

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.4575-2019 (O&M)

Date of decision: 28.02.2019

Union of India and others

.....Petitioners

versus

Lt. Cdr. Dalip Singh and others

.....Respondents

CWP No.4589-2019 (O&M)

Union of India and others

.....Petitioners

versus

Lt. Col. P.C. Chandel (Retd.) and others

.....Respondents

CWP No.4597-2019 (O&M)

Union of India and others

.....Petitioners

versus

Cdr. Nirmal Singh and others

.....Respondents

**CORAM: Hon'ble Mr.Justice Rajiv Sharma
Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Namit Kumar, Advocate for the petitioners

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This order will dispose of three connected writ petitions bearing CWP Nos.4575, 4589 and 4597 of 2019, arising out of the same facts and against the same order dated 17.1.2018(Annexure P1) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, "CAT").

Respondents Lt. Cdr. Dalip Singh, Lt. Col. P.C. Chandel and Cdr Nirmal Singh 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 promoted to their respective ranks as regular Defence Officers. Their service conditions were governed by Special Army Instructions 9/S/74. They were treated as regular Army Officers and enjoying all allowances 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, they were designated as regular Armed Forces Officers like Lt, Capt., Major, Lt. Col. and equivalent in the Army, Navy and Air Force. They were granted the same pay and 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. Like similarly situated ECOs, they were paid from defence estimates as per Government of India instructions dated 23.5.1980. However, their services were governed by Central Civil Services (Pension) Rules, 1972. After their retirement, the pension was disbursed to them equivalent to the Regular Defence Officers. All of sudden, after decades, their pension was reduced without assigning any reason as per pass book entry (Annexure A4) in O.A. No.060/01033/2016, letter dated 20.4.2015 (Annexure A3) from PNB, Sector 17B, Chandigarh in O.A. No.060/00659/2016. Notices for recovery of excess amount have also been issued without any orders. It is further

claimed that their pension has been reduced without issuing any show cause notice, without providing any opportunity, by issuing impugned letter No.144 dated 27.1.2010 (Annexure A11), letters dated 13.1.2014 (Annexure A15), letters 29.9.2015 (Annexure A6), letters dated 3.11.2015 (Annexure A7) and letters dated 30.12.2015 (Annexure A22) in O.A. No.060/00054/2016 (Lt. Cdr. Dalip Singh vs. Union of India etc.). Similar letters have been issued in other cases.

The respondents before the CAT, took the plea that officers, who were commissioned as ECOs in Defence Forces but could not get permanent commission in the Army, were provided suitable employment in NCC. A separate cadre of Whole Time Officers (WTOs) was created in the year 1963. Their ranks were never at par or equivalent to the officers of Armed Forces of the Union. They were called NCC Commissioned Officers. The terms and conditions of their service were further modified vide letter dated 23.5.1980 (Annexure R3), in which it was clarified that such officers shall be junior to the regular service officers of the same rank and will serve under them. The respondents further took a plea that the competent authority issued the impugned instructions dated 26.5.2009 (Annexure R5), clarifying that the pensionary benefits granted to regular defence personnel will not be applicable to the NCC WTOs. The Pension Distributing Authority 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. When this anomaly was noticed, the Government issued letter dated 27.1.2010 clarifying the position. Therefore, the pension of the applicants was revised and excess amount was ordered to be recovered from

them.

After hearing both the parties, the Tribunal vide impugned order set aside the orders, letters and instructions, referred to above having the effect of reduction of pensionary benefits and consequential recovery from the applicants being arbitrary and illegal and the respondents (present petitioners) were permanently restrained from recovering the alleged excess amount of pensionary benefits from the applicants at this belated stage.

We have heard learned counsel for the parties and have also carefully gone through the file.

The admitted position is that the applicants before the CAT and private respondents herein were appointed as Emergency Commissioned Officers during China aggression. They were later on accommodated as NCC Commissioned officers known as NCC WTOs. Undoubtedly, they were granted same facilities, pay scale and allowances as to the regular army officers. They were provided military accommodation from Defence Pool, Travel Facilities, Railway Warrants, Form-D, Medical Facilities in Military Hospitals, Canteen facilities etc. They were also granted rank as given to the regular officers in the Army, Navy and Air Force.

During their career, they got promotion at appropriate time at par with the regular army officers. It is not the case of the present petitioners that the applicants had any role in the fixation of pay and pension or that they had concealed or not disclosed the true facts at any stage before fixation of their pension. Their pension was fixed by the competent authority and now after decades without issuing any show cause notice, their pension has been reduced and has been refixed by issuing revised PPO. No formal order of reduction of pension has been passed. The

Tribunal has relied upon the various authorities of the Supreme Court to consider that the pension has been fixed and that there was no misrepresentation or fault on the part of the officer, therefore, same cannot be reduced without following the due process i.e. issuing show cause notice and giving proper opportunity of hearing to the private respondents.

Therefore, we are of the view that there is no illegality or infirmity in the order passed by the Tribunal whereby the impugned orders, letters and instructions were set aside, which were having the effect of reduction of pensionary benefits and consequently it was held that no recovery can be effected from the applicants (private respondents herein).

Resultantly, the present writ petitions stand dismissed.

A photocopy of the order be placed on the files of connected cases.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

28.02.2019

gk

Whether speaking	-	Yes
Reportable:	-	Yes