

**Central Administrative Tribunal
Mumbai Bench: Mumbai**

OA No.860/2024

Order reserved on: 15th October 2024

Order pronounced on: 11th November, 2024



Hon'ble Mr. Justice M.G.Sewlikar, Member (J)
Hon'ble Mr. Santosh Mehra, Member (A)

Hari N.Saste and others

....Applicants

(By Advocate: Mr.D.M.Shukl)

Versus

Union of India and others

... Respondents

(By Advocate: Mr. N.K.Rajpurohit)

ORDER ON INTERIM RELIEF

By Justice M.G.Sewlikar, Member (J)

The applicants are claiming interim relief that the respondents shall not recover the amount of commuted pension from those employees who have completed 12 years after retirement.

2. Facts in brief are that all the applicants have retired from the Department of Posts. They have commuted 40%



of their pension. Annexure A-65 is the list of the applicants who have completed 12 years after retirement. Government of India was pleased to order restoration of commuted pension after 15 years of retirement. 5th Central Pay Commission has given justification for reducing period of restoration to 12 years instead of 15 years. The applicants contend that the mortality rate has gone down and is going down every passing day. Interest rate/repo rate has gone down from 16% to 14%. During the year 2014 to 2024, it has gone down to 5.40% to 6.50%. The applicants in their individual capacity made representation to the respondents. But their representations have been rejected. The applicants contend that the Government of Gujarat and Government of Andhra Pradesh have reduced the period of restoration of pension to 12 years and 13 years respectively.

3. The applicants further contend that the restoration of pension is governed by Rule 10A of the CCS (Commutation of Pension) Rules, 1981. It reads thus:

“Rule 10A – Restoration of commuted pension – The commuted amount of pension shall be restored on completion of fifteen years from the date of reduction of pension on account of commutation becomes operative in accordance with Rule 6.”



4. The applicants have given instance to show that the commutation of pension can be restored within 12 years. The applicants have, therefore, challenged this rule on the ground that the respondents are not ready to amend the said rule by making following prayers:

“8. **Relief(s) Sought:** In view of the facts and grounds stated above, the Applicants prays for the following relief(s):

A) This OA may kindly be allowed.

B) Hon'ble Tribunal may please to declare that Rule-10A read with Rule-6 of the Central Civil Services (Commutation of Pension) Rules, 1981 {Annx.A-1} are arbitrary to the extent that same are NOT amended since the year 1981 and it allows restoration of commuted pension after 15 years, whereas, it should be 12 years;

C) Hon'ble Tribunal may please to set-aside the impugned letter No.Pen/2-2/08/K-838/2015 dated 12.7.2024 {Annx.A-2} issued by CPMG (R-5) and impugned letter(s) No. BC/Pension Commutation/HNS/2024 dated 06/7/2024 {Annx.A-3} a/to applicant No.1 read with identical impugned letter {Annx.A-4 to A-48}. The Hon'ble Tribunal may further order the respondents that commuted value of pension of these applicants should be restored after 12 (twelve) years to be reckoned from the date of sanction of commutation:

D) Hon'ble Tribunal may further be pleased to order that applicants, those who have already completed 12 (twelve) years of retirement from the date of sanction of commutation of pension, the recovery of commutation value, interest should NOT be made and amount, recovered in excess of 12 years should be refunded to the concerned applicants with 6% interest till the date of actual refund;

E) Hon'ble Tribunal may further order the respondents that in respect of the applicants those who are going to complete 12 (twelve) years in the year 2024 and onwards from the date of sanction of commutation of pension, the

further recovery towards commuted value of pension should NOT be made after completion of 12 years of period;

F) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants.

9. **Interim order, if any prayed for:** Pending final decision on the application, the applicants seeks the following relief:

a) Hon'ble Tribunal may kindly be pleased to grant "Interim Stay" on the impugned orders letters {Anx.A-1 to A-48} and direct the respondents that recovery of commuted pension should NOT be made from the applicants those who have completed 12 years of retirement reckoned from the date of sanction of commutation subject to final decision in the OA;

b) Applicants further states that their prayer(s) for grant of interim relief is relied upon the legal provisions, as laid down in the :- (1) order dated 09.02.2024 {Anx.A-51} passed by Hon'ble Punjab & Haryana High Court in CWP No.2490-2024 (Ram S Jindal Vs UoI) (2) order dated 31.5.2024 {Anx.A-50} passed by Hon'ble Punjab & Haryana High Court in CWP No.14058-2024 (C.M.Tandon Vs UoI) staying recovery of commuted value of pension of pensioner(s) those who completed 10 years of retirement or above, (3) letter No.HR:EBD:11726:2024 dated 29.6.2024 {Anx.A-54} issued by Union Bank of India implementing order dated 31.5.2024 passed by Hon'ble High Court of Punjab & Haryana in CWP No. 14058-2024 (C.M.Tandon Vs UoI) STAYING recovery of commuted value of pension, (4) Notification No.1/15/2024-1 Pension(FD) dated 17.7.2024 (Anx.A-52) issued by Haryana State Govt., (5) notification No. Pen-162/2015 24134 dated 04.9.2015 {Anx.A-53} issued by the Odisha Govt, (6) Govt.Resolution No. NVT/1020100/D/66/P (PENSION CELL) dated 12.10.2022 {Anx.A-56} issued by the Gujrat Govt, (7) notification No. PM/VV2015-16/OG-GO dated 19.10.2015 { Anx.A-55} issued by the O/o Accountant General (A&E) Telangana directing Treasury Officers to take necessary action as per the decision of Odisha Govt, (8) the 5th Central Pay Commission's detailed recommendation on issue of "Commutation of Pension" {Anx.A-49}, (9) that Rule-33 of Central Civil Services (Commutation of Pension) Rules, 1981, also allows the GoI to relax the arbitrary conditions of Rule-10A, read with Rule-6 to redress the hardships of the applicants/ Pensioners.



Applicants states that a advance copy of this OA hasbeen served to (i) all respondents through Speed Postand (ii) Softcopy through email. The applicants have alsofiled "Affidavit of Service".



5. Respondents filed their reply opposing the interim relief. They contend that the applicants are challenging the statutory rule. The said challenge is barred by limitation. They are challenging the rules of 1981 in the year 2024. No cogent reason is assigned for condonation of delay. It is the contention of the respondents that the applicants had voluntarily opted for commutation of pension. Such commutation of pension is to be recovered in 15 years. Therefore, they cannot challenge the validity of this rule. Representations of the applicants were replied on the basis of the extant rules. Unless the rule is set aside, applicants cannot get any relief. On these grounds the respondents prayed that the interim relief should not be granted.

6. We have heard learned counsel for the applicants and learned counsel for the respondents.

7. Learned counsel for the applicants submits that the restoration of commutation of pension takes place within



12 years. Therefore, the respondents cannot allow the recovery of commutation of pension beyond 12 years. That amounts to unjust enrichment. He submits that Hon'ble Punjab and Haryana High Court has granted interim relief and restrained the Government from recovering the amounts towards commutation of pension. On the same lines various Benches of this Tribunal have granted interim relief.

8. Learned counsel for the respondents submitted that the respondents are challenging the Rule 10A. That Rule is not yet set aside by Hon'ble Supreme Court, High Court or any Bench of this Tribunal. So long as the rule exists on the statute book, no interim relief can be granted. He submitted that rule can be challenged only on the ground of legislative competence and that the rule violates fundamental right. In the case at hand, no such case is made out. He further submitted that the commutation of pension is not mandatory. It is purely optional for commuting pension. An employee has to fill in several forms. Thereafter, once an employee exercises the option, he accepts with full knowledge that the recovery toward



commutation of pension will be for 15 years. Therefore, the applicants are estopped from contending that the recovery is complete in 12 years. He submitted that in judicial review this is not permissible. He further submitted that the claim is barred by limitation. 1981 rule is being challenged in the year 2024. He, therefore, prayed for rejection of interim relief.

9. We have given thoughtful consideration to the submissions made by the learned counsel on both sides.

10. The 5th Central Pay Commission has made recommendations of reducing the period of commutation to 12 years. We would like to reproduce those recommendations which reads thus:

“Having regard to all relevant factors, we recommend that the commuted portion of pension should be restored after a period of 12 years reckoned from the actual date of commutation. We would, however, urge Government to ensure that the commuted value is disbursed promptly to the pensions, and in any case not later than 90 days from the date of submission of the necessary application.”

11. This portion indicates that the restoration of commuted pension shall be done within 12 years. There is



nothing on record to show that the Government of India has not accepted these recommendations.

12. It is worth noting that the applicants have given the calculation to show that the commutation of pension happens within 12 years. In para 4.12.3 they have given the chart in respect of applicant No.30 as under:

Date of retirement	Basic Pension	Amount of 40% Pension commuted	Commuted value of pension	Amt. being recovered during 15 years
31.01.2017	40,000/-	16000/-	15,73,248/-	28,80,000/-

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13. Respondents have nowhere denied that the commuted pension cannot be recovered within 12 years. This shows that the respondents admit that the commuted pension is recovered within 12 years from the date of retirement. Once this position is admitted then the fact remains whether the respondents, as a model employer can continue to recover the amount till the expiry of 15 years. As indicated above, the respondents have not explained that the amount of commuted pension cannot be recovered in 12 years. Once it becomes an admitted position that the amount can be recovered in 12 years, there is no propriety



in allowing the respondents to continue to make the recovery. The applicants have not challenged the constitutional validity of the Rule 10A. They have simply sought amendment to Rule 10A read with Rule 6 that the period should be reduced to 12 years. It is not in dispute that the Punjab and Haryana High Court has granted interim relief that further recovery beyond 12 years shall not be made. It was argued that the Government had approached Hon'ble Supreme Court against the order of Hon'ble Punjab and Haryana High Court. But the order of Hon'ble Punjab and Haryana High Court has not been stayed. It is also not in dispute that various Benches of this Tribunal have granted interim relief akin to the relief granted by Hon'ble Punjab and Haryana High Court.

14. It was also argued that Hon'ble Punjab and Haryana High Court has granted interim relief under the rules of that State. And therefore, no relief can be granted to the applicants who are Central Government employees. We don't find any substance in this submission. The respondents have not explained as to how the State



Government rules are different from the rules of Central Government.

14. The question of estoppel comes into play when representation is made by one person and the other person acting on the representation changes his position to his detriment, then the person making representation is estopped from going back on his representation. In the case at hand, the respondents have not changed their position to their detriment. Rather Government is in advantageous position. Therefore, the question of estoppel does not arise.

15. Having regard to the above we are inclined to grant interim relief to the applicants No.10, 11, 13, 14, 15, 27 & 39. The respondents till further orders shall not recover the amount towards commutation of pension in respect of the applicants No.10, 11, 13, 14, 15, 27 & 39 who have completed 12 years after retirement. List the OA on 19.12.2024.

(Santosh Mehra)
Member (A)

(Justice M.G.Sewlikar)
Member (J)

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