

1. Commutation of Pension
2. Pmt. absorption.

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
RAILWAY BOARD**

.....

RBE No. 79/2002

No. F(E)III/99/PN1/32.

NEW DELHI

Dated: 5.06.2002

The General Managers & FA&CAOs,
All Zonal Railways and Production Units.

Sub: Judgement dated 27.2.2002 of the High Court of Judicature at Madras dismissing the W.P. No. 15333/99 filed by Shri P.M. Joseph against judgement dt. 7.6.99 of CAT/Chennai -----100% commutation of pension on permanent absorption, option once exercised is final.

Ref: Board's letter of even number dt. 15.10.99.

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A copy of judgement dt. 27.2.2002 of the High Court of Judicature at Madras dismissing the W.P. No. 15333/99 filed by Shri P.M. Joseph against the judgement dt. 7.6.99 of CAT/Chennai is circulated herewith for information and guidance. It is desired that similar cases if any, being contested by your Railway may be contested/finalised on the same lines.


(S. SREERAM)
Dy. Director Finance (Estt.) III.,
Railway Board.

DA: As above.

Copy to:

EDPC-I, DPC, EDV(E), DS(D), EDE(Res), EDE, JS, JS(G), JS(E),
E(G), ERB-III, E(O)I, II, III & (CC), PC-III, IV, V, E(P&A)I, II & ERB-I.

Copy to:

Smt. Gangamurthy, Director (Pension),
Deptt. of Pension & Pensioners' Welfare,
3rd Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi.

In the High Court of Judicature at Madras

Dated : 27.02.2002

Coram:

The Honourable Mr. Justice R. Jayasinha Babu
and

The Honourable Mr. Justice F.M. Ibrahim Kalifulla

Writ Petition No.15333 of 1999

Joseph

Petitioner

Vs.

The Union of India, rep. by
Secretary (E) Railway Board
Ministry of Railways
Bhavan,
Delhi U 110 001

The Union of India, rep. by
Secretary (Expenditure)
Ministry of Finance,
North Block,
Delhi U 110 001

Director (P.W.),
Department of Pension
Pensioners Welfare
Floor, Lok Nayak Bhawan,
Delhi U 110 003

Comptroller and Auditor
General of India,
Bhahadur Shah Zafar Marg,
Delhi U 110 002

General Manager,
Southern Railway,
Chennai U 600 003

The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai U 600 104

Respondents.

Petition preferred under Article 226 of the Constitution of India
for issuance of writ of certiorarified mandamus calling for the
records of the Order of the 6th respondent in O.A.No.482/99 dated 7.6.1999,
and the same and direct the 1st respondent to issue orders permitting the
petitioner to revise petitioner's earlier option to commute petitioner's
pension to that of commutation of one third pension and consequently,
pay the settlement dues from the revised date of commutation.

For petitioner : Mr. Vijay Narayan
For respondents : Mrs. Aparna Nandakumar
1 and 3
For respondents : No appearance
2 to 6
For 6th respondent: Tribunal

O R D E R

(Order of the Court was made by R. Jayasinha Babu, J.)

Petitioner is a pensioner, who had the benefit of commuting 10 0% of his pension at the time he was absorbed in a public service undertaking with effect from 1.3.1988. The order issued by the Government of India, Ministry of Railways, the writ petitioner having been an employee of the Railways at the time while sanctioning the permanent absorption in IRCON, contain the following condition regarding retirement in IRCON. Retirement Benefits:- He will be entitled to retirement benefits in respect of his railway service in terms of retirement OM quoted above as circulated vide Board's letter No. F(E)III/86/PN-1/5 dated 16.4.1986. Retirement benefits which as to IRCON would be disbursable to the officer in addition to his pay in IRCON from the date of his permanent absorption, provided the officer gives an undertaking that in the event of services of the officer terminating at the instance of either IRCON or the officer within a period of two years of either date of his retirement from the Government of India or the permission of Government of India would be obtained by the officer before he takes any private employment."

2. In addition to that condition, it was also stipulated in paragraph 2(i) of that order as under:

" Any further liberalisation of pension/gratuity/commutation Rules decided upon by Government of India in respect of Officers of Central Civil Service/Railway service after the permanent absorption of Shri P.M. Joseph in IRCON would not be extended"

3. It is admitted by the petitioner that he was allowed to commute not merely one-third of the pension, the ceiling up to which other Government servants were being permitted to commute their pension, but that he was also allowed to commute the remaining two-thirds. He chose to exercise the option to have the two-thirds also commuted.

3A. The petitioner filed an original petition before the Central Administrative Tribunal in the year 1999 claiming the benefit of the revised pension sanctioned by the Government after it received the report of the V Pay Commission. It was contended by him before the Tribunal, even as it is contended before us, that had the petitioner been made aware in the year 1988 the likely upward revision of pension in future, he would not have exercised this option, and failure to so inform him at that point of time vitiates the option exercised. Petitioner sought liberty to exercise a

fresh option and repay the amount which he had received at that point of time and, thereafter, receive pension at the revised rates. The Tribunal rejected his claim.

4. The Supreme Court, in the case of Des Raj Bhatnagar Vs. Union of India (1991) 2 SCC 266, considered the claim of a Government servant who had received 100% computation of his pension at the time of his absorption into a public service undertaking, which absorption stipulated that he would not be entitled to the benefit of revision in pension in future. The Apex Court held that persons like the petitioner therein belonged to a different class from that of other Government servants who were allowed to commute one-third of their pension, and denied any right to commute the remaining two-thirds. It was also held by the Court, "The commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in the course of his life spread over a period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation i (1) availability of a lump sum amount, and (2) the risk factor. In the present case, the petitioners had not only got one-third of their pension commuted but exercised the option of getting the entire pension commuted and in lieu thereof got a lump sum. Such persons cannot fall in the category of Central Government pensioners for the purposes of getting benefit of Liberalised Pension Rules which can be made applicable only to Central Government pensioners. It is no doubt correct that the family pension has been allowed in case of the persons like the petitioners but that does not make them entitled to get any benefit given to the pensioners on account of the Liberalised Pension Rules taking note of the fallen value of the rupee."

5. What was said in that case by the Supreme Court would apply to the facts of this case as well, although the question regarding the right, if any, of the person falling within the class considered by the Supreme Court to give a revised option was not an issue before the Court. When the facts are that the option has been exercised and the commuted amount has been received, the right of such a person to have the Liberalised Pension Rules applied having been negated by the Supreme Court, the question of permitting such a person to recall his option now and reversing the whole process which had been completed way back in the year 1988 does not arise.

6. Learned counsel for the petitioner submitted that the Supreme Court had, in the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. P.V. Sundararajan & ann. (1996) 2 S.C.C.187 held that the denial of the benefits given to the petitioners in the Common Cause Case (1987) 1 SCC 142 resulted in discrimination and, therefore, violated Articles 14 and 16 of the Constitution. The benefit, which had been recognised in the Common Cause Case (supra), was the right of a person who had commuted his pension up to one-third to have his one-third restored after a period of fifteen years. It was held by the Court that that right to have the one-third commuted portion

restored is available not only to those who had commuted only one-third, but had also commuted the remaining two-thirds.

7. The Court in that case did not consider the applicability of the Liberalised Pension Rules, as that was not the issue before the Court. The Court referred to Rule 37-A of the CCB (Pension) Rules, 1972, and held that there was a clear cut distinction between the one-third portion of pension to be commuted without any condition attached, the two-third portion of pension to be received as terminal benefits with conditions attached to it. It then observed: "It follows that so far as commutation of one-third 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. 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 the petitioners as well."

8. The Court, thus, did not hold that the commutation of the two-third with conditions attached was in any way legally infirm. The Court also did not hold that those who had received that two-third amount should have the opportunity to refund that amount, and instead, claim pension as if they had commuted only one-third instead of the whole.

9. The petitioner's claim that even the balance two-thirds, which he had already commuted, should now, after the interval of a decade and more, be treated as not having been commuted and the petitioner be treated as a person entitled to receive pension to that extent, is a claim which does not find any support from that judgment of the Apex Court.

10. Learned counsel also placed reliance on the judgment of the Apex Court in the case of State of Tamil Nadu Vs. V.S. Balakrishnan (1974 Supp (3) S.C.C.204), wherein, the Apex Court struck down a clause in a Government Order issued by the State of Tamil Nadu under which persons who had been working in the Government were allowed to be absorbed in the State Dairy Development Corporation after treating them as having retired from Government service with a right to receive pension for the period of service rendered by them in the Government, subject to the condition that any further liberalisation of Pension Rules decided by the Government, for Government employees after the permanent absorption of Government Servants in the Federation would not be extended to them. The Court held that that provision was, on the face of it, arbitrary.

11. The petitioner in this case had himself voluntarily opted to commute the remaining two-third, even though he was under no obligation to do so. Having made his choice, he cannot now, more than a decade later, seek to reverse that action on the ground that he had not been made

aware at the time the option was exercised, that, the amount of the pension would increase substantially in future by reason of revisions from time to time. Neither the petitioner, nor the Government could have forecast at that time, as to whether there would be any revision in future, and if so, the timing thereof, as also the quantum. Having made a choice with full knowledge of the condition attached, it is not possible to hold that the petitioner still has a right to undo what he had done long ago.

12. The Rules which apply to other pensioners do not permit the commutation of anything more than one-third. Petitioner had the benefit of an exception which was also not thrust on him, but regarding which he was given the option. The option having then been exercised and the petitioner having received the full amount payable on that basis at that point of time, the petitioner cannot now claim that the Government ought to have foreseen the future and warn the employee that he would be foregoing a great deal more by way of future revisions in pension, when he was offered the temptation of commuting the remaining two-third of the pension also.

13. The order issued by the Government on 27th October, 1997 by the Department of Pension and Pensioners Welfare in paragraph 7(a) reads thus:

" PENSION:- Where the Government servants on permanent absorption in public sector undertakings/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 lump sum 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."

14. The judgment of the Supreme Court reported in Welfare Association of Absorbed Central Government Employees (1996) 2 S.C.C.187 (supra) only enables the petitioner to receive one-third of the commuted pension and no more. As the petitioner has not yet become eligible to receive one-third portion, the fifteen year period not having expired from the date of commutation, the question as to whether that one-third of the amount which would become payable to him as pension at the time he received the commuted amount, would be at the old rate or as revised by applying the liberalised pension rates granted after the report of the V Pay Commission, does not require our consideration at this time.

15. The Tribunal, therefore, was not in error in rejecting the petitioner's prayer to recall his option and to exercise a fresh option now. The writ petition is, therefore, dismissed.

Index:Yes

Btr/

Sd/-

Assistant Registrar

/ True Copy /

H. Mani
7.2.2007

To
1. The Secretary (E) Railway Board
Union of India,
(Ministry of Railways)
Rail Bhavan,
New Delhi - 110 001

2. The Secretary (Expenditure)
Union of India,
Ministry of Finance,
North Block,
New Delhi - 110 001

3. The Director (P.W.),
Department of Pension
and Pensioners Welfare
3rd Floor, Lok Nayak Bhawan,
New Delhi - 110 003

4. The Comptroller and Auditor
General of India,
10, Bhahadur Shah Zafar Marg,
New Delhi - 110 002

5. The General Manager,
Southern Railway,
Park Town, Chennai - 600 003

6. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104

+ one cc to Mr. Vijaynarayan advocate on payment of charges
SR 12049

+ One cc to Mrs. Aparna Nandakumar advocate on payment of
charges SR 12044

KA

R. Jayasimha Babu, J
and
F.M. Ibrahim Kalifulla, J.

W.P.No.15333 of 1999