

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

13

O.A. NO:345/88

199

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DATE OF DECISION 12.11.91

SHANKARRAO KRISHNARAO DALVI

Petitioner

MR. D V GANGAL

Advocate for the Petitioners

Versus

UNION OF INDIA & ANOTHER

Respondent

MR. A I BHATKAR

(FOR MR. M I SETHNA)

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U C SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

U
VICE CHAIRMAN

mbm*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD; BOMBAY-400001

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O.A. No. 345/88

Shankarrao Krishnarao Dalvi
Plot No.5, Sainik Society
Poud Road; Pune-411038

..Applicant

V/s.

1. Union of India
through Secretary
Ministry of Defence
New Delhi

2. Directorate of General
NC.C.
Ministry of Defence
West Block No.4
R K Puram; New Delhi-110022

..Respondents

CORAM: HON.SHRI JUSTICE U C SRIVASTAVA, V.C.
HON.SHRI M Y PRIOLKAR, MEMBER (A)

APPEARANCE

MR. D V GANGAL
ADVOCATE
FOR THE APPLICANT

MR. BHATKAR (FOR MR. M I SETHNA)
COUNSEL
FOR THE RESPONDENTS

JUDGMENT:
(PER: U C SRIVASTAVA, VICE CHAIRMAN)

DATED: 12.11.91

The applicant who rendered 24 years of continuous service as Short Service Commissioned Officer under the Army Instruction with NCC and also worked for nine years as Commissioned Officer in Territorial Army and the erstwhile Gwalior State Force, and has retired from service in the year 1978 has claimed pensionary benefits w.e.f. 5.1.1978 under the C.C.S. Pension Rules. The applicant joined the Gwalior State Force on 4.4.1944 and after merger in 1951 the applicant was granted Territorial Army Commission on 27.2.1953. On 26.2.1956 he joined the Short Service Commission under the NCC and worked there till he retired in the year 1978.

The statement on behalf of the applicant is that he made various representations for pension and

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ultimately a reply was given to him on 27.1.1988 stating that the case of the applicant does not fall within the purview of C.C.S. Pension rules and that is why he approached this Tribunal.

The contention on behalf of the applicant is that the order is discriminatory and arbitrary as the same applies to the officers who are in service with the Government of India on 4.8.1978 and not earlier. No pensionary benefits were given to the members of NCC earlier. The Government of India vide its order dated 1.10.1986 has extended the pensionary benefits to NCC whole time commissioned officers who have not been accepted for grant of permanent commission in National Cadet Corps but have completed 20 years of service before retirement. The provisions of this order was given effect from 30th December 1980. Prior to this the Government of India vide its order dated 4.8.1978 sanctioned payment of pension, DCRG and the retirement terminal benefits granted to the civilian category, Class-I officers of the Central Government to the officers of NCC permanent commission. But it was provided that those officers who have already retired before the commencement of this order would not be covered by the order.

The applicant claimed benefit of both the orders and contended that he was entitled for benefit of 1978 order and in view of the fact when the decision is given in 1986 in which the effect has been given from

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1988 and as such there is no rationale behind it and the cut off date has been arbitrarily fixed. So far as the letter of 1978 is concerned one M V V Thampy and others approached the Administrative Tribunal Ernakulam Bench which vide its order dated 132.1990 dismissed the same, on the ground that those had already retired from service and cannot be covered by the order of 1978. We are in agreement with the decision of the Ernakulam Bench of CAT.

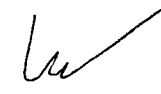
The learned counsel for the applicant contended that this cut off date has got no rationale behind it and the same has been arbitrarily fixed with the result that not many but few of the NCC officers like the applicant have been wrongfully deprived of the pensionary benefits. Learned counsel referred to the case of Nakara, (T.S. Nakara & Ors. V Union of India, (AIR 1983 SO 130)). The case of Nakara was considered by the Supreme Court in the case of Krishnakumar V. Union of India & Ors, in which ^{it was held that} ~~after considering the case~~ the option given to the Railway employees covered under the provident fund scheme to switch over ^{to} the pension scheme with a definite cut off date could not be violative of Article 14 of the Constitution of India. As the court took the view that pension retirees who are aligned were a separate class and no further classification was found necessary and the specified date bore a definite nexus to the ~~objects~~ objects to be achieved by giving some option. The option once exercised would be final.

The respondents have opposed the application of the applicant obviously on these grounds. The learned counsel for the applicant contended that the pensionary benefit has been extended to those who have retired from territorial army and no cut off date has been fixed in the case of NCC officers although they have similarly served.

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Undoubtedly it is the case of extension of pensionary benefits to the employees who have retired from NCC. When they joined the service they were aware of the fact that no pensionary benefit ^{was available} for them and they are entitled for contributory fund etc. Later on it seems that the pensionary benefits have been extended to the & retired employees of various army or paramilitary force and then the benefit has also been extended to the employees of NCC. The counter affidavit filed by the respondents also does not specify as to why this cut off date has been fixed, and what is the rationale behind it. But obviously it cannot be without any basis. However, it cannot be said that ~~because~~ the cut off date has to be changed because there were certain changes & and those who have retired prior to 1980 have not been given the benefit. Taking into consideration that various pensionary benefits have now been extended to various retired employees and this class consists of a very small class, we hope and trust that the prayer of the applicant shall be reconsidered by the respondents and they may ^{consider, if possible the desirability of} extend^{ing} the pensionary benefits to those who retired prior to 1980. With the above observations the application is disposed of finally with no order as to costs.


(M Y PRIOLKAR)
MEMBER (A)


(U C SRIVASTAVA)
VICE CHAIRMAN