

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 13.2.1990

PRESENT

HON'BLE SHRI N.V.KRISHNAN, ADMINISTRATIVE MEMBER
&
HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.156/87

Major M.V.V.Thamby(Rtd.) - Applicant

v.

1. The Union of India,
represented by the Secretary,
to Govt. of India,
Ministry of Finance,
New Delhi.
2. Secretary to Govt. of India,
Ministry of Defence,
New Delhi-22.
3. Director General,
National Cadet Corps,
Ministry of Defence,
Ramakrishnapuram,
New Delhi-22.
4. Deputy Director General
(P&MS),
Directorate General NCC,
Ministry of Defence,
West Block No.4,
R.K.Puram, New Delhi-66. - Respondents

Mr B Raghunathan - Counsel for the
applicant

Mr PV Madhavan Nambiar, SCGSC - Counsel for the
respondents

O_R_D_E_R

(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

In this application filed under Section-19 of
the Administrative Tribunals Act, the applicant a
retired NCC Major has prayed that it may be declared
that he is entitled to all pensionary benefits and
that the respondents may be directed to grant all
pensionary benefits(pension, DCRG & other terminal

✓

benefits) from the date of his retirement namely, 2.5.1978. The facts of the case can be briefly stated as follows.

2. The applicant while working as a Lecturer in English in Mahatma Gandhi College, Trivandrum was NCC commissioned as a part time/officer on 29.7.1950. He was later selected as a whole time Commissioned Officer. on the NCC After 25 years of service as Commissioned Officer, /he retired on superannuation on attaining the age of 55 on 2.5.1978. The Government of India had by order No.5431/DGNCC/PC/MS(B)/2198/A/D(GS.VI) dated 4.8.1978 ordered payment of pension, death-cum-retirement gratuity and other terminal benefits granted to civilian category 'A' (Class I) officers of the Central Government, to the officers who are granted NCC permanent commission. But it was provided in the order that those officers who had already retired on the commencement of the order would not be covered by the order. Therefore the applicant was denied the benefit of pension and other terminal benefits for the sole reason that he retired a few months before the promulgation of the order dated 4.8.1978. He was the only NCC Officer with permanent commission who was denied the benefit of the order of retirement. Since he felt that this discrimination on the basis of the date of retirement was illegal he made several representations to the Govt.

but there was no response. Therefore the applicant filed O.P. No.6143/85-R before the Hon'ble High Court of Kerala. The O.P. was disposed of by the Hon'ble High Court directing the respondents to consider the representations of the applicant. On the basis of that judgement, the fourth respondent re-examined the matter and rejected the request of the applicant for grant of pensionary benefits. Aggrieved by this order dated 5.2.1986 at Annexure-C, the applicant has filed this application. The respondents have filed a reply statement contending that as the applicant was not in service on 4.8.1978 he was not entitled to the benefit of the order mentioned in the application and that therefore he is not entitled to any retirement benefits as prayed for.

3. We have heard the arguments of the learned counsel on either side and have also gone through the records. The order on the basis of which the claim in the application is made runs as follows:

" I am directed to convey the sanction of the President to the grant of NCC Permanent Commission to whole-time NCC officers (men as well as women officers) commissioned under Government of India, Ministry of Defence letter No.5431/NCC/PERS(D)/775-III/D(GS.III) dated 21st December, 1963. So far as male officers are concerned the grant of NCC Permanent Commission will be a one time measure limited to existing officers only.

The sanction in para 1 above is subject to the condition that the above mentioned category of officers will be screened by a Board of Officers and only such of those whole-time NCC officers as are recommended by the Screening Board and approved by the Ministry of Defence will be granted NCC Permanent Commission.

Officers granted NCC Permanent Commission, if otherwise not found unfit, will be eligible to serve till 55 years of age and will be entitled to pension, Death-cum-retirement gratuity and other terminal benefits granted to civilian Category 'A' (Class-I) Officers of the Central Government. The officers who are granted Permanent Commission will be entitled to the same scales of pay and allowances and the concession/benefits as are presently admissible to them and except as aforesaid the officers will not be entitled to any other allowances/concessions on grant of Permanent NCC Commission.

For the purposes of discipline only, the whole-time NCC officers granted Permanent Commission as above will be brought under the purview of the relevant provisions of the Service Acts/Army Act, 1950 as applicable during peace time.

Whole-time NCC Officers who are not granted Permanent Commission under these orders will continue to be governed by their existing terms and conditions of service. Those officers who have already retired have been released from service will not be covered by these orders.

These orders will be effective from the date of issue.

This issues with the concurrence of Ministry of Finance (Defence) vide their u/o No.26-8/GS.I of 1978".

It is clear from this order that those officers who had already retired and have been released from the service would not be covered by these orders. The learned counsel for the applicant argued that the classification of the officers who retired from service prior to 4.8.1978 and those who continued in service on that crucial date for the purpose of grant of pensionary benefits to one group denying the same to the other is unreasonable and that therefore, the same is violative of Article 14 of the Constitution and that the same is liable to be struck down. He cited / decision Hon'ble of the Supreme Court of India in T.S.Nakara & others V. Union of India, (AIR 1983 SC, 130) wherein the Supreme

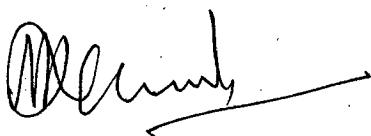
Court has held that the pensioners as a whole form a class and that the further classification of the pensioners on the basis of date of retirement and denial of the benefit of liberalised pension scheme to those who retired before a particular date is unconstitutional. But the principles laid down in Nakara's case has no application to the facts of this case. In this case the object sought to be/achieved by the order No.5431/DGNCC/PC/MS(B)/2198/A/D(GS.VI) dated 4.8.1978 was to grant terminal benefits to officers who were granted Permanent Commission in NCC. It related only to officers and not to pensioners. The officers of the NCC who were in service on 4.8.1978 formed a distinct and separate class from those who had already retired prior to that date. So it cannot be said that similarly situated persons have been classified unnecessarily so as to deny the benefit conferred by the order to a particular group. Since the applicant had retired on a date anterior to 4.8.1978 on which date the order was brought to force, we are not in a position to accept the case of the applicant that he should also be given the benefit of pension and other terminal benefits basing on the above order.

4. Though we have all sympathies for the applicant, who retired after long service just a few months prior

✓

..6...

to the introduction of the scheme for payment of pension and other benefits to the NCC Commission^{ed} Officers and became ineligible for the benefits, we are sorry that we are not in a position to grant him any relief. In the result, the application is dismissed without any order as to costs.


(A.V.HARIDASAN)

JUDICIAL MEMBER


(N.V.KRISHNAN)

ADMVE. MEMBER

trs