

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) 2932/2005

Date of Decision : 21st May, 2008

D.B.MATHUR

..... Petitioner
Through: Mr. J.P. Sengh, Sr. Adv. with
Mr. R.S. Dalal, Mohd. Anis &
Mr. Aditaya Ahlawat, Advocates.

versus

PUNJAB NATIONAL BANK

..... Respondent
Through: Mr. Keshav Kaushik, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers 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 ?

ORDER

1. The petitioner impugns fixation of pay on re-employment with Punjab National Bank after his retirement from Army.
2. The petitioner had joined employment with New Bank of India on 14.8.89 as a Security Officer. New Bank of India has since then merged with Punjab National Bank, the respondent herein.

3. Consequent upon his re-employment with the Bank, salary of the petitioner was fixed at the minimum of the pay scale of Rs.2100-120-3900/-. After adding dearness allowance, the petitioner upon re-employment was entitled to total emoluments of Rs.2,871/- per month. At the time of retirement in the Army, the petitioner was working as a Captain drawing a basic pay of Rs.1550/-, dearness allowance of Rs.940/- and his total emoluments was Rs.2,480/- per month.

4. It is the contention of the petitioner that his basic pay upon re-employment has not been correctly fixed and as per the 'Compendium of Govt. Guidelines in the matter of Re-employment, Pay Fixation etc. of Ex-Servicemen in Public Sector Banks'. It is an admitted case of both the parties that pay fixation of an ex-serviceman on re-employment in a public sector enterprise has to be in terms of Clause 5.5(ii). It is submitted by the petitioner that in terms of Clause 5.5(ii), while fixing the pay of the petitioner as Security Officer, dearness allowance should not have been taken into consideration and only the basic pay as a Security Officer should have been taken into consideration. Clause 5.5(ii) reads as under:-

“(ii)Re-employment on or after 1.2.1984

From 1st February, 1984 the pay fixation of an ex-service officer on his re-employment in the Bank will be in accordance with the following principles:

a) The basic pay on re-employment in the Bank, would be fixed at the minimum of the pay

scale of the post in which the ex-service officer is re-employed.

b) If the emoluments (excluding HRA, CCA, if any) of the officer with reference to the minimum of the scale of pay in the Bank fall short of the emoluments (i.e. basic pay+DA etc. excluding HRA & CCA) drawn by him at the time of his retirement, his pay on re-employment will be fixed in such a manner that such emoluments are protected. If however, it does not work out to an exact stage in the pay scale, the pay will be fixed at stage immediately below the stage at which the pre-retirement emoluments are protected.”

5. Sub clause (a) stipulates that the basic pay on re-employment would be fixed at the minimum of the pay scale of the post to which an ex-serviceman is appointed. The petitioner was appointed as a Security Officer and therefore under clause (a) on re-employment his basic pay is to be fixed at the minimum of the pay scale prescribed for the said post i.e. Rs.2,100/-.

6. Sub clause (b) grants “pay protection” to an ex-serviceman with reference to the emoluments that an ex-serviceman was drawing when he was discharged/retired from the Army. For this purpose the basic pay and dearness allowance which the ex-serviceman was drawing at the time of his retirement has to be taken into consideration. Other payments like HRA, CCA have to be excluded. The basic pay and Dearness Allowance being paid to the ex-servicemen at the time of his retirement is protected on his re-employment. For the purpose of pay protection emoluments payable upon re-employment have to be

calculated. For this purpose, again HRA and CCA have to be excluded. I do not think while calculating emoluments at the time of re-employment, dearness allowance should be excluded. Dearness allowance is part of the total emoluments. Sub-clause (b) only excludes HRA and CCA. It does not exclude dearness allowance.

7. The words with reference to “the minimum of the scale of the pay in the Bank” mentioned in sub-clause (b) is for comparing the total emoluments which an ex-serviceman receives at the time of re-employment and total emoluments which was being paid to the ex-serviceman at the time of his retirement. If dearness allowance payable on re-employment is excluded, it will lead to imbalance and two unequals being equated for the purpose of pay protection. From experience we know that dearness allowance can form substantial part of salary or emoluments being paid to an employee. Dearness allowance gets merged from time to time in the pay scales but this is normally done after Pay Commission’s reports. Therefore, for the purpose of pay protection both, basic pay and dearness allowance payable to an ex-serviceman upon re-employment and the basic pay and dearness allowance paid at the time of retirement, have to be taken into consideration. The contention of the petitioner that only basic pay at the time of re-employment should be taken into consideration and dearness allowance should be excluded for the purpose of pay

protection with reference to emoluments payable at the time of retirement from Army including Dearness Allowance cannot be accepted and is liable to be rejected. I may note here that the petitioner upon re-employment was still entitled to payment of part pension.

8. Learned counsel for the petitioner has also relied upon Office Memorandum dated 2nd July, 1999. The said Memorandum was issued after the recommendation of the Vth Central Pay Commission in its report that dearness relief should be paid to re-employed pensioners, in case their pay is fixed at the minimum of the pay scale of the post on re-employment, in respect of non-ignorable portion of the pension. The recommendations made by the Pay Commission were considered by the Central Government and the President was pleased to direct as under:

“(b) In terms of the existing orders on the subject the pay of re-employed pensioners who held Group ‘A’ post or posts of the ranks of Commissioned Officers at the time of their retirement is to be fixed at present.

* at the same stage as last drawn before retirement or, if there is no such stage, at the stage next above the pay last drawn;

* At the maximum of the pay scale, if the pay last drawn is more than the maximum of the pay scale of the post in which re-employed;

* At the minimum of the pay scale of the post in which re-employed, if it is more than the pay last drawn.

Further, the pay on re-employment is required to be fixed after ignoring only a portion of the pension (Rs.1,500) received for the previous employment. In view of the fact that(i)

the pension is taken into account in such cases and is not entirely ignored (ii) the pay in the post of re-employment is not required to be fixed at the minimum of the scale in all cases; and (iii) Dearness Allowance at the rates applicable from time to time is also admissible on the pay fixed in terms of the orders on the subject, these re-employed pensioners will not be entitled, in addition, to any Dearness Relief on their pension.

(c) As regards employed family pensioners, since the family pension received by the eligible dependents of Central Government employees, in any case, not taken into account in determining their pay on employment, Dearness Relief at the rates applicable from time to time shall be admissible on their family pension.

(d) While implementing these decisions, orders issued by the Department of Personnel & Training vide OM No.3/1/85-Estt.(Pay-II) dated 31.07.1986 and as amended from time to time regarding fixation of pay of re-employed pensioners shall be duly kept in view.

(e) These orders shall be effective from July 18, 1997.”

9. The above Office Memorandum clarifies that on re-employment a pensioner who had held Group ‘A’ post before retirement would be entitled to the same scale of pay as he was last drawing before retirement. Thereafter, the Office Memorandum stipulates the maximum and the minimum which an officer may be entitled to draw on re-employment. The maximum limit is the maximum of the pay scale of the post in which the ex-serviceman is re-employed. The minimum is the minimum of the pay scale of the post to which the ex-serviceman is re-employed, subject to the condition that it should be more than the

pay last drawn by the ex-serviceman when he retired from the Army. As already stated above, for this purpose, basic pay and DA paid on the date of retirement and on re-employment both have to be taken into consideration.

10. The last portion of paragraph 3(b) of the Office Memorandum dated 2nd July, 1999 stipulates that on re-employment pensioners would not be entitled to dearness relief declared from time to time. It also gives reasons why the Government has taken the said decision. Three reasons mentioned in the said Office Memorandum are:-

(1) Officers, ex-servicemen are entitled to receive pay after ignoring a portion (non-ignorable portion) of the pension and this is not counted while fixing pay in the re-employed post and is also not deducted from the salary payable.

(2) Pay in the re-employed post is not required to be fixed at the minimum of pay scale in all cases. This is due to pay protection and therefore an ex-serviceman once re-employed in a bank may be entitled to higher pay than the minimum fixed in the said scale.

(3) The third reason given in the office memorandum is that dearness allowance is payable to the re-employed ex-serviceman on the re-employed post.

11. The second contention of the petitioner therefore cannot be

accepted.

12. The petitioner upon retirement from the Army was getting pension of Rs.1,069/- at the time of re-employment. It is admitted case that non-ignorable portion of the pension was Rs.569/- and balance amount of Rs.500/- was to be ignored for the purpose of fixation of pay scale in the post of Security Officer. Therefore the pay fixed by the respondents is in accordance with law. I do not find any error in the same.

13. I may note here that the petitioner was re-employed in the year 1989 and his pay was fixed thereafter. He retired after working in the bank on 31st March, 2002. The present writ petition was filed on 15th February, 2005. The respondents have raised a plea of delay and laches as the petitioner seeks to re-open the pay fixed which was done in the year 1989 at the time of re-employment. Learned counsel for the petitioner submitted that representations were repeatedly made by the petitioner. It is well-settled that representations alone do not explain delay and laches. Delay and laches on the part of the petitioner is apparent. Learned counsel for the respondent has also referred to a decision of the Supreme Court in **SS Rathore vs. State of Madhya Pradesh AIR 1990 Supreme Court 10** wherein it has been observed that repeated representations do not explain limitation, delay and laches. Learned counsel for the petitioner in this regard submitted that the representations of the petitioner were rejected for the first time

on 29th January, 2001 and the question of dearness allowance was referred to the Banking Division, Ministry of Finance, New Delhi. I have examined the letter dated 29.1.2001. The reference to Banking Division, Ministry of Finance was only limited to non-ignorable portion of the pension i.e. Rs.500/- and whether any dearness relief was payable on the said portion. This non-ignorable portion was being paid by the Ministry of Defence and not by the Bank. This letter therefore will not extend and does not explain the delay and is not relevant for fixation of the pay and emoluments paid by the Bank w.e.f. 1989.

14. In these circumstances, it is held that the petitioner has approached this Court belatedly and the writ petition is bad for delay and laches. On merits also the petitioner is not entitled to any relief. Writ Petition accordingly is dismissed. In the facts and circumstances, there will be no order as to costs.

SANJIV KHANNA, J.

MAY 21, 2008
Nk/P