

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

40.

OA 1010/2015

Ex MWO Ayodhya Mishra Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr. VS Mahndiyan, Advocate
Ms. Apurva, Advocate
Sgt Pankaj Kumar Yadav, OIC Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
13.03.2026

The applicant vide the present OA makes the following prayers:-

“(i) Direct respondents to stop the recovery which is being made from pension of the applicant and direct respondents reimburse the excess amount recovered from his pension after Jul to 2012 i.e after paying entire commutation amount of Rs 277866/-

(ii) Direct respondents to re-imburse the excess recovered amount to the applicant with interest @ 12% per annum.

(iii) Pass any other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case mentioned above.”

2. Submissions have been addressed on behalf of either side.

3. It is brought forth through the records that the applicant was inducted on 19.03.1964 and was discharged from service on 31.07.2001. Apparently, the period of 15 years from the date of discharge from service would end on the date of 30.06.2016. As per the calculation sheet of commutation annexed to the counter affidavit of the respondents, the commencement of the commutation was in October 2001 and culminated in May 2016.
4. The prayers that the applicant has made vide the present OA already reproduced hereinabove in Para 1, apparently indicate to the effect that the applicant seeks reimbursement of a stated excess amount recovered from his pension from July 2012 after paying the entire commutation amount of Rs. 2,77,866/-, apart from seeking interest on the same.
5. The premise on which the applicant urges the said submission is in view of the contention raised on behalf of the applicant in view of the submission of a document by the then learned Attorney General dated 20.03.1986 to the Hon'ble Supreme Court as reproduced in the judgment dated 09.12.1986 in the case of *"Common Cause" a Registered Society and Ors. v. Union of India* [1987] 1 SCR 497.
6. It is essential to observe that though a decision of the respondents as communicated to the learned Attorney General vide a letter dated 20.03.1986 which read to the effect:-

"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)."

vide the observations made in the penultimate paragraph by the Hon'ble Supreme Court, it was observed and directed to the effect:-

"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”,-

observing thus that there was no separate period that was required to 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 considered in the case of civil pensioners and for them too the effective date should be 01.04.1985.

7. Significantly, vide the verdict of the Hon’ble High Court of Delhi in *Forum of Retired IPS Officers (FORIPSO) vs. Union of India and Others* reported in 2019 SCC OnLine Del 6610, to similar effect, it has been observed and laid down vide Para 21 and Para 22, thereof, to the effect:-

“21. 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.

22. 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.”

and thus thereby adhering to the directions of the Hon’ble Supreme Court in *“Common Cause” a Registered Society and Ors.* (supra).

8. Significantly, in matters before the Hon’ble High Court of Punjab and Haryana Union in *Shila Devi & Ors. vs. State of Punjab and Ors.* and 807 connected matters, issues were raised in relation to aspect of the commutation of pension being done within a period of 11 and a half years to 12 years with *inter alia* submissions made even therein that restoration of the surrendered portion could be allowed at the age of 70 years as was submitted in relation to the verdict of the Hon’ble High Court of Punjab and Haryana in *Rattan Chand & Others v. Bhakra Beas Management Board & Another*, 2003 SCG 893, vide judgment dated 27.11.2024 in Civil W.P. (C) 9426/2023 (O&M) titled *Shila Devi and Ors. Vs. State of Punjab and Ors.*, and other connected 807 writ petitions of the Hon’ble High Court of Punjab and Haryana. The said petitions have all been dismissed and the challenge to the common judgment dated 27.11.2024 of the Hon’ble High Court of Punjab and Haryana in W.P.

(C) 9426/2025 and connected petitions has been repelled and dismissed by the Hon'ble Supreme Court vide judgment dated 05.05.2025 by the Hon'ble Supreme Court in SLP SPECIAL LEAVE PETITION (CIVIL) Diary No(s).18502/2025 arising out of impugned final judgment and order dated 27-11-2024 in CWP No.12523/2024 in CWP No.17657/2024 in CWP No.12381/2024 in CWP No.13864/2024 in CWP No.21599/2024 in CWP No.17638/2024 in CWP No.14799/2024 in CWP No.17928/2024 in CWP No.16457/2024 in CWP No.21655/2024 in CWP No.21196/2024 in CWP No.23229/2024 in CWP No.13514/2024 in CWP No.9331/2024 in CWP No.10665/2024 in CWP No.13859/2024 in CWP No.15033/2024 in CWP No.19724/2024 in CWP No.25828/2024 in CWP No.23482/2024 in CWP No.15027/2024 in CWP No.23254/2024 in CWP No.15001/2024 in CWP No.17137/2024 in CWP No.13941/2024 in CWP No.13789/2024 in CWP No.16149/2024 in CWP No.17269/2024 in CWP No.18739/2024 in CWP No.27937/2024 in CWP No.20107/2024 in CWP No.13248/2024 in CWP No.24186/2024 in CWP No.11469/2024 in CWP No.12623/2024 in CWP No.8071/2024 in CWP No.23189/2024 in CWP No.16869/2024 in CWP

No.14290/2024 in CWP No.18505/2024 in CWP
No.21387/2024 in CWP No.13436/2024 in CWP
No.16439/2024 in CWP No.21222/2024 in CWP
No.16560/2024 in CWP No.13256/2024 in CWP
No.18709/2024 in CWP No.20708/2024 in CWP
No.17746/2024 in CWP No.16150/2024 in CWP
No.13208/2024 in CWP No.14785/2024 in CWP

No.16857/2024 on the basis of the order dated 07.04.2025 of the Hon'ble Supreme Court in petition(s) for Special Leave to Appeal (c) No(s). 8845/2025 which arose out of order dated 04.12.2024 in CWP 22606/2024 of the Hon'ble High Court of Punjab and Haryana in the case of *Des raj vs. UoI and others*, which petition in CWP 22606/2024 before the Hon'ble High Court of Punjab and Haryana was disposed of in terms of the adjudication in *Shila Devi and Ors.*(supra).

9. The implicit spirit of the directions in the order dated 11.09.2024 by the Hon'ble High Court of Delhi in W.P. (C) 12781/2024 in *Union of India & Ors. vs. Sub Trilok Chand* (retd.) vide observations in Para 8 and Para 9 which read to the effect are also similar:-

“8. We also find that the impugned order does not even refer to the decision of this Court in Forum of Retired IPS Officers (FORIPSO) vs Union of India 2019 SCC OnLine Del 6610, wherein a similar claim for restoration of the commuted

portion of pension after 12 years as against the agreed term of 15 years, was rejected.

9. In these circumstances, we are of the view that the petitioners' have been able to make out a prima facia case in their favour. Grave prejudice will be caused to the petitioners in case the operation of the impugned order is not stayed as they would, under the impugned order, be compelled to restore the commuted portion of the respondents' pension after 12 years itself. It is, therefore, directed that till the next date of hearing, the operation of the impugned order will remain stayed."

Apparently there is no merit in the submissions made by the applicant through the present OA, which is thus dismissed.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(MS. RASIKA CHAUBE)
MEMBER (A)**

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