

(2023) 07 DEL CK 0218

In the Delhi High Court

Case No : Civil Writ Petition No. 431, 516 Of 2020

Suresh Sharma

APPELLANT

Vs

National Technical Research Organisation Through Its
Chairman & Ors.

RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Central Civil Services (Commutation of Pension) Rules, 1981 — Rule 4, 6(1)(b), 8, 12, 13, 19
Central Civil Services (Pension) Rules, 1972 — Rule 9, 64

Citation : (2023) 07 DEL CK 0218

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, M.D. Jangra, Vikram Jetly, Shreya Jetly, Mimansak Bhardwaj, Kailash Nath Tiwari

Final Decision : Allowed

Judgement

Anoop Kumar Mendiratta, J

1. The challenge in these petitions is to an order dated August 27, 2019 passed by the Central Administrative Tribunal (hereinafter, referred to as the Tribunal) in O.A. No. 4518/2018 and O.A. No. 4706/2018, whereby both the OAs, preferred by the petitioner with reference to calculation of "commutation of pension", were dismissed.

2. In brief, petitioner superannuated from the post of Additional Controller (Admn.) in the pay scale of Rs. 37,400 - 67,000 + Grade pay of Rs.8,900/- from the respondent organization i.e. NTRC on June 30, 2014, after rendering service for 39 years 11 months and 12 days. Provisional pension was sanctioned in view of three disciplinary proceedings pending against the petitioner at the time of superannuation. Petitioner became entitled for payment of DCRG, Commutation of Pension and Regular Pension on conclusion of disciplinary proceedings on July 25, 2018, wherein penalty was imposed for withholding of 10%, 20% and 10%

of monthly pension for a period of 2 years, 5 years and 1 year, respectively.

3. As per the petitioner, the genesis of the dispute lies in the action of the respondent in illegally deducting Rs.6,03,190/- from Commutation of pension of Rs.12,88,604/- sanctioned vide order No. VI/A&A/03/PEN/95/2014/946 dated August 16, 2018, from pension for the period July 1, 2014 to July 31, 2018, in violation of Rule 6(1)(b) of the CCS (Commutation of Pension) Rules, 1981 (hereinafter referred to as the Rules).

4. The aforesaid action of the respondent was initially challenged by the petitioner by filing O.A. No. 3653/2018 before the Tribunal, wherein vide order dated September 26, 2018, the representation of the petitioner dated August 17, 2018 was directed to be decided by respondent by passing a speaking and reasoned order.

5. It is further the case of the petitioner that the direction of the Tribunal was followed by order No.V(B)/Grp-A/19015/PF(29)/2005-3967 dated November 01, 2018 sanctioning the under-paid amount of Rs.6,03,190/-, but the same was subsequently backed out by respondent vide new order No. V(B)/Grp-A/19015/PF(29)/2005-4480 dated November 26, 2018 on the ground that commutation of pension is received as requested by the petitioner vide application dated October 15, 2018.

6. The grievance of the petitioner is that the commutation of pension is to be calculated in accordance with the Rules and the commutation calculated on the basis of application dated October 15, 2018 is in violation of Rule 6(1)(b) of the Rules and to the disadvantage of the petitioner.

It has been vehemently contended by learned counsel for the petitioner that the Commutation of pension has been made in violation of Rule 6(1)(b) read with Rules 12 and 13 of the Rules and no effective hearing was given to the petitioner in this regard and neither any reference has been made to the relevant rules. Further reference has been made to judgment dated June 16, 2022 passed in Civil Appeal Nos. 4578-4580/2022 titled as "Krishna Rai (Dead) vs. Banaras Hindu University'.

7. The stand of the respondent as reflected in the counter affidavit and also referred in the impugned order may be further noted:

"4.2 Counsel for the respondents further drew our attention to summary of this case as stated by them in the counter affidavit which are reproduced as under:-

S.No.

Particular

1.

Applicant retired on superannuation on 30.06.14.

2.

On the date of superannuation three Departmental Enquiries (DEs) were ongoing.

3.

The provisional pension at the rate of Rs. 30,775/- p.m. (i.e. 50% of Basic Pay Rs. 61,550/- last drawn) + applicable Dearness Relief; was authorized and paid from 01.07.14 to 31.12.15 (under 6th CPC).

4.

The provisional pension was revised to Rs. 80,650/- p.m. + applicable Dearness Relief from 01.01.16 onwards (under 7th CPC) and paid till 31.07.18 with deduction as under:-

a) On finalization of first DE on 20.10.17 (10% of monthly pension was withheld two years).

b) On finalization of second DE on 29.06.18 (20% of monthly pension was withheld five years).

c) On finalization of third DE on 11.07.18 (10% of monthly pension was withheld one year).

5.

After finalization of all three DEs, the Pension Payment Order for payment of pension on regular basis w.e.f. 01.08.18 was issued on 16.08.18 (first regular pension to be paid to applicant through CPAO/Pension Paying Bank on 31.08.18). The rate of monthly pension under 7th CPC is Rs. 80,650/-p.m., subject to recovery/withholding as per final orders of DEs, last recovery/withholding upto 28.06.2023.

6.

Commutation of Pension is permitted to maximum of 40% of basic pension originally granted (Rs. 30,775/-) to the person. Commutation value in this case is Rs. 12,310/- (i.e. $30,775 \times 40\%$).

7.

Pensioner gets monthly pension as reduced by Commutation.

8.

Value of Commutation is worked out as under:- Basic Pension $\times$ 40% $\times$ 12 $\times$ number of years of purchase (based on pensioner age on next birthday 61 years).

$30,775 \times 40\% \times 12 \times 8.194 = \text{Rs. } 12,10,418/-$

9.

The pension is commuted and full pension is re- stored on completion of 15 years from the date of Commutation.

10.

The commutation was worked out on the basis of age on next birthday i.e. 61 years and therefore restoration date 01.07.2029 was indicate in PPO.

11.

For commutation of pension, applicant is required to submit the application in Form 1, within one year of finalization of DEs and issue of final orders, which is still awaited from applicant.

12.

The commutation was processed on the basis of application dated 03.07.13. Since the calculations were based on age on next birthday on the date of Superannuation i.e. 61 years, the restoration period of 15 years was counted from 01.07.14 and commutation element (Rs. 12,310 p.m.) included in provisional pension (paid from 01.07.14 to 31.07.18) was recovered (Rs. 6,03,190) from total commutation and balance Rs. 6,07,228 paid to applicant on 16.08.18. The recovery is not illegal but had to be made to avoid giving double benefit to applicant (one in form of full commutation and

other in form of early restoration of full pension).

13.

Complying with the directions of the Hon'ble Tribunal, issued in O.A. No. 3653/2018 on the same subject, the orders dated 26.11.18 were issued to release the payment on the basis of revised calculation of commutation of pension taking the age on next birthday of pensioner i.e. 65 years as on 15.10.18 and Commutation factor of 7.731 prescribed in CCS (Commutation of Pension) Rules, 1981. On this date withholding of pension @ 40% as penalty was in vogue. Therefore the commutation value was worked out as under:-

Basic Pension Rs. 30,775 less 40% penalty =Rs. 18,465 Commutation @ 40% on Rs. 18,465 is equal to Rs. 7,386

Revised Commutation of Pension Rs, $7,386 \times 12 \times 7.731$ = Rs. 6,85,214

Commutation already paid Rs. 6,07,228 Balance Rs. 77,986 paid on 29.11.2018

The order dated 26.11.18 has been challenged by the applicant by filing OA No. 4518/18.

14.

Since the commutation value has been revised from Rs. 12,310 (40% of full pension) to Rs. 7,386/- (40% of pension after penalty of 40% in vogue on 15.10.18). Revision of PPO was issued with approval of Competent Authority on

21.12.18. Pension (Rs. 80,650/-) is unaltered.

8. In the aforesaid factual background, O.A. No.4518/2018 and O.A. No.4706/2018 preferred by the petitioner, were decided by the Tribunal vide common order dated August 27, 2019, since, the issues involved in both the O.As. pertained to issue of "commutation of pension", after noticing the prayers in the respective O.As. in the following terms:

"O.A. No.4518/2018

(i) Declare the action of the respondents in withdrawing Order No. V(B)/Grp-A/19015/PF(29)/2005-3967 dated 01.11.2018 vide their Order No.V(B)/Grp-A/19015/PF(29)/2005-4480 dated 26.11.2018 Order No.V(B)/Grp-A/19015/PF(29)/2005-4480 dated 26.11.2018 and Order No.V(B)/Grp-made basis A/19015/PF(29)/2005-4498 dated 27.11.2018 as manipulative, illegal, mala fide, arbitrary and mischievous and quash the same.

(ii) Declare the action of the respondents in deducting Rs. 6,03,190/- on account of reduction in pension on account for commutation of pension (Paid on 17.8.2018) for the period 01.07.2014 to 31.07.2018 as illegal, arbitrary and thus void ab initio.

(iii) Direct the respondent to immediately restore the Order No.V(B)/Grp-A/19015/PF(29)/2005-3967 dated 01.11.2018 refunding the underpaid amount of Rs. 6,03,190/- to the applicant along with interest thereon @ 12% for the period 17.07.2018 till the date it is refunded.

(iv) Grant suitable amount as compensation for mental harassment, agony and inconvenience caused by the illegal deduction and subsequent illegal revision in the commutation of pension.

(v) To allow the O.A. with costs.

(vi) To pass any further orders as this Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the case.

O.A. No.4706/2018

(i) Declare the action of the respondents in issuing impugned letter No.VI/A&A/03/PEN/95/2014/1721 dated 21.12.2018 (Annexure A-01) as illegal, mala fide & arbitrary and quash the same.

(ii) To allow the O.A. with costs.

(iii) To pass any further orders as this Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the case."

9. The reasoning of the Tribunal as reflected in para 5 of the impugned order may also be reproduced for reference:

"5. Having heard applicant, who appeared in person and learned counsel for the

respondents, this Tribunal does not find any illegality at this stage of this matter as clearly pointed out by the learned counsel and the fact that the applicant has already challenged the aforesaid punishments of withholding of 10%, 20% and 10% of the monthly pension for a period of 2 years, 5 years and 1 year respectively with immediate effect passed by the respondents after finalization of the DE proceedings in OAs which are pending adjudication before this Tribunal. However, we make it clear that if in future the applicant succeeds in the pending OAs filed by him against the aforesaid withholding of cuts in pension, he is given liberty to revisit the calculation of computation if so advised, in accordance with law."

10. The aforesaid order dated August 27, 2019 passed by the Tribunal has been challenged by the petitioner in present W.P.(C) 431/2020 and W.P.(C)516/2020 with following prayers:

"W.P.(C) 431/2020

(I) Quash the Order dated 27.08.2019 In O.A. No.4706/2018 of the Ld. Single Member of the Central Administrative Tribunal Principal Bench, New Delhi.

(II) Call for the original records leading to Issue sanctioning of pensionary benefits like regular Pension, Gratuity and Commutation of Pension to the petitioner with effect from 01.08.2018, vide Letter No. VI/A8iA/03/PEN/95/2014/946 dated 16.08.2018 (Annexure A-02 of the O.A.), Pension Payment Order No. 246501801148 vide SSA No.1139394 dated 24.08.2018.

(iii) Declare the action of the respondents in issuing impugned letter No. VI/A&A/03/PEN/95/2014/1721 dated 21.12.2018 (Annexure A-01 of the O.A.) as illegal, mala fide & arbitrary, and quash the same .

(iv) To allow the O.A. with costs.

W.P.(C) 516/2020

(i) Quash the Order dated 27.08.2019 in O.A. No. 4518/2018 of the Ld. Single Member of the Central Administrative Tribunal Principal Bench, New Delhi.

(ii) Call for the original records leading to issue of Original Commutation sanction, deduction of the amount for the period 01.07.2014 to 31.07.2014, issue of Order No. V(B)Grp-A/19015/PF(29)/2005-3967 dated 01.11.2018 sanctioning underpaid Commutation amount, issuing of Order No. V(B)/Grp-A/19015/ PF (29)/ 2005-4480 dated 26.11.2018 reducing the already paid amount of commutation and Order No. V(B)/Grp-A/19015/PF (29)/2005-4498 dated 27.11.2018.

(iii) Declare the action of the respondents in withdrawing Order No. V(B)/Grp-A/19015/PF(29)/2005-3967 dated 01.11.2018 vide their Order No. V(B)/Grp-A/19015/ PF (29)/ 2005-4480 dated 26.11.2018 and Order No. V(B)/Grp-made basis A/19015/PF(29)/2005-4498 dated 27.11.2018 as manipulative, illegal, mala fide, arbitrary and mischievous and quash the same.

(iv) Declare the action of the respondents in deducting Rs.6,03,1907- (Rupees six lakh three thousand one hundred and ninety only) on account of reduction in pension on account for commutation of pension (paid on 17.8.2018) for the period 01.07.2014 to 31.07.2018 as illegal, arbitrary and thus void ab Initio.

(v) Direct the respondent to immediately restore the Order No. V(B)/Grp-A/19015/PF(29)/2005-3967 dated 01.11.2018."

11. Petitioner submits that the commuted value of pension flowing in his favour as per the calculation made by the respondents is less favourable and is in violation of CCS (Commutation of Pension) Rules, 1981. It is his contention that the respondents have failed to apply the correct commutation factor with reference to basic pay as drawn on the date on which commutation became absolute (i.e. August 16, 2018).

12. In order to appreciate the contentions raised by the petitioner, it is necessary to reflect the background scheme of the CCS (Commutation of Pension) Rules, 1981.

Commutation of pension under the CCS (Commutation of Pension) Rules, 1981 is a payment of portion of the pension which is calculated on the basis of formula prescribed by the Rules. The employee is entitled to receive the value of commuted pension in lump sum upto 40% in one go and the employer is absolved from the payment of the pension to the extent commuted as determined in terms of the Commutation Rules after fifteen years. The full pension is thereafter restored. The option for getting the part of pension commuted is entirely at the end of the employee and an application may be filed by the eligible employee in accordance with Rule 13. Rule 12 of the Commutation Rules provides for the persons who are eligible for commutation of pension without medical examination and Rule 19 deals with the persons who become eligible only on undergoing medical examination. On an application being filed by an employee in terms of Rule 13 for commutation of pension, a legal right accrues in favour of the employee and the commuted value of pension is to be accordingly calculated and paid.

13. Generally, payment of commuted value of pension does not pose any issue in case no vigilance/disciplinary proceedings are pending or contemplated against the employee. The commutation in this category upto the limit of 40% is permissible immediately on finalization of pension upon retirement subject to filing of application by the employee. In the eventuality, where provisional pension is granted under Rule 64 of Pension Rules, the commutation is permissible subject to the limit under Rule 5. It may further be noticed that in the eventuality of pendency of disciplinary case, only provisional pension is granted to the employee and commuted value of pension is withheld till the vigilance clearance is accorded. The provisional pension is sanctioned on account of pendency of judicial or departmental proceedings and Rule 4 applies and forbids the commutation of provisional pension. Under Rule 12 of the

Commutation Rules, a person authorized to receive the pension in whole or in part, on the finalization of departmental or judicial proceedings referred to in Rule 9 of the Pension Rules and issue of final orders, is entitled to commuted pension.

It is pertinent to observed that Rule 4 of the Commutation Rules places restriction on commutation of pension and provides that no government servant against whom departmental or judicial proceedings, as referred to in Rule 9 of the Pension Rules have been instituted before the date of his retirement or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a percentage of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be during the pendency of such proceedings.

14. Rule 6 further provides as to when the commutation of pension becomes 'absolute'. The proviso (b) to Rule 6(1) provides that in case of an applicant, who is drawing pension from a branch of nationalized bank, the reduction in the amount of pension on account of commutation shall be operative from the date on which the commuted value of the pension is credited by the bank to the applicant's account.

Rule 8 provides that the lump sum commuted value of pension payable to the applicant shall be calculated in accordance with the table of values prescribed from time to time and applicable to the applicant on the date on which the commutation becomes "absolute".

Perusal of Government of India's Decision (1) under Rule 5, on limit of commutation of pension also reflects that when a part of pension is withheld or withdrawn under Article 351, CSR, the residual amount is the amount that has been granted under the Rules from the date of withholding or withdrawal or part of pension. As such, if commutation is applied for, after this date, the admissible amount that can be commuted will have to be calculated with reference to the pension payable to the person after that date. Commutation rules do not state that the commutable amount is to be calculated with reference to the pension originally granted to the person.

15. Admittedly, the commuted value of pension could only have been made after the conclusion of disciplinary proceedings though it is informed by the counsel for the petitioner that the penalty imposed in the aforesaid disciplinary proceedings also stands challenged by the petitioner. In the present case, the mode of computation of commuted value of pension has been disputed on behalf of the petitioner and it is his case that the amount so calculated by the respondents is less than the amount which he is entitled to receive on the completion of disciplinary proceedings whereby separate penalties stand imposed.

16. Reverting back to the facts of the case, admittedly, the petitioner superannuated on June 30, 2014, while three departmental enquiries were pending against him. As per the stand taken by the respondents, the provisional

pension was paid to the petitioner at the rate of Rs. 30,775/- per month (i.e. 50% of Basic Pay Rs. 61,550/- last drawn by the petitioner plus applicable Dearness Relief; was authorized and paid from July 01, 2014 to December 31, 2015). Thereafter, the provisional pension under 7th CPC was revised to Rs. 80,650/- per month plus applicable Dearness Relief from January 01, 2016 onwards and paid till July 31, 2018 with deductions in terms of finalization of departmental enquiries [i.e. (a) On finalization of first DE on October 20, 2017 (10% of monthly pension was withheld two years), (b) On finalization of second DE on June 29, 2018 (20% of monthly pension was withheld five years) and (c) On finalization of third DE on July 11, 2018 (10% of monthly pension was withheld one year)].

After finalization of three departmental enquiries, the pension payment order for payment of pension on regular basis w.e.f. August 01, 2018 was issued on August 16, 2018 and the rate of monthly pension under 7th CPC was revised to Rs. 80,650/- per month, subject to recovery / withholding as per final orders of departmental enquiries, last recovery / withholding up to June 28, 2023 in terms of the penalties in departmental enquiries.

17. The case of the respondents is that the commutation in this case on the date of superannuation on June 30, 2014, based on pensioner's age on his next birthday i.e. 61 years and commutation value expressed as number of years of purchase as 8.194 was initially calculated at Rs.12,10,418/- on the basic pay of Rs. 30,775/-.

Further, since pensioner gets monthly pension reduced by commutation, the pension as on July 01, 2014 on superannuation was to be reduced by the commutation value of Rs.12,310/- per month, which was included in the provisional pension paid to the petitioner from July 01, 2014 to July 31, 2018. The same was accordingly directed to be recovered from the total commutation amount of Rs.12,10,418/- and the balance amount of Rs. 6,07,228/- was paid to the petitioner on August 16, 2018. The logic of the respondents is that recovery is not illegal, but had to be made to avoid giving benefit to petitioner, as he had been receiving provisional pension after his superannuation.

However, in view of O.A. No.3653/2018, preferred by the petitioner, and in compliance of order dated November 26, 2018, the revised calculations of commutation of pension were made by respondents taking the age on next birthday of petitioner i.e. 65 years on October 15, 2018 and commutation factor of 7.731 was applied as prescribed in the CCS (Commutation of Pension) Rules, 1981. Further, withholding of pension at 40 % in terms of penalty, the commutation value was worked as follows:-

" Basic Pension Rs. 30,775 less 40% penalty =Rs. 18,465 Commutation @ 40% on Rs. 18,465 is equal to Rs. 7,386. Revised Commutation of Pension Rs, 7,386x12x7.731 = Rs. 6,85,214 Commutation already paid Rs. 6,07,228 Balance Rs. 77,986 paid on 29.11.2018."

18. The aforesaid procedure adopted by respondent for calculation of commutation amount needs to be tested in the light of CCS (Commutation of Pension) Rules, 1981. It is pertinent to note that if on the date of superannuation (i.e. June 30, 2014) no disciplinary proceedings would have been pending, the petitioner would have received the commutation amount of Rs. 12,10,418/- on the basic pay of Rs. 30,775/- multiplied with 8.194 (i.e. commutation value expressed as number of years of purchase at the relevant time). However, in view of the pending disciplinary proceedings, the commuted value of pension could only be calculated on conclusion of the same on July 11, 2018. The benefit of the commuted amount after deductions only came to be crystallized after July 11, 2018 and was deposited in account of petitioner on August 16, 2018. The said amount was initially calculated on the basis of basic pay as on June 30, 2014 multiplied by the relevant commutation factor of 8.194 on August 16, 2018, but subsequently, revised in view of the directions issued by the Tribunal. Thereafter, instead of applying the commutation factor of 8.194, the commutation factor of 7.731 has been applied taking the age on next birthday of petitioner as 65 years.

We are of the considered view that the Tribunal apparently failed to appreciate that the calculations made by the respondents overlooked proviso (b) to Rule 6 as well as Rule 8 of the CCS (Commutation of Pension) Rules, 1981 and "commutation value expressed as number of years of purchase" prejudicial to the petitioner could not be applied. It needs to be kept in perspective that the commutation amount after reduction only became absolute on being credited in the account of the petitioner on August 16, 2018. The calculation made by the respondents applying reduced commutation factor without keeping in perspective the corresponding basic pay is contrary to the rules.

19. For the aforesaid reasons and in the facts and circumstances of the case, we are unable to concur with the findings of the Tribunal. The order passed by the Tribunal is accordingly set aside with the directions to the respondents to pass a fresh speaking order recalculating the commutation of pension after taking into consideration the relevant rules. The writ petitions are accordingly allowed in aforesaid terms.

In the facts and circumstances, no order as to costs. Pending applications, if any, also stand disposed of.