(2013) 02 DEL CK 0360

In the Delhi High Court

Case No : WP (C) 3387 of 2011

UOI APPELLANT

Vs

GM Jagannadharao and Others RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 226, 32

Citation : (2013) 1 LLN 667

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ajay Vikram Singh, for the Appellant; Y. Raja Gopala Rao, Advocate, for the Respondent

Judgement

Pradeep Nandrajog, J.—In the early sixties the Government of India took a decision to give impetus to Public Sector Undertakings in the core industrial sectors and initially sent government servants on deputation to various Public Sector Undertakings. With passage of time it was found desirable that some deputationists could be absorbed in these Public Sector Undertakings and a methodology devised to protect the service rendered while under the Government for purposes of pension as also receive terminal benefits upon superannuation from the Public Sector Enterprises was the concept of deemed retirement in public interest. In other words, irrespective of qualifying pensionable service not rendered, but proportionate to the number of years service rendered in the government such government servants who were permanently absorbed in Public Sector Undertakings became entitled to be treated as retired in public interest with pensionary benefits as per the applicable pension rules including the entitlement for pension to be commuted as per the Civil Pensions (Commutation) Rules. Under the said Rules a government servant is entitled to commute one-third pension. And as regards those who are treated as having retired in public interest they are entitled to the additional facility of commuting even the balance two-third pension i.e. these persons can commute the full pension. The respondent is one such government servant who was absorbed in a Public Sector Undertaking. After having rendered service in the Indian Railways, the respondent was absorbed in RITES (a Public Sector Undertaking) on April 30, 1989. As per his request on February 05, 1990 one-third commuted pension payable to him for the service rendered in the Indian Railways was received by him followed by he commuting the remaining two-third pension on March 10, 1990.

2. In the year 1983 a registered society and some retired government servants filed petitions under Article 32 of the Constitution of India seeking striking down certain provisions of Central Civil Services (Commutation of Pension) Rules, 1981 on the ground that the rules permit the government to recover more than what is paid to the pensioners upon commutation and sought directions for issuance of formulating appropriate scheme rationalizing the provisions relating to commutation. During the pendency of the matter, the government agreed to restore the commuted portion of the pension in regard to all civilian employees at the age of 70 years or after 15 years of retirement, whichever is later, and agreed to make this effective from April 01, 1986. However, the Court directed that it would be just and equitable that the benefit agreed to be extended in respect of commuted portion of the pension should be effective from April 01, 1985.

3. Thereafter on March 05, 1987, the Department of Pension and Pensioners'' Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India issued an Office Memorandum with respect to commutation of pension of government servants, para 4 whereof reads as under:-

Central Government employees who got themselves absorbed under Central Public Sector Undertakings/autonomous bodies and have received/or opted to receive commuted value for 1/3rd of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension are not entitled to any benefit under these orders as they have ceased to be Central Government pensioners.

4. Aggrieved by aforesaid paragraph of the Office Memorandum dated March 5, 1987, some government servants who were absorbed in public sector undertakings/enterprises filed petitions under Article 32 of the Constitution of India in the Supreme Court praying therein that the relief of restoration of 1/3rd commuted pension granted to the government servants should also be extended to them, which petitions were allowed by the Court as per the decision reported as Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and another, .

5. It would be relevant to note the following portion of the decision of the Supreme Court:-

These persons were also offered the usual facility of commuting one-third of their original pension under Civil Pensions (Commutation) Rules and were also offered additional facility of commuting the balance two-thirds pension also i.e. to commute the full pension. This facility therefore creates three categories of these persons (1) the persons who have not commuted their pension and therefore draw full monthly pension from the Government; (2) the persons who have commuted one-third of the pension and therefore will draw a sliced monthly pension, reduced to the extent of commuted amount, (3) the persons who have commuted the full pension and who will not be given any monthly pension by deeming monthly pension to have been reduced to nil. The persons falling in the first category continue to derive all the benefits of being Government pensioner and get all the Interim Relief, liberalization and/or whatever reliefs are given by the Government to the petitioners. But the persons in the second category are denied these benefits to the extent of "one-third commutation". The third category are the worst hit and are totally denied of all these benefits.

To appreciate the claim of the petitioners it is necessary to set out two relevant rules in the C.C.S. Pension) Rules 1972. Rule 37 and 37A read as follows:-

Rule 37: Pension on absorption in or under a corporation, company or body: (1) 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 of pension he shall in addition to the (retirement 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 Civil Pensions (Commutation) Rules, and b) 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-third of his pension.

From the above extracts, it will be seen that a clear-cut distinction is 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 Article 14 & 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.

Therefore, the denial of restoration of one-third commuted pension is not justified. If after the expiry of 15 years, the pensioners who have opted for one-third commutation, becomes entitled to restoration of pension on the ground that the lump sum amount paid had got adjusted before the said period as held in ''Common Cause'' case, there is no good reason for not applying the same to the petitioners who have commuted their one-third portion of the pension under Rule 37-A of the Pension Rules 1972 without any commitment for this portion of commutation.

For the foregoing reasons, we hold that the petitioners are entitled to the benefits as given by this Court in ''Common Cause'' case so far as it related to restoration of one-third of the commuted pension. Consequently, the impugned para 4 of Office Memorandum dated 5.3.1987 is quashed. The writ petitions are accordingly allowed to the extent indicated above.

(Emphasis Supplied)

6. On October 27, 1997 the Department of Pension and Pensioners'' Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India issued an Office Memorandum regarding implementation of recommendations of 5th Central Pay Commission relating to revision of pension of pre-1996 pensioners/family pensioners, the relevant portion whereof reads as under:-

The undersigned is directed to say that in pursuance of Government''s decision on the recommendations of Fifth Central Pay Commission, sanction of the President is hereby accorded to the regulation, with effect from 1.1.1996, pension/family pension of all the pre-1996 pensioners/family pensioners in the manner indicated in the succeeding paragraphs.

2.1 These orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.1996 under the Central Civil Services (Pension) Rules, 1972, CCS (Extraordinary Pension) Rules and corresponding rules applicable to Railway pensioners and pensioners of All India Services including of the Indian Civil Service, retired from service on or after 1.1.1973.

3.1 In these orders:

a) ''Existing Pensioner'' or ''Existing Family Pensioner'' means a pensioner who was drawing/entitled to pension/family pension on 31.12.1995.

b) ''Existing pension'' means the basic pension inclusive of commuted portion, if any due on 31.12.1995. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS (Extraordinary Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Service.

c) ''Existing family pension'' means the basic family pension drawn on 31.12.1995 under the CCS (Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.

d) ''Existing Dearness Relief means the relief due to pensioners/family pensioners upto average CPI 1510.

4.1 The pension/family pension of existing pre-1996 pensioners/family pensioners will be consolidated with effect from 1.1.1996 by adding together:

i) The existing pension/family pension.

ii) Dearness Relief upto CPI 1510 i.e. @ 148%, 111% and 96% of Basic Pension as admissible vide this Department''s OM No. 42/8/96-P&PW(G) dated 20.3.1996.

iii) Interim Relief I

iv) Interim Relief II

v) Fitment Weightage @ 40% of the existing pension/family pension.

The amount so arrived will be regarded as consolidated pension/family pension with effect from 1.1.1996.

7. The cases of Central Government employees who have been permanently absorbed in public sector undertaking/autonomous bodies will be regulated as follows:

a) PENSION:

Where the Government servants on permanent absorption in public sector undertaking/autonomous bodies continue to draw pension separately from the Government, the pension of such absorbees will be updated in terms of these orders. In cases where the Government servants have drawn one time lumpsum terminal benefits equal to 100% of their pensions and have become entitled to the restoration of one-third commuted portion of pension as per Supreme Court judgment dated 15.12.1995 their cases will not be covered by these orders.

(Emphasis Supplied)

7. Sometime thereafter the petitioners in Welfare Association''s case (supra) filed a contempt petition registered as No. 530/1997 in the Supreme Court contending therein that though the government has restored 1/3rd portion of their commuted pension but has denied all other attendant benefits granted to the Central Government pensioners. Vide order dated May 01, 1998 the Supreme Court disposed of said contempt petition and the decision is reported as Welfare Association of Absorbed Central Government Employees in Public Enterprises and Another Vs. Arvind Verma and Others, .

8. It would be relevant to note following portion of the decision of the Supreme Court:-

Thereafter, it appears that the respondents construing the judgment of this Court literally restored one-third of the commuted pension and denied all other attendant benefits as made available to the other Central Government pensioners. Aggrieved by that, the petitioners have moved this Court once again by filing this Contempt Petition. Shri Altaf Ahmad, learned Additional Solicitor General, once again attempted to re-open the issue that the petitioners cannot be treated at par with the Central Government pensioners even though such a contention was raised and negative by this Court in the said judgment. For the reasons already stated in the judgment, we hold that the petitioners have to be treated at par with the Central Government pensioners. When we directed the respondents to restore one-third portion of the commuted pension, it was intended to be given effect to in letter and spirit, which means that the restoration of pension must be attendant benefits as given to the Central Government pensioners....

It will be noticed that the Central Government pensioners are given revision in the pension, which was not given to the petitioners on the ground that this Court had ordered only restoration of pension. After hearing counsel on both sides, we make it clear that the respondents are liable to restore not only the pension as ordered by this Court in the said judgment, but also all attendant benefits as given to the Central Government pensioners.

(Emphasis Supplied)

9. On July 14, 1998 the Department of Pension and Pensioners'' Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India issued an Office Memorandum regarding restoration of one-third commuted pension of government servants who got absorbed in public sector undertakings/ enterprises, the relevant portion whereof reads as under:-

3. The modalities of implementation of the Supreme Court order dated 1.5.98 have been under active consideration of the Govt. The President is now pleased to decide that the beneficiaries of the Supreme Court judgment dt. 15.12.95 shall be entitled to the benefit of revision of the restored amount of 1/3rd commuted portion of pension at par with other Central Govt. Pensioners. Accordingly, in supersession of the instructions contained in this Deptt''s O.M. No. 4/3/86-P&PW (D) date 13.1.98 it has been decided that the cases of absorbed employees for revision of the restored amount of 1/3rd commuted portion of pension etc. shall be regulated as under:-

(III) Revision of the restored amount of 1/3rd commuted portion of pension as per the recommendations made by the Fifth Central Pay Commission where permanent absorption in a PSU/autonomous body has taken place on or after 1.1.1996 but prior to 31.3.95.

The basic pension that was sanctioned at the time of absorption, should be notionally revised as per the decision of the Government on the recommendations made by the Fifth Central Pay Commission based on the Table prescribed under this Department''s P.M. No. 45/86/97-P&PW (A)-Part-II dated 27th Oct. 1997. Thereafter 1/3rd portion of such pension should be worked out and restored after 15 years from the date of recommendation or 1.1.1996, whichever is later. Administrative Ministries/Departments may refer to Table-III of Annexure-I of the specimen for guidance.

4. Dearness Relief on the restored amount of 1/3rd commuted portion of pension shall be admissible at the same rate at which it has been made admissible to other Central Government Pensioners from time to time. The rates at which D.R. has been released by the Government to its pensioners during the period from 1.4.1985 to 1.1.1998 has been indicated in Annexure-II

(Emphasis Supplied)

10. Sometimes thereafter, some government servants who were absorbed in public sector undertaking/enterprises including one Lt. Col. B.R. Malhotra, who had commuted 100% pension payable to them filed applications before the Supreme Court contending therein that all Central Government pensioners are entitled to dearness relief on sanctioned basis pension as revised from time to time, regardless of whether they have commuted any part of their pension. It was urged that in case of absorbees the government has calculated dearness relief at applicable rates on one-third of notional pension, whereas in case of central government pensioners the dearness relief has been calculated at applicable rates on full pension including the commuted part of pension. Vide judgment dated April 26, 2000 the Supreme Court disposed of said applications, which decision is reported as P.V. Sundara Rajan and Another Vs. Union of India and Others, .

11. With respect to the absorbees who had commuted only one-third of their pension, the Supreme Court held as under:-

The dearness relief on pension has been granted to pensioners to compensate them for the erosion in the value of money due to rise in the cost of living. It seems clear that the Government has permitted to the applicants dearness relief calculated only on one-third part of the pension restored while in case of other pensioners, the dearness relief is calculated on full pension including the commuted part of pension. As already noticed, the applicants are to be treated on the same footing as other Central Government employees in so far as the question of restoration of one-third of commuted pension is concerned and are entitled to the benefits as given in Common Cause case. In this respect, it would also be useful to notice that the ''pension'' as defined in Central Civil Services (Pension) Rules 1972 does not include dearness relief. Rule 3(1)(o) reads as under:

Pension includes gratuity except when the term pension is used in contradistinction to gratuity, but does not include dearness relief;

12. We may also reproduce Rule 55A:-

Dearness Relief on Pension/Family Pension

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment.

(iii) Deleted

13. The Government instructions also show that the dearness relief is granted to compensate the pensioners for erosion in the value of money due to rise in the cost of living. Anything which is not part of pension has to be paid in full in so far as those who have commuted one-third pension. Nothing of substance could be shown by Mr. Altaf Ahmed, learned Additional Solicitor General, so as to deprive the grant of benefit of dearness relief on full pension to these public sector absorbers at par with Central Government pensioners. Directions in this regard have been issued by this Court from time to time but applicants are still being deprived of this benefit We give to the respondents a final opportunity to grant to the applicants the benefit of dearness relief on pension as aforesaid within a period of three months. The applicants are, however, not entitled to any other benefit claimed in the applications.

12. At this juncture, it would be most apposite to note that with respect to absorbees who had commuted 100% pension, the Court held as under:-

The parity claimed by Lt. Col. Malhotra and other absorbers who had commuted 100% pension, in our view, is entirely misplaced. The contention that what is commuted or given up is an amount and not the right to receive pension or right to receive post-commutation revision and attendant benefits including dearness relief on the gross entitled pension on the dates they were granted to other Government pensioners, is only illusory. The decision in the case of State of T.N. and Others Vs. V.S. Balakrishnan and Others, on which reliance was placed by Mr. Gopal Subramanium, Senior Advocate, has no applicability to the point in issue. Those who commuted 100% pension continue to remain non-pensioners till their pension is restored. In Welfare Association Case (supra), persons who commuted the full pension and who will not be given any monthly pension by deeming monthly pension to have been reduced to nil has been treated as a separate category. Those who commute 100% pension are not entitled to the benefit of dearness relief on full pension or other benefits as claimed herein. We also do not find any discrimination in so far as this class is concerned.

(Emphasis Supplied)

13. On July 12, 2000 the Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India issued another Office Memorandum relating to restoration of one-third pension of government servants who were absorbed in public sector undertakings/ enterprises, the relevant portion whereof reads as under:-

OFFICE MEMORANDUM

Restoration of 1/3rd commuted portion of pension after 15 years from the date of commutation or 1.4.85, whichever is later in respect of Government servants who had drawn lumpsum payment on absorption in PSU/Autonomous Body - implementation of Supreme Court Judgment dated 26.4.2000.

2. The modalities of implementing Supreme Court judgment dated 26.4.2000 has been under active consideration of the Govt. The President is now pleased to decide that Govt. servant who had drawn lumpsum payment on absorption in a PSU/Autonomous Body and have become entitled to the restoration of 1/3rd commuted portion of pension in terms of the Supreme Court Judgment dated 15.12.1995 shall, apart from the payment of revised restored amount of 1/3rd commuted portion of pension, be also entitled to payment of dearness relief on full pension from the date of restoration, instead of dearness relief on the revised restored amount of 1/3rd commuted portion of pension. In other words dearness relief shall be payable of full pension i.e. the revised pension which the absorbed employee would have received on the date of restoration of 1/3rd commuted portion of pension had he not drawn lumpsum payment on absorption. The payment of dearness relief will, however, be subject to the condition laid down in para 5 of O.M. dated 14th July, 1998.

3. Para 4 of the O.M. dated 14.7.1998 shall, therefore, be deemed to have been modified as indicated above.

(Emphasis Supplied)

14. In the year 2001, the respondent wrote a letter to the Department of Pension and Pensioners'' Welfare demanding dearness relief and revision of his pension, which demands were rejected vide order dated February 16, 2001.

15. Consequent thereto, the respondent filed an application u/s 19 of the Central Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Principal Bench, New Delhi inter-alia seeking following reliefs:-

i. Dearness Relief on the 1/3rd portion of pension commuted from the date of commutation/retirement from Public Sector Undertaking up to 31.12.95;

ii. to consolidate the basic pension in terms of its O.M. No. 45/86/97-P&PW (A)-Part I dated 24.10.97 and the pay difference of the consolidated pension and basic pension from 1.1.96;

iii. to pay the Dearness Relief on the consolidated pension minus 2/3rd of basic pension up to the date of restoration of 1/3rd pension;

iv. for payment of consolidated pension referred to in sub-para (b) with Dearness Relief on full consolidated pension from the date of restoration as per the Judgment of the Hon''ble Supreme Court dated 26.4.2000 passed in Writ Petition (C) No. 567 of 1995 etc. in the case of P.V. Sundara Rajan & others Vs Union of India & Ors.

16. Vide judgment dated November 12, 2003 the Tribunal allowed the application filed by the respondent. It would be relevant to note the following portion of the judgment of the Tribunal:-

21. I have carefully considered the rival contentions of the parties and perused the material on record. It is not disputed, as the matter was listed for ''Being Spoken'', that the applicant has commuted 1/3rd of his pension without any condition and the remaining 2/3rd portion of the pension was commuted receiving terminal benefits subject to the condition that the applicant would not claim the same.

22. In ''Common Cause'' case [supra], the claim of the Govt. servants to restore the commuted value of their pension on completion of 15 years from the date of superannuation was allowed by the Apex Court.

23. In Welfare Assn. of Absorbed Central Govt. Employees case (supra), there were three categories of the persons described. The second category was discussed, who had commuted 1/3rd portion of pension and would draw a slice monthly pension reduced to the extent of commuted amount. However, in this case, the persons who had commuted full pension, their cases had not been adjudicated and they have been treated as a separate category. However, in the aforesaid judgment, para 4 of the OM dated 5.3.1987, which provides that those Central Govt. employees, who got themselves absorbed in the public sector undertaking and have opted to receive commuted value of 1/3rd of pension as well as terminal benefits equal to the commuted value to the balance amount of pension, are not entitled to any benefit and quashing the same, benefits were granted to the absorbees at par with the ''Common Cause'' case (supra). However, relating to category of persons have commuted 1/3rd of pension, when the Govt. has not complied with the directions and had not given the benefits at par with, CPs were filed and the same were disposed of in Welfare Assn. of Absorbed Central Govt. Employeess case (supra) wherein one of the objections put forth by the Additional Solicitor General to the effect that once 2/3rd portion of pension has been capitalized as one time settlement, this portion is no longer applicable to the absorbed employees. As such they are not entitled to the grant of dearness relief on this to the grant of dearness relief on this 2/3rd commuted portion of the pension. However, noticed that the Central Govt. pensioners are given revision in the pension, which has been denied to the absorbees on the ground that the only relief which has been granted to the absorbees is restoration of the pension, the Apex Court decision delivered by three Judges Bench held that the absorbees are not only entitled for restoration of the pension but also the attendant benefits at par with the Central Govt. pensioners. In my considered view the only consideration which could be given to the aforesaid direction is irrespective of their capitalized value of 2/3rd portion of pension as one time settlement and the right of absorbees to restore the attendant benefits on the ground of their being non-pensioners cannot be wound-off. They are to be treated at par with Central Govt. pensioners and are entitled for the relief in the

form of attendant benefits.

24. In P.V. Sundara Rajan''s case (supra), which has been filed by the absorbees to the effect that the Central Govt. pensioners are entitled to dearness allowance relief on centralized basis and their pensions have been revised from time to time irrespective of any part of the pension being commuted. The benefits is to be calculated at the applicable rates on the amount of pension including the amount of commuted pension to restore the benefit of 1/3rd of the notional pension. They cannot be treated differently from the Central Govt. pension. In this backdrop, the Apex Court reiterated that the absorbees are to be treated at the same footing as Central Govt. pensioners and held that dearness relief is to compensate to pensioners for rational erosion in the value of money due to size in the cost of living. In any case, it is not a part of pension and it has to be paid in full, insofar as those who have commuted 1/3rd portion of the pension is concerned and held that the petitioners therein are entitled for benefits of dearness relief on pension. The Apex Court has discussed the case of intervenor, who had commuted 100% of pension by holding that by commuting 100% of pension, one remains non-pensioner till the pension is restored and was treated as a separate category. This grievance was not adjudicated in ''Common Cause'' case (supra) by the Apex Court, whereas in the instant case, it is not disputed that the applicant has commuted 1/3rd portion of the pension unconditionally and commuted remaining 2/3rd portion of pension receiving the terminal benefits subject to the condition that he would not claim the same. In this view of the matter, the applicant''s case cannot be brought in the category of persons who had commuted 100% of their pension. The Division Bench [Hyderabad Bench] of this Tribunal in OA No. 1345/2001 in the case of R. Rama Murthy Vs. Union of India and Others decided on 28.11.2002 by taking note of the decision of the Apex Court in the case of P.V. Sundara Rajan (supra) had held that in the aforesaid situation where 2/3rd portion of the pension receiving terminal benefits with a condition as opted by the persons who had commuted 1/3rd of the pension unconditionally and the applicant therein was not only entitled to restoration of 1/3rd portion of the pension on the full pension after expiry of 15 years but also attending benefits including dearness relief on full pension, in view of the decision of the Apex Court in welfare Association of Absorbed Central Government Employee in Public Enterprises (supra).

25. Having regard to the above to which I fully agree the case of the applicant cannot be brought to the category of a person who had commuted 100% of pension. In that event, the decision in Contempt Petition by the Apex Court in Welfare Association of Absorbed Central Government Employee in Public Enterprises (supra) wherein the Apex Court had allowed the attendant benefits to the petitioner therein, in all fours, covers the case of the applicant herein as well.

26. Insofar as OM dated 12.7.2000 is concerned and the interpretation of implementation of the decision of Apex Court in P.V. Sundara Rajans case (supra) is concerned, the same has been made on the strength that a person absorbed

who had commuted 1/3rd portion of the pension, is entitled to the payment of dearness relief on full pension from the date of restoration of 1/3rd of commuted pension and the dearness relief shall be payable on the revised pension which the absorbees would receive on restoration of 1/3rd of commuted pension, which is on the strength that such a category is a separate category having commuted 100% of pension is to be treated as a non-pensioner and it is only after 15 years from the date of option the status of pensioner would be restored and then the benefit of dearness relief would be granted. Thus, according to the decisions of the Apex Court in P.V. Sundara Rajan (supra) as well as in Welfare Association of Absorbed Central Government Employee in Public Enterprises (supra), the stand taken by the respondents in their reply is contrary to the law laid down by the Apex Court. Applicant, who has to be treated as category 2 and who had commuted 1/3rd portion of the pension and rest of his is lump sum retrial benefits with a condition not to claim the same, would not be covered by the aforesaid OM. As such, I do not find any impediment for the applicant to have accorded the benefits as prayed for and the Office Memorandum dated 12.7.2000, which has not been impugned, shall not apply to the case of the applicant.

27. In the result, for the foregoing reasons, the applicant has a valid legal claim. The OA is allowed in terms of the prayers contained in Para 8 of the OA.

17. Aggrieved by the judgment dated November 12, 2003 the petitioner filed a writ petition under Article 226 of the Constitution of India in this Court.

18. During the pendency of aforesaid petition, on September 6, 2007 the Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India issued yet another Office Memorandum relating to restoration of one-third pension of government servants who were absorbed in public sector undertakings/enterprises, which reads as under:-

OFFICE MEMORANDUM

Subject: - Restoration of 1/3rd commuted portion of pension in respect of Government servants who had drawn lumpsum payment on absorption in public sector undertakings/autonomous bodies-implementation of Andhra Pradesh High Court judgment dated 24.12.03 in Writ Petition No. 8532 of 2003 followed by the Supreme Court Judgment dated 29.11.06 in Civil Appeal No. 5269 of 2006 arising out of SLP Nos. 21647-648 of 2005 and the Supreme Court Judgment dated 24.7.07 in Review Petition No. 643 of 07.

The undersigned is directed to say that the Government servants who had drawn lump sum payment in respect of pro-rata pension (1/3rd as well as 2/3rd) on absorption in a PSU/Autonomous Bodyand have become entitled to restoration of 1/3rd commuted portion of pension as per the provisions of this Department''s O.M. No. 34/2/86-P&PW dated 5th March 87 after 15 years from the date of commutation or 1.4.85 whichever is later, are regulated vide this Department

O.M. No. 4/59/97-P&PW (D) dated 14th July 1998 as clarified from time to time.

2. Andhra Pradesh High Court in its judgment dated 24.12.03 in Writ Petition No. 8532 of 2003 followed by the Supreme Court Judgment dated 29.11.06 in Civil Appeal No. 5269 of 2006 arising out of SLP Nos. 21647-648 of 2005 and the Supreme Court Judgment dated 24.7.07 in Review Petition No. 643 of 07 has decided as under:-

... the public sector undertaking absorbees are also entitled for dearness relief etc. but no ton entire pension commuted as on the date of retirement. Moreover they received lumpsum amount by way of terminal benefits on surrendering on 2/3rd pension. In that way they have already parted with 2/3rd pension, it cannot be said to revive after 15 years. But, in case of Central government pensioners 2/3rd pension was continued to be received by them. Therefore, what is restored is 1/3rd pension which means full pension. But the same principle cannot be applied to say that the absorbee will get full pension after 15 years in case those who had commuted 1/3rd pension and received terminal benefits for 2/3rd pension had he not surrendered, he continue to receive 2/3rd pension, the same principle apply as in case of Central Government employee. But having received the cash compensation in respect of the surrender value of 2/3rd, he cannot be allowed to say that he is also a pensioner as far as 2/3rd pension is concerned. Such absorbee stand on a different footing and they fall in a different class by themselves on this issue. Under those circumstances, the inescapable conclusion is that 1/3rd pension has to be arrived at only on the basis of the basic pension divided by three after completion of 15 years which becomes drawable as on the date of respective dates and not to be arrived by deducting Rs. 403/- from the pension. Therefore, the petitioner will be entitled to as follows:-

In this case the employee had commuted minimum permissible pension i.e. 1/3rd. But, even if lesser portion is commuted, the pro-rata commuted portion has to be deducted from the basic pension to arrive at restorable pension, but however, he will get dearness relief, interim relief etc. on full basic pension

3. The modalities of implementation of above judgment have been under active consideration of the Government. The President is pleased to decide that in partial modification of this Department''s O.M. No. 4/59/97-P&PW (D) dated 14th July 1998, the Government servants who had drawn lump sum payment in respect of pro-rata pension (1/3rd as well as 2/3rd) on absorption in a PSU/ Autonomous Body and have become entitled to restoration of 1/3rd commuted portion of pension as per the provisions of this Department''s O.M. No. 34/2/86-P&PW dated 5th March 87 after 15 years from the date of commutation or 1.4.85 whichever is later, shall be entitled to the benefit of revision of restored amount of 1/3rd commuted portion of pension as explained hereunder:-

(I) As on 01.01.1986

(a) The full pension of the absorbees shall be notionally revised w.e.f. 1.1986 based on full pension on absorption in accordance with the instructions for revision of pension, issued for implementing the 4th Pay Commission Recommendations.

(b) The restorable 1/3rd pension shall be the sum of the following:-

I. 1/3rd of full pension as on 31.12.1985.

II. Dearness Relief on full pension as on 31.12.1985.

III. Additional benefits on full pension as per this Department OM No. 2/1/87-PIC dated 16.4.1987 relating to implementation of the 4th Pay Commission Recommendations.

(II) As on 01.01.1996

(a) The full pension of the absorbees shall be notionally revised w.e.f. 1.1.1996 based on full pension as on 31.12.95 in accordance with the instructions for revision of pension, issued for implementing the 5th Pay Commission Recommendations

(b) The restorable 1/3rd pension shall be the sum of the following:-

I. 1/3rd of full pension as on 31.12.1995.

II. Dearness Relief on full pension as on 31.12.1995.

III. IR-I and IR-II

IV. Fitment @ 40% of the full pension as on 31.12.1995* (* in terms of this Deptt. OM No. 45/86/07-P&PW (A)-pt, II Dated 27.10.1997)

4. Payment of DR shall be on full pension and is subject to the condition that the absorbed employee was not re-employed/employed under the Central Government or State Government or a Corporation/Company/Body/Bank under them in India or abroad, including permanent absorption in such Corporation/ Company/Body/Bank at the time of restoration.

5. The benefit of revision of restored amount of 1/3rd commuted portion of pension shall be admissible from the date the commuted portion of pension is restored.

6. This issues with the concurrence of Ministry of Law vide their UO No. 11088/07-A dated 17.8.2007 and Ministry of Finance (Department of Expenditure) vide their UO No. C-47/E.V./2007 dated 27.8.2007.

(Emphasis Supplied)

19. Vide order dated August 28, 2008, the Division Bench of this Court, disposed of the writ petition filed by the petitioner by remanding the matter to the Tribunal. It would be relevant to note the following portion of the order dated August 28, 2008:-

After hearing learned counsel for the parties, we wanted to have a look at the Office Memorandum dated 24th October, 1997 but it appears that there is some typing mistake and the Office Memorandum is not dated 24th October, 1997 but is actually dated 27th October, 1997. That has been placed on record by learned counsel for the Petitioner through an additional affidavit filed before us.

We have seen the original application filed by the Respondent and find that the document dated 27th October, 1997 (wrongly typed as 24th October, 1997) was not amongst the list of annexures and it appears that the document was not placed before the Tribunal either by the Respondent or by the Petitioner. in the impugned order, the Tribunal has not made any reference to the document at all or discussed how the document supports the case of the Respondent.

Under the circumstances, we are of the view that the order passed by the Tribunal has not taken full material into consideration. That being so, we have no option but to set aside the order passed by the Tribunal and remand the matter back to it for reconsideration on merits after taking into consideration the Office Memorandum dated 27th October, 1997 as well as the relevant case law including the decision relied upon by the Respondent in the case of P.V. Sundara Rajan.

(Emphasis Supplied)

20. Vide impugned judgment dated September 24, 2010 the Tribunal once again allowed the application filed by the respondent. Till paragraph 23 of the impugned decision where the Tribunal has noted the past history and the contentions urged, the reasoning commences in paragraph 24 and concludes in paragraph 31, which paragraphs read as under:-

24. I have carefully perused the pleadings made by the applicant in the OA as also the reply filed by the respondents.

25. In ''Common Cause'' case [supra], the claim of the Govt. servants to restore the commuted value of their pension on completion of 15 years from the date of superannuation was allowed by the Apex Court.

26. In Welfare Assn. of Absorbed Central Govt. Employees case (supra), there were three categories of the persons described. The second category was discussed, who had commuted 1/3rd portion of pension and would draw a slice monthly pension reduced to the extent of commuted amount. However, in this case, the persons who had commuted full pension, their cases had not been adjudicated and they have been treated as a separate category. However, in the aforesaid judgment, para 4 of the OM dated 5.3.1987, which provides that those Central Govt. employees, who got themselves absorbed in the public sector undertaking and have opted to receive commuted value of 1/3rd of pension as well as terminal benefits equal to the commuted value to the balance amount of pension, are not entitled to any benefit and quashing the same, benefits were granted to the absorbees at par with the ''Common Cause'' case (supra).

However, relating to category of persons have commuted 1/3rd of pension, when the Govt. has not complied with the directions and had not given the benefits at par with, CPs were filed and the same were disposed of in Welfare Assn. of Absorbed Central Govt. Employees case (supra) wherein one of the objections put forth by the Additional Solicitor General to the effect that once 2/3rd portion of pension has been capitalized as one time settlement, this portion is no longer applicable to the absorbed employees. As such they are not entitled to the grant of dearness relief on this to the grant of dearness relief on this 2/3rd commuted portion of the pension. However, noticed that the Central Govt. pensioners are given revision in the pension, which has been denied to the absorbees on the ground that the only relief which has been granted to the absorbees is restoration of the pension, the Apex Court delivered the decision and held that the absorbees are not only entitled for restoration of the pension but also the attendant benefits at par with the Central Govt. pensioners. In my considered view the only consideration which could be given to the aforesaid direction is irrespective of their capitalized value of 2/3rd portion of pension as one time settlement and the right of absorbees to restore the attendant benefits on the ground of their being non-pensioners cannot be round-off. They are to be treated at par with Central Govt. pensioners and are entitled for the relief in the form of attendant benefits.

27. In P.V. Sundara Rajans case (supra), which has been filed by the absorbees to the effect that the Central Govt. pensioners are entitled to dearness allowance relief on centralized basis and their pensions have been revised from time to time irrespective of any part of the pension being commuted. The benefits are to be calculated at the applicable rates on the amount of pension including the amount of commuted pension to restore the benefit of 1/3rd of the notional pension. They cannot be treated differently from the Central Govt. pension. In this backdrop, the Apex Court reiterated that the absorbees are to be treated at the same footing as Central Govt. pensioners and held that dearness relief is to compensate to pensioners for rational erosion in the value of money due to size in the cost of living. In any case, it is not a part of pension and it has to be paid in full, insofar as those who have commuted 1/3rd portion of the pension is concerned and held that the petitioners therein are entitled for benefits of dearness relief on pension. The Apex Court has discussed the case of intervenor, who had commuted 100% of pension by holding that by commuting 100% of pension, one remains non-pensioner till the pension is restored and was treated as a separate category. This grievance was not adjudicated in ''Common Cause'' case (supra) by the Apex Court whereas in the instant case it is not disputed that the applicant has commuted 1/3rd portion of the pension unconditionally and commuted remaining 2/3rd portion of pension receiving the terminal benefits subject to the condition that he would not claim the same. In this view of the matter, the applicants case cannot be brought in the category of persons who had commuted 100% of their pension. The decision of Hyderabad Bench of this Tribunal in R. Rama Murthy (supra) by taking note of the decision of the Apex

Court in the case of P.V. Sundara Rajan (supra) had held that in the aforesaid situation where 2/3rd portion of the pension receiving terminal benefits with The decision of Hyderabad Bench of this Tribunal in R. Rama Murthy (supra) by taking note of the decision of the Apex Court in the case of P.V. Sundara Rajan (supra) had held that in the aforesaid situation where 2/3rd portion of the pension receiving terminal benefits with a condition as opted by the persons who had commuted 1/3rd of the pension unconditionally and the applicant therein was not only entitled to restoration of 1/3rd portion of the pension on the full pension after expiry of 15 years but also attendant benefits including dearness relief on full pension, in view of the decision of the Apex Court in Welfare Association of Absorbed Central Government Employee in Public Enterprises (supra).

28. Having regard to the above, to which I fully agree, the case of the applicant cannot be brought to the category of a person who had commuted 100% of pension. In that event, the decision on Contempt Petition by the Apex Court in Welfare Association of Absorbed Central Government Employee in Public Enterprises (supra) wherein the Apex Court had allowed the attendant benefits to the petitioner therein, in all fours, covers the case of the applicant herein as well.

29. Insofar as OM dated 12.7.2000 and the interpretation of implementation of the decision of Apex Court in P.V. Sundara Rajans case (supra) is concerned, the same has been made on the strength that a person, who is absorbed and commuted 1/3rd portion of the pension, is entitled to the payment of dearness relief or dearness relief on full pension from the date of restoration of 1/3rd of commuted pension and the dearness relief shall be payable on the revised pension, which the absorbees would receive on restoration of 1/3rd of commuted pension, which is on the strength that such a category is a separate category having commuted 100% of pension is to be treated as a non-pensioner and it is only after 15 years from the date of option the status of pensioner would be restored and then the benefit of dearness relief would be granted. Thus, according to the decisions of the Apex Court in P.V. Sundara Rajan (supra) as well as in Welfare Association of Absorbed Central Government Employee in Public Enterprises (supra), the stand taken by the respondents in their reply is contrary to the law laid down by the Apex Court. Applicant, who has to be treated as category 2 and who had commuted 1/3rd portion of the pension and rest of his is lump sum retiral benefits with a condition not to claim the same, would not be covered by the aforesaid OM. As such, I do not find any impediment for the applicant to have accorded the benefits, as prayed for and the Office Memorandum dated 12.7.2000, which has not been impugned, shall not apply to the case of the applicant.

30. In the above backdrop, the claim of the applicant as category 2 will be treated as 100% commutation of benefits but lump sum retiral benefits to the extent of 2/3rd would not be construed. Accordingly, the embargo in OM, referred to ibid, i.e., dated 27.10.1997, would be not attracted and applicant being exception to it, OM has applicability in his case for the relief of consolidated

pension.

31. In the light of above, this OA is allowed. Respondents are directed to allow dearness relief on the 1/3rd portion of pension commuted from the date upto 31.12.1995 and to consolidate the pension in terms of OM dated 27.10.1997 and pay the difference of the consolidated pension and basic pension from 1.1.1996. Respondents are also directed to pay dearness relief on the consolidated pension minus 2/3rd of basic pension upto the date of restoration of 1/3rd pension. Decision in P.V. Sundara Rajans case (supra) may also be applied for payment of consolidated pension. This shall be disbursed to the applicant with arrears, within a period of three months from the date of receipt of a copy of this order. No costs.

(Emphasis Supplied)

21. Aggrieved by the impugned judgment dated September 24, 2010 passed by the Tribunal the petitioner has filed the present petition under Article 226 of the Constitution of India.

22. Having closely scrutinized the impugned judgment dated September 24, 2010 passed by the Tribunal, we find that the same cannot be sustained.

23. As already noted hereinabove, the claim (s) raised by the respondent in the application filed by him before the Tribunal related to payment of dearness relief and consolidation/revision of his pension. Vide judgment dated November 12, 2003 the Tribunal allowed the application filed by the respondent. Vide order dated August 28, 2008 a Division Bench of this Court set aside the judgment dated November 12, 2003 passed by the Tribunal and directed the Tribunal to reconsider the matter ''after taking into consideration the Office Memorandum dated 27th October, 1997 as well as the relevant case law including the decision relied upon by the respondent in the case of P.V. Sundara Rajan''.

24. However, while re-adjudicating the matter, the Tribunal has completely overlooked the order dated August 28, 2008 passed by a Division Bench of this Court. A reading of paras 21 to 26 of earlier judgment dated November 12, 2003 and paras 24 to 29 of impugned judgment dated September 24, 2010 quoted hereinabove which contain the reasoning would show that while passing the impugned judgment dated September 24, 2010 the Tribunal has almost verbatim reproduced the reasoning given by it in its earlier judgment dated November 12, 2003. Furthermore, the Tribunal has merely noted the contents of the Office Memorandum dated October 27, 1997 but has not considered the same while re-adjudicating the matter as was directed by this Court vide order dated August 28, 2008.

25. We also find that there is a fundamental fallacy in the impugned judgment dated September 24, 2010 passed by the Tribunal. In Welfare Association''s case (supra) it was held by the Supreme Court that the facility of 100% commutation of pension granted to the government servants who were absorbed in public sector undertakings/enterprises creates 3 categories of such persons viz. ''(1)

the persons who have not commuted their pension and therefore draw full monthly pension from the Government; (2) the persons who have commuted one-third of the pension and therefore will draw a sliced monthly pension, reduced to the extent of commuted amount, (3) the persons who have commuted the full pension and who will not be given any monthly pension by deeming monthly pension to have been reduced to nil''.

26. A perusal of the impugned judgment shows that it has been held by the Tribunal that the respondent falls under category (2) referred to by the Supreme Court in Welfare Association''s case (supra), which is entirely incorrect. It is an admitted fact that the respondent has commuted 100% of his pension, in that he had commuted 1/3rd portion of his pension and received terminal benefits equal to the commuted value of remaining 2/3rd portion his pension. Such being the position, the respondents falls in 3rd category of persons referred to by the Supreme Court in Welfare Association''s case (supra) i.e. the persons who have commuted their full pension.

27. We further find that save and except noting Office Memorandums dated October 27, 1997 and July 12, 2000 the Tribunal has not noted other Office Memorandums issued by the Government on the subject of restoration of pension of government servants absorbed in public sector undertakings/ enterprises referred by us in the foregoing paragraphs. One of the reliefs claimed by the respondent was payment of dearness relief from date of his retirement/ date of commutation, which relief runs counter to Official Memorandum dated September 06, 2007 which prescribes that benefit of revision of pension shall be admissible from the date of restoration of 1/3rd portion of pension. This most vital memorandum has not even been noted, much less considered by the Tribunal.

28. In view of above, the impugned judgment dated September 24, 2010 passed by the Tribunal is set aside. The matter is remanded back to the Tribunal for reconsideration and we express the hope that this time the Tribunal would not indulge in cut, copy and paste.

29. We have been constrained to remand the matter to the Tribunal for a second time by a lengthy decision for the reason we were compelled to bring out the issues which arose in their historical perspective which warranted a consideration and an opinion from the Fora of first jurisdiction.

30. Needless to state, while reconsidering the matter the Tribunal shall take into account all the Office Memorandums issued the Government on the subject of restoration of pension of government servants absorbed in public sector undertakings/enterprises as also the discussion contained in the present judgment. Parties shall appear before the Registrar of the Tribunal on April 03, 2013 by which date the file would be located by the Registrar and the matter placed before an appropriate Bench for adjudication.

