
(2002) 07 DEL CK 0191
In the Delhi High Court
Case No : CWP No. 4894 of 2001

Union of India (UOI)

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Commutation of Pension Rules, 1981 — Rule 18, 6

Citation : (2002) 07 DEL CK 0191

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Sanjay Jain and Karishma, for the Appellant; K.C. Mittal, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The issue involved in the present case is really a short one. The respondent No.2 herein joined the petitioner in the Ministry of Health and Family Welfare on 28 the March, 1946 and after rendering 33 years and 11 months service, he was absorbed in Hindustan Zinc Ltd., Udaipur, a Public Sector Undertaking on 17th March, 1979. On his absorption he is deemed to have retired from Government service. He was asked to exercise his option either for receiving pension with Death-cum-retirement gratuity (DCRG) or for receiving gratuity and lump sum amount in lieu of pension. He opted for the second, namely, gratuity and lump sum amount in lieu of pension. It was given to him although he wasn't subjected to medical examination as is required under Rule 18 of the Commutation of Pension Rules, 1981. Nobody noticed this lacuna. Although the respondent No.2's commutation date was 15th March, 1980, he was paid commuted value of full pension on 8th January, 1981.

2. Normally, Government servants on retirement, if they opt for lump sum, their 1/3rd commuted portion of pension is restorable after 15 years from the date of such option. Such benefit was earlier not admissible to those Government servants who are deemed to have retired on their permanent absorption in PSUs.

However, the Supreme Court in its decision in Welfare Association of Absorbed Central Govt. Employees in Public Enterprises & Others Vs. Union of India and Anr. as well as P.V. Sundara Rajan & Anr. Vs. UOI reported in (1996) 33 ATC 188 held that even this category of Government servants would be eligible for restoration of 1/3rd commuted portion of pension, 15 years from that date. This decision was rendered on 15th December, 1995.

3. Acting on this decision, the Government also issued OM dated 30th September, 1996 giving effect thereto. As a result the respondent No.2 herein became entitled to 1/3rd commuted portion of pension. Since the respondent No.2's commutation date was 15th March, 1980 this 1/3rd commuted pension was due to be restored on 15th March, 1995. However, the petitioner permitted the same to the respondent No.2 only from 8th January, 1996. The period of 15 years was computed from the date he was given commuted full pension, i.e., 8th January, 1981 and not the commutation date i.e. 15th March, 1980. The respondent No.2 felt aggrieved by this action of the petitioner. The respondent No.2 herein successfully challenged this decision of the petitioner herein by filing Original Application No. 1972/2000 inasmuch as vide impugned judgment dated 30th May, 2001 allowing his application, the learned Tribunal has directed restoration of 1/3rd commuted value to be reckoned w.e.f. 15th March, 1995. The relevant portion of the impugned judgment, to this effect, is as under:

"It is evident that the commutation of pension becomes absolute only on the date of his commutation date i.e. 15.3.80 and not from 8.1.81. Restoration of 1/3 of the commuted value should be reckoned w.e.f. 15.3.1995 and the respondents cannot seek to gain advantage of their own mistake of not ordering the medical examination and claim that applicant should suffer for the same. Even otherwise effectively the restoration of 1/3 of commuted value gets advanced by just eight month i.e. January 1996 to March 1996. This is the only manner in which the applicant can be given what is his due."

4. While, allowing the Original application, last part of the judgment contains the following directions:

"In the result the application succeeds and is accordingly allowed. The respondents are directed to recover the lump sum amount of commuted value and he be permitted to exercise fresh option and be paid pension from the date of his retirement to date. This should be done within a period of two months from the date of receipt of copy of this order."

5. Mr. Sanjay Jain, learned counsel appearing for the petitioner, Union of India, fairly stated that he had no quarrel with the direction in so far as restoration of 1/3rd of the commuted value was to be reckoned w.e.f. 15th March, 1995 instead of 8th January, 1996. However, his main grievance was that the learned Tribunal was not correct in law in allowing the respondent No.2 to exercise fresh option qua the commutation of his pension 20 years after he had originally exercised his option and enjoyed the benefit of the same. According to the learned counsel,

the learned Tribunal ought to have realised that the settled position regarding the option and not to commute the pension is that option once decided achieves finality, and Therefore, the respondent No.2 could not be allowed to exercise fresh option. He also submitted that by giving such direction, the learned Tribunal went beyond the prayer made by the respondent No.2 herein inasmuch as his first prayer was for exercising fresh option and in the alternative, he had made prayer to the effect that status-quo as regard commutation date be maintained. Therefore, once his alternate prayer was allowed, there was no question of allowing his first prayer.

6. On the other hand, learned counsel for the respondent No.2 submitted that in medical examination of the respondent no.2 was not conducted at the time of commuting his pension as required under Rule 6, commutation of pension does not become absolute on the date on which the medical report, as referred to in Rule 18, is signed and in view thereof it was perfectly justified for the learned Tribunal to allow another option to the respondent No.2 herein.

7. After considering the submissions and relevant legal position, we are of the view that the directions contained in last para of the impugned judgment, i.e. para-6, as extracted above, cannot be sustained for more than one reasons:

1) The learned counsel for petitioner rightly contended that the two prayers were in the alternate as is clear from the prayer clause which reads as under:

(i) The lump sum amount of commuted value of pension paid to the application may be ordered to be recovered from the petitioner with normal rate of interest, he may be permitted to exercise fresh option and be paid pension from the date of his retirement to date with the same rate of interest.

(ii) Alternatively, the respondents may be directed to maintain status-quo as regards commutation date they may not be allowed to alter their own decision now after a lapse of 17 years.

8. The manner in which the respondent No.2 couched his own prayers, have could have been satisfied if one of the prayers were granted to the respondent No.2. In fact, the reading of the Original Application would also show that the respondent No.2 either wanted exercise of fresh option or the date of commutation as on 15th March, 1980 instead of 8th January, 1981. Once his prayer regarding date of commutation being 15th March, 1980 was allowed, there was no reason to grant the first prayer by allowing him to exercise fresh option.

2) Even otherwise, we are not convinced with the reasons given by the learned Tribunal while allowing first prayer. The main reason given by the learned Tribunal is that since the medical examination, as required under Rule 6 of the Rule was not conducted, the commutation did not become absolute. It maybe that a technical irregularity occurred in not subjecting the respondent No.2 to medical examination before accepting his option and authorising payment of the

dues in lump sum in lieu of pension. However, the fact remains that even when medical examination was not conducted, the orders for commutation of pension and payment of dues in lump sum were passed and the respondent No.2 was in fact paid the amount on 8th January, 1981. The respondent No.2 was beneficiary of such an order and Therefore, could not be allowed to take spacious plea of such irregularity of which he had taken advantage of. The matter, in fact, was given quietus in so far as exercising of such an option by the respondent No.2 is concerned. His option having been accepted and acted upon, there was no occasion to even reopen the same. In fact an altogether different facet of the matter surfaced after the decision of the Supreme Court in Welfare Association of Absorbed Central Govt. Employees in Public Enterprises & Others (supra) rendered on 15th December, 1995 as per which the respondent No.2 became eligible for restoration of 1/3rd commuted portion of pension. The question whether he had exercised his option way back in 1979-80 was in fact a dead issue which was settled long ago.

3) On the respondent No.2 becoming eligible for restoration of 1/3rd commuted portion of pension, the dispute which in fact had arisen was the date on which the respondent No.2 became eligible for restoration of 1/3rd commutation of pension. Whereas the respondent No.2 wanted it to be 15th March, 1995 by calculating 15 years from 15th March, 1980 which was the commutation date. The petitioner's view was that it should be 8th January, 1996 as it had calculated 15 years' period from 8th January, 1980 when the payment of commutation value of full pension was in fact paid to the respondent No.2. Even the representation of the respondent No.2 was regarding this date which was rejected by the petitioner herein on 22nd June, 1997 and there after on 22nd March, 1999, and Therefore, the cause of action at this stage was only the relevant date of eligibility of restoration of 1/3rd commuted portion of pension. In the process it was not permissible for the respondent No.2 to dig out the buried skeleton, i.e., the very issue regarding exercise of his option for either receiving pension with DCRG or for receiving gratuity of lump sum amount in lieu of pension. In fact the matter had to proceed further only on the basis that the respondent no.2 had already received the lump sum in lieu of pension and in view the Supreme Court decision he had now become eligible for restoration of commuted value of 1/3rd pension. This issue had in fact arisen only on the premise that he had earlier opted in the year 1979-80 for receiving lump sum in lieu of pension which was paid to him almost 20 years ago.

4) Even otherwise after receiving full pension on 8th January, 1981 and enjoying the same for all these years, the respondent No.2 was stopped from raking up this issue again and the relief (i) in his Original Application was highly belated and time barred, and Therefore, could not have been granted.

9. The result of the aforesaid discussion is that the directions contained in para-6 of the impugned judgment of the learned Tribunal are hereby set aside.

10. This writ petition is allowed to this extent. The effect of that would be that

the respondent No.2 shall be entitled to restoration of 1/3rd commuted value w.e.f.15th March, 1995 and not w.e.f.8th January, 1996. This direction of the Tribunal maybe complied with by the petitioner within a period of two months from the date of receipt of this order/judgment.

11. In view of the peculiar facts of this case, there shall, however, be no order as to costs.