

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.4666/2015

Order reserved on 29th November 2016

Order pronounced on 3rd December 2016

Hon'ble Mr. K.N. Shrivastava, Member (A)

Lt. Col. B.P. Shahi (Retd.)
Age 76 years
s/o late Mr. S P Shahi
Plot No.23, Sector 6, Dwarka
New Delhi – 75

..Applicant

(Dr. J.C. Vashista, Advocate)

Versus

1. Union of India through Secretary
Ministry of Defence
South Block, PHQ-PO
New Delhi – 11
2. Principal Controller of Defence Accounts (Pensions)
Daraupadi Ghat, Allahabad (UP)
3. State Bank of Bikaner & Jaipur (CPCC)
2nd Floor, SMS Highway Chaura Rasta
Jaipur, Rajasthan – 302003
4. State Bank of Bikaner & Jaipur
WZ-304, Nangal Raya
Jail Road, New Delhi

..Respondents

(Mr. G. S. Virk, Advocate)

O R D E R

The applicant, through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following specific reliefs:-

“(i) Set aside amended Corri. PPO/No.C/Misc./Corr.132/2014 dated 23.09.2014 issued by the respondent no.2, i.e. PCDA (Pensions), Allahabad, UP.

(ii) Issue necessary direction(s)/instruction(s) to the respondent no.1 and 2 to issue Corrigendum to the PPO favouring the applicant and restoring the applicant's pension @ Rs.26,265/- per month as per existing policy of the Govt. of India on the subject.

(iii) Issue necessary direction(s)/instruction(s) to the respondent no.3 and 4 to credit the recovered amount of Rs.2,08,846/- (Rupees Two Lacs Eight Thousand Eight Hundred Forty Six only) in the account of the applicant.

(iv) Allow an interest @ 24% per annum on the recovered amount of Rs.2,08,846/- (Rupees Two Lacs Eight Thousand Eight Hundred Forty Six only) from the applicant."

2. The brief facts of the case are as under:-

2.1 The applicant was selected as Emergency Commission Officer (ECO) for Indian Army in the year 1963. He underwent OTS Training from 19.07.1963 to 01.02.1964 and thereafter inducted into the Indian Army. He served the Army from 02.02.1964 to 26.04.1968.

2.2 On his discharge from the Army, by way of reemployment, he joined National Cadet Corps (NCC) as a Commissioned Officer, also called Whole Time Officer (WTO), on 02.06.1968. Giving the benefits of his past service in the Army, his seniority in the NCC was antedated w.e.f. 09.03.1964. He retired from NCC on 01.01.1996 in the rank of Lt. Col.

2.3 The respondent No.2 issued Pension Payment Order (PPO) on 31.05.1995 whereby his pension was fixed at `2709/- effective from 01.01.1996 (Annexure A-3 (colly.)).

2.4 Pursuant to the 6th Central Pay Commission recommendations, the pay of Lt. Cols. in the Army and equivalent ranks in other Armed Forces Services was revised and Lt. Cols. were placed in the Pay Band 4 - `37400-67000 + Grade Pay `8000/- + MSP `6000/- (Annexure A-4 (colly.)).

Accordingly the pension of the applicant was revised to `27,464/-, including DP.

2.5 Following the judgment of Hon'ble Supreme Court dated 04.09.2012 in I.A. No.9/2010 in T.P. (C) No.57/2007, directing that the judgment of Hon'ble High Court of Kerala in the case of **Major Dhanapalan** should be implemented in respect of all the service officers, who were in service as on 01.01.1986 in the rank of Captain to Brigadier, the Principal Controller of Defence Accounts (O) (PCDA (O)), Pune issued Annexure A-6 instructional order dated 25.10.2012, which, *inter alia*, so far it relates to NCC, stated as under:-

- (a) The integrated scale for NCC officers is `2200-100-3800-150 - 5000.
- (b) Minimum pay of Lt. Col. in NCC after having completed 21 years of service shall be `3900/-.
- (c) The pay of the Captain in the proposed scale as on 01.01.1986 shall be `3800/- + rank pay `600/-.

The Annexure A-6 order, however, also contained a caveat to the effect that this order is subject to pending receipt of any instruction from the Ministry of Defence (MoD). The said order also stated that the arrears payable to the affected officers as per the judgment in Major Dhanapalan's case shall be accordingly worked out.

2.6 The respondent No.2, acting on its earlier circular No.144 dated 27.01.2010 (Annexure R-2), unilaterally revised downwards, the pension of the applicant, which was earlier fixed as per Annexure A-5 (colly.) of MoD,

and issued impugned A-2 order (page 170 of the paper book), which reads as under:-

“I am directed to refer to Government letter No.15324/HQDGNCC/Coord/532/D (GS-VI)/98 dated 29th May 1998 and to say that the question of revision of pay scales of WTOs (Retired) working earlier with NCC organization the rank of Lt. Col. has been examined in this Ministry in consultation with Defence (Finance) and Ministry of Finance, Department of expenditure for the purpose of grant of pension and pensionary benefits (revised) to them. It has been decided that erstwhile WTOs (NCC) in the rank of Lt. Col. hitherto being governed by SAI 9/S/74 for the purpose of Pay and Allowances subject to deduction of Rs.50/- per month due to a abolition of Special Disturbance Allowance w.e.f. 1st January, 1973, will be placed in Pay Band-III (Rs.15600-39100) with the corresponding grade pay (Rs.7600) for the purpose of revision of pensionary benefits w.e.f. 1.1.2006.

2. NCC HQrs will take necessary action in the matter in consultation with PCDA Allahabad.”

2.7 The result of the impugned Annexure A-2 was that the applicant's pension was reduced from `26,265/- to `17,399/- and it also entailed into a recovery of `7,62,819.14 (Annexure A-8). The respondent No.2, who is the pension sanctioning authority, has also recovered a sum of `1,96,274.00 leaving an outstanding balance of `5,66,595.14.

2.8 Aggrieved by Annexure A-2 order of respondent No.2, the applicant approached the Armed Forces Tribunal (AFT), who, vide interim order dated 22.05.2015, stopped recovery of the outstanding amount from the pension of the applicant.

2.9 Later during the course of hearing, it was pointed out to AFT that the pension of the applicant is governed by the CCS (Pension) Rules, 1972 and as such the AFT does not have jurisdiction over the matters relating to pension of the applicant. In this regard, reference was made to Annexure R-

4 communication dated 21.12.1963 of Ministry of Defence to the Director General, NCC wherein at paragraph 8 it is clearly stated that the pension of NCC officers shall be governed by the CCS (Pension) Rules. For this reason, the AFT closed its proceedings and directed the applicant to approach the Central Administrative Tribunal. Accordingly, the applicant has filed the instant O.A praying for the aforementioned reliefs.

5. Pursuant to the notices issued, the respondents entered appearance and filed their reply. Subsequently, they have filed an additional affidavit. Repelling the pleadings of the applicant in the O.A., the respondents in their reply have broadly submitted as under:-

- (i) The applicant is attempting to claim retiral benefits as applicable to the officers of Armed Forces whereas his pension and retiral benefits are governed by CCS (Pension) Rules, 1972.
- (ii) The respondent No.1 vide letter dated 11.11.2008 (Annexure R-1), revised the pension of the Armed Forces pensioners/family pensioners. It has been made very clear in the said letter that the orders contained therein shall apply to all the Armed Forces pensioners/family pensioners as on 01.01.2006 under the Pension Regulations of the three Services/State Forces and various Government orders issued from time to time. The said letter was amended by the MoD's letter dated 21.05.2009. It came to the notice of the authorities that some banks/Pension Disbursing Authorities (PDAs) had erroneously revised the pension of NCC WTOs as per the MoD's circular dated 21.05.2009, which was circulated under circular No.412 dated 26.05.2009.

- (iii) The application of the MOD's circular dated 26.05.2009 to WTOs of NCC was not tenable. Consequently, PCDA (Pension) Allahabad vide circular No.144 dated 27.01.2010 (Annexure R-2) issued instructions to correct the error.
- (iv) Vide the impugned PPO dated 23.09.2014 (Annexure A-1), the pension of the applicant was reduced from `26,265/- to `17,399/- after refixing his pension in terms of Annexure R-2 circular dated 27.01.2010 issued by the PCDA (P) Allahabad. The refixation of the pension at a lower level has resulted into a recovery of `7,62,819.14 from the applicant, part of which (`1,96,274.00) has already been recovered from his pension leaving an outstanding balance of `5,66,595.14.

6. Rebutting the averments of the respondents in their reply, the applicant in the rejoinder has submitted as under:-

- (i) The Hon'ble Supreme Court in the case of **Union of India & another v. Lt. Col. Komal Charan & others** [AIR 1992 SC 1479] has held that "the N.C.C. officers employed on whole-time basis are paid exclusively by the Central Government from the Defence Services Estimates. Therefore, the pay of such Officers is not debitable to the Civil Estimates, as required by Fundamental Rule 2".
- (ii) The Annexure A-6 instruction order of PCDA (O) Pune is based on the judgment of Hon'ble Supreme Court in **Major Dhanapalan**, in which it has been unambiguously clarified that an integrated scale for NCC officers is `2200-100-3800-150-5000. The judgment has

clarified that the rank pay is not to be deducted for the calculation of pension.

7. Arguments of learned counsel for the parties heard on 29.11.2016. I have considered the arguments of the learned counsel for the parties and have perused the pleadings and documents annexed thereto.

8. Admittedly, the establishment of NCC is part of MoD and is paid out of defence estimates. However, as per MoD's letter dated 21.12.1963, which deals with the service conditions of NCC officers, it is quite clear that the CCS (Pension) Rules, 1972 are applicable to them for pension and retiral benefits, *albeit* these benefits too are paid to the retired NCC officers from the defence estimates. It is also crystal clear that all orders, circulars and instructions, applicable to regular Armed Service personnel, are not *ipso facto* applicable to WTOs of NCC unless specifically stated so. Some of them are made applicable with specific mentions therein.

9. The PCDA (O) Pune, who is responsible for fixation of the pay of the service personnel, pursuant to the Hon'ble Supreme Court judgment in **Major Dhanapalan**, has issued Annexure A-6 instructional order, which not only deals with the Armed Forces personnel but also with WTOs of NCC. He Annexure A-6 has made it absolutely clear that the integrated scale for NCC officers is `2200-100-3800-150-5000. The basic principle of fixation of pay of the Armed Forces personnel by including the rank pay in the integrated pay scale, as ordained by the Apex Court in **Major Dhanapalan** (supra), has also been made applicable to the WTOs of NCC in Annexure A-6. Neither the MoD nor has the Controller General of Defence Accounts (CGDA), New Delhi issued any contrary instructions to

the instructions contained in Annexure A-6, *albeit* Annexure A-6 states that that the instructions contained therein are subject to any instructions received from MoD subsequently. As such, the Annexure A-6 instructions have attained finality.

10. The PCDA (P) Allahabad has been assigned the task of fixation of pension of Armed Forces personnel as also of WTOs of NCC. Needless to say that the pension fixation has umbilical link with pay scale. No doubt, the PCDA (P) Allahabad had issued Annexure R-2 circular instructions dated 27.01.2010 with regard to the revision of pension for Armed Forces personnel and WTOs of NCC, which reads as under:-

“Sub:- Revision of pension of pre 1/1/06 Armed Forces Pensioners : Lt. Col. and equivalent in Navy/Air Force whole time Officers of NCC.

It has come to notice of this office that some Pension Disbursing Authorities (PDAs) have revised incorrectly pension of whole time officers (W.T.O.) of Lt. Col. and equivalents in Navy/Air Force of NCC in terms of MOD Deptt. of Ex Servicemen Welfare letter No. 17(4)/2008(I)/D (pen/policy) dated 21st May 2009 circulated under this office circular No.412 dated 26.5.2009.

In this context it is clarified that G of I, Min. of Defence letter No.17(4)/2008(I)/D (pen/policy) dated 11.11.2008, circulated under this office circular No.397 dated 18.11.2008 relates to revision of Armed Forces pensioners/ family pensioners of pre-2006. G of I, Min. of Defence letter No. 17 (4)/2008(I)/D (pen/policy) dated 21.05.2009, circulated under our circular No.412 dated 26.5.2009 is an amendment to letter of 11.11.2008 referred above, which is not applicable to NCC officers and MNS (Local) granted pension under ‘C’ series PPOs.

Extension of benefit of MOD letter dated 21st May 2009 circulated under this office circular No.412 dated 26.5.2009 to officers of NCC/MNS (Local) by some Pension Disbursing Authorities is resulting in overpayment of pension. It is, therefore, requested that all pension paying branches/treasuries/DPDOs/PAOs under your jurisdictional may be instructed not to allow the benefit of MOD letter dated 21st May 2009 to the officers of NCC/MNS (Local) whose PPOs are notified under “C” series.

They may further be instructed to review the cases of officers of NCC/MNS (Local) whose PPOs are notified under “C” series and if benefit of said MOD letter have been allowed to above category of pensioners, recovery be effected immediately.”

11. The instructions contained in Annexure R-2 were never implemented in the case of the applicant. Further it is to be noted that the Apex Court’s judgment in **Major Dhanapalan** was delivered on 04.09.2012 pursuant to which, Annexure A-6 instructional order had been issued by the PCDA (O) Pune, based on which the revision of pay was effected for Armed Forces personnel as well as for WTOs of NCC. Accordingly, the pension of the applicant also got revised and came to be fixed at `26,265/-.

12. The respondent No.2, much belatedly giving effect to its Annexure R-2 instructions, has issued the revised PPO (Annexure A-1) dated 23.09.2014 downwardly revising the pension of the applicant from `26,265/- to `17,399/-. This has culminated into a recovery of `7,62,819.14, out of which a sum of `1,96,274.00 has already been recovered from the pension of the applicant, leaving an outstanding balance of `5,66,595.14. In my considered view, this action of respondent No.2 was not at all justified. As mentioned earlier, the pay and consequently pension revision of the applicant have come into effect by virtue of Annexure A-6 instructional order of PCDA (O) Pune. Annexure A-6 has not been rescinded by MoD and as such it has attained finality. Thus any tampering or interference by respondent No.2 in the pension of the applicant fixed on the strength of Annexure A-6 is not only unwarranted but also illegal, in view of the fact that Annexure A-6 is based on the judgment of the Apex Court in **Major Dhanapalan**.

13. In the conspectus of the discussions in the foregoing paragraphs, I quash and set aside the Annexure A-1 revised PPO issued by respondent No.2. I direct that the pension of the applicant should be fixed/restored as per Annexure A-3 PPO order dated 31.05.1995 in conjunction with Annexure A-6 instructional order of PCDA (O) Pune dated 25.10.2012. This shall be done within a period of eight weeks from the date of receipt of a copy of this order. Any amount recovered from the applicant pursuant to the Annexure A-1 PPO, which now stands quashed and set aside, shall be returned to the applicant. It is clarified that the applicant shall not be entitled for any interest on this amount.

14. The O.A. is accordingly disposed of. No order as to costs.

(K.N. Shrivastava)
Member (A)

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