
(2018) 12 CAT CK 0034

In the Central Administrative Tribunal

Case No : Original Application No. 060, 0010 Of 2018

Lt. Cdr. Jaswant Singh Yadav

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1), 31(1), 226, 309, 311

Citation : (2018) 12 CAT CK 0034

Hon'ble Judges : Sanjeev Kaushik, J;P. Gopinath, J

Bench : Division Bench

Advocate : B.Nandan Vasishta, K.K.Thakur

Final Decision : Disposed Off

Judgement

1. The applicant has challenged the circular no. 144 dated 27.01.2010 (Annexure A-11) issued by respondent no. 3 and letter dated 13.01.2014 (Annexure A-15) issued by respondent no. 1 to the Director General, National Cadet Corps, New Delhi whereby the authorities decided that WTOs (NCC) in the rank of Lt. Col. will be placed in Pay Band III (Rs. 15600-39100) with the corresponding grade pay of Rs. 7600 w.e.f. 01.01.2006 and have also decided to effect recovery of excess payment. He has further sought issuance of directions to the respondents to allow him pension at par with his counterparts in the Armed Forces in terms of letter dated 21.05.2009 (Annexure A-14) and to restore the pension by placing him in pay band -4. He further sought issuance of direction to stop the illegal recovery being affected from his pension allegedly in excess of his entitlement.

2. Fact which led to filing of the present O.A are that the applicant joined the Indian Army as Commissioned Officer in the rank of 2nd Lieutenant on 27.9.1963 in 166 Field Regiment. During his service career in Army, he was awarded Raksha Medal and Samar Seva star for his contribution during service. He was released from Indian Army on 31.10.1967. Thereafter, he was appointed in naval wing of NCC wing in the Rank of Lieutenant (Navy) where he was granted regular commission in the NCC on 20.12.1967 and was posted as an Executive Officer at

1, Delhi Naval Unit. Thereafter, the applicant served in various capacities in respective units at various places and retired as such on 31.7.1992 and at that time, he was in pay scale of Rs. 2200-5000. It is the case of the applicant that during his entire service, initially in Army and subsequently in NCC naval wing, he performed his duties with utmost sincerity, dedication and missionary zeal to the best of his capabilities which was widely appreciated by his superiors in all quarters. It is pleaded that the applicant had all along been treated at par with their counterparts serving in the Army in the matter of all pay scales, pecuniary, financial and other benefits like scale of accommodation, canteen facilities, travelling facilities etc and exercised the same powers during his entire service as a Commissioned Officer in the NCC Wing as per relevant provisions of NCC Act and Rules. After retirement, his pension was duly fixed vide office order dated 24.6.1992 @ Rs. 2373/- with effect from 1.8.1992 in the pay scale of Rs. 2200-5000. His pension was revised from time to time as per recommendations of 5th and 6th Central Pay Commission. It is not out of place to mention here that the applicant was appointed in NCC as Whole Time Officer as per terms and conditions circulated vide Govt. of India letter dated 23.05.1980 vide which he was treated at par with officers of the Armed Forces. The applicant is aggrieved against the action of the respondents where, after 20 years of retirement and without serving any notice and giving any opportunity of hearing to him, respondent no. 3 arbitrarily, illegally and unlawfully reduced his pension w.e.f. October, 2017. On enquiry from PDA i.e. Central Bank of India, V&PO Kosli, District Rewari, in the month of October, 2017, regarding his pension statement, the applicant came to know that respondent no. 3 had already recovered the pension on account of alleged over-payment. Thereafter, the applicant obtained a certificate from the bank authorities which reflected that monthly pension has been reduced to Rs. Rs.39575/- from Rs.77384/-. Immediately, the applicant submitted a representation dated 6.11.2017 to respondent no.4 wherein the applicant raised an objection with regard to illegal recovery and fixing his pension in lower grade than his entitlement. The applicant has not received any reply to his representation, rather, in another similar case, respondent no. 3 informed that there is no pay scale decided for NCC Whole Time Officers in 6th CPC. They have also informed that Pension Disbursing Authorities (in short PDA?s) have been advised to recover the overpaid amount made to the NCC Officers as per circular no. 144 dated 27.01.2010 wherein it is stated that pension revision letter dated 21.05.2009 is not applicable to NCC officers. Hence, the present O.A.

3. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement wherein they have submitted that the applicant, who was appointed in NCC after his release from Indian Army, was not entitled for benefit which he availed as admissible to the regular incumbent in Indian Army. After having clarification in this behalf from Dy. CDA (P) vide letter dated 27.01.2010 and letter dated 13.01.2014 issued by Government of India, Ministry of Defence wherein it was decided with regard to pay scales of Ex NCC Whole Time Officers in the rank of Lt. Col. for the purpose of pensionary benefits, it was

decided to fix the pension of the applicant in the Pay Band III (Rs. 15600-39100) with the corresponding grade pay of Rs. 7600 w.e.f. 01.01.2006. Resultantly the amount which was paid to him, over and above his entitlement, was also ordered to be recovered from his pension. Accordingly, they have prayed for dismissal of the OA.

4. We have heard the learned counsel for the parties and have perused the material placed on record.

5. This matter is no longer res-integra and has already been decided in the case of Lt. Col. P.C.Sood (retd.) versus Union of India decided on 3.7.2017 in O.A.No.063/00130/2015. In the said case, this Tribunal had ordered as follows:-

"10. There cannot be any doubt whatsoever that an executive instruction unless issued for the benefit of the employees cannot be given retrospective effect and retroactive operation. This issue has already been dealt by Hon^{ble} Supreme Court in the case of Daljit Singh Narula Vs. The State of Haryana and Ors. 1979 (1) SLR 420, the head note is as follows:-

"Constitution of India, Articles 226, 309 and 311 Conditions of service determined by executive order Cannot be altered by executive order retrospectively to the prejudice of civil Servant Sanction to revised scale of pay Cancellation of sanction can operate only prospectively. ?The Hon^{ble} Supreme Court in the case of K. Narayanan (supra), has held as follows:-Retrospectively-It is an exception Rule making authority should not be permitted normally to act in the past Even where the Statute permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right. In the case of C.R. Rangadhamaiah (supra), the Hon^{ble} Supreme Court has held as follows:-

"Retrospective effect given to the amendments Notifications/amendments dated 5.12.1988 reduced the amount of pension payable to the employees who had already retired from service on the date of issuance of the said notifications - Impugned notifications/amendments in so far they have been given the retrospective effect are violative of rights guaranteed under Article 19(1) and 31(1) of the Constitution Further amendments are also violative of Articles 14 and 16 of the Constitution being arbitrary and unreasonable No infirmity in the full bench decision in declaring the amended provisions as void to the extent they have been given retrospective effect Respondents entitled to get pension on the basis of Rule 2544 (g) as it existed on the date of their retirement. In the case of Ex. Capt. K.C. Arora (supra), the Hon^{ble} Supreme Court has held as follows:-

"..Amendment in the rules with retrospective effect affecting prejudicially the persons who had acquired rights relating to their seniority, increments and Pension Amendment in the rules with retrospective effect taking away such acquired rights Though Governor competent to frame rules with retrospective effect but the same cannot take away the acquired rights Amendment in the

rules ultra vires the constitution."

In Pradyut Kumar Chakraborty's Vs. State of West Bengal (FMAT No. 2654/1994) decided on 28.09.1994, it is held that:-

"By reasons of the impugned order dated 20.01.1994, the Secretary, Board of Revenue rejected the prayer of the petitioner on the ground that the State of West Bengal has issued a memorandum bearing No. 200 (60)/EMP/2E-31/93 dated 03.09.1993. The contention of the learned counsel for the appellant is that the said letter should not have been given retrospective effect. The contention of the learned counsel appears to be correct. Keeping in view the fact that the father of the petitioner was permitted to retire with effect from 16.02.1990, in terms of Annexure E aforementioned, which was relevant for the purpose of consideration, was the Rules and the Circular letter issued by the State at the relevant time. It is now well known that an executive direction cannot be given retrospective effect. Only a Rule framed under the Proviso to Article 309 of the Constitution of India can be given retrospective effect."

In N.C. Singhal Vs. Director General, Armed Forces, it has been stated that:-

"The appellant submitted that his conditions of service were governed by the Army Instruction No. I/S of 1954 and according to para 13 thereof, the whole of his previous full pay commissioned service must count for pay, and that Army Instruction No. 176 which came into force with retrospective from October 1962, in the case of A.M.C Reserve Officers called 10 colour service during emergency in the matter of ante-date, for promotion, T.A., leave and pay, cannot affect his condition of service which were governed in this behalf by para 13 of Army Instruction No. I/S of 1954.

We think that the appellant's conditions of service were governed by para 13 of Army Instruction No. I/S/ of 1954 and his previous full pay commissioned service should be taken in the matter of 'ante-date' for the purpose of his pay. The condition of service in this regard was not liable to be altered or modified to the prejudice of the appellant by a subsequent administrative (Army) instruction which was given retrospective effect from 26, October, 1962."

11. When we consider the facts of the present case in the light of the law as enumerated above, we allow the present O.A and invalidate the action of the respondents in making their impugned letter dated 13.01.2014 effect retrospectively. Accordingly, letter dated 13.01.2014 making this letter implemented from retrospective date is hereby quashed and set aside. Consequent orders passed in furtherance thereto are also hereby quashed. The respondents are also directed to disburse the recovered amount to the applicant, if any made, within a period of four weeks from the date of receipt of certified copy of the order."

The present case is found to be squarely covered by the ratio of law laid down in the order passed in the case Lt. Col. P.C.Sood(supra) and is, therefore, disposed

of in the same terms, for the parity of reasons given therein. No costs.