

CASE NO.:
Appeal (civil) 5269 of 2006

PETITIONER:
Accountant General of Orissa and Anr

RESPONDENT:
R. Ramamurty and Anr

DATE OF JUDGMENT: 29/11/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) Nos. 21647-648 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in these appeals is to a judgment rendered by a Division Bench of the Andhra Pradesh High Court in Writ Petition No.8532 of 2003. The said writ petition had been filed by the appellants questioning correctness of the decision rendered by the Central Administrative Tribunal, Hyderabad Bench (in short the 'CAT') in O.A.No. 1345 of 2001. The basic issue which arose for consideration in the writ petition was "what is the mode of calculating of restoration of pension in respect of employees covered by Rule 37A of CCS (Pension) Rules, 1972 (in short the 'Rules'). According to the appellants, a conjoint reading of Rules 37 and 37A as operated upto 31.3.1995 has not been kept in view. The High Court modified the order of the CAT and held that in a case where an employee had commuted minimum permissible pension i.e. 1/3 and even where 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.

The High Court arrived at the aforesaid conclusion after considering Rules 37 and 37A.

Challenge in these appeals is on the ground that the High Court was not correct in calculating the commuted amount of pension to be restorable pension without taking into consideration the relevant pension rules and the Office Memorandum No.4/59/97-P&PW(D) dated 14.7.1998, Office Memorandum No.2/1/87-PIC-1 dated 16.4.1987 and Office Memorandum No.45/86/97-P&PW(A) Part II dated 27.10.1997.

According to the appellants, these Memoranda's laid down the tables according to which the computation has to be arrived at as issued by the Department of Pension.

Learned counsel for the respondents on the other hand supported the judgment in question.

Rules 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 owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits which he may have elected, or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Central Government applicable to him.

EXPLANATION: Date of absorption shall be:

(i) in case of Government employee joins a Corporation or a company or body on immediate absorption basis the date on which he actually joins that corporation or company or body;

(ii) in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government the date from which his unqualified resignation is accepted by the Government.

(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Governments / Union Territory Administrations or under the joint control of two or more State Government/Union Territory Administration.

(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive pro rata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION: Body means autonomous body or statutory body:-

RULE 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 computed value of one-third of his pension as may be admissible to him in accordance with the provisions of the Civil Pensions (Commutation) Rules [now Central Civil Services (Commutation of Pension) Rules, 1981]; 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."

The respective stand have to be considered in the light of this Court's decision in P.V. Sundara Rajan v. Union of India (2000 (4) SCC 469). In para 11 it has been noted as follows:

"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 insofar 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 (1987 (1) SCC 142). In this respect, it would also be useful to notice that "pension" as defined in Central Civil Services (Pension) Rules, 1972 does not include dearness relief. Rule 3(1)(o) reads as under:

"3(1)(o) 'pension' includes gratuity except when the term pension is used in contradistinction to gratuity, but does not include dearness relief."

Further, in Paragraphs 12 and 13 it has been observed as follows:

12. We may also reproduce Rule 55-A:

"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"

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 a part of pension has to be paid in full insofar as those who have commuted one-third pension."

In view of what has been stated in the said case, more particularly in the quoted paragraphs, there is no substance in the appeals which we accordingly dismiss. No costs.