
(2002) 02 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7143 of 2000

State of M.P. and others

APPELLANT

Vs

Dr. M. Choubey and others

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21(3)
Constitution of India, 1950 — Article 227

Citation : (2002) 4 MPLJ 302

Hon'ble Judges : Uma Nath Singh, J;Dipak Misra, J

Bench : Division Bench

Advocate : R.S. Jha, Deputy A.G, for the Appellant; S.K. Upadhyaya, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Mishra, J.

The State of Madhya Pradesh and its functionaries, being dissatisfied with the order passed by the State Administrative Tribunal in O.A. No. 1925/1998 dated 10-1-2000, Annexure-P/8, have invoked the extra-ordinary jurisdiction of this Court under Article 227 of the Constitution of India for quashment of the same.

The facts lie in a narrow compass. The respondent No. 1 herein, Dr. M.L. Choubey, was appointed as Veterinary Assistant Surgeon under the Government of Madhya Pradesh and had continued in the said post till 30-6-1982. He was given promotion to the post of Assistant Director, Veterinary Services. His services were permanently absorbed in M.P. Dugdha Maha Sangh Limited by order dated 3-6-1986 with effect from 1-7-1982. The respondent No. 1 when attaining the age of superannuation on 30-6-1991 was required to exercise an option if he desired to receive the monthly pension and death-cum-retirement-gratuity under the usual government arrangement or receive the gratuity and lump sum amount in lieu of pension. The option was to be exercised within six months of the absorption. It was submitted that if no option was exercised within

the prescribed period, it was to be deemed that the absorbed government servant had opted for the second alternative i.e. receiving the gratuity and lump sum amount in lieu of pension. This option was required under the circular dated 18-5-1976. As the respondent had not exercised any such option, he was paid the lump sum amount of pension by commuting it at 100%. This was done in the year 1990. However, in the year 1998, the respondent No. 1 felt aggrieved that in spite his request 2/3rd of commuted pension has not been restored and he was not given the hike/rise on pension sanctioned by the State Government from time to time which was made available to all other pensioners. As his grievances were not mitigated at the government level, he approached the Tribunal seeking redressal of his anguish. It was put forth by him before the Tribunal that M.P. Civil Services (Pension) Rules, 1976 which came into force with effect from 1-6-1976 do not envisage commutation of pension upto 100%. It was also put forth that the circular dated 18-5-1976 also does not permit commutation more than 1/3rd of the pension amount. It was urged before the Tribunal that even after commutation of 100% of pension the applicant remains a member of pensioners homogenous group and cannot be denied the reliefs granted from time to time to the government pensioners.

The stand of the respondent No. 1 was resisted by the State Government and its authorities on two counts, namely, that the petitioner was not holding a civil post under the Government inasmuch as he had been permanently absorbed in a Society registered under the Co-operative Societies Act and secondly, the petitioner had been availed the computation value of pension upto 100% and hence, he was not entitled to get any relief in law. The Tribunal negated the contention raised by the State and with regard to maintainability came to hold that the application filed by the respondent No. 1 before the Tribunal was entertainable. In respect of the second aspect, the Tribunal placed reliance on the decisions rendered in the case of Welfare Association of Absorbed Central Government Employees in Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and another, and Common Cause, A Registered Society and Others Vs. Union of India (UOI), , and referred to the Rule 34 of the Rules and the Circular in vogue and came to hold that the petitioner could not have been granted 100% commutation and accordingly directed the said functionaries to restore 2/3rd amount of applicant's commuted pension as per rules and give him the reliefs sanctioned by the State Government to the pensioners from time to time treating him as a pensioner with all the consequential benefits.

It is urged in the petition that the Tribunal has erred in law in its appreciation of rules and circular in vogue and, therefore, the order passed by it is indefensible. It is also put forth that the petitioner had availed 100% commutation on the basis of application filed by him as per Annexure-P/4 in the year 1990 and hence, he could not have taken recourse to the Tribunal by filing an application. It is also averred in the petition that the Tribunal has wrongly applied the principles laid down in the case of Welfare Association of Absorbed Central Govt. Employees in

the Public Enterprises and others (supra).

A return has been filed by the respondent No. 1 contending, inter alia, that the grounds which have been put forth before this Court were not urged before the Tribunal and hence, the petitioners are estopped in law to raise such points. It is set forth that the grievance relating to pension is a continuing cause of action and, therefore, the petitioner was entitled to assail the action of the State Government in the year 1998. It is also the stand of the respondent No. 1 that he was given the benefits as per rules and circular cannot override the rules. Various other averments have been made in support of the order passed by the Tribunal.

Questioning the legal propriety of the order passed by the Tribunal, Mr. R.S. Jha, learned Deputy Advocate General has contended that the Tribunal had no jurisdiction to entertain the writ petition inasmuch as the petitioner was not holding a civil post under the Government at the time of filing of the original application. It is put forth by him that the Tribunal has erroneously applied the law and has not kept in view the rule and circular which are in vogue. The learned counsel for the State has submitted that the petition before the Tribunal was grossly time barred but no application for condonation of delay was filed as envisaged u/s 21(3) of the Administrative Tribunals Act, 1985 and as that alone the Tribunal should have rejected the application. It is also urged by him that the concept of continuing cause of action is not attracted in a case of this nature.

Mr. Upadhyaya, learned counsel appearing for respondent No. 1 has submitted that the case of the respondent No. 1 is covered by the decision of the Apex Court and as the benefit has been given by the State Administrative Tribunal, on that foundation no fault can be found with the aforesaid order. It is canvassed by him that the employee of the State Government who had been given pension by way of commutation does not cease to be an employee of the State Government and, therefore, is entitled for the benefits which are conferred on the State Government employees from time to time. Meeting the challenge with regard to the maintainability of the petition, it was proposed by Mr. Upadhyaya that the grievance of the petitioner before the Tribunal was directly and pointedly against the State Government for the period he worked under the State Government and, therefore, he had to take recourse to section 19 of the aforesaid Act.

We may at the outset say though Mr. R. S. Jha, learned Deputy Advocate General submitted that the respondent No. 1 could not have approached the Tribunal being not a State Government employee did not pursue that point and hence we restrain ourselves from adverting to the same.

Though, Mr. Jha, learned Deputy Advocate General for the State has raised the issue of limitation as we have noticed the Tribunal has decided the matter on merits and hence, as presently advised, we are inclined to deal with the merits of the case rather than dwell upon the issue of limitation. We may not be understood to have said that a belated application in all cases should be

entertained by the Tribunal without sufficient cause.

The facts which had been put forth before us are admitted in all aspects except Annexure-P/4 which has been brought on record. We may hasten to add in the return filed by the respondent No. 1 there is no whisper in that regard. On a scrutiny of the same it is quite perceptible that the respondent No. 1 wanted to commute his pension at 100%. Mr. Upadhyaya, learned counsel could not throw much light in this regard except stating that the respondent No. 1 might have filed the said document when he was asked to give option.

The relevant rule which deals with grant of pension is Madhya Pradesh Civil Services (Pension) Rules 1976. Rule 34 of the aforesaid Rules deals with pension on absorption in or under a corporation, company or body. The said Rule read as under:

34. Pension on absorption in or under a corporation, Company or body. -- A Government servant who has been permitted to be absorbed in a service or post in or under a corporation or, company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the Public interest, be deemed to have retired from service on retiring pension from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him.

The latter circular, which has been brought on record, was issued on 18-5-1976. The paragraphs 3,4 and 8 which are relevant for our present purpose are reproduced below:--

(3) (i) Every Government servant will exercise an option within six months of his absorption, for either of the alternatives indicated below:-- i.e. Government Companies/Corporations and other autonomous bodies,

(a) Receiving the monthly pension and D.C.R. Gratuity already worked out, under the usual Govt, arrangements.

(b) Receiving the gratuity and lump sum amount in lieu of pension worked out with reference to commutation table obtaining on the date of option.

(ii) Where no option is exercised within the prescribed period the Government servant will be governed by alternative (i) (b). Option once exercised shall be final. The option shall be exercised in writing and communicated by the Government servant concerned to the undertaking.

(4) Where a Government servant elected or is automatically governed by alternative para 3(1) (b) above, he shall in addition to D.C.R. Gratuity, be granted:--

(a) On an application made in this behalf, a lump sum amount not exceeding the

commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of the M.P. Civil Pension (Commutation) Rules, 1976; and

(b) A terminal benefits equal to twice the amount of the lump sum referred to in Clause (a), subject to the condition that the Govt. Servant surrenders his right of drawing two-thirds of his pension.

Any further liberalization of pension rules decided upon by Government after the permanent absorption of a Government servant in a public undertaking would not be extended to him.

Mr. Upadhyaya, learned counsel for the respondent No. 1 would like us to read paragraphs 3 and 4 to the effect that no retired employee can avail 100% commutation of the pension amount and has to avail the terminal benefits as has been provided in para-4(b).

Sounding a contra note it is urged by Mr. Jha, learned counsel that if the Rule and latter circular are studied in a conjoint manner, grant of 100% commutation of the pension is permissible. Clause (b) of para 3(i) clearly says that the lump sum amount in lieu of pension can be given. We need not have to advert to the same in the case at hand inasmuch as the petitioner undisputedly had availed 100% commutation of pension at the time of retirement. At this juncture we may proceed to note the citations which were commended to us. In the case of Common Cause (supra), the Apex Court took note of the fact that in the case of civilians the total amount of pension which can be commuted is upto one-third while in the case of defence official, commutation is admissible upto 43% in the case of officers and upto 45 per cent in respect of other ranks, in the backdrop of the letter issued by the Union of India to the learned Attorney General on March 20, 1986. In paragraph 5 the Apex Court held as under:--

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 forth coming 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.

After so stating their Lordships directed in paragraph 9 as under:--

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.

Mr. Upadhyaya learned counsel has placed heavy reliance rendered in the case of Welfare Association of Absorbed Central Govt. Employees in the Public Enterprises and Others (*supra*), wherein their Lordships referred to the case of Common Cause and Office memorandum dated 5-3-1987. Their Lordships also took notice of Rules 37 and 37-A of CCS (Pension) Rules, 1972. After referring to the aforesaid Rules, their Lordships in paragraphs 9, 10 and 12 has held, it reads as under:--

9. From the above extracts, it will be seen that a clear-cut distinctions made in Rule 37-A itself between one-third portion of pension to be commuted without any condition attached and two-third portion of pension to be received as terminal benefits with condition attached with it. It follows that so far as commutation of one-third of the pension is concerned, the petitioners herein as well as petitioners in "Common Cause" case stand on similar footing with no difference. So far as the balance of two-third pension is concerned, the petitioners herein have received the commuted value (terminal benefits) on condition of their surrendering of their right of drawing two-thirds of their pension. This was not the case with the petitioners in "Common Cause" case, that being the position the denial of benefit given to "Common Cause" petitioners to the present petitioners violates Articles 14 and 16 of the Constitution. The reasoning for restoring one-third commuted pension in the case of "Common Cause" petitioners equally applies to the restoration of one-third commuted pension in the case of these petitioners as well.

No doubt the Government while declining to consider the case of petitioners favourably took into account a decision of this Court in Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises vs. Union of India holding that the petitioners in "Common Cause" case stand on a different footing than that of the petitioners in the present case. In that judgment Rule 37-A was brought to the notice of the Court. Another reason given by the Government was that the petitioners on commuting their pension in full cease to be Central Government Pensioners. This is too broad a contention to be accepted as no statute or rule is quoted in support of this contention. This stand taken by the Government does not appear to be correct in view of their own counter affidavit filed in this case. In para 8 at p. 14 of the counter-affidavit it has been stated as follows:--

It would be seen from (b) that the two-third terminal benefits received by the

absorbees is nothing but pension. Thus, the absorbees who have opted for lump sum payment have not only commuted one-third of their pension but also the remaining portion of two-third pension which is termed as "terminal benefits". The absorbees have in fact commuted the entire pension and not one third of pension.

This was also the condition incorporated in respect of persons who had opted for one-third commutation. This also indicated that the stand of the Government is not correct. Therefore, the denial of restoration of one-third commuted pension is not justified.

Eventually in the said case the Apex Court directed restoration of one-third commutation pension.

Mr. R. S. Jha, learned Deputy Advocate General for the State submitted that in the aforesaid case the Apex Court had given direction for restoration of one-third commuted pension as Rule 37 and 37-A of the CCS (Pension) Rules, 1972 are couched in a different manner. The learned counsel for the State submitted that the Rules 37 and 37-A envisaged grant of terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension to be worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable subject to the condition that the government servant surrenders his right of drawing two-thirds of his pension. The learned counsel for the State has also submitted that in the counter affidavit in the aforesaid case, it was clearly mentioned that the employees had availed two-third pension which is termed as terminal benefit. In the case at hand, the respondent No. 4 vide Annexure - P/4 had given option for commutation of 100% pension amount. In view of the said commutation, we are of the considered view that the case of the applicant before the Tribunal would be covered within the ambit and sweep of Clause-3(i) (b) of the latter circular.

We may at this juncture note that the Apex Court in the case of Welfare Assn. of Absorbed Central Govt. Employees (*supra*) distinguished the decision rendered in the case of Public Enterprises v. Union of India reported in, (1991) 2 SCC 265 on the ground that the Rule 37-A was not brought to the notice of the Court. Their Lordships also took note of fact that the stand taken by the State Government that the petitioners had commuted their pension in full cease to be Central Government Pensioners is not based on any statute or rule.

In this context, we may profitably refer to a decision rendered in the case of Des Raj Bhatnagar and Another Vs. Union of India (UOI), , wherein a two Judge Bench of Apex Court came to hold that Central Government employees opting for permanent absorption in Public Sector Undertakings and availing benefit of commutation of full amount of their original pension constitute a class different from Central Government Pensioners. We may profitably quote the relevant passage:

10. The commutation brings about certain advantages. The

commuting pensioner gets a lump sum amount which ordinarily he would have received in the course of his 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. In the present case the petitioners had not only got one-third of their pension commuted but exercised the option of getting the entire pension commuted and in lieu thereof got a lump sum. Such persons cannot fall in the category of Central Government pensioners for the purposes of getting benefit of Liberalised Pension Rules which can be made applicable only to Central Government pensioners. It is no doubt correct that the family pension has been allowed in case of the persons like the petitioners but that does not make them entitled to get any benefit given to the pensioners on account of the Liberalised Pension Rules taking note of the fallen value of the rupee.

It was contended by Mr. Rao on behalf of the petitioners that the petitioners are not claiming any pension but their contention is that the Liberalised Pension Rules which give benefit to those pensioners who had got their one-third pension commuted should be granted to the petitioners by awarding lump sum after increasing their pension and calculating such amount in proportion to the increased pension. We find no force in this contention as the petitioners fall in a different class altogether and are not entitled to claim any benefit granted to Central Government pensioners. After getting a lump sum in lieu of entire pension, they do not fall in the class of Central Government pensioners and are not entitled to any benefit granted to Central Government pensioners. The case of such Central Government pensioners who got their one-third pension commuted also fall in a different class inasmuch as they get two-third pension, and after 15 years of such commutation or having attained the age of 70 years whichever was later they become entitled to full pension. Petitioners on the other hand were not entitled to any pension after having received the lump sum amount in lieu of pension being commuted and having opted to receive such amount in lump sum at the time of entering the service in Public Sector Undertaking.

We may hasten to add that we have only noted this decision as it was cited before us by learned counsel for the State but we are convinced in the present factual context that the petitioner herein himself availed 100% commutation of pension in the year 1991 he cannot rely on para 4 of latter circular to claim that their can be a restoration of the two-third amount of commuted pension. Quite apart from the above, in paragraph 8 of the latter circular which was issued for the purpose of permanent absorption of a Government servant in Government Offices, Corporations and other autonomous bodies and (grant of retirement benefits), it has been stated, (as has been produced hereinbefore) that any further liberalization of Pension rules decided by the government after the permanent absorption of a government servant in a public undertaking would not be extended to him.

On a perusal of aforesaid paragraph we are of the considered opinion that a person who has been absorbed permanently in Public Sector Undertaking cannot claim to have the benefits of liberalization of the Pension Rules decided upon by the Government from time to time. If the Rules and the latter circular are read in proper perspective that leads to an irresistible conclusion that an employee cannot claim what has not been provided therein. The Tribunal has not kept itself alive to Clause-8 of the Circular and issued the directions. We may not be understood to have said that we have dealt with the validity of Clause-8 of the latter circular but we have only stated what the said Clause conveys.

We have not dealt with the aspect of limitation though seriously propounded by Mr. Jha, learned Deputy Advocate General but we cannot close our eyes to the facts that the respondent No. 1 had availed the entire benefits in the year 1991 on the basis of option given by him in the year 1990 and after going to hibernation for eight years he approached the Tribunal in the year 1998. Before the Tribunal he had not stated that he had given option that he had availed benefit of 100% commutation pension. In our view such a conduct on the part of the respondent No. 1 also goes against him and on that score alone relief should have been denied to him.

Consequently, we find that the order passed by the Tribunal is unsustainable and is accordingly lanced in exercise of the jurisdiction under Article 227 of the Constitution of India.

Accordingly, the writ petition is dismissed. However, in the peculiar facts and circumstances of the case, there shall be no order as to cost.