

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

O. A. No. 47 of 2011

Col. K.B. Mall

.....Petitioner

Versus

Secretary, M/o Defence & Ors.

.....Respondents

For petitioner: Dr. J.C. Vashista, Advocate.  
For respondents: Sh. R. Balasubramanian, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.**  
**HON'BLE LT. GEN. S.S.DHILLON, MEMBER.**

**ORDER**  
**31.5.2011**

1. Petitioner by this petition has prayed that the Respondent No. 4 may be directed to immediately change the Pension Payment Order No. M/003191/2006 of the petitioner and issue necessary corrigendum to the PPO favouring the petitioner for Zero per cent commutation of his pension.

2. Petitioner was commissioned in Indian Army on 13<sup>th</sup> June 1981 and served for 25 years with unblemished record. The petitioner was transferred to pension establishment on his request with effect from 13<sup>th</sup> March 2006 and was issued PPO No. M/003191/2006 (pre-revised) under the existing 5<sup>th</sup> Pay Commission scale. Thereafter on implementation of 6<sup>th</sup> Pay Commission scale/rate of pay vis-a-vis pension was revised with retrospective effect from 1<sup>st</sup> January 2006. However without properly considering the pros and cons, petitioner submitted his option to commute 50% of his pension by the letter dated 6<sup>th</sup> January 2009. Subsequently he

realised that it will not be beneficial for him and, therefore, he immediately informed the CDA Pune on 3<sup>rd</sup> March 2009 that he does not want 50% commutation of his pension. It appears that meanwhile CDA Pune processed his application without keeping in mind his change of option on 3<sup>rd</sup> March 2009. PCDA(P) Allahabad on 23<sup>rd</sup> April 2009 issued the commutation. Petitioner in this connection has especially invited our attention to the communication sent by CDA Pune that in fact his subsequent communication dated 3<sup>rd</sup> March 2009 was not processed by them because of the excess work. The copy of the order dated 29<sup>th</sup> September 2010 is reproduced as under:

“To  
Shri C.K. Bhatjiwale, SAO  
PCDA(P)  
Allahabad 211014

Subject: Redressal of Grievances: Col. K.B. Mall (Retd.)  
Reference: Ministry of Defence ID No. 813/RM/PGC/2010 dated  
5.7.2010

Consequent on receipt of 6<sup>th</sup> CPC orders, LPC cum Data Sheet for more than 6000 officers were revised. Due to receipt of huge volume of correspondence from the officers, the option for “NIL” commutation sent by the officer on 3<sup>rd</sup> March 00 (which was received before processing the case was overlooked by us) while sending the revised LPC-cum data sheet to your office on 23-04-09. It is therefore requested to accept the “NIL” commutation as a special case and oblige.

A copy of petition dated 12/08/2010 of Col. K.B. Mall received from Ministry of Defence D (Pension Grievances Cell) New Delhi vide their ID dt. 5/7/2010 is forwarded herewith for doing needful. In support of the request made by the officer in his petition, a certificate for non credit of commutation amount to his bank account has also been sent by him vide his fax letter dated 22.9.2010. A copy of the same is enclosed.

Kindly intimate the action taken on the request of the officer.

SAO”

3. In this letter the CDA Pune accepted that while processing the application because of the over work they could not take into consideration the petitioner's communication dated 3<sup>rd</sup> March 2009 and, therefore, it is a mistake and it is requested to accept the nil commutation as a special case and oblige. But it appears that PCDA(P) Allahabad did not give heed to it and on the contrary informed the respondents that commutation option once given could not be revoked. Petition was contested and a detailed reply was filed by the respondents and the plea of the respondent in their reply is that once an option has been given of commutation it is irrevocable and, therefore, PCDA(P) Allahabad justified in not accepting the request made by the CDA Pune for accepting the nil commutation so far as petitioner is concerned. Since the PCDA(P) Allahabad did not accept the request made by the CDA Pune and this correspondence between two departments continued and each one stood on their guns, therefore, petitioner was left with no option but to file this petition.

4. We have heard learned counsel for the parties and perused the record. It appears that normally once an option is given it is irrevocable but as per the communication sent by the CDA Pune dated 29<sup>th</sup> September 2010 they clearly mentioned that while they were processing the application in pursuance of 6<sup>th</sup> Pay Commission, LPC-cum-data sheet for more than six thousand and due to receipt of a huge volume of communication from the officers the option of nil commutation sent by the petitioner on 3<sup>rd</sup> March 2009 could not be processed and it was bonafidely overlooked. Therefore they requested PCDA(P) Allahabad to revoke the issue of

the commutation order and put the controversy to the rest but it appears that instead of condoning this mistake of the CDA Pune, the authorities at PCDA(P) Allahabad contested that once an option has been given it cannot be revoked. It appears to be a case of unreasonable stand on the part of the PCDA(P) Allahabad that once the CDA Pune has admitted their mistake that they could not process their application while it was received by them while they were processing the other applications regarding LPC-cum-data sheet in pursuance of 6<sup>th</sup> Pay Commission. Therefore, it was a bonafide mistake on the part of the CDA Pune and petitioner should not be made to suffer for that. Therefore we are of the opinion that the stand of the PCDA(P) Allahabad is unreasonable, on account of the mistake of the CDA Pune and we accordingly set aside the order of the PCDA(P) Allahabad dated 21<sup>st</sup> May 2009 and direct that they must issue a fresh order of nil commutation. The money which is said to have been released and lying in the shall may be refunded by the petitioner to the PCDA(P) Allahabad.

5. Petition is allowed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**S.S. DHILLON**  
(Member)

New Delhi  
May 31, 2011