

PETITIONER:

"COMMON CAUSE" A REGISTERED SOCIETY AND OTHERS

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 09/12/1986

BENCH:

MISRA RANGNATH

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BHAGWATI, P.N. (CJ)

CITATION:

1987 AIR 210 1987 SCR (1) 497

1987 SCC (1) 142 JT 1986 991

1986 SCALE (2) 974

CITATOR INFO :

RF 1988 SC1407 (3)

R 1988 SC2125 (3)

D 1990 SC1228 (1)

ACT:

Central Civil Services (Commutation. of Pension) Rules, 1981-Commuted value of pension--Deduction from monthly pension-Restoration of--After completion of 15 years from date of retirement--Both for Civilian employees and Armed Forces personnel--Benefit effective from April 1, 1985.

HEADNOTE:

The Central Civil Services (Commutation of Pension) Rules, 1981 are the rules applicable to civilian employees under the Government of India. In regard to Defence personnel a similar set of regulations is in force. In the case of civilians the total amount of pension which can be commuted is upto onethird, while in the case of Defence personnel, commutation is admissible upto 43% in the case of officers and upto 45% in respect of other ranks.

In petitions under Article 32, the petitioners have asked for striking down certain provisions of the said Rules as they permit the Union to recover more than what is paid to the pensioners upon commutation and for a direction that an appropriate scheme rationalising the provisions relating to commutation be brought into force because there has been a substantial improvement in the life expectancy of the people, and since commutation portion out of the pension is ordinarily recovered within about 12 years, there is no justification for fixing the period at 15 years.

The respondent--Union of India challenged the maintainability of the petitions as also the claim of the petitioners. On the suggestion of the Court, the Union of India examined the matter and agreed to restore the commuted portion of the pension in regard to civilian employees at the age of 70 years or after 15 years, whichever is later, effective from April 1, 1986. So far as Defence employees were concerned, it was contended that retirement in their case was at an early age and merely with lapse of a period of 15 years full pension could not be restored because they receive in consideration of the exigencies of the service a

higher rate of pension as compared to civilian employees and the benefit contained in the Government order cannot be extended to all classes of Defence personnel.

Allowing the petitions,
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HELD: 1. When a pensioner commutes any part of his pension upto the authorised limit, his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension. [501 B]

2. Commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Two advantages are certainly forthcoming out of commutation--(1) availability of a lump sum amount, and (2) the risk factor. Many State Governments have already formulated schemes accepting the 15 years rule. This Court would not be justified in disturbing the 15 years formula so far as civilian pensioners are concerned. [501 C-D]

3. On the expiry of 15 years from the date of retirement, restoration of commuted value of pension would take place and it would be just and equitable that the benefit of commuted portion of the pension should be effective from 1.4.1985 so far as civilian employees are concerned. [500 E, 501 G]

4. The decision of the respondent--Government does not cover all classes of Defence personnel, having been confined to 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). Previously the retiring age for the lower ranks such as sepoy, used to be after 15 years' service but now it has been enhanced to 20 years' service. A sepoy retiring after 20 years' service is entitled to 5 years' weightage, for his pension entitlement. Similarly a Naik retiring after 22 years' of service and a Havildar after 24 years' service are also given credit of five years. While a civilian employee ordinarily retires after a full term of service entitling him to full pension, it does not happen in the case of the lower ranks in the Defence services and with the extra-advantage by the addition of years of credit, the benefit in terms of money works out in the range of about 75% to 6%. [501 H-502 B]

5. More than 50% of the Defence personnel belong to the lowest rank and about 81% in all retire early. The weightage factor relied upon by the respondent to treat the Defence personnel differently is not a tenable feature. The Defence personnel are a class by themselves. In their case, retirement takes effect in certain classes as justified by the exigencies of the service rather early. Weightage, if any, is intended to cover this so that an equation for other purposes could be established. There is no merit in the stand of respondent that the early age of retirement is fully compensated by the higher rate of pension. [502C -- D]

6. No separate period need be fixed for the Armed Forces personnel and
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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 1.4.1985. [502 F-G]

7. 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. 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, which appears to be equitable. [502 E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 3958-61 of 1983.

(Under Article 32 of the Constitution of India)

H. Salve, P.H. Parekh and P.K. Manohar, for the Petitioners.

P.P. Singh, R.D. Agarwala, Ms. S. Relan, C.V.S. Rao, L.R. Singhand S.R. Srivastava for the Respondent.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. By these applications under Article 32 of the Constitution Common Cause, a registered Society and three retired Government servants have asked for striking down certain provisions of the Communication of Pension Rules applicable to civilian and defence pensioners as they permit the Union of India to recover more than what is paid to the pensioners upon commutation and for a direction that an appropriate scheme rationalising the provisions relating to commutation be brought into force. The respondent has filed a counter-affidavit challenging the maintainability of the petition as also the claim of the petitioners and the matter has been heard at considerable length from time to time. Parties have filed written submissions supplementing their oral arguments.

The Central Civil Services (Commutation of Pension), Rules, 1981 are the approximate rules in force so far as civilian employees Under the Government of India are concerned. A set of regulations is in force in regard to Defence personnel.

It is not disputed that in the case of civilians the total amount of pension which can be commuted is upto one-third while in the case of Defence personnel, commutation is admissible upto 43 per cent in the case of officers 500

and upto 45 per cent in respect of other ranks. The argument advancement on behalf of the petitioners that there has been a substantial improvement in the life expectancy of the people in India has not been refuted on behalf of the respondent. This Court suggested to the respondent in course of the hearing that in the changed situation now prevailing in the country, a new look should be given to the matter. In deference to the suggestion made by this Court the respondent took time to consider the various aspects raised in the writ petitions and the oral submissions advanced at the hearing as also the written notes submitted in Court. II also took into account the fact that several State Governments have changed the rule applicable to commutation and have restored full pension to the pensioners who commuted a part of their pension after lapse of fifteen years. Union of India has now agreed to restore the commuted portion of the pension in regard to all civilian employees at the age of seventy years or after fifteen years, whichever is later, and has agreed to make this effective from April 1, 1986. This decision of the Respondent was communicated to the learned Attorney General by a letter dated 20.3.1986 reading thus:

"I 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)."

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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.

As the position now stands, when a pensioner commutes any part of his pension upto the authorised limit his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension.

The petitioners have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and, therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation--(1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15 year formula so far as civilian pensioners are concerned.

The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place.

The respondent--Government has agreed that this benefit should be extended with effect from 1.4.1986. The writ applications were filed in 1983. The matter was placed on board for hearing in February 1984. The Union Government took some time for responding to the suggestion of the Court and that is how the disposal was initially delayed. Thereafter, the hearing of the matter has again been delayed on account of pressing business in the Court. In these circumstances, we think it just and equitable that the benefit agreed to be extended in respect of the commuted portion of the pension should be effective from 1.4.1985 so far as the

civilian employees are concerned.

The decision of the respondent--Government contained in the above communication does not cover all classes of Defence personnel having been confined to personnel of Armed Forces in whose case the retirement age varies in accordance the colour service prescribed for the rank (attaining the age of 37/38 years or more). In regard to those who are excluded it has been contended that the retirement is at too early an age and since a higher rate of

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pension as compared to civilian employees is admissible, the benefit contained in the Government order cannot be extended to that class. Previously the retiring age for the lower ranks such as sepoy, used to be after 15 years' service but now it has been enhanced to 20 years' service. A sepoy retiring after 20 years' service is entitled to five years of weightage, for his pension entitlement. Similarly a Naik retiring after 22 years of service and a Havildar after 24 years' service are also given credit of five years. While a civilian employee ordinarily retires after a full term of service entitling him to full pension, it does not happen in the case of the lower ranks in the Defence services and with the extra-advantage by the addition of years of credit, the benefit in terms of money works out in the range of about 75% to 6%. It has to be remembered that more than 50% of the Defence personnel belong to the lowest rank and about 81% in all retire early. The weightage factor relied upon by the Respondent to treat the Defence personnel differently is not a tenable feature. Undoubtedly the Defence personnel are a class by themselves. In their case, retirement takes effect in certain classes as justified by the exigencies of the service rather-early. Weightage, if any, is intended to cover this so that an equation for other purposes could be established. There is really no merit in the stand of the Respondent that the early age of retirement is fully compensated by the higher rate of pension.

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 years 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 1.4.1985.

We direct the respondent--Government to give effect to this order within a period of three months from now. We place on record our appreciation of the consideration shown by the Union of India to ameliorate the hardship of the pensioners. There will be no order as to the costs.

A.P.J.

Petitions

allowed.

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