, the Deputy Director of Pensions was required to decide the issue on the basis of the submissions made on behalf of the parties, taking into consideration the Rules and Regulations applicable in that behalf and was further required to decide the issue by a speaking Order within a period of four months, and in case the intervention of the Central Government was found necessary, then he was required to dispose of within a period of six months from the date of the receipt of the Order.

4. It appears that the Deputy Director (Pensions), made a reference to the Central Government by his letter dated 2-3-1998, copy of which is otherwise not available on the record, and pursuant thereto, got a reply from the Central Government dated 31-3-1998. The said reply dated 31-3-1998 is at annexure R-I colly to the affidavit in reply filed by respondent No. 4 dated 22-3-2001. The Deputy Director (Pensions), thereafter by his Order dated 18-6-1998, decided thus:

The Central Government in their reply has made it clear that commutation is to be done with reference to original Pension and not consolidated Pension. It is further stated as per 10(a) of Office Memorandum No. 2/1/ 87-PIC/I dated 16-4-1987 those who have opted to have lump sum terminal benefits their cases will not be covered by the orders of IVth Pay Commission. Therefore action taken by Goa Government to consolidate his pension under IVth Pay Commission when he had already opted 14-9-83 to commute full pension was not correct. Hence his lump sum pension cannot be commuted on the consolidated pension of Rs.

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375/-. It is also clarified that as per provisions of Rule 28 of C.C.S. Commutation of Pension Rules 1981 withdrawal of option is not permissible, and hence the question of relaxing the Rules in the instant case does not arise. I agree with the opinion expressed by the Central Government, which is according to me, in accordance with the provisions of the said Rule. Therefore, in view of the Provision of C.C.S. ''Pension'' Rules, 1972, and in view of clarification given by the Government of India, the claim of Shri Anthony Monteiro for commutation and terminal benefits at minimum pension of Rs. 375/-is hereby rejected. Likewise, the application subsequently made by him to withdraw his option for full commutation, being also legally untenable, has also got to be rejected.

5. The petitioner is now before this Court again in the second round. There is no dispute that the petitioner had applied for pensionary benefits on 14-7-1981 even before the Order dated 14-9-1983 (Exhibit A, to the Petition), was passed by the Director of Animal Husbandry and Veterinary Services. The petitioner applied for commutation of pension on 16-2-1984 under the Central Civil Services (Commutation of Pension) Rules, 1981, and, according to the petitioner, the said application was in the prescribed form but the same was not processed and acted upon by the respondents. In the affidavit filed on behalf of the respondents, the filing of this application for commutation dated 16-2-1984, has been disputed but we are inclined to accept the petitioner''s statement that the petitioner did file an application for commutation on 16.2.1984 (exhibit F, to the Petition), in the prescribed form. We say so because in the letter dated 7-4-1992, written by the Director of Accounts to the Deputy Secretary to Government of India, copy of which is on record, it was stated that Commutation amount could not be paid to him immediately after absorption due to administrative difficulties and "failure on the part of the employee concerned to submit the application for commutation etc. in the proper format". In other words, it is impliedly admitted that the application for commutation was submitted but it was not in proper format. In Para 11 of the Petition, the petitioner stated that as the application of the petitioner for commutation of pension dated 16-2-1984, was not processed and acted upon, six years later on 22-3-1990, the petitioner submitted a fresh application for commutation of full pension under Rule 37-A(1) of Central Civil Services Pension Rules, in the prescribed form. There is no denial to the said averments of the petitioner in the affidavit in reply filed on behalf of the respondents. Filing of the said application was also taken note of by this Court in Judgment dated 20-2-1998.

6. In the meantime, while the said application dated 16-2-1984, for commutation remained pending with the respondents, the Deputy Director (Pensions) by Order No. A 4250 dated 2-3-1984, fixed the basic monthly pension of the petitioner at Rs. 145/- and consolidated at Rs. 251/- and, accordingly, paid to the petitioner arrears of Rs. 7,506/-for the period from 1-6-1981 to 31-1-1984. Thereafter, the payment of pension was stopped on account of audit objections and then resumed after about three years in April, 1988, when the petitioner was paid a sum of Rs. 12,590/-, for the period from August, 1984 to March 1988. After the

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petitioner submitted a fresh application for commutation dated 22-3-1990, as his earlier application was not processed, the respondent No. 3 took cognizance of the same and the petitioner was called for medical examination as per Rule 8 of the Central Civil Services (Commutation of Pension) Rules, 1981 and the petitioner underwent the requisite medical examination. It may be stated that Rule 6(1)(ii) of the said Rules provides that the commutation of pension shall become absolute in the case of an applicant referred to in Chapter IV, on the date on which medical authority signs the medical report in Part III in Form 4. After the said medical examination, pension was allowed to be commuted by the respondents in terms of Rule 37-A of the Central Civil Services Pension Rules, 1972, but the commutation was allowed on the basis of pension of Rs. 145/- per month drawn by the petitioner prior to 1-1-1986 and not at the rate of Rs. 375/- per month as claimed by the petitioner, and, by Orders dated 8-1-1991 and 10-1 -1991, the petitioner was paid a sum of Rs. 17,344/- and Rs. 8,582/- respectively. The sum of Rs. 17,344/- was paid to the petitioner as terminal benefits of his balance amount of pension left after commuting one third of his original pension and the sum of Rs. 8,582/-, was paid to the petitioner by way of commutation of a sum of Rs. 48/- out of his final pension of Rs. 145/ -. The petitioner represented against the said commutation at the rate of Rs. 145/- per month by his letter dated 8-1-1991 and further requested that in case he was not allowed to commute full pension on the basis of Rs. 375/-, the commutation Order may be withdrawn but was informed by respondent No. 4, by letter dated 20-2-1991, that there was no provision for withdrawal of application of commutation. Thereafter, the representations continued until the filing of the said Writ Petition before this Court.

7. Admittedly, the petitioner''s pension was fixed by Order dated 2-3-1984, at a time when the petitioner''s application for commutation dated 16-2-1984 was pending. It has been submitted on behalf of the petitioner, that the Central Government gave the opinion as it did by letter dated 31-3-1998, because the respondents did not place before the Central Government, the correct facts i.e. regarding the pendency of the application for commutation of pension filed by the petitioner dated 16-2-1984. In case the said fact was brought to the notice of the Central Government, then the opinion given vide letter dated 31-3-1998, might have been different. The case of the petitioner is solely based on the said application dated 16-2-1984, under which, he had applied for commutation of pension and which had remained unprocessed with the respondent No. 4 and before the pension of the petitioner was commuted, the Office memorandum dated 16-4-1987 had come into force and it, inter alia, provided that where the Government servants on permanent absorption in public sector undertakings/ autonomous bodies continue to draw pension separately from the Government, their pension will be updated in terms of those Orders. In cases where the Government servants had drawn one time lump sum terminal benefits equal to 100% of their pensions, their cases will not be covered by those Orders. It is therefore, obvious, that when the said O.M. was brought into force from

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1-1-1986, the petitioner had not drawn one time lump sum terminal benefits equal to 100% of his pension and, therefore, the petitioner''s pension was required to be stepped up to Rs. 375/- per month. It may again be noted that in terms of Rule 6(1)(ii), the commutation of pension becomes absolute on the date on which the medical authority signs medical report and that happened in the case of the petitioner only after 27-9-1990, and by which date, the petitioner was not paid the commuted value of his pension and, therefore, had to be paid commuted value of his pension in accordance with Clause 7.1 r/w Clause 10(a) of the said O.M. dated 16-4-1987. The Central Government as well as the Deputy Director of Accounts (Pension) have not taken into consideration that the petitioner''s application for commutation was pending and he had not been paid lump sum terminal benefits as contemplated by the said O.M. After the O.M. came into force, the petitioner was entitled to commutation as per O.M. at consolidated rate of Rs. 375/- and not at the basic rate of Rs. 175/-as fixed by Order dated 2-3-1984.

8. In our view, therefore, the petition deserves to succeed in terms of prayer (c) of the petition. The respondents are directed to pay to the petitioner, pension at the rate of Rs. 375/- per month in accordance with the said O.M. Payments made to the petitioner shall be adjusted. Rule is made absolute on the above terms with no order as to costs.

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