

(2008) 07 AP CK 0002
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6953 of 2008

R. Veerabhadram

APPELLANT

Vs

Additional Secretary to Government, General Administration
(SC-F) Department and Another

RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Revised Pension Rules, 1980 — Rule 2, 4, 6

Citation : (2009) 1 ALT 67

Hon'ble Judges : Ghulam Mohammed, J; C.V. Ramulu, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; G.P. for Services II, for the Respondent

Final Decision : Allowed

Judgement

C.V. Ramulu, J.—This writ petition is directed against the order dated 3-3-2008 passed in OA No. 6219 of 2007 with VMA No. 132 of 2008 & CA No. 23 of 2008 by the Andhra Pradesh Administrative Tribunal.

2. It appears, the petitioner-party-in-person, while working as Joint Secretary in Government of Andhra Pradesh, retired from service on 30-6-1988, but in view of certain disciplinary proceedings pending against him (ACB case), the pension of the petitioner was not settled and he was paid provisional pension. Ultimately, on acquittal in the ACB case on 23-3-1998, he became eligible for full pension and other retirement benefits and he was paid the same. It is stated that the petitioner was asked to exercise the option for commutation of his pension and was given a form and the petitioner accordingly submitted his willingness to commute the pension with the fond hope that commutation of his pension would be taken into consideration from the date of his retirement from service, on attaining the age of superannuation i.e. 30-6-1988. But it appears, the respondents have commuted his pension from the next date of birthday, from the date of submission of the application. The proceedings against the petitioner

were concluded in the year 1998, by which time his age was 68 years, therefore 69th birthday was taken into consideration for the purpose of commutation of pension at the rate of 7.22 as per the Annexure-III to Appendix IV of Revised Pension Rules, 1980, for short, "the Revised Pension Rules" and as a result of this, the petitioner got only Rs. 53,803/-, whereas the claim of the petitioner was Rs. 77,948/-. Noticing this anomaly, the petitioner made representations before the respondents seeking to consider payment of the balance of amount taking into consideration the commutation of his pension from the next birthday after attaining the age of 58 years i.e. from 59th year in view of his acquittal in ACB case. Had it been taken as next birthday, after attaining the age 58 years, for the purpose of calculation of pension, the commutation value could have been 10.46 as per Annexure-III to Appendix IV of the Revised Pension Rules. It appears, ultimately, the Accountant General addressed a letter dated 22-6-2007 to the Additional Secretary to Government, General Administration Department, AP Secretariat, Hyderabad, a copy of which was also marked to the petitioner. The purport of the said letter was that in case of those persons to whom only provisional pension was granted, the Government servant has to apply in the prescribed form and the commutation will become absolute on the date on which the application is received by the Head of the Office and commuted value of pension was authorized to the petitioner as per Appendix IV of the Revised Pension Rules taking the age of next birthday as 69 years. Aggrieved thereby, the petitioner filed the above OA No. 6219 of 2007 before the Andhra Pradesh Administrative Tribunal. The Administrative Tribunal did not go into the merits of the case, except noting the pleadings and dismissed the OA on the ground of laches as commutation of pension of the petitioner was done as long back as on 16-9-1998 and the petitioner approached the Tribunal after a lapse of 10 years. Aggrieved thereby, the present writ petition is filed.

3. The petitioner-party-in-person, present in the Court, has reiterated the stand taken by him in the OA as well as in the writ affidavit and contended that had he not involved in the ACB case, he would have retired from service on 30-6-1988, he would have made application for commutation of pension within one year after his retirement on superannuation. But only in view of the ACB case, which was concluded in the year 1998, after ten years of his retirement, he cannot be blamed as he was not allowed to commute the pension during that period. Therefore, the impugned Order in O.A. is illegal.

4. On the other hand, learned Counsel for the respondents has drawn our attention to Rule 2(d), Rule 4(b)(iv) and Rule 6(b) of Appendix IV of Revised Pension Rules. The said rules reads thus:

(d) A Government servant against whom judicial or department proceedings has been instituted or a pensioner against whom any such proceeding has been instituted or continued under Article 351-A of the CSRs, shall not be permitted to Commute any part of his pension during the pendency of such proceedings.

4. (b)(iv) In the case of those to whom only provisional pension is granted, if

after conclusion, entire pension is withheld, the question of commutation does not arise. In the case of others to whom pension was allowed either in full or in part, the period of one year has to be reckoned from the date of issue of orders on conclusion of the proceedings. The Government servant has to apply in the prescribed form and the commutation will become absolute on the date on which the application is received by the Head of the Office.

6 (b) If the pensioner did not express any desire for simultaneous commutation along with service pension at the time of retirement but wishes to commute any portion of pension after retirement or wishes for further commutation, within the period of one year from the date of retirement, he/she should submit the application in the form in Annexure-I to this appendix.

5. It is the contention of learned Counsel for the respondents that a person who retired from service, in the normal course, is supposed to commute his pension within one year after his retirement on superannuation, and in case of persons covered under Rule 4(b)(iv) of Revised Pension Rules the commutation will become absolute on the date on which the application is received by the Head of the Office. Learned Counsel for the respondents further contended that under Rule 6(b) of Revised Pension Rules, if the pensioner did not opt for simultaneous commutation along with service pension at the time of retirement, but wishes to commute any portion of pension after retirement, he should submit application within one year from the date of retirement, in the form in Annexure-I to the Appendix-IV. It is stated that since the petitioner could not submit his application within one year from the date of his retirement, his next date of birthday i.e. 69th birthday must be taken for the purpose of commutation of his pension.

6. We have given our earnest consideration to the respective submission made by the petitioner-party-in-person and the learned Counsel for the respondents. Perused the material available on record.

7. At the outset, we are of the opinion that nowhere in the Revised Pension Rules there is a rule stipulating that in case of persons covered by Rule 4(b)(iv) and facing disciplinary proceedings, at the time of his superannuation, the commutation of pension must be taken into consideration from the next date of birthday from the date on which the application is received by the Head of the Office. Take an extreme example, if the proceedings continue for a period of 15 years, then as per Annexure-III to Appendix IV of the Revised Pension Rules, he may not be entitled to anything at all though he retired on attaining the age of superannuation. The respondents, appears to have not interpreted the rules objectively. When once the petitioner was acquitted of all the charges (ACB case) and though the said proceedings concluded on 23-3-1998 i.e. nearly after ten years after the retirement of the petitioner from service on attaining superannuation, the petitioner shall be eligible for all the benefits including commutation of pension from the date of his retirement i.e. 30-6-1988. On acquittal of the charges, the position as on the date of superannuation of the petitioner shall stand restored. In other words, the application must be deemed

to have been made immediately after his retirement i.e. 30-6-1988 and not the date on which the application was received by the Head of the Office. This is a case which falls into Rule 4(b)(iv) of the Revised Pension Rules. In this case, the petitioner was allowed full pension and the period for submitting the application for commutation is one year from the date of conclusion of the disciplinary proceedings. But this does not mean that the petitioner will be allowed to commute his pension from 69th year, since the application was made immediately after completion of the disciplinary proceedings in which he was fully exonerated. The said Rule only speaks that he should make the application immediately after one year from the date of attaining the age of superannuation in the normal course and within one year after conclusion of the disciplinary proceedings, in case the proceedings are pending at the time of retirement. There is no rule, which says that the petitioner even after being exonerated, may be after 10 years, he has to commute the pension from 69th year and not entitled to commute pension at 59th year. Thus, the approach of the respondents is not in tune with the requirements of law and as such, liable to be declared as arbitrary and illegal.

8. In the result, the petitioner shall be allowed to commute his pension from the date of the birthday in his 59th year of age, treating as if the application was filed immediately after his retirement and the respondents shall pay all the amounts for which he is entitled therefor. Further, the respondents shall not recover any amount from the pension of the petitioner in the guise that he is not entitled to commute his pension from 59th year.

9. Accordingly, the impugned Orders passed in OA No. 6219 of 2007 with VMA No. 132 of 2008 & CA No. 23 of 2008 by the Tribunal are hereby set aside and the O.A. shall stand allowed. The writ petition is thus allowed. No order as to costs.