

PETITIONER:
P.V.SUNDARA RAJAN & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 26/04/2000

BENCH:
S.S.Ahamad, Y.K.Sabharwal

JUDGMENT:

Y.K.SABHARWAL J.

The matter concerning the pension of Central Government employees absorbed in Public Sector Undertakings has been the subject matter of examination by this Court from time to time.

In "Common Cause", A Registered Society And Ors. v. Union of India [(1987) 1 SCC 142], the grievance stressed was that certain provisions of the Commutation of Pension Rules permit Union of India to recover more than what is paid to the pensioners upon commutation and thus they sought for the issue of directions for formulating appropriate scheme rationalising the provisions relating to commutation. That petition was filed on behalf of the government servants who had commuted their pension partially. During the pendency of the matter, Union of India 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, whichever is later, and agreed to make this effective from 1st April, 1986. The Court, however, 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 1st April, 1985.

In Welfare Association of Absorbed Central Government Employees in Public Enterprises v. Union of India & Ors. [(1991) 2 SCC 265], a two Judges' Bench examined the writ petition filed on behalf of those who at the time of retirement from Government service and entering into public sector had taken the advantage of commuting the entire pension and were seeking the benefit of the judgment in the case of Common Cause (supra). It was held that the petitioners belong to a class different from those whose case was before this Court in the Common Cause case. It was noticed that the commutation does bring certain advantages to the commuttee and the class of Government officers represented by the petitioner had derived such benefits and there was no basis for the allegation that by not extending the benefit of common cause case, there has been any infringement of Article 14 of the Constitution.

In Welfare Association of Absorbed Central Government

Employees in Public Enterprises v. Union of India & Ors. and P.V.Sundara Rajan & Anr. v. B.B. Tandon & Ors. being Writ Petitions (C) Nos. 11855 of 1985 and 567 of 1995 respectively [(1996) 2 SCC 187], the relief was confined to the restoration of one-third portion of the fully commuted pension as per the decision in Common Cause case. The contention of the petitioners was that they have been denied the benefit of 'common cause' judgment, by insertion of para 4 in the impugned OM dated 5th march, 1987. They sought quashing of the said para which provided that the Central Government employees who got themselves absorbed under Central Public Sector Undertakings/Autonomous Bodies and have received/or opted to receive commuted value for one-third of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension are not entitled to any benefit under the said orders as they have ceased to be Central Government pensioners. The scope of Rule 37A of the CCS (Pension) Rules, 1972 was also examined. That Rule reads as under :-

"37-A Payment of lump sum amount to persons on absorption in or under a corporation, company or body

(1) Where a government servant referred to in Rule 37 elects the alternative of receiving the (retirement gratuity) and a lump sum amount in lieu 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-thirds of his pension."

This Court (Bench of three Judges) held that one-third portion of the pension has been commuted without any condition and two-third with the condition attached. It would be useful to reproduce para 9 of the said decision as under:

"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 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."

In respect of the earlier two Judges' Bench decision, [(1991) 2 SCC 265], it was observed that Rule 37A was not brought to the notice of the Court and that the contention that the petitioners on commuting their pension in full cease to be Central Government pensioners was too broad to be accepted in the absence of any Statute or the Rule. Under these circumstances, it was held that the petitioners are entitled to the benefits as given in "Common Cause" case so far as it related to restoration of one third of the commuted pension and consequently, para 4 of OM dated 5th March, 1987 was quashed.

Contempt Petition No. 530 of 1997 in Writ Petition (C) No. 11855 of 1985 was filed with the grievance that the Government construing the aforesaid judgment literally restored one-third of the commuted pension and denied all other attendant benefits as made available to the other Central Government pensioners. By order dated 1st May, 1998 in Welfare Association of Absorbed Central Government Employees in Public Enterprises & Anr. v. Arvind Verma & Ors. [AIR 1998 SC 2862], this Court held that the petitioners have to be treated at par with the Central Government pensioners and the earlier decision had to be given effect to in letter and spirit which means that the restoration of pension must be with attendant benefits as given to the Central Government pensioners. The Government, it was held, was liable to restore not only the pension but also all attendant benefits. Noticing, however, that there was some genuine doubt on the part of the respondents in construing and giving effect to the judgment of this Court and, therefore, there was no contempt, the Government was directed to comply with the judgment within three months and the contempt petition was thus disposed of.

In purported implementation of the aforesaid order dated 1st May, 1988, the Central Government issued a circular dated 14th July, 1998. This led to filing of yet another contempt petition (Contempt Petition (Civil) No. 255 of 1999). By order dated 6th September, 1999, while observing that no case for contempt is made out, this Court directed that the contempt petitions be treated as applications for clarification.

Under aforesaid circumstances, contempt petitions have been registered as interlocutory applications. One Lt. Col. B.R. Malhotra (Retired) has also been impleaded as one of the applicants in IA No. 4/99. He had commuted 100% pension and complains of discrimination by government against 100% commutees. Writ Petitions(C) Nos. 345 and 576 of 1999 have also been filed by the absorbed government employees who had commuted 100% pension.

One of main grievance urged in the applications is 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 has been claimed that the benefit is to be calculated at applicable rates on the amount of pension including the amount of commuted pension but these benefits have been restored to the petitioners only partly

at the notified rates on one-third of the notional pension. It has been submitted that they are at par with other Central Government pensioners.

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; "

We may also reproduce Rule 55-A :-

" 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"

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 absorbees 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.

The parity claimed by Lt.Col. Malhotra and other absorbees 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 Ors. v. V.S. Balakrishnan and Ors. [(1994) Suppl. 3 SCC 204] on which reliance was placed by Mr. Gopal Subramaniam, 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.

The interlocutory applications and the writ petitions are disposed of in the above terms leaving the parties to bear their own costs.