

CWP-21553-2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP-21553-2014*****Date of Decision: 15.07.2016******KASHMIR CHAND******... Petitioner******VS.******PUNJAB STATE POWER CORPORATION LTD. AND OTHERS******..Respondents*****CORAM: HON'BLE MR. JUSTICE KULDIP SINGH**Present: Mr. S.K. Rattan, Advocate,
for the petitioner.Mr. G.S. Ghuman, Advocate,
for the respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest?*

KULDIP SINGH (J.)

The petitioner, who is an ex-serviceman, was appointed on daily-wage basis as Wireless Operator on 09.03.1987 and then he has worked on work-charge basis w.e.f. 21.04.1993 and further his services were regularized w.e.f 03.04.1997 and he retired from service on attaining the age of superannuation on 31.07.2002. The pension of the petitioner was accordingly fixed @ ₹ 1,310/- w.e.f. 07.08.2002 to 31.03.2004, ₹ 1,965/- w.e.f. 01.04.2004 to 31.10.2006 and ₹ 2,063/- w.e.f. 01.11.2006 onwards.

After the implementation of the 5th Pay Commission report, petitioner wrote to the respondent department for grant of revised pension, however, vide impugned order dated 17.10.2011 (*Annexure P-4*) his pension was reduced and refixed at ₹ 989/- w.e.f. 01.08.2002 to 31.12.2005 and ₹ 2,236/- w.e.f. 01.01.2006 in the new scales, without issuing any show cause notice or granting any opportunity of hearing to the petitioner.

In the present petition, the petitioner has impugned the said order dated 17.10.2011 (*Annexure P-4*) and also the letters dated 20.10.2011 and 20.01.2012 (*Annexures P-5 and P-6*) respectively, vide which he was paid the reduced pension. By way of writ of certiorari, the petitioner seeks quashing of the said orders/letters.

The petitioner was also directed to refund the amount with interest @ 12 % per annum. In this case, the recoveries were effected, however, some of the recoveries have been refunded during the proceedings of the contempt petition filed before this Court.

On behalf of the respondent, the stand has been taken that the grant of pension has not been denied nor the deduction of the same has been denied. The only stand taken by the State is that the petitioner has concealed the fact that that he is already receiving pension from the Military, therefore, the pension which has been in excess, was deducted and was accordingly refixed as the dual pension is not admissible.

I have heard learned counsel for the parties.

Undisputedly, the petitioner is an Ex-serviceman. He was neither appointed on work charge basis nor in any regular cadre, on account of he being ex-serviceman. It is also not disputed that the petitioner is getting the pension from the Army. Now, when the petitioner is retired from service, his pension was fixed at the minimum in accordance with the recommendations of the 4th Pay Commission, regarding pension and other retirement benefits which is ₹ 1,310/-. In the subsequent pay commission report also minimum pension was fixed @ ₹ 3,500/-. In this way, the pension of the petitioner was fixed at the minimum. Now, the question is whether the pension could be reduced as was done by the respondents, I find the reply in negative. Once, the

pension is granted it has to be minimum as per the recommendation of the Pay Commission.

Learned counsel for the respondents has argued that the State Government, under Rule 6.9 read with Rule 6.19 (c), does not allow dual pension.

I am of the view that as the previous service of the petitioner was in the Army with the Union of India, there are no rules that in case of service under the Union of India, the pension on the second appointment is not to be paid by the Government. If the respondents were to implement the policy of not granting the dual pension then the petitioner would have been not entitled for any pension at all. The reduction of the pension means that the State admit that dual pension is admissible in case of the petitioner. Moreover, the Government, after taking into consideration the pension drawn by the petitioner from Army, apparently reduced the pension of petitioner. I am of the view that same is apparently illegal. Once, the pension is granted, it cannot be less than the minimum as decided while implementing the 4th and 5th Pay Commission reports.

Therefore, in view of the above, the impugned order/letters are the patently illegal and are hereby set aside. The recoveries already made and not refunded to the petitioner shall be refunded to the petitioner within 3 months with the interest @ 9% per annum.

The petition stands allowed accordingly.

July 15, 2016

Suresh Kumar

**[KULDIP SINGH]
JUDGE**