

(2024) 12 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : CWP No. 118580of 2024

Rajider Kumar Bhardwaj

APPELLANT

Vs

State Of Himachal Pradesh & Ors

RESPONDENT

Date of Decision : 17-12-2024

Acts Referred:

Constitution of India, 1950 — Article 32

Central Civil Services (Commutation of Pension) Rules, 1981 — Rule 5, 10A

Citation : (2024) 12 SHI CK 0064

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Chitranjan Sharma, Sikandar Bhushan, Tek Ram Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Petitioner is a retired government employee who got commuted his pension. His case is that he has paid back commuted value of pension alongwith interest in 135 installments i.e. by 30.06.2024, hence full pension is to be released to him thereafter.

2. Factual position

2(i) On attaining the age of superannuation, petitioner retired from service on 28.02.2013 as Chief Ayurvedic Pharmacist.

2(ii) On his retirement, petitioner opted for commutation of 40% of his pension. Respondent No. 5 i.e. Principal Accountant General (A&E) Himachal Pradesh authorized payment of commuted value of pension in favour of the petitioner vide Commutation Payment Orders dated 20.02.2013 and 31.12.2013. A total of Rs. 5,08,288/- (under order dated 20.02.2013) + Rs. 23,706/- (under order dated 31.12.2013) = Rs. 5,31,994/- was paid to the petitioner as commuted value of pension. As per these Commuted Payment Orders, full pension was to be

restored to the petitioner after 180 months i.e. 15 years starting from the month following month of payment.

2(iii) Monthly recovery of commuted value of pension from the petitioner commenced from March, 2013 @ Rs. 5060/- per month and @ Rs. 5296/- per month (on account of additional commuted pension of Rs. 23,796/-) from December, 2013. Petitioner as per following table refunded the amount of Rs. 7,23,428/- as commuted value of pension and interest thereupon @ 8% per annum till August 2024:-

Commuted value of pension received at the time of retirement

Installment deducted from pension every month

Interest @ 8% payable on Principal amount. Principal amount recovered in 100.45 installments

Total amount payable @ 8% interest including Principal amount Col (1+3)
Recoverable in 135 installments

Total amount recovered till August 2024 with interest

Excess amount that has been recovered till August 2024 Col (5-4)

If recovery that will be made in 180 installments (15 years @ Rs. 5296/- per month)

Excess amount will be recovered in 180 installments Col (7-4)

1

2

3

4

5

6

7

8

$(508288 + 23706) = 531994/-$

$(5060 + 236) = 5296/-$

179999/-

711993/-

723428/-

11435/-

953280/-

2,41,287/-

2(iv) Petitioner's case is that the respondents have recovered principal amount i.e. commuted value of pension from him in 101 installments (rounded off). Interest @ 8% per annum i.e. Rs. 1,79,999 (Rs. 1,80,000/- rounded off) on commuted value of pension was also paid by the petitioner in next 34 installments. Petitioner's case is that on payment of 135th installment of commuted value of pension on 30.06.2024 he had cleared his entire liability towards commuted value of pension. Petitioner's grievance is that despite his clearing the liability of commuted value of pension alongwith applicable interest, commuted value of pension is still being recovered from his monthly pension. That full pension is not being released to him. Hence, this petition has been filed seeking directions to the respondents to restore the commuted portion of pension to the petitioner from the day when he cleared his liability i.e. after 11 years & 3 months instead of 15 years. The substantive reliefs prayed for by the petitioner are as under:-

"i) That in view of Govt. of India decision No. (3) dated 22.8.1990 below rule 10-A of CCS (Commutation of Pension) Rules, 1981 Annexure P-2 the respondents may kindly be directed to restore the commuted portion of pension after 11 years and 3 months instead of 15 years as the recovery of principal amount alongwith interest has been fully recovered in 135 installments and excess amount recovered from the petitioner may kindly be refunded with 12% interest.

ii) That the respondents may kindly be directed to stop the recoveries of the commuted value from the pension of the petitioner forthwith as the petitioner has already paid recovery for a period of 11 years and 6 months up to August, 2024 whereas full amount of commuted value alongwith interest stands recovered in 11 years and 3 months."

3. Respondents No. 1 to 4 in their reply filed through respondent No. 3 submit that:- (i) Government employees in State of Himachal Pradesh are governed by the Central Civil Services (Pension) Rules, 2021 {in short the 'CCS (Pension) Rules'} and the Central Civil Services (Commutation of Pension) Rules, 1981 {in short the 'CCS (Commutation of Pension) Rules'}. As per Rule 5 of the CCS (Commutation of Pension) Rules, a Government servant is entitled to commute for lumpsum payment of an amount not exceeding 40% of his pension purely on option basis; (ii) Petitioner retired on 28.02.2013 as Chief Ayurvedic Pharmacist on attaining the age of superannuation with commuted value of pension amounting to Rs. 531994/- (Rs. 508288 + Rs. 23706). The commuted portion of pension i.e. Rs. 5060/- and Rs. 5296 was to be restored after 180 months as per Commutation Payment Orders dated 20.02.2013 and 31.12.2013; (iii) Recovery of commuted value is being effected by the Principal Accountant General (A&E) – respondent No. 5 and District Treasury Officer, Shimla – respondent No. 6 according to Rule 5 of the CCS (Commutation of Pension) Rules.

Stand of District Treasury Officer – respondent No. 6 as placed on record by the learned Deputy Advocate General through instructions memo dated 29.11.2024 is that reply filed by respondents No. 1 to 4 be treated to have been filed by respondent No. 6 as well. Learned Deputy Advocate General has also placed on record instructions memo dated 13.11.2024 from District Treasury Officer, Shimla – respondent No. 6. The instructions give detail of following commuted value of pension in respect of the petitioner:-

Sr. No.

Amount

AGHP

Authorisation date

Date of payment

Amount of recovery monthly

Restoration date (180 Months)

1.

5,08,288/-

20-02-2013

08-03-2013

5,060/-

08-03-2028

2.

23,706/-

31-12-2013

17-01-2014

236/-

17-01-2029

On behalf of Principal Accountant General (A&E) – respondent No. 5, its learned counsel made a statement on 2.12.2024 that reply is not required to be filed by this respondent.

He placed on record instruction memo dated 27.11.2024 that full pension can be restored after 180 months after recovery of commuted portion of pension. Relevant portion of the instructions reads as under:-

“In this connection it is stated that all necessary instructions regarding

restoration of pension after recovery of commuted portion of pension has already been recorded in the commutation payment order No. 131385201 dated 20/02/2013 authorized in favour of you at the time of your retirement issued by this office. As per those instructions your restoration of pension is 180 months after recovery of commuted portion of pension. Besides this, it is also stated that as and when the necessary instructions if any regarding restorations of pension from 180 months to 125 months is received from H.P. Govt./Finance Department the action in this regard will be taken accordingly."

4. Consideration

Commutation of pension is lumpsum pension payment, a retiree can receive at retirement or thereafter, instead of receiving regular pension installments, up to a limit of full pension. The value of commuted portion of pension is reduced from pension payable to the pensioner.

4(i) Rule 84(2) of the CCS (Pension) Rules states that the Central Civil Services (Commutation of Pension) Rules, 1981 shall apply in regard to commutation of pension authorized under these rules, payment of commuted value of pension and restoration of commuted pension on expiry of the period of commutation. The rule reads as under:-

"84. Application of other rules

1. ...

2. The Central Civil Services (Commutation of Pension) Rules, 1981 shall apply in regard to commutation of pension authorized under these rules, payment of commuted value of pension and restoration of commuted pension on expiry of the period of commutation." ...

4(ii) The CCS (Commutation of Pension) Rules Chapter II Rule 5 puts limit on commutation of pension and reads as under:-

"5. Limit on commutation of pensioner

(1) A Government servant shall be entitled to commute for a lumpsum payment of an amount not exceeding forty per cent of his pension.

(2) In an application for commutation in Form 5 of the Central Civil Services (Pension) Rules, 1972 or in Form 1 or Form 1-A or Form 2 of these rules, as the case may be, an applicant shall indicate the percentage of pension which he desires to commute and may either indicate the maximum limit of forty per cent of pension or such lower limit as he may desire to commute.

(3) If the percentage of pension to be commuted results in fraction of rupee, such fraction shall be ignored for the purpose of commutation."

Maximum 40% of the pension can be commuted for lumpsum payment. An employee can opt for commutation of pension accordingly.

4(iii) As per Rule 8 of the CCS (Commutation of Pension) Rules, the lumpsum payable to an applicant is to be calculated in accordance with the table of the values prescribed from time to time and applicable to the applicant from the date on which the commutation becomes absolute. The Rule goes as under:-

"8. Calculation of commuted value of pension

The lumpsum payable to an applicant shall be calculated in accordance with the Table of the values prescribed from time to time and applicable to the applicant on the date on which the commutation becomes absolute."

The Table giving commutation value for a pension of Rs. 1 per annum under the CCS (Commutation of Pension) Rules is as under:-

"TABLE COMMUTATION VALUES FOR A PENSION OF

Rs. 1 PER ANNUM

Effective from 1st January, 2006

[see Rules 3(1)(m) 8,26(7), 28(5) and 29(1) and 29(2)]

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]

The Revised Table of Commutation Value for Pension, will be used for all commutations of pension which becomes absolute after the date of issue of this O.M. In the case of those pensioners, in whose case commutation of pension became absolute on or after 1-1-2006 but before the issue of this OM, the pre-revised Table of Commutation Value for Pension will be used for payment of commutation of pension based on pre-revised pay/pension. Such pensioners shall have an option to commute the amount of pension that has become additionally commutable on account of retrospective revision of pay/pension on implementation of the recommendations of the Sixth Central Pay Commission. On exercising such an option by the pensioner, the revised Table of Commutation

Value for pension will be used for the commutation of the additional amount of pension that has become commutable on account of retrospective revision of pay and pension. In all cases where the date of retirement/commutation of pension is on or after the date of issue of this OM, the revised Table of Commutation Value for Pension will be used for commutation of entire pension.”

4(iv) Petitioner retired at the age of 58 years in the year 2013. He was to attain 59 years of age on his next birthday. The applicable factor in his case would be 8.371. Simple interest @ 8.00% was applied as per Table of Commutation Values for Pension. The commuted value of pension in petitioner's case would be $5296 \times 8.371 \times 12 = 531994$. This amount was received by the petitioner as commuted value of his pension. Petitioner paid Rs. 531994 i.e. commuted value of pension in 100.45 (101 rounded off) installments. According to the petitioner Rs. 1,79,999/- towards interest upon the commuted value of pension (@ 8% of Rs. 531994/-per annum) was recovered from him in next 34 installments.

Petitioner’s grievance is that despite his paying back the commuted pension with interest @ 8% per annum, the respondents did not restore full pension to him. The commuted value of pension is still being recovered from his pension even though the same stands fully refunded with interest.

4(v) Commuted pension was sanctioned in favour of the petitioner under Commutation Payment Orders dated 20.02.2023 and 31.12.2013. As per these Orders the commutation value of pension was to be restored after 15 years from the date of payment of commuted value of pension.

4(v)(a) The above is in consonance with Rule 10-A of the CCS (Commutation of Pension) Rules, which pertains to restoration of commuted pension and states that commuted amount of pension shall be restored on completion of 15 years from the date the reduction in pension on account of commutation becomes operative in accordance with Rule 6. The Rule reads as under:-

“10-A. Restoration of commuted pension

The commuted amount of the 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 the pension shall be restored on completion of fifteen years from the respective date(s).”

Petitioner has placed reliance upon following decision No. 3 of Government of India under Rule 10-A to contend that recovery from his pension should not continue till 15 years since he had cleared his liability much before the stipulated period:-

“(3) How to reckon the period of fifteen years for restoration of commuted

portion of pension. – 1. Decision (2) above provides that such Central Government pensioners who have commuted a portion of their pension and on 1-4-1985 or thereafter have completed or will complete 15 years from their respective dates of retirement will have their commuted portion of pension restored. This is based on the assumption that the reduction in pension on account of commutation which takes place only after the payment of the lumpsum commuted amount, may be discontinued after the commuted amount paid in lumpsum together with notional interest on the amount got, by and large, fully adjusted by that portion of pension which was not actually paid monthly in view of commutation. It is, therefore, not correct to reckon the 15-year period for restoration from the date of retirement, except in cases where commutation of pension has been simultaneous with retirement.”

4(v)(b) Petitioner’s claim of restoration of pension after repaying back the commuted value of pension stems from the notion as if the commuted value of pension is some kind of loan advanced to him by the State at the time of his retirement and on repayment of this loan, full pension is to be restored to him. This notion is not correct. Commutation of pension up to a certain limit is an option made available to the Government servant at the time of his retirement and thereafter in order to enable him to take care of his financial responsibilities.

The facility of getting lumpsum value of commuted pension was previously available only if the pensioner would permanently surrender portion of his pension but not exceeding 1/3rd thereof. This commutation was permissible immediately after retirement or at any time thereafter at the option of the retiree. Thus recovery of commutation of pension went on during life time of pensioner.

The State pensioners and their Association requested the State Government for restoration of commutation portion of their pension. The State Government considered the matter with regard to liberalization of the pension Rules and the difficulties experienced by the pensioners due to inflation trends and came out with an office memorandum on 05.08.1982. Under this office memorandum Government allowed restoration of commuted portion of pension on pensioner’s attaining the age of 70 years. The decision came into force w.e.f. 01.04.1982.

Further clarifications were issued by the respondents-State under office memorandum dated 08.12.1998. Some of the clarifications relevant to the context are as under:-

Points

Clarification

2.

Whether 40% Commutation should be allowed after medical examination,, if applied after one year of retirement and what will be the commutation factor for

revised commutation ?

In case the retired Government servant has availed of the benefit of commutation of pension not exceeding 1/3rd of his pension within one year of retirement, he may be allowed the benefit of commutation of pension upto 40%

w.r.t. age next birthday, as on date, without medical examination. In case the retired Government servant had not availed of the commutation upto 1/3rd within one year of retirement, he may be allowed commutation upto 40% w.r.t. age next birthday, as on date after medical examination. The pensioners who have already undergone medical examination in the latter case need not be medically examined again for this purpose.

...

...

...

4.

What will be the date of restoration of additional commutation of pension ?

The commuted portion of pension shall be restored after 15 years from the respective dates of commutation as provided in Government of India decision No. 1 under Rule 10 of CCS (Commutation of Pension) Rules, 1981. Necessary endorsement should be made in the PPO.

The matter came up before the Hon'ble Apex Court in "Common Cause", A Registered Society & ors. vs. Union of India (1987) 1 SCC 142, The petitioners therein asked for striking down certain provisions of Commutation of Pension Rules which permitted the Union of India to recover more than what is paid to the pensioner upon commutation. The petitioners also prayed for direction that appropriate scheme rationalizing provisions relating to commutation be brought into force. An argument was raised on behalf of the petitioners that there had been substantive improvement in life expectancy of people in India; Several State Governments had changed the Rules applicable to commutation and had restored full pension to the pensioners who commute a part of their pension after lapse of 15 years; In changed situation new look should be given to the matter. In deference to the suggestion made by the Hon'ble Court and taking note of various changes made by the several State Governments restoring full pension to the pensioners who commute part of their pension after 15 years, Union of India agreed to restore commuted portion of the pension in regard to all civilian employees at the age of 70 years or after 15 years whichever is later.

The petitioners therein next contended before the Hon'ble Apex Court that commuted portion out of the pension ordinarily gets recovered in about 12 years, therefore, there was no justification for fixing the period of restoration of full pension at 15 years. This contention did not find favour with the Hon'ble Apex Court. Hon'ble Court noticed that commutation brings about certain advantages.

The commuting pensioner gets a lumpsum amount which he ordinarily would have received in course of a spread over period subject to his continuing to live. Thus two advantages were pointed out from commutation: (i) Availability of lumpsum amount; and (ii) Risk factor. The Court, therefore, held that it would not be justified to disturb the 15 year formula as far as civilian pensioners were concerned. Relevant portion of the judgment reads as under:-

"1. By these applications under Article 32 of the Constitution Common Cause, a registered Society and three retired Government servants have asked for striking down certain provisions of the Communication of Pension Rules applicable to civilian and defence pensioners as they permit the Union of India to recover more than what is paid to the pensioners upon commutation and for a direction that an appropriate scheme rationalizing the provisions relating to commutation be brought into force. The respondent has filed a counter-affidavit challenging the maintainability of the petition as also the claim of the petitioners and the matter has been heard at considerable length from time to time. Parties have filed written submissions supplementing their oral arguments.

... ..

5. The petitioners have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and, therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation--(1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15 year formula so far as civilian pensioners are concerned.

6. The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place."

4(v)(c) In the case of petitioner, Pension Payment Orders issued to him in the year 2013 specifically provided that commuted value of pension would be recovered from him for a period of 180 months i.e. 15 years. Petitioner did not object and accepted this condition at that relevant time.

The respondent-State is a welfare employer. By giving option of commuting the pension to the retiree, by paying the commuted value of pension to the pensioner, it ventures into a grave risk area. There may be a situation where after commuting the pension, the pensioner does not survive and dies before the recovery is effected completely. In that situation, commuted pension gets restored and his dependents get full family pension as per Rules. No recovery

from family pension is made in that eventuality. There are risks which are to be covered by the Government. Various other factors are involved with which the Court is not equipped to deal with. As has been held in *Forum of Retired IPS Officers (Foripso) vs. Union of India & another* 2019 (2) AD (Delhi) 581, the issues relating to commutation of pension, factor to be applied, restoration of full or part of pension are complex and vexed questions. These questions are policy matters which are examined and decided on the basis of recommendations of the Pay Commission by the competent Authority. Admittedly different Pay Commissions have not changed the enforcement of recovery of commuted value of pension till 15 years from the date of receipt of commuted pension. Executive decision or policy decision though 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. The Court would not interfere unless formula or method adopted is per se and ex facie irrational, arbitrary or can be struck down. Relevant paras from the decision go as follows:-

"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 do 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.”

Similar is the ratio of Shila Devi & ors. vs. State of Punjab & others CWP No. 9426 of 2023 (O&M), decided on 27.11.2024 by the High Court of Punjab & Haryana.

No other point was urged.

5. In view of above discussion, the relief of restoration of full pension before 15 years from the date of reduction of pension on account of commutation of pension, cannot be granted. This petition, therefore, fails and is accordingly dismissed. Pending miscellaneous application(s), if any, also stand disposed of.