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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7228-2019 (O/M)
Date of decision : 18.3.2019

Punjab National Bank

..... Petitioner (s)

Versus

Cdr. Nirmal Singh (Retd.) and others

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Madhu Dayal, Advocate,
for petitioner-Bank.

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KULDIP SINGH, J.

Petitioner-Bank has impugned the order dated 17.1.2018 (Annexure-P-1), passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal'), vide which application filed by applicant-respondent No. 1 alongwith other applicants, was allowed and circular dated 27.1.2010 and letter 13.1.2014 (Annexure-A-5 and Annexure-A-8 respectively), calculation sheet dated August, 2014 and letter dated 20.4.2015 (Annexure-A-3) and other letters, qua reduction of pensionary benefits and consequential recovery from applicants, were set aside.

The short facts of case are that applicant-respondent No. 1, namely, Cdr. Nirmal Singh was initially commissioned in the Indian Army as Emergency Commissioned Officer (hereinafter referred to as 'ECO') in

the rank of Second Lieutenant etc. during the course of China aggression. He was promoted to his rank as Regular Defence Officer. His service conditions were governed by Special Army Instructions 9/S/74. He was treated as regular Army Officer and enjoying all allowances admissible to a regular Army Officer. After emergency, he was granted permanent commission in National Cadet Corps (hereinafter referred to as '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 (hereinafter referred to as 'WTOs') was created. According to applicant-respondent No. 1, he was designated as a regular Armed Forces Officers like Lieutenant, Captain, Major, Lieutenant Colonel and equivalent in the Army, Navy and Air Force. He was 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 a regular Armed Forces Officer. Like similarly situated ECO, he was paid from defence estimates as per the Government of India Instructions dated 23.5.1980. However, his services were governed by the Central Civil Services (Pension) Rules, 1972. After his retirement, the pension was disbursed to him equivalent to a regular Defence Officer. All of a sudden, after decades, his pension was reduced without assigning any reason as per pass book entry (Annexure-A-4) in OA No. 060/01033/2016, letter dated 20.4.2015 (Annexure-A-3) from PNB, Sector-17-B, Chandigarh, in O.A. No. 060/00659/2016. Notice for recovery of excess amount has also been issued without any orders. It is further claimed that his pension has been reduced without issuing any show cause notice, without providing any

opportunity, by issuing impugned letters No. 144, dated 27.1.2010, dated 13.1.2014, 29.9.2015, 3.11.2015, 30.12.2015 (Annexure-A-11, Annexure-A-15, Annexure-A-6, Annexure-A-7, Annexure-A-22 respectively) in OA No. 060/00054/2016, titled as Lt. Cdr. Dalip Singh Versus Union of India etc.). Similar letters have been issued in other cases.

Respondents before the Tribunal 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 WTOs was created in the year 1963. Their ranks were never at par or equivalent to the officers of the Armed Forces of the Union. They were called NCC Commissioned Officers. The terms of conditions of their service were further modified, vide letter dated 23.5.1980 (Annexure-R-3), 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. Respondents further took a plea that the competent authority issued the impugned Instructions dated 26.5.2009 (Annexure-R-5), 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 applicant alongwith co 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 applicant and co-applicants, being arbitrary and illegal and respondents Union of India etc. were permanently restrained from recovering the alleged excess amount of pensionary benefits from applicant and co-applicants at this belated stage.

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

The admitted position is that applicant before the Tribunal was appointed as Emergency Commissioned Officers during China aggression. He was later on accommodated as NCC Commissioned Officer known as NCC WTO. Undoubtedly, he was granted same facilities, pay scale and allowance as to regular Army Officer. He was provided military accommodation from defence pool, travel facilities, railway warrants, Form 'D', medical facilities in military hospitals, canteen facilities etc. He was also granted rank as given to a regular officer in Army, Navy and Air Force.

During his career, he got promotion at appropriate time at par with the regular army officer. It is not the case of petitioner-Bank that applicant-respondent No. 1 had any role in the fixation of pay and pension or that he had concealed or not disclosed true facts at any stage before fixation of his pension. His pension was fixed by competent authority and now after decades, without issuing any show cause notice, his pension has been reduced and has been re-fixed by issuing revised PPO (Pension Payment Order). No formal order of reduction of pension has been passed. The Tribunal has relied upon various authorities of the Hon'ble Supreme

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

Earlier, Union of India challenged the same order of the Tribunal before this Court in CWP-4575-2019 alongwith connected writ petitions, titled as Union of India and others Versus Lt. Cdr. Dalip Singh and others and same was dismissed in limine, vide common order dated 28.2.2019. Now, another respondent-Punjab National Bank has filed present writ petition.

We are of the view that there is no illegality or infirmity in the impugned order dated 17.1.2018 (Annexure-P-1), passed by the Tribunal, whereby 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 applicant-respondent No. 1. Accordingly, writ petition is dismissed in limine.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

18.3.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No