

(2019) 01 DEL CK 0178

Delhi High Court

Case No: Civil Writ Petition No. 1222 Of 2015

Forum Of Retired IPS Officers
(Foripso)

APPELLANT

Vs

Union Of India And Another

RESPONDENT

Date of Decision: Jan. 17, 2019

Acts Referred:

- Constitution of India, 1950 - Article 32, 226
- Central Civil Services (Commutation of Pension) Rules, 1981 - Rule 10A
- All India Services (Conditions of Service-Residuary Matters) Rules, 1980 - Rule 2

Citation: (2019) 2 AD(Delhi) 581

Hon'ble Judges: Sanjiv Khanna, J; Chander Shekhar, J

Bench: Division Bench

Advocate: Ashok Dhamija, Alabhya Dhamija, Ashwini Bhardwaj

Final Decision: Dismissed

Judgement

.....

Sanjiv Khanna, J",.....

1. The petitioner, Forum of Retired Indian Police Service (IPS) Officers, is a Non-Government Origination and a non-political forum based, established".....

and registered as a society under the provisions of Societies Registration Act, 1860. Members of the petitioner society are primarily retired Indian".....

police officers including senior citizens aged ninety years or more. Petitioner society, it is stated, is primarily engaged in welfare and getting justice to".....

pensioners.....

2. The petitioner vide the present Writ Petition under Article 226 of the Constitution of India has sought following reliefs:-,,,,,

â€œ(a) Issue an appropriate writ, order or direction, striking down Rule 10A of the Central Civil Services (Commutation of Pension) Rules, 1981" ,,,,,

which lays down rule for recovery of the amount of commuted pension for 15 years, and directing the Respondents to reduce the recovery period of" ,,,,,

the amount of commuted pension for pensioners who retired from the All India Services or from the Central Civil Services-,,,,,

â€¢ from the existing recover period of 15 years to the actual recovery period of the commuted amount [i.e., the â€œyears of purchaseâ€ (without" ,,,,,

interest)] with an addition of two years thereto as held by Honâ€™ble Supreme Court in the case of Common Cause v. Union of India, (1987) 1 SCC" ,,,,,

142:,,,,,

â€¢ OR, alternatively, from the existing recovery period of 15 years to the actual recovery period of the commuted amount [i.e., the â€œyears of" ,,,,,

purchaseâ€ (without interest)] with an addition of the actual period to recover the interest on such commuted amount in accordance with the principle,,,,,

for the recovery of interest levied on Government advances made to Government servants; and directing the Respondents to refund the excess,,,,,

recovery of amount of commuted pension made from the said pensioners to them along with interest. ,,,,,

(b) Pass such other and further order or orders as this Honâ€™ble Court may deem fit and proper.â€ ,,,,,

3. The petitioner society had filed Writ Petition (Civil) No. 17/2015 before the Supreme Court of India for similar reliefs, which was allowed to be" ,,,,,

withdrawn with liberty to approach the appropriate High Court vide order dated 19th January, 2015. In the aforesaid background and noticing that the" ,,,,,

petitioner society has espoused cause of retired pensioners, who would find it difficult to approach the High Courts for individual reliefs, we are not" ,,,,,

inclined to dismiss the present Writ Petition on the ground of locus standi. Petitioner society has filed the present petition for and on behalf of its ,,,,,

members i.e. the retired pensioners. Accordingly, we reject the contention of the respondents that the present writ petition should be dismissed as it is" ,,,,,

a public interest litigation relating to service matters. ,,,,,

4. In order to appreciate the controversy and the issue raised, a brief prologue is required. Prior to 1st April, 1985, commuted portion of pension was" ,,,,,

not restored during the life time of the pensioner. Common Cause, a registered society and three Government servants, had filed a writ petition before" ,,,,,

the Supreme Court under Article 32 of the Constitution for striking down certain provisions of Central Civil Services (Commutation of Pension) Rules," ,,,,,

1981 and other commutation of pension rules applicable to civilian and defence pensioners. Writ Petition Nos. 3958-61/1983 were decided vide,,,,,

decision reported as Common Cause a registered society and Ors. v. Union of India (1987) 1 SCC 142, by taking on record the decision taken by the" ,,,,,

Central Government communicated to the Attorney General vide letter dated 20 th March, 1986. Relevant portion of this letter reads as under:-" ,,,,,

â€œI am glad to inform you that government have taken a decision in the matter of recovery from pension towards commuted value of pension. The,,,,,

decision is as follows:,,,,,

(i) Recovery from pension payable every month towards commuted value of pension will stop on the completion of 15 years from the date of,,,,,

retirement on superannuation or on the pensioner completing the age of 70 years, whichever is later." ,,,,,

(ii) The formulation will apply to all civilian pensioners in whose case the age of retirement on superannuation is 58 years and the personnel of Armed,,,,,

Forces in whose case the retirement age varies in accordance with the colour service prescribed for the rank (attaining the age of 37/38 years or,,,,,

more).,,,,,

(iii) Government have taken this decision as an act of goodwill to pensioners and to extend to them some measure of relief in the evening of their lives.

It is sincerely believed that there will be no further demand on this issue and that the pensioners will accept the decision of the government without,,,,,

dissent or reservation.

(iv) The decision will take effect prospectively (from April 1, 1986). A distinction has been made in the case of defence employees on the ground that" ,,,,,

retirement in their case is at an early age and merely with lapse of a period of fifteen years full pension could not be restored. It has also been pointed,,,,,

out that the defence personnel receive in consideration of the exigencies of the service a higher rate of pension as compared to civilian employees.â€¸,,,,,

Supreme Court in this decision had made observations which we have subsequently referred to and quoted for it is germane to the issue and,,,,,

contentions raised.,,,,,,

5. After the aforesaid decision, Rule 10A was inserted in the Central Civil Services (Commutation of Pension) Rules, 1981, which reads as under:-" ,,,,,

â€œ10.A. Restoration of Commuted Pension-The Commuted amount of pension shall be restored on completion of fifteen years from the date the,,,,,

reduction of pension on account of commutation becomes operative in accordance with rule 6:,,,,,

Provided that when the commutation amount was paid on more than one occasion on account of upward revision of pension, the respective commuted" ,,,,,

amount of pension shall be restored on completion of fifteen years from the respective date(s).â€¸,,,,,

In terms of Rule 10A, a pensioner is entitled to restoration of full pension after 15 years from the date of reduction of pension on account of" ,,,,,

commutation. If commutation amount has been granted on more than one occasion, it is to be restored on completion of 15 years from the respective" ,,,,,

date(s).,,,,,

6. There is no specific provision for restoration of commuted pension in the All India Services (Commutation of Pension) Regulations, 1959. However," ,,,,,

provisions for restoration of commuted pension in terms of Rule 10A after fifteen years appear to have been made applicable in view of Rule 2 of All,,,,,

India Services (Conditions of Service-Residuary Matters) Rules, 1980." ,,,,,

7. The petitioner claims that restoration of commutation of full pension after 15 years is arbitrary and lacks a mathematical basis and foundation.,,,,,,

Retirement age for central government employees was raised to 60 years with effect from 1st May, 1998. Commutation factor in view of increase in" ,,,,,

age of retirement would stand reduced from 10.46 applicable at the age of 59 years to 9.81 applicable at the age of 60 years. As per the new,,,,,

commutation table made effective from 2nd September, 2008 the commutation factor has been downgraded from 9.81 to 8.194 for 60 years." ,,,,,

Notwithstanding the aforesaid reduction in the commutation factor, the period for restoration of commuted pension has been retained and continues to",,,,,

be 15 years. Secondly, permissible commutation was increased from 33% of the basic pension to 40% of the basic pension. Thirdly, the respondents",,,,,

for the purpose of commutation i.e. for quantifying the percentage of amount to be paid on commutation, had based the table on interest payable @",,,,,

4.75% per annum, which interest was increased/enhanced to 8% per annum in the new table for the retirees with effect from 2nd September, 2008.",,,,,

Fourthly, the commutation provisions have not kept up with time as the life expectancy has increased from 57 years in 1987 to more than 68.5 years at",,,,,

present. Average life expectancy for the relevant group, i.e. the government servants as per WHO statistics is 77 years. Government servants have a",,,,,

much higher life expectancy than the national average. Further the commuted pension is paid to retirees after they clear the medical,,,,,

examination/screening which reduces the risk factor of an early death. In support of the contentions, reference was made to Chapter 136 of the report",,,,,

of the Fifth Central Pay Commission, which had recommended reduction of the period of recovery of commuted pension to 12 years from 15 years.",,,,,

This recommendation, it was argued, was unjustifiably and arbitrarily not accepted by the Central Government, though some State Governments like",,,,,

Kerala, Madhya Pradesh, Orissa and Punjab had permitted restoration of full pension after 12 years of commutation.",,,,,

8. In order to explain the grievance raised, it would be most appropriate to refer to the arithmetical calculations and computations made by the",,,,,

petitioner challenging the period of 15 years for restoration of commutation of pension. Relevant portion reads as under:-,,,,,

“Retirees between 1986 and 1995,,,,,

The age of retirement during this period was 58 years. This category of retirees have all completed the prescribed period of 15 years for restoration of,,,,,

pension. Since 1.3.1971 and until 31.12.2005, the Commutation Factor (CF) was 10.46 for the 59 year old (age next birth day) retirees and the",,,,,

officially prescribed rate of interest was 4.75% p.a. Commutation allowed was 1/3rd of the basic pay. The basic pension of Secretaries/DGs who,,,,,

superannuated between 1.1.86 and 31.12.95 at the top of their pay scale (Rs.8,000) was fixed at Rs.4,000 and the commuted portion of their pension",,,,,

was Rs.1,67,318 with a deduction of Rs.1,333 per month. The principal amount of Rs.1,67,318 was fully recovered in 10.46 years [$10.46 \times 12 \times 1333 = 1,67,318$].",,,,,

1333=1,67,318].",,,,,

If we consider the prescribed interest rate of 4.75% p.a. as simple interest, the total interest works out to Rs.36,250. This is recoverable in 2.27",,,,,

years [$36250/1333=27.2$ months or 2.27 years]. Thus, total recovery period of the commuted amount works out to $10.46+2.27=12.73$ years. Even after",,,,,

full recovery, the pensioner kept on paying for $15-12.73=2.27$ years. Thus, excess recovery $=2.27 \times 12 \times 1333=Rs.36,311$ ".",,,,,

If we consider the prescribed interest rate of 4.75% p.a. as compound interest, the total interest works out to Rs.54,750. This is recoverable in 3.42",,,,,

years [$54750/1333=41.07$ months or 3.42 years]. Thus, total recovery period of the commuted amount is $=10.46+3.42=13.88$ years. Even after full",,,,,

recovery, the pensioner kept on paying for $15-13.88=1.12$ years.",,,,,

Thus, excess recovery $=1.12 \times 12 \times 1333=Rs.17,916$ ".",,,,,

Retirees between 1996 and 2005,,,,,

The age of retirement was raised to 60 years after the 5th Central Pay Commission (CPC). Permissible commutation was also raised to 40% of the,,,,,

basic pay. Those who retired between 1996 and 1998 have already completed the prescribed period of 15 years for restoration of pension. Since,,,,,

1.3.1971 and until 31.12.2005, the Commutation Factor (CF) was 9.81 for the 61 year old (age next birth day) retirees and the officially prescribed",,,,,

rate of interest was 4.75% p.a. Secretaries/DGs who superannuated between 1.1.96 and 31.12.05 at the top of their pay scale (Rs.26,000), were",,,,,

sanctioned commuted pension amount of Rs.9,18,216 with a deduction of Rs.7,800 per month. The principal amount of Rs.9,18,216 is fully recovered",,,,,

in 9.81 years [$9.81 \times 12 \times 7800=9,18,216$].",,,,,

If we consider the prescribed interest rate of 4.75% p.a. as simple interest, the total interest works out to Rs.2,12,114. This is recoverable in 2.27",,,,,

years [$212114/7800=27.2$ months or 2.27 years]. Thus, total recovery period of the commuted amount works out to $9.81 + 2.27 = 12.08$ years. Even",,,,,

after full recovery, the pensioner keeps on paying for $15 - 12.08 = 2.92$ years. Thus, excess recovery = $2.92 \times 12 \times 7800 = \text{Rs.}2,73,312$." ,,,,

If we consider the prescribed interest rate of 4.75% p.a. as compound interest, the total interest works out to Rs.3,20,367. This is recoverable in" ,,,,

3.42 years [$320367/7800=41.07$ months or 3.42 years]. Thus, total recovery period of the commuted amount is = $9.81 + 3.42 = 13.23$ years. Even after" ,,,,

full recovery, the pensioner keeps on paying for 15 $\hat{=}$ $13.23 = 1.77$ years. Thus, excess recovery = $1.77 \times 12 \times 7800 = \text{Rs.}1,65,672$." ,,,,

Retirees from 2006 Onwards,,,,,

The age of retirement continues to be 60 years. After the 6th CPC, since 1.1.06, the Commutation Factor (CF) has been downgraded from 9.81 to" ,,,,

8.194 for the 61 year old (age next birth day) retirees, thereby reducing the commuted amount by a whopping 16.5%" ,,,,

!!! On top of that, the prescribed rate of interest has been enhanced from 4.75% to 8% p.a. which is an astronomical jump of 68% even in this low" ,,,,

interest regime!!! The basic pension of Secretaries/DGs who superannuated on or after 1.1.06 at the top of their pay scale (Rs.80,000) was fixed at" ,,,,

Rs.40,000. Their commuted pension amount is Rs.15,73,248 with a deduction of Rs.16,000 per month. As per the old CF of 9.81, they would have" ,,,,

been entitled to a commuted sum of Rs.18,83,520. Thus, there is a huge drop of Rs.3,10,272!!! The currently sanctioned principal amount of" ,,,,

Rs.15,73,248 is fully recovered in 8.194 years [$8.194 \times 12 \times 16000 = 15,73,248$]." ,,,,

If we consider the prescribed interest rate of 8% p.a. as simple interest, the total interest works out to Rs.5,10,417. This is recoverable in 2.66" ,,,,

years [$510417/16000 = 31.9$ months or 2.66 years]. Thus, total recovery period of the commuted amount is = $8.194 + 2.66 = 10.85$ years. Even after" ,,,,

full recovery, the pensioner keeps on paying for 15 $\hat{=}$ $10.85 = 4.15$ years. Thus, excess recovery = $4.15 \times 12 \times 16000 = \text{Rs.}7,96,800$." ,,,,

If we consider the prescribed interest rate of 8% p.a. as compound interest, the total interest works out to Rs.9,93,007. This is recoverable in 5.17" ,,,,

years [$993007/16000 = 62.06$ months or 5.17 years]. Thus, total recovery period of the commuted amount is = $8.194 + 5.17 = 13.37$ years. Even after" ,,,,

full recovery, the pensioner keeps on paying for 15 $\hat{=}$ $13.37 = 1.63$ years. Thus, excess recovery = $1.63 \times 12 \times 16000 = \text{Rs.}3,12,960$." ,,,,

The above calculations are only illustrative, applicable to retired Secretary/DG rank officers who retired on or after 1.1.86 at the top of their pay scale",,,,,

and their pension was fixed at the maximum. Calculations can be made similarly for other cases and the results would tally.,,,,,

I may point out that the interest charged on various Govt advances like House Building Advance, Car Advance, Festival Advance, Marriage Advance",,,,,

Age next

Birthday","Commutation

value

expressed as

number of

year's

purchase","Age next

Birthday","Commutation

value

Expressed as

number Of

year's

purchase","Age next

Birthday","Commutation

value

expressed as

number of

year's

purchase

20,9.188,41,9.075,62,8.093

21,9.187 26,42,9.059,63,7.982

22,9.186,43,9.040,64,7.862

23,9.185,44,9.019,65,7.731

24,9.184,45,8.996,66,7.591

25,9.183,46,8.971,67,7.431

,9.182,47,8.943,68,7.262

27,9.180,48,8.913,69,7.083

28,9.178,49,8.881,70,6.897

29,9.176,50,8.846,71,6.703

30,9.173,51,8.808,72,6.502

31,9.169,52,8.768,73,6.296

32,9.164,53,8.724,74,6.085

33,9.159,54,8.678,75,5.872

34,9.152,55,8.627,76,5.657

35,9.145,56,8.572,77,5.443

36,9.136,57,8.512,78,5.229

37,9.126,58,8.446,79,5.018

38,9.116,59,8.371,80,4.812

39,9.103,60,8.287,81,4.611

40,9.090,61,8.194,,

Age of Pensioner,"Additional quantum of pension" ,,,,

From 80 years to less than 85 years,20% of basic pension,,,,

From 85 years to less than 90 years,30% of basic pension,,,,

From 90 years to less than 95 years,40% of basic pension,,,,

From 95 years to less than 100 years,50% of basic pension,,,,

100 years or more,100% of basic pension,,,,

and cumbersome exercise which the Court would not like to step into, undertake and even interfere unless there is complete arbitrariness and" ,,,,,

discrimination that is ex-facie apparent. Courts on perceived wisdom would not declare the table as flawed, acting and preforming the role of an" ,,,,,

actuarial. Every government, including the Central Government, has to take into consideration their available resources and funds, for any increase and",,,,,

enhancement in pension requires money which may well have to be diverted from other schemes or would result in reduction of funds available for,,,,,

poor, the marginalized and needy.",,,,,

17. Pension, commutation of pension, etc. are policy matters, which are examined and decided on the basis of recommendations of the Pay",,,,,

Commissions by the authorities. No doubt, an executive order or policy decision is not beyond the scope of judicial review but the Courts do not go into",,,,,

the nitty gritty of the policy to substitute the table by making various computations and calculations, which are possible by different formulas or by",,,,,

applying a particular formula. Broadly, policy decisions can be subjected to judicial review when they are unconstitutional being de hors the provisions",,,,,

of the Act and the Regulations, if the delegatee has acted beyond its power of delegation and if the executive policy is contrary to the statutory or",,,,,

larger policy in matters of price fixation, pay fixation, etc. Courts would not interfere unless formula or method adopted is per se and ex facie",,,,,

irrational, arbitrary or can be struck down on the four grounds mentioned above.",,,,,

18. These aspects were kept in mind and highlighted by the Supreme in Common Cause (supra) when they rejected the contention that the commuted,,,,,

portion of pension would be ordinarily recovered within 12 years, and therefore, there was no justification for fixing period at 15 years. The Supreme",,,,,

Court observed that commutation brings about its advantages as a lump sum amount is received, which amount would have otherwise been paid over",,,,,

a period of time during a person's life-time. The Supreme Court had listed out two clear advantages, namely, availability of the lump sum as",,,,,

pension and the risk factor. We may add another advantage as the commutation of pension is presently untaxed under the Income Tax Act, 1961. This",,,,,

considerably adds to the monetary benefit accruing to the pensioners. Further, the rate of return on the funds invested by the pensioners could vary",,,,,

and depends upon market driven rate of interest. There are schemes for senior citizens in which the rate of returns is high. Computations made by the,,,,,

petitioner do not refer to the return by way of interest that the pensioner would earn. In the aforesaid background the Supreme Court had specifically,,,,,

rejected similar argument observing that while fixing the commutation period, the Court should not be guided or go by the example of life insurance." ,,,,,

The Supreme Court had made the following observations on the said aspects in Common Cause (supra) :-,,,,,

“9. In dealing with a matter of this nature, it is not appropriate to be guided by the example of life insurance; equally unjust it would be to adopt the",,,,,

interest basis. On the other hand, the conclusion should be evolved by relating it to the “years-of-purchase” basis. An addition of two years to the",,,,,

period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15-year rule. That is more or less the basis which,,,,,

appears to be equitable. It may be that this would give rise to an additional burden on the exchequer but it would not be heavy and after all it would,,,,,

bring some relief to those who have served the cause of the nation at great sacrifice. We are, therefore, of the view that no separate period need be",,,,,

fixed for the armed forces personnel and they should also be entitled to restoration of the commuted portion of the pension on the expiry of 15 years,,,,,

as is conceded in the case of civil pensioners. And for them too, the effective date should be from April 1, 1985.” ,,,,,

19. We would want most favourable terms for the pensioners, but there are restraints and the field experts and not the Court is the best judge to",,,,,

evaluate on different and somewhat conflicting factors that have to be taken into consideration. This is not to say that courts do not have jurisdiction,,,,,

and aggrieved pensioners/employees if they are unjustly treated cannot be granted relief, but for such interference the Court should come to a firm",,,,,

conclusion that a grave error had crept in which makes the court’s interference absolute to do justice. Interference in such matter can result in,,,,,

creating all kinds of problems and cascading effects as these are highly complexed and difficult matters requiring balancing of various competing,,,,,

interests, which would to some extent include financial resources available." ,,,,,

20. In view of the explanation offered by the respondents, we do not think that the Court would be justified in interfering with the old and the new",,,,,

commutation table. Accordingly, the writ petition has no merit and is dismissed without any order as to costs.",,,,,