**UNITED NATIONS APPEALS TRIBUNAL**
**TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2009-001

**Muthuswami et al.**
**(Appellants)**

**v.**

**United Nations Joint Staff Pension Board**
**(Respondent)**

# JUDGMENT

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|---|---|
| Before: | Judge Inés Weinberg de Roca, Presiding<br>Judge Jean Courtial<br>Judge Luis María Simón |
| Judgment No.: | 2010-UNAT-034 |
| Date: | 1 July 2010 |
| Registrar: | Weicheng Lin |

Counsel for Appellants: Self-represented

Counsel for Respondent: Bernard Cochemé

**JUDGE INÉS WEINBERG DE ROCA,** Presiding.

## Synopsis

1. At the time of their respective retirements, each of the three Appellants opted for commutation of a portion of their pension benefit entitlements into a lump sum, in exchange for a reduction in their pension benefits for life. They now request the restoration of their full pension arguing that the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) has recovered the lump sum due to the time that has elapsed. The Appeals Tribunal dismisses the appeal.

## Facts and Procedure

2. The Appellants Suttamalle Ponniah Sundaram (Sundaram), Venkatarama Muthuswami (Muthuswami), and Gopalasamudram Sadagopan Srinivasan (Srinivasan) retired from service in 1983, 1997, and 1998, respectively. At the time of their retirement, all three opted for commutation of a portion of their pension benefit entitlements into a lump sum, in exchange for a reduction in their pension benefits for life.

3. In May 2009, Srinivasan wrote to the UNJSPF requesting the "[r]estoration of full pension for 1/3 Lump Sum Recipients after a pre-determined period of commutation". Sundaram and Muthuswami addressed similar letters to the UNJSPF.

4. In a letter dated 20 July 2009 to Srinivasan, the Pension Fund stated that, at a meeting held on 15 July, the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and Pension Board, respectively) had decided to uphold the Pension Fund's decision to maintain the reduction as being fully compliant with Articles 1(f) and 28(g) of the UNJSPF's Regulations.

5. On or about 27 August 2009, Sundaram, Muthuswami, and Srinivasan filed an appeal against the Standing Committee's decision. They also requested an oral hearing. Several retirees wrote to the Registrar of the Appeals Tribunal expressing support and endorsement of the "common cause" appeal. On 28 October 2009, the Pension Board filed an answer to the appeal.

6. In response to the notice that this appeal would be heard during the Appeals Tribunal's first session in Geneva in March 2010, Muthuswami filed an open letter dated 16 February 2010 containing further arguments relating to the appeal.

7. On 4 March 2010, the Pension Board filed a statement by its Consultancy Actuary, John McGrath, providing background information on technical actuarial aspects of the proposal to change the level of pension benefits. On 10 March 2010, Muthuswami submitted comments on the statement.

8. The hearing of the appeal was postponed until the second session of the Appeals Tribunal in New York. At a public hearing held on 22 June 2010, the Appeals Tribunal heard Muthuswami and Sundaram for the Appellants and Bernard Cochemé and John McCrath for the Pension Board.

## Submissions

### Appellants' Appeal

9. The Appellants submit that Articles 1(f) and 28(g) of the UNJSPF Regulations, read in conjunction with Article 43 of the UNJSPF Regulations, cannot be construed as a lifetime enforcement of a reduced pension for retirees who accept one-third of their pension as a lump sum. There is no rule or clause in the UNJSPF Regulations providing, even by implication, that the lump sum option binds the beneficiary to a reduction in pension for life. Neither was it explicitly stated in any mutually agreed pension documents.

10. In the absence of a written agreement between UNJSPF and the retirees in respect of the reduced lifetime pension, the denial of the restoration of a full pension after the full recovery of the lump sum and interest over time is untenable. The undertaking signed by the beneficiaries at the time of their respective retirements is not a legal agreement as it is merely an "information sheet"/"instruction for payment".

11. The Appellants submit that commutation of a pension is limited to a certain number of years in almost all national civil service pension schemes and the UNJSPF's policies and practices should conform to such universal practice.

12. While most of the UNJSPF Regulations have been amended over the years, the lump sum provision has remained constant, despite vastly changed circumstances like life expectancy.

13. The continuation of the payment of a reduced pension benefit beyond the full recovery of the lump sum (with interest and charges) creates two classes of beneficiaries who are unequal - those beneficiaries who took the lump sum and those who did not. This amounts to discrimination and violates the articles of the Universal Declaration of Human Rights, 1948,[1] and the Charter of the United Nations in respect of equity, fairness, and justice. This also amounts to non-compliance with the Noblemaire principle, which is still in force and should continue to apply even in retirement.

14. In India, lump sum commutation and restoration of full pension after 15 years has long been the practice and was fully endorsed by India's highest court in 1986.

**Pension Board's Answer**

15. The Pension Board submits that, under the UNJSPF Regulations, it is clear that when a UNJSPF participant upon retirement elects to exercise the option to commute a portion of the pension entitlement into an actuarially calculated lump sum, the resultant reduction in pension will remain in effect for the lifetime of the retiree.

16. In a defined-benefit pension plan such as the UNJSPF plan, the employer promises the employee on retirement a periodic benefit that is predetermined or "defined" by a formula which considers the employee's earnings history, years of service, and age, rather than resulting from what the employee and employer contributed and the investment returns.

17. The Pension Board argues that the request of the Appellants, if allowed, would require a fundamental change in the level of contributions from participants and member organizations to fund the type of benefits sought by the Appellants.

18. The request of the Appellants would be unfair to those retirees who opted to take the full pension and no lump sum. If the lump sum was to be restored to those retirees who

[1] General Assembly resolution 217A (III).

opted for the lump sum, they would be getting an additional benefit – one that has no basis in the current UNJSPF Regulations.

## Considerations

19. This is an appeal from a decision of the Standing Committee under Article 2(9) of the Statute of the Appeals Tribunal, which provides as follows:

> The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:
>
> (a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;...

20. Sundaram, Muthuswami, and Srinivasan are retirees who, at the time of their retirement, opted to commute one-third of their pension benefit entitlement into a lump sum, which entailed a consequential reduction in their pension benefits for life. In May 2009, Srinivasan wrote to the UNJSPF requesting "[r]estoration of full pension for 1/3 Lump Sum Recipients after a pre-determined period of commutation". Sundaram and Muthuswami made the same request to the UNJSPF. By letter dated 20 July 2009, the UNJSPF informed Srinivasan that the Standing Committee rejected his request. The decision of the Standing Committee is the subject of the appeal by Sundaram, Muthuswami, and Srinivasan.

21. The Pension Fund provides for the payment of pension benefits to staff of the United Nations common system in the event of retirement, death, or disability. The Regulations of the UNJSPF were adopted by the General Assembly in resolution 248(III) on 23 January 1949. Under Article 49 of the Regulations, the Pension Board may recommend amendments to the Regulations to the General Assembly, which may amend the Regulations after consultation with the Pension Board.

22. Participants in the Pension Fund who retire or choose early retirement may receive their retirement benefit in one of two ways. A retiree may opt to receive a pension, payable over his or her lifetime by way of a periodic monthly benefit. Alternatively, through the

commutation option, a retiree may receive up to one-third of the pension as a lump sum and the balance of the pension, payable over his or her lifetime as a reduced periodic monthly benefit. The relevant articles of the UNJSPF Regulations are as follows:

> Article 1 (Definitions)
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> ...
>
> (f) "*Commute*" shall mean cause to be converted and paid in a lump sum part or the whole of a benefit otherwise payable at periodic intervals, according to the actuarial tables of the Fund.
>
> Article 28 (Retirement Benefit)
>
> (a) A retirement benefit shall be payable to a participant whose age on separation is the normal retirement age or more and whose contributory service was five years or longer.
>
> ...
>
> (g) A benefit payable at the standard annual rate may be commuted by the participant into a lump sum subject to the following limitations and to supplementary article D, where applicable:
>
> (i) If the rate is 300 dollars or more, the amount of the lump sum may not exceed the smaller of:
> (A) The actuarial equivalent of one third of the benefit; or
> (B) The actuarial equivalent of one third of the maximum benefit that would be payable to a participant retiring at the normal retirement age, on the same date as the participant, with a final average remuneration equal to the pensionable remuneration on that date for the top step of level P-5 on the scale of pensionable remuneration in appendix B below;
>
> (ii) Nevertheless, if the amount calculated under (i) above is less than the amount of the participant's own contributions, then the benefit may be commuted to the extent of the latter amount;
>
> (iii) If the rate is less than 1000 dollars, the benefit may be commuted to the extent of its full actuarial equivalent; if a participant is married, the prospective benefit payable to his or her spouse may be commuted at the standard annual rate of such benefit.
>
> ...
>
> Article 29 (Early Retirement Benefit)
>
> (a) An early retirement benefit shall be payable to a participant whose age on separation is at least 55 but less than the normal retirement age and whose contributory service was five years or longer.
>
> ...
>
> (c) The benefit may be commuted by the participant into a lump sum to the extent specified in article 28(g) for a retirement benefit.
>
> Article 43 (Recovery of Indebtedness to the Fund)
>
> The Board may deduct from any benefit payable under these Regulations to a participant, or on his or her account, the amount of any indebtedness to the Fund by the participant or by any beneficiary or third person to whom payment has been made otherwise than in accordance with these Regulations, including interest and costs, where appropriate.

23. As explained by the Pension Board in its answer to the appeal, the lump sum due to a retiree who opts to commute part of his or her pension is calculated on the basis of actuarial factors that take into account interest rates and life expectancy for the Pension Fund participants as a whole. Retiring participants who die shortly after commuting part of their pension into a lump sum realize a significant economic gain at the expense of the Pension Fund, which is balanced by those who live substantially longer than the projected life expectancy.

24. At the time of their retirement, Sundaram, Muthuswami, and Srinivasan each completed and signed an "Instructions for Payment of Benefits" form indicating that they opted to commute one-third of their pension into a lump sum and receive the balance as a reduced pension. Now, some years later, they argue that they are entitled to have their full pensions restored.

25. The Appellants argue that Articles 1(f) and 28(g) of the UNJSPF Regulations, read in conjunction with Article 43, cannot be interpreted as a lifetime enforcement of a reduced pension for lump sum recipients. When read together, the ordinary meaning of these articles is that, as a consequence of opting to commute part of the retirement benefit into a lump sum, a participant receives a reduced retirement benefit. The Appellants have not made a meaningful argument to suggest that the Regulations can be interpreted in any other way. The Appellants do not refer to any article of the Regulations which provides, expressly or by implication, that the full retirement benefit may be restored after a participant has opted to commute a portion of the retirement benefit into a lump sum. Article 43 of the Regulations concerns the recovery of indebtedness to the Pension Fund arising through overpayment of a benefit, and does not make any reference to restoration of the full retirement benefit.

26. The Appellants also argue that their decision to take one-third of their pension as a lump sum and receive a reduced pension was not binding upon them. This argument is without merit. Under the UNJSPF Regulations, all retirees are required to choose between accepting the full pension or taking the lump sum option and receiving a reduced pension. The Appellants made this choice by completing and signing the relevant forms. They accepted the lump sum and have received the reduced pension for a number of years.

27. The Appellants state that their decision to receive one-third of the pension as a lump sum together with a reduced pension has not turned out to be the best choice, and they would be in a better position had they opted for a full pension. This may be true. However, this risk is inherent in the choice that is made by all retirees under the Regulations. If retirees are not bound by their decision, and can simply reverse the decision if it becomes apparent later that the choice they made was not to their advantage, this would fundamentally change the basis upon which the Pension Fund currently operates.

28. The Appellants make a general argument that in these circumstances they have been discriminated against and their basic fundamental rights concerning equity, fairness, and justice under the Universal Declaration of Human Rights, 1948 have been violated. Given the legal framework for the establishment and operation of the Pension Fund adopted by the General Assembly and the application of the Pension Fund's Regulations to the Appellants, a general argument of this nature cannot succeed.

29. The Appellants rely on the Noblemaire principle in support of their argument that the Regulations must be implemented to limit the period of commutation of the lump sum to a fixed duration, after which time the full pension is automatically restored. The Appellants argue that some national service pension schemes, including that of India, allow for restoration of the full pension in this way.

30. The Administrative Tribunal of the International Labour Organization (ILOAT), in Judgment 986, *In re Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2) and Santarelli* (1989), explained the Noblemaire principle and its application to the pensions system, as follows:

> 7. That general principle was born in League of Nations days, in 1920, and taken over by the United Nations. Though it has never been set down as a written rule, no international organisation or official text has ever challenged it, and it is a custom binding on any organisation that belongs to the United Nations system. In defining the principle Judgment 825 (in re Beattie and Sheeran) of 5 June 1987 said that it embodied two rules:
>
> 'One is that, to keep the international civil service as one, its employees shall get equal pay for work of equal value, whatever their nationality or the salaries earned in their own country. The other rule is that in recruiting staff from their full membership international organisations shall offer pay that will draw and keep citizens of countries where salaries are highest'.

> As so defined Noblemaire covers both pay and pension. The relations of staff with an international organisation do not end when they leave its employ. The pension scheme forms part of the administrative arrangements they may look forward to and, like pay, pensions are governed by basic rules that are binding on the organisation. Foremost among them is Noblemaire, the purpose of which is not to bestow privilege on international civil servants but to draw some of the best people from every country into the service.

31. General Assembly resolution 44/198, adopted on 21 December 1989, reaffirmed that the Noblemaire principle should continue to serve as the basis of comparison between United Nations emoluments and those of the highest-paying civil service – currently the United States federal civil service – which, by its size and structure, lends itself to such comparison. By its resolution 59/268, adopted on 23 December 2004, the General Assembly reaffirmed the continuing application of the Noblemaire principle.

32. Until the application of the Noblemaire principle is changed, the United States federal civil service is the basis of comparison of the pension benefits of the staff of the United Nations common system. The Appellants have not made any arguments with respect to the pension benefits of the United States federal civil service and, therefore the Noblemaire principle does not assist the Appellants in this appeal.

33. Through this appeal, the Appellants are effectively seeking an amendment to the Regulations of the Pension Fund to enable the restoration of a full pension after a period of time for those retirees who opt to take part of the pension as a lump sum and receive a reduced pension benefit. However, only the General Assembly can amend the Regulations.

34. The Appeals Tribunal is competent to pass judgment on an appeal from the decision of the Standing Committee of the Pension Board alleging non-observance of the Regulations of the Pension Fund. The Standing Committee rejected the request of Srinivasan to restore his full pension on the basis that he was only entitled to receive the reduced pension benefit under the Regulations. The Appellants have not established that the Standing Committee did not comply with the Regulations of the Pension Fund.

**Judgment**

35. For the foregoing reasons, the appeal is dismissed. The decision of the Standing Committee recorded in the letter from the UNJSPF to Srinivasan, dated 20 July 2009, is affirmed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

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| (*Signed*) | (*Signed*) | (*Signed*) |
| Judge Weinberg de Roca, Presiding | Judge Courtial | Judge Simón |

Entered in the Register on this 17th day of August 2010 in New York, United States.

(*Signed*)

Weicheng Lin, Registrar
United Nations Appeals Tribunal