

CENTRAL ADMINISTRATIVE TRIBUNAL CHANDIGARH BENCH

Order Sheet

Item no.: 4
O.A./746/2024 (CHANDIGARH)
[COMMUTATION]
[SENIOR CITIZEN]
With
M.A./1684/2024
Court No.: 2

No of Adjournment: 5

Order Dated: 29/08/2024

KRISHNA DEVI
Vs
DEPARTMENT OF TELECOMMUNICATION

For Applicant(s) Advocate : SH. SANJAY KAUL

For Respondent(s) Advocate : SH. SANJAY GOYAL, SR. CGSC, MS. NEERU CHADHA

Order of The Tribunal

1. This Original Application is filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief

- I. Quash communications dated 16.05.2024, 31.05.2024, 13.06.2024 and 11.07.2024 (Annexure A-1 Colly) issued to applicant No. 1,3,5,6, 7 and 8 vide which the respondent No.2 has rejected the request of applicants by relying upon Rule 10 A of Central Civil Services (Commutation of Pension) Rules, 1981 and have stated that commutation amount is due for restoration only after completion of fifteen years, being contrary to the interim directions granted in different CWP's by Hon'ble Punjab and Haryana High Court.
- II. Quash Rule 10-A of the CCS Commutation of Pension) Rules, 1981 (Annexure A-4) which provides for the restoration of

commuted portion of pension after a period of 15 years instead of 11 years and 05 months, even though the recovery of commuted portion of pension along with interest thereon per annum stands fully recovered, consequently, to hold the same to be illegal and arbitrary being ultra-vires of the provisions of the Constitution of India as well as on the ground that the same is causing undue enrichment to the State.

- III. Quash action of the respondents whereby they are making recovery of Commuted Value of Pension (CVP) arbitrarily, illegally and in excess of what was to be recovered as it stood recovered in full in 11 years 5 months, yet the respondents are continuing the recovery, which and same cannot be sustained in the eyes of law.
- IV. Direct the respondents to stop recovery from the applicants and to refund the excess recovery already made of CVP amount of the applicants with interest @ 12% per annum from the date the recovery of excess amount was started to the actual date of refund.

2. The applicants are also seeking following interim relief:

- I. During the pendency of the Original application, it is prayed that further recovery of the commuted value of pension from applicants may kindly be stayed in the interest of justice as has been done in similar cases by the Hon'ble High Court of Punjab and Haryana, wherein the clear and specific directions have been given to stay recovery, who have completed 10 years of retirement in orders dated 30.05.2024 and 31.05.2024.

3. From the aforesaid, it is evident that the applicants have challenged the communications dated 16.05.2024, 31.05.2024,

13.06.2024 and 11.07.2024 thereby rejecting their request and seeking quashment of Rule 10 (A) of CCS (Commutation of Pension) Rules, 1981.

4. We have heard learned counsel for the applicants and perused the material available on file. The brief facts are that the applicants were working on different posts like Sr. TOA (Grade-IV), Phone Mechanic, Sr. TOA (P), Sr. TOA (Grade-III) etc. in BSNL Department working under different SSA of respondent No. 3. They have retired during the period of year 2010 to 2013. The applicants after retiring on superannuation are receiving monthly pension under the provisions of CCS (Pension) Rules, 1972. The provisions of Central Civil Services (Commutation of Pension) Rules, 1981 are applied to the commutation of pension as well as with regard to the commuted value of pension and restoration of commuted pension on the expiry of period of commutation. It has been pleaded that the government servant, who has retired from the service can commute a portion not exceeding 40% of their monthly pension. The commuted portion of pension shall get restored after 15 years from the month following the month of commuted value of pension (CVP). The pension of the pensioner is proportionately reduced to the extent of the commuted portion from the date of receipt of lump sum commuted value by the pensioner.

5. The applicants have further pleaded that it has come to their notice that amount of commuted value of pension could be recovered in a period of 10 years, whereas, it has been recovered in a period of 15 years (i.e 180 installments). It is further submitted that the same got recovered in a period of 10 years and 8 months (i.e. 120 installments), therefore, the subsequent recovery of commuted value of pension from the monthly pension, amounts to

unjust enrichment of the State at the cost of applicants/pensioners. The recovery of commuted value of pension is still going on, therefore, the same is required to be stayed.

6. The learned counsel for the applicants has vehemently prayed for interim relief. He has placed reliance on the various orders passed by the Hon'ble Punjab and Haryana High Court in the identical matters in CWP No. 14003/2024 and 9426/2023 preferred by petitioners/employees of State of Punjab and Haryana.

7. The respondents have been granted ample opportunities to file reply to the claim of interim relief i.e. seeking stay of recovery of commuted value of pension. No reply except on behalf of respondents No. 1 and 2 has been filed. Since, the issue involved in the instant O.A is of wider financial implications on both the sides, therefore, the respondents No. 3 to 9 was granted last opportunity to file reply, however, there is no response. Respondent No. 1 and 2 filed reply objecting the claim that there is no error on the part of answering respondents in recovering commuted amount from the pension of the applicants. It has also been contended that the recovery made by the respondents is not at all excess, rather it is the amount, which the applicants are liable to pay as they have commuted the pension at the time of their retirement. The commuted portion of the pension can be restored after the expiry of 15 years from the date of receipt of commuted value of pension and opposed the stay of recovery of commuted value of pension.

8. The learned counsel for the applicants has placed on record the copy of order dated 03.05.2023 passed by the Hon'ble Punjab and Haryana High Court in CWP No. 9426/2023, wherein, the petitioners have challenged the provisions of Sub Rule (2) of Rule

11.1 of the Punjab Civil Services Rules, Vol. II, which provides restoration of commuted portion of pension after a period of 15 years instead of 11.5 years.

9. Apart from the aforesaid, in the similar issue, the Principal Bench, of AFT, Delhi vide order dated 22.07.2024 have placed reliance on order of Hon'ble Punjab and Haryana High Court dated 03.05.2023 in CWP No. 9426/2023 has stayed the further recovery from the pension of the applicants (therein). The Hon'ble High Court of Kerala at Earnakulam vide order dated 08.08.2024 has also in the identical matter granted the stay of recovery towards commuted value of pension till the final decision is taken. Moreover, the colleagues of the applicants in Haryana Circle have also got the order from the Hon'ble Punjab and Haryana High Court in CWP No. 1863/2024, wherein the Hon'ble High Court vide order dated 05.08.2024 stayed the further recovery qua the petitioners (therein), who have completed 10 years of retirement or above.

10. We have also noticed from the records that in the compliance of various orders passed by the Hon'ble Punjab and Haryana High Court, the Finance Department of Haryana vide communication dated 16.07.2024 decided to stop the recovery of commuted value of pension till the vacation of stay orders, from **all the pensioners** (including petitioners), who has completed 10 years of retirement or above.

11. Similarly, the Department of Finance, Government of Punjab has also issued the direction that "in order to avoid further litigation in the matter, State Government has now considered the issue and decided to stop the recovery of Commuted Value of Pension till the

vacation of Stay Orders from all pensioners (including Petitioners) of State Government, who have completed 10 years of retirement or above.”

12. We have given our thoughtful consideration to the facts of the case and heard learned counsel for both the sides. The applicants herein are also entitled for the same relief as has been granted by the jurisdictional High Court of Punjab and Haryana, following the principal of parity and being homogeneous class. The relevant rules being in pari materia to that case, the prayer for grant of interim relief is liable to be accepted.

13. The prima facie case of interim relief is made out. The balance of convenience is in favour of the applicants. There shall be stay on further recovery of commuted value of pension from the applicants subject to the fact that the applicants have completed 10 years 8 months of retirement. The respondents are directed to file reply in O.A within a period of three weeks.

14. List the matter on 10.10.2024.

Rashmi Saxena Sahni
Member (A)

Suresh Kumar Batra
Member (J)

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