CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

…

ORIGINAL APPLICATION No.060/00054/2016 & 2 Others
Chandigarh, this the 17th day of January, 2018

CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. P. GOPINATH, MEMBER (A)

…

(1) O.A.NO.060/00054/2016

Lt. Cdr. Dalip Singh S/o Late Sh. Saudagar Singh, R/o Kothi No. 314, GILLCO Valley (Near Gate No. 02), Sector-127, Kharar, Greater Mohali, District SAS Nagar, Punjab-140301, retired as Lt. Cdr. From 1 Chd. Naval Unit, Chandigarh (Group-A).

…. Applicant

(**Argued by: Mr. B. N. Vasishta, Advocate**)

Versus

1. Union of India through Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-110011.
2. The Director General, NCC Headquarters, Govt. of India, Ministry of Defence, West Block-IV, R.K. Puram, New Delhi-110066.
3. The Principal Controller of Defence Accounts (Pensions), Govt. of India, Ministry of Defence, Draupadi Ghat, Allahabad-211014.
4. Punjab National Bank, through its Chief Manager, PNB Branch, Sector -19C, Chandigarh.

….. Respondents

(**Argued by : Mr. K.K. Thakur, Advocate for Respondents No.1to3**
Mr. Gulrej Khan, proxy counsel for
Mr. Amit Kumar Goyal, Advocate for R.No.4

(2) O.A. No.060/00659/2016

Cdr. Nirmal Singh S/o Late Sh. Sarwan Singh, R/o House No. 1563, Sector 33-D, Chandigarh-160020, retired as Commander Officer from 1 Chandigarh Naval Unit NCC Chandigarh, aged about 72 years (Group A).

…. Applicant

(**Argued by : Mr. B. N. Vasishta, Advocate**)

Versus

1. Union of India through Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-110011.
2. The Director General, NCC Headquarters, Govt. of India, Ministry of Defence, West Block-VI, R.K. Puram, New Delhi-110066.
3. The Principal Controller of Defence Accounts (Pensions), Govt. of India, Ministry of Defence, Draupadi Ghat, Allahabad-211014.
4. Punjab National Bank, through its Chief Manager, PNB Branch, Sector -17, Chandigarh.

..... Respondents

(**Argued by : Mr. K.K. Thakur, Advocate for Respondents No.1to3**
Mr. K.C. Bhatia, Advocate for R.No.4)

(3) <u>O.A. No.060/01033/2016</u>

Lt. Col. P.C. Chandel (Retd.) son of Late Sh. Sada Ram, aged about 77 years, r/o House No. 1119, Sector – 2, Panchkula.

.... Applicant

(**Argued by : Mr. S.S. Pathania, Advocate**)

Versus

1. Union of India, Ministry of Defence, South Block, New Delhi-110011 through its Secretary.
2. The Director General, National Cadet Corps, West Block-IV, R.K. Puram, New Delhi-110066.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (U.P)-211014.
4. Chief Manager, Central Bank of India, SCO No. 293-294, Sector 35-D, Chandigarh (U.T).

... Respondents

(**Argued by : Mr. K.K. Thakur, Advocate for Respondents No.1to3**
Mr. G.S. Bhandari, Advocate for R.No.4

ORDER (ORAL)
HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J):-

1. As identical questions of law and facts are involved, so we propose to dispose of indicated Original Applications (OAs), by means of this common decision, in order to avoid repetition of facts, and as acknowledged by learned counsel for the parties as well.

2. The matrix of the facts and material culminating in the commencement, relevant for deciding the core controversy involved

in the instant OAs and exposited from the record is that the applicants were initially commissioned in the Indian Army, as Emergency Commissioned Officers (ECOs), in the ranks of 2nd Lieutenant etc, during the course of China aggression. They were accordingly promoted to their respective ranks as regular Defence Officers. Their service conditions were governed by Special Army Instructions 9/S/74. They were stated to have been treated as regular Army Officers and were enjoying all the allowances as admissible to regular Army Officers. After the emergency, they were granted permanent commission in National Cadet Corps (NCC), on the recommendations of the Screening Board, which was approved by the Ministry of Defence. A special cadre of NCC Commissioned Officers, known as NCC Whole Time Officers (WTOs) was created. According to the applicants, that they performed their duties in NCC and took active part in adventure activities, just like regular Armed Forces Officers. They were stated to have been designated as regular Armed Forces Officers like Lt, Capt. Major, Lt. Col, like wise and equivalent in the Army, Navy & Air Force. They were granted the same pay and other allowances, military accommodation from Defence Pool, Travel Facilities, Railway Warrants, Form-D, medical facilities in Military Hospitals, Canteen facilities etc. as admissible to regular Armed Forces Officers. They and other similarly situated ECOs, were paid from defence estimates, as per the Government of India instructions dated 23.5.1980. However, they were governed by CentralCivil Services (Pension) Rules, 1972.

3. The case, set up by the applicants, in brief, in so far as relevant, is that after release / retirement from the Armed Forces,

they were paid the equivalent pay and their pension was accordingly fixed, at par with equivalent ranks in Army, Navy & Air Force. Even on implementation of the 4th and 5th Central Pay Commission recommendations also, they were paid salary at par with regular defence service officers. After retirement, they were disbursed the pension equivalent to the regular Defence Officers. It was alleged that although, all of a sudden, their pension was reduced, without assigning reason or notice, as per pass book entry, Annexure A-4 in O.A.No. 060/01033/2016, letter dated 20.4.2015 (Annexure A-3) from PNB, Sector 17B, Chandigarh in O.A.No.060/00659/2016 etc. Even notices for recovery of the alleged excess amount were issued to applicants, without any basis and without specific orders, in this regard.

4. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicants claim that although they were entitled to and granted pensionary benefits, at par with the equivalent rank Defence Officers, but strangely enough, the respondents have suddenly reduced their pensionary benefits, after decades, that too without any show cause notice (SCN) or providing opportunity of being heard, in the garb of impugned letter No.144, dated 27.1.2010 (Annexure A-11), letters dated 13.1.2014 (Annexure A-15), dated 29.9.2015 (Annexure A-6), 3.11.2015 (Annexure A-7), 30.12.2015 (Annexure A-22) in O.A.No.060/00054/2016 (***Lt. Cdr. Dalip Singh Vs UOI etc***.), letter No. 144 dated 27.1.2010 (Annexure A-5), dated 13.1.2014 (Annexure A-8), calculation sheet dated August, 2014 & letter dated 20.4.2015 (Annexure A-3), in O.A.NO.060/00659/2016 titled ***Cdr. Nirmal Singh Vs. UOI etc***.) and office order dated 13.1.2014

(Annexure A-12) in OA 060/01033/2016 titled ***Lt. Col. P.C. Chandel Vs. UOI etc***.). On the strength of the aforesaid grounds, the applicants seek to assail the pointed impugned letters etc, being arbitrary, discriminatory, illegal, issued without following the principles of natural justice & without jurisdiction and claim pension at par with equivalent rank officers of Defence Forces, in the manner stated hereinabove.

5. On the contrary, the respondents have refuted the claim of the applicants. The Respondent No.3 filed the counter affidavit / reply on behalf of the official respondents, wherein it was pleaded that a separate cadre of Whole Time Officers (WTOs) was created in the year 1963 to provide employment to the officers, who were commissioned as ECOs, in the Defence Forces, but could not get permanent commission in the Army. The sanction for the grant of NCC Commission was issued under Government of India letter dated 21.12.1963 (Annexure R-2 in OA No.060/00659/2016) under NCC Act, 1948 (Annexure R-1 in OA No.060/00659/2016), wherein it was provided that the ECOs released from Army were to be provided suitable employment in NCC but their ranks were never at par with or equivalent to regular officers of the Armed Forces of the Union. They were called as NCC Commissioned Officers, but in fact they were not officers of the regular Army and they were appointed as NCC Commissioned Officers under Section 9 of the NCC Act, 1948. Their terms and condition of service were further modified vide letter dated 23.5.1980 (Annexure R-3 in OA.No.060/00659/2016) wherein it was clarified that such officers shall be junior to the regular service officers of the same rank and will serve under them. They will be governed by the Central Civil

Services (Pension) Rules, 1972. They were not required to perform any combatant or active military duty.

6. The case of the respondents further proceeds that the Competent Authority has issued impugned instructions dated 26.5.2009 (Annexure R-5 in OA.No.060/00659/2016), wherein it was clarified that the pensionary benefits granted to the regular defence personnel will not be applicable to NCC WTOs. The Pension Distributing Authority (PDA) could not distinguish the difference between Special Commissioned Officers and regular Army Officers and their pension was erroneously fixed as if they retired and fell within the category of Armed Forces Officers. Due to this flawed interpretation, all the WTOs were given pension at par with equivalent rank of defence officers. When this anomaly was noticed, then Government immediately issued letter dated 27.1.2010 (Annexure R-6 in OA.No.060/00659/2016) to PDAS clarifying the position. According to the respondents, that there is a difference between the officers of the regular defence personnel and officers of the NCC cadre WTOs appointed by the different sources. The PDAs wrongly interpreted the Government order. Consequently, the pension of the applicants was revised and excess amount was ordered to be recovered from them. Instead of reproducing the entire contents of the replies and in order to avoid repetition of the facts, suffice it to say that, virtually acknowledging the factual matrix and reiterating the validity of the impugned letters / orders, the respondents have stoutly denied all other allegations and grounds contained in the OAs and prayed for its dismissal.

7. Controverting the pleadings in reply filed by the respondents, and reiterating the grounds contained in the OA, the applicants have filed the rejoinders. That is how, we are seized of the matter.

8. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, we are of the firm view that the instant OAs deserve to be accepted, in the manner, and for the reasons, mentioned herein below.

9. As is evident from the record that having successfully cleared the recruitment process, all the applicants were duly commissioned during emergency, at the time of China aggression. During their career in defence services, they got promotions at the appropriate times, at par with regular Army Officers. The applicants claim that they were treated at par with regular officers of the defence forces, for all intents and purposes. After release from the Army, they were granted regular commission in NCC, with all existing benefits and allowances, admissible to the equivalent rank of regular Army Officers. Having completed their tenure, they retired from their respective services. At the time of retirement, their pay and pensionary benefits were fixed at par with the equivalent officers in the regular defence services. Even during their posting in military stations, they were treated at par with regular Officers of Defence Services. Sequelly, they were provided Military Accommodation from Defence Pool, Travel Facilities, Railway Warrants, Form-D, Medical Facilities in Military Hospitals, Canteen facilities etc. They and other similarly situated ECOs, were paid from defence estimates. As per terms and conditions

contained in the letter dated 23.5.1980, they were stated to have been treated at par with the officers of the Armed forces.

10. They are aggrieved against the action of the respondents, when their pensionary benefits were abruptly reduced, after decades of their retirement that too without giving any SCN or providing any opportunity of being heard, in the garb of pointed impugned letters / orders / instructions.

11. Thus, it would be seen that the facts of the cases are neither intricate, nor much disputed, and fall within a very narrow compass to decide the real controversy between the parties. Such being the position on record, now the short and significant question, that arises for our consideration in these cases is as to whether the respondents have any legal authority to abruptly reduce the pensionary benefits of the applicants, after decades of their retirement, that too without issuing SCN, without providing opportunity of being heard and without following the due procedure, in the given particular facts and special circumstances of the matter, or not?

12. Having regard to the rival contention of the learned counsel for the parties, to our mind, the answer must obviously be in the negative, in this regard.

13. What cannot possibly be disputed here is that the pay and pensionary benefits of the applicants were initially fixed at par with the equivalent rank officers of the defence services. But surprisingly enough, the amount of pension of the applicants was abruptly reduced by the respondents, at a very belated stage, that too without issuing the SCN, or providing any opportunity of being heard & without passing any individual formal orders of reduction

of pension and without assigning any cogent reasons. It is not a matter of dispute, that it was the competent authority, which itself initially had voluntarily fixed the pay and granted the pension to the applicants at par with the Army Officers, after their retirement from service. Moreover, it is not the case of the respondents that the applicants have any role to play in such fixation of pay or pension or they have concealed or not disclosed true facts, at any stage, before fixation of their pension. Thus, the applicants cannot possibly be blamed, in this relevant connection.

14. Meaning thereby, all of a sudden amount of pension of the applicants, was reduced straightway by issuing the revised PPO, without passing any formal order in this regard, that too without issuing any SCN or providing any opportunity of being heard to the applicants. In this manner, the indicated impugned letters / orders / instructions cannot legally be sustained, as it was issued without following the well settled principles of law and natural justice. The contentions of the learned counsels for the applicants that such actions / letters / instructions are not only arbitrary but illegal as well, have considerable force.

15. Therefore, once the amount of pension was duly fixed and granted to the applicants , in that eventuality, the amount cannot arbitrarily be reduced by the competent authority, without issuing SCN, providing adequate opportunity of being heard and following the due procedure and passing a speaking order, which have in fact, not been adhered to in the present case by the respondents. Hence, their action is arbitrary, which has caused a great deal of prejudice and inculcated and perpetuated injustice to the cause of

the applicants, which is not legally permissible. This matter is no longer res-integra and is now well settled.

16. An identical question came to be decided by Hon'ble Apex Court in the case of ***Bhagwan Shukla Vs. U.O.I. and Others*** *AIR 1994 SC 480*, wherein it was ruled that in case any employee is reduced without following the due procedure of law in lower scale, then he has obviously been visited with the civil consequences. There has, thus, been a flagrant violation of the principles of natural justice and he was made to suffer huge financial loss, without being heard. Fair play in action warrants that no such order, which has the effect of employee suffering civil consequences, should be passed without putting the concerned employee to notice and giving him a hearing in the matter.

17. Sequelly, the Hon'ble Apex Court in the case titled ***Indu Bhushan Dwivedi Versus State of Jharkhand and another***, (2010) 11 SCC, 278, has ruled as under:-

> "One of the basis canons of justice is that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause. As a general rule, an authority entrusted with the task of deciding lis between parties or empowered to make an order which prejudicially affects rights of any individual or visits him with civil consequences is duty-bound to act in consonance with basis rules of natural justice including the one that material sought to be used against person concerned must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision, which forms an integral part of concept of rule of law. This right has its roots in notion of fair procedure. It draws attention of authority concerned to imperative necessity of not overlooking cause which may be shown by the other side before coming to its decision.
>
> The employer is not only required to make the employees aware of specific imputations of misconduct but also to disclose material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, final decision gets vitiated on the ground of violation of rule of audi alteram partem. Even if there are no statutory rules which regulate holding of disciplinary enquiry against a delinquent employee, employer is duty-bound to act in consonance with rules of natural justice."

18. Not only that, exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of ***Chairman,***

Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240 has in para 8 held as under:-

> "8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation".

19. Sequelly, similar question came to be decided by Hon'ble Apex Court in a celebrated judgment in the case of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others*** 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that "recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim**.** It was also held that "**while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution. Such authorities are required to pass reasoned and speaking order."** The same view was again reiterated by Hon'ble Apex Court in the case of ***Divisional Forest Officer Vs. Madhusudhan Rao*** JT 2008 (2) SC 253. Thus seen

from any angle the impugned action / letters of reduction of the amount of pension of the applicants, cannot legally be sustained, under the present set of circumstances.

20. There is yet another aspect of the matter, which can be viewed entirely from a different angle. A similarly situated applicant ***Lt. Col. P.C. Sood (Retd.) S/o Late Sh. Tek Chand***, had earlier filed ***O.A.No. 063/00130/2015,*** challenging same Circular No. 144 dated 27.1.2010 issued by Government of India, to the Director General, NCC, New Delhi, whereby WTOs (NCC) were fixed in lower pay scale, retrospectively and it was decided to effect recovery of the excess amount of pensionary benefits, on the similar grounds, as impugned in the present OAs. The respondents had also opposed the claim of the applicant (therein), on almost on the same grounds, as pleaded in the present cases. After hearing the same very learned counsel for the respective parties, and going through the record, the said OA was allowed and the impugned action (therein) of the respondents, reducing the amount of pension and recovery of excess amount, was invalidated and set aside, vide order dated 3.7.2017, by a coordinate Bench of this Tribunal. The operative part of the order reads as under :-

> "5. We have heard Mr. B. Nandan, proxy counsel for the applicant and Mr. K.K. Thakur, learned counsel for the respondents.
>
> 6. Mr. B. Nandan, learned counsel for the applicant attacked the impugned order on two counts. Firstly that impugned order 27.01.2010 (Annexure A-7) and order dated 13.01.2014 (Annexure A-15) are illegal, arbitrary and being passed without considering that applicant has already been entitled for same benefit as admissible to his counterpart in regular commission. It is further argued that Deputy CDA (A), from the office of Allahabad is not the competent authority to issue any circular to bank or other authorities fixing the pay of the similarly situated persons like applicant. Neither Dy. CDA is applicants appointing authority nor any authority under law to issue any circular taking policy decision for the employees working under NCC, therefore, he submitted that impugned orders be quashed and set aside. With regard to Annexure A-15 dated 13.01.2014, learned counsel for the applicant

submitted that this letter is contrary to earlier instruction issued by the Government of India in this behalf. Secondly, learned counsel for the applicant argued that the authorities cannot implement the decision with retrospective effect to disadvantage of the employees like the present applicant who had already retired. He also argued that their decision for revision and consequently, pension in pay band III w.e.f. 01.01.2006 is bad in law. Thereafter, effecting recovery for alleged excess amount is also bad in law. To buttress his submission, he placed reliance upon the judgment passed by the Hon'ble Supreme Court in case of State of Punjab & Ors Vs Rafiq Masih (White Washer) (2014(8) SCC 883).

7. Per contra, Sh. K.K. Thakur, learned counsel for the respondents has reiterated what has been stated in the written statement as reflected above.

8. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record.

9. To understand and to decide the issue involved in this O.A, we have to trace the history whether argument raised by learned counsel for the applicant that is he entitled for same benefit as admissible to his counterpart in Army or not? Concededly, the applicant who retired as Captain from Indian Army and was appointed in the same rank and granted the regular commission in NCC on 18.11.1969 and was posed as Administrative Officer where he earned various promotions and retired as Lt. Col. on 31.08.1994. It is not disputed by the respondents that when the applicant was appointed in NCC he was appointed as WTO as per terms and conditions of circular dated 23.05.1980. Army issued instruction no. 9/S/74 dated 19.12.1974 wherein under Clause 14, it has been stated that the provision of this instruction do not apply to NCC officers, officers of the Regular Reserve, TA officer and re-employed officer for whom, separate instructions will be issued. Subsequent to that Government of India, Ministry of Defence issued another letter dated 16.01.1976 to the Director General, National Cadet Crops, New Delhi wherein it is stated that President is pleased to decide that the pay and allowances of NCC officers employed on whole time basis in NCC, will be revised and regulated in accordance with the provisions of SAI 9/S/74. The relevant para reads as under:-

> 'I am directed to refer to para 6 Appendix A to this Ministry's letter No. 5413/NCC/PERS (D)/755-III/D (GS.III) dated 21.12.1963 and paras 4(a)(i) Appendix 'A' to this Ministry's letter No. 0051/62/NCC PERS (A)/3281/GS/9/(6) S-III dated 11.12.1961 and to state that in pursuance of the recommendations of the third pay commission and Govt. Decision thereon, the President is pleased to decide that the Pay and Allowances of NCC Officers employed on whole time basis in NCC, will be revised and regulated in accordance with the provisions of SAI 9/S/74. Subject to deduction of a sum of Rs. 50 P.M from the above rates of pay on account of abolition of special disturbance allowances from 01.01.1973. Subsequent to that Government of India issued another letter dated 23.05.1980 wherein terms and conditions of service of NCC Whole Time Officers granting NCC permanent commission under Govt. of India letter dated 04.08.1978 were framed. Clause 6 deals with Pay and Allowances and clause 8 deals with Pension, Family Pension, Death cum retirement Gratuity and other terminal benefits and same reads as under:-

> 'Clause 6- Pay and Allowances
>
> (a) These officers will be governed by SAI 9/S/74 for the purpose of pay and allowances subject to deduction of Rs. 50/-pm due to abolition of special disturbance allowance with effect from 01.01.1973.
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> (b) Kit Maintenance Allowance will be admissible at the rate of Rs. 50/- per month.
>
> (c) High Altitude and uncongenial Climate Allowance as laid down in SAI 9/S/74, will not be admissible to these officers.
>
> (d) Outfit Allowance will not be admissible to these officers. Clause 8 Pension, Family Pension, Death-cum-Retirement Gratuity and other terminal benefits.

These officers will be governed by Central Civil Service (Pension) Rules, 1972, as amended from time to time.

Clause 6 of above letter makes it clear that these NCC officers will be governed by SAI 9/S/74 for the purpose of pay and allowances subject to deduction of Rs. 50/- p.m due to abolition of special disturbance allowance w.e.f. 01.01.1973. With regard to pension and family pension, it cleared that NCC officers will be governed by the Central Civil Service (Pension) Rules, 1972. This issue has already been decided by the Hon'ble Supreme Court in case of Union of India & Another Vs. Lt. Col. Komal Charan & Ors. (AIR 1992 SC 1479) wherein also it is held that NCC officers are governed under Army instructions and only with regard to pension, family pension and DCRG, they will be governed under Central Civil Service (Pension) Rules, 1972. In accordance with letter dated 23.05.1980, pay and other allowances of the applicant was fixed from time to time which were made available to the corresponding post in the Indian Army. Circular No. 144 dated 27.01.2010 (Annexure A-7) issued by Dy. CDA (P) cannot be said to have been issued by the competent authority because PCDA, Allahabad is not competent authority to issue any instruction with regard to service condition of the applicant. The Government of India, Ministry of Defence has taken decision vide letter date 13.01.2014 (Annexure A-15) to place these officers like the applicant in Pay Band III then pay band-IV what they were getting as per own their letter dated 21.05.2009 and placing them in pay scale of Rs. 15600-39100 with corresponding grade pay of Rs. 7600 for the purpose of revision of pensionary benefits w.e.f. 01.01.2006. Pursuant to this, they have decided to recover the amount which the applicant was getting on account of revision of pay scale by placing him in Pay Band IV. At the retirement of the applicant, his pension was also fixed accordingly. He was enjoying those benefits for almost 20 years when the respondents have passed the impugned order. It is to be noted herein that as per Government of India letter dated 20.05.2009 issued to the Chief of Army Staff, Naval Staff & Air Staff, the applicant was also granted the benefit while implementing the government's decision of their recommendations of 6th CPC-revision of pension of pre-01.01.2006 retiree pensioners/family pensioners.

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 Chakrabortys 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 appellants 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."

21. Meaning thereby, the subject matter of the instant OAs was directly and substantially, in issue, in the earlier OA, decided against the respondents by this Tribunal. We see no cogent grounds to differ with the reasoning of the learned Co-ordinate Bench of this Tribunal. Moreover, the earlier judgment of this Tribunal is even otherwise, relevant to decide the real contrary between the parties, in the instant cases, on the doctrine of ***stare decisis***.

22. Therefore, thus, seen from any angle, the impugned action / indicated letters, or any other action / instructions / letters of the respondents, having the effect of reduction of pensionary benefits of the applicants, are arbitrary and cannot legally be sustained, in the obtaining circumstances of the case. Hence, the ratio of law laid down in the indicated judgments, ***mutatis mutandis***, is

applicable to the present controversy and is the complete answer to the problem in hand.

23. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

24. In the light of the aforesaid reasons the instant O.As are accepted. The impugned letter No.144, dated 27.1.2010 (Annexure A-11), letters dated 13.1.2014 (Annexure A-15), dated 29.9.2015 (Annexure A-6), 3.11.2015 (Annexure A-7), 30.12.2015 (Annexure A-22) in O.A.No.060/00054/2016 (***Lt. Cdr. Dalip Singh Vs UOI etc***.), letter No. 144 dated 27.1.2010 (Annexure A-5), dated 13.1.2014 (Annexure A-8), calculation sheet dated August, 2014 & letter dated 20.4.2015 (Annexure A-3), in O.A.NO.060/00659/2016 titled ***Cdr. Nirmal Singh Vs. UOI etc***.) & dated 13.1.2014 (Annexure A-12) in OA 060/01033/2016 titled ***Lt. Col. P.C. Chandel Vs. UOI etc***.) and any other orders, letters or instructions, having the effect of reduction of pensionary benefits and consequential recovery from the applicants, are arbitrary, illegal and are hereby set aside. As a consequences thereof, the respondents are permanently restrained from recovering the alleged impugned excess amount of pensionary benefits from the applicants, at this belated stage. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
Dated: **17.01.2018**.

HC*