

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

**Judgment reserved on: 23.11.2022**

% **Judgment delivered on: 23.01.2023**

+ **LPA 202/2022**

CAPT. D.B.MATHUR ..... Appellant  
Through: Mr. Shikhar Khare, Advocate.

versus

PUNJAB NATIONAL BANK ..... Respondent  
Through: Mr. Rajat Arora, Advocate.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**J U D G M E N T**

**SATISH CHANDRA SHARMA, C.J.**

1. The Appellant has approached this Court taking exception to the order dated 07.02.2022 passed by the Ld. Single Judge in W.P.(C) No. 7483/2012. In the writ petition, the Appellant sought re-fixation of his pay on the basis of the Circular No. 30/91 dated 14.08.1991 (hereinafter referred as the “1991 Circular”) issued by the Respondent.

2. The facts of the case, in a nutshell, reveal that the Appellant joined the Indian Army for pre-commissioned training on 19.01.1959 and came to be commissioned on 11.12.1962. On 08.05.1983, the Appellant was retired from the Army. After serving in the forces, on 14.08.1989, the Appellant

was re-employed under the Respondent bank as a security officer. On 14.08.1991, the Respondent bank issued Circular No. 30/91 containing certain directions for fixation of pay of commissioned officers working under the bank after reemployment. The 1991 Circular provided that for the purpose of fixation of pay of such officers, the period of pre-commission training would also be taken into account while fixing pay at the time of reemployment. In terms of the 1991 Circular, this benefit was to be provided to those officers who had either joined their pre-commission training or were commissioned between 01.11.1962 and 10.01.1968. In terms of the 1991 Circular, the Appellant found himself eligible to seek re-fixation of pay and made a representation to the Respondent bank seeking the benefit of the 1991 Circular, including increments equivalent to the entire period of service in the armed forces. Thereafter on 04.07.1996, the Respondent issued Circular No. 17/96 (hereinafter referred to as "1996 Circular"), whereby the Respondent clarified that the benefit of Circular No. 30/91 would not be available to Emergency Commissioned Officers (ECOs) and Short Service Commission Officers (SSCOs). The rationale behind the exclusion of these two categories of officers was that during the pre-commission training period of these officers, they were neither given the rank of commissioned officers nor allowed the commensurate scale of pay. Rather, during this period, these officers are called "Gentleman Cadets" and are entitled to a stipend, and therefore, their pre-commission period cannot be taken into account for the purpose of fixation of pay.

3. Be that as it may, the Appellant's representations for re-fixation of pay did not receive a favourable response from the Respondent bank and

consequently, the first round of litigation began. The Appellant filed Writ Petition No. 2932 of 2005 before this Court seeking the benefit of re-fixation of pay in terms of the 1991 Circular. It is a matter of record that the writ petition came to be dismissed by the Ld. Single Judge on 21.05.2008. This Order was appealed by the Appellant in LPA 474/2008. In the LPA, the Respondent bank contended that the 1991 Circular was applicable only for pay fixation of Ex-Emergency Commissioned Officers (ECOs) and Short Services Commissioned Officers (SSCOs), and since the Appellant did not fall in either of those categories, the 1991 Circular did not apply to the Appellant. Rejecting this argument, the Appellate Court reversed the order of the Ld. Single Judge and observed that the 1991 Circular was applicable to all commissioned officers, irrespective of whether they joined the Army through the NDA or otherwise. Consequently, the matter was remanded back to the Respondent for taking a fresh decision. Pursuant to this direction, the Respondent bank took a decision and the impugned order dated 05.11.2009 came to be passed against the Appellant, thereby giving cause for this second round of litigation.

4. In this round of litigation, the writ petition of the Appellant was dismissed by the Ld. Single Judge vide the order impugned before us in this appeal. The learned Single Judge in his order observed that the basic stipulation for re-employment of commissioned officers under the Respondent bank was that the pay to be fixed upon their employment must not be on the higher side of the last drawn pay in the previous employment i.e. the last drawn pay in the Army. The Court further noted that the 1991 Circular did not overturn this basic stipulation, indicating the link between

the pay to be fixed upon reemployment and the last drawn pay. The relevant part of the order reads as under:

*"12. It becomes pertinent to note that as this Court reads the Circular of 14 August 1991, it is evident that it fails to manifest any principled decision taken by the respondent Bank to jettison the basic stipulation of pay being linked to the last pay that was drawn by the concerned personnel prior to re-employment. The Circular of 14 August 1991 is only supplementing the issue of pay fixation and ruling on the question of whether pre-commissioned service is to be taken into consideration for the purposes of computing the number of increments that may be viewed as having been earned. The said Circular fails to embody any explicit or implicit intent or stipulation which may be read or interpreted as entitling an erstwhile officer to claim fixation in a particular pay scale which may have exceeded the last pay drawn by him in the Armed Forces. In any case and once the Circular of 14 August 1991 had been revisited and reviewed by the Circular of 04 July 1996, the extension of benefits to the petitioner as claimed cannot possibly be countenanced."*

5. The Court further noted that the 1991 Circular, strictly speaking, applied to the Emergency Commissioned Officers and Short Services Commissioned Officers only, and the same came to be withdrawn by the 1996 Circular. The Court further observed that the 1996 Circular was never placed before this Court in the earlier round of litigation and the Court found nothing on record to indicate that the 1991 Circular, even if applied invariably to all commissioned officers, would permit deviation from the standard principle linking the last drawn pay in the Indian Army with the pay to be fixed upon reemployment. The relevant part of the Order in this context reads as under:

*"15. The submission based on the principles of res judicata or a constructive application of its principles is clearly misconceived since neither of the parties drew the attention of the Court to the admitted fact that the Circular of 14 August 1991 had been modified or to put it differently had ceased to be in force. The decision of the Court can neither be read nor construed as an authority for the proposition that the petitioner would be entitled to the benefits of that Circular notwithstanding it having been withdrawn and modified by the time the issue arose for consideration. The principles of res judicata or constructive res judicata cannot be extended to apply to situations like the present. In any case while rendering judgment on the LPA, this Court had only negated the objection of the respondent that the Circular of 14 August 1991 would not apply to Permanently Commissioned Officers. It had not held the petitioner upon re-employment being entitled to be placed in a scale of pay which exceeded that last drawn by him while exiting the Armed Forces."*

6. Impugning the Order, the Appellant has submitted that the learned Single Judge did not appreciate the true import of the 1996 Circular as it applied only to ECO/SSCOs and not to the permanently commissioned officers and thus, it could not have superseded the 1991 Circular which applied squarely to the Appellant. To buttress, it is added that the 1991 Circular was written in a very clear language and mandated re-fixation of pay of permanent officers. It is further submitted that the impugned order runs contrary to the decision of the Division Bench in L.P.A. No. 474/2008 dated 25.08.2009 (decision of the Division Bench in the first round of litigation), whereby the 1991 Circular was held to be applicable to all officers including permanent commission offices, and thus, the impugned order wrongly restricted the 1991 Circular to ECO/SSCOs only. In the next line of argument, the Appellant submitted that the 1991 Circular created an

entirely new regime of pay fixation for the eligible officers and made a departure from the earlier regime of linking the reemployment pay with the last drawn salary in the Indian Army.

7. We have heard the parties at length and have gone through the relevant documents carefully.

8. The decision of this case essentially hinges upon the answers to the following two questions –

*First*, whether the 1991 Circular made a complete departure from the rule of linking the last drawn pay in the Indian Army with the pay to be fixed upon reemployment;

*Second*, whether the 1996 Circular withdrew the 1991 Circular in its entirety and operated in supersession of the same.

9. The representation given by the Appellant seeking the benefit of the 1991 Circular was decided by the Respondent bank on 05.11.2009, in light of the directions made by this Court in the previous round of litigation. It was found by the Respondent that the pay of the Appellant was fixed as per the rules and no discrepancy was found with the same. The relevant extract of the said decision is being reproduced for clarity hereunder:

*“6. I have considered the representation of Shri Mathur with regard to fixation of his pay as directed by Hon'ble High Court in terms of Government guidelines including Personnel Division circular letter no. 30/91 dated 14.08.1991, and I find that the pay of Shri Mathur as fixed on re-employment in Bank in the minimum of the scale of pay in which he was re-employed, was much higher than the total emoluments he was*

*drawing at the time of his retirement from Indian Army, as such, the pay he was drawing at the time of retirement in Indian Army was fully protected in the Bank as per Government guidelines..” (emphasis supplied)*

10. A perusal of the decision reveals that the primary ground taken into consideration by the Respondent was the basic principle linking the last drawn pay at the time of release from the Indian Army with the pay to be fixed upon reemployment in the bank. The Appellant seeks benefit under the 1991 Circular which reads thus:

*"1. Those who joined the bank services before 24.8.81 In respect of such officers the number of increments are to be given corresponding to the completed years officers (now the service will include pre-commissioned training also). The effective date was 1.4.80 and in case of those officers who joined the bank service between 1.4.80 to 24.4.81, the benefit of pay fixation would be effective from their date of joining.*

*2. Those who joined bank services after 24.8.81 Only those officers who joined pre-commissioned training or were commissioned in the armed forces between 1.11.62 and 10.1.68 are to be provided with the increment equivalent to the number of years of services in the army. (now including pre-commissioned training period, w.e.f. their date of joining the bank services).*

*In case of other officers the above directions will not be applicable. The officers belonging to above two categories may be advised to send their cases for pay fixation afresh to HO clearly indicating therein the exact date of joining the pre-commission training, date of commissioning and and date of joining the Army.....”*

11. The 1991 Circular seeks to extend the benefit of pre-commission training period for the fixation of pay to the commissioned officers. The

Appellant, admittedly, falls in the second category i.e. those who joined bank services after 24.08.81. The 1991 Circular, on a literal and logical reading, does not convey anything to infer that it was a complete departure from the earlier rule of linkage of pay, as discussed above. Admittedly, the rule of linkage of pay was born out of the Government Guidelines, and pertinently, the said Government Guidelines linking the pay were never touched by any of the circulars. A circular issued by the Respondent cannot be assumed to have overridden the Government Guidelines. Moreover, there seems to be no conflict between the rule of pay linkage and the 1991 Circular so as to assume any implied overruling of the previous principles by this circular. The 1991 Circular, if read in its literal, ordinary and grammatical meaning, merely grants the benefit of pre-commission training to the commissioned officers for the calculation of their pay upon reemployment in the bank as ex-commissioned officers. A circular, unlike a legislation, is not a comprehensive document so as to take precedence over all other rules in place. The import of the circular is to be understood in conjunction with the Government Guidelines and effect has to be given to both of them. It would mean that in normal circumstances, the benefit of pre-commission training ought to be extended in the calculation of pay, however if, upon application of the circular, the pay upon reemployment comes out to be higher than the last drawn pay at the time of release, then the Government Guidelines would become operative in the field and cap the pay. Thus, the 1991 Circular neither made a complete departure from the rule of pay linkage nor set into motion an entirely new regime, as argued. We find ourselves in agreement with the Ld. Single Judge on this aspect.

12. In the first round of litigation, a Division Bench of this Court had held that the 1991 Circular, while it was in operation, applied to all the commissioned officers, and not only to the ECO/SSCOs. However, Ld. Single Judge, in the impugned order, has observed that the 1991 Circular applied to the two categories of ECO/SSCOs only and the same came to be withdrawn by the 1996 Circular in its entirety. The relevant part of the 1996 Circular reads thus:

***"Reg: Pay fixation of Ex-ECOS/SSCOS on Re- employment in bank.***

*Please refer to Personnel Division Circular Letter. No. 30/91 dated 14.8.91 wherein it was inter-alia advised that the period of pre- commissioned training will be included while computing total length of service rendered in the forces at the time of refixation of pay on re-employment in the bank.*

*We have been advised by the Government of India, Ministry of Finance, Department of Economic Affairs, (Banking Division) vide their letter No. F.201/5/94-SCT (B) dated 14.5.96 that the question whether pre- commissioned training period of Emergency Commissioned Officers/Short Service Commissioned Officers in the Army is to be taken into account for the purpose of computing total length of service rendered by them in the Armed Forces for the purpose of fixation of pay on re-employment in Banks has been under their consideration: The Department of Personnel and Training have decided in consultation with Ministry of Defence and Department of Expenditure that ECOS/SSCOs during the pre-commissioned training period are neither given the rank of Commissioned Officer nor they are allowed the scale of pay. During that period they are called "Gentleman Cadets" and given stipend. **Therefore, the period spent on pre-commissioned training by ECOS/SSCOS cannot be taken into account for the purpose of pay fixation etc. on their re-employment to the civil posts.** Public Sector banks have been advised to review the past cases*

*in the light of above position and refix the pay wherever necessary.”*

13. The 1996 Circular, no doubt, unconditionally withdraws the 1991 Circular. It has been submitted by the Appellant that the 1996 Circular applied only to the two categories of officers namely - ECO/SSCOs and not to other commissioned officers. In our considered view, it is immaterial whether the 1996 Circular applied only to two categories of officers or to all the commissioned officers for, the representation of the Appellant was rejected by the Respondent on the basis of the fundamental rule of linkage of pay. We have already held that the 1991 Circular did not make a complete departure from the said rule and thus, the enquiry is immaterial. Even the 1991 Circular was subject to the fundamental rule of linkage of pay, and it never disturbed the said rule.

14. Nevertheless, the impugned order notes that the 1996 Circular withdrew the 1991 Circular in its entirety. On a parity of reasoning, the impugned order also notes that if the 1991 Circular can be held to be applicable to all commissioned officers, then 1996 Circular could also be given the same reading. We feel that this observation of the Ld. Single Judge goes in the teeth of what was held by the Division Bench of this Court in the first round of litigation. Needless to observe, the said observation of the Ld. Single Judge may be assigned a restrictive reading.

15. Be that as it may, Ld. Single Judge has rightly noted that in the previous round of litigation, erroneously or otherwise, the 1996 Circular was not placed before the Court and thus, a proper appreciation of facts could not have been made. We are in agreement with the observation that the previous

order passed by this Court could not be treated as an authority on the proposition that the 1991 Circular would continue to operate despite the same having been explicitly revoked by a subsequent circular.

16. Pertinently, the record of the case also reveals that the Respondent's order rejecting the Appellant's representation had noted that the instructions issued in 1991 Circular were actually in continuation of earlier instructions issued vide letter no. 202/3/1/86/SCT (B) dated 08.02.1988 (Hereinafter referred as "1988 Circular"). The earlier instructions were applicable to ECO/SSCOs only and thus, by continuation, the 1991 Circular also applied to ECO/SSCOs only. The relevant extract of the earlier instructions reads as under:

*"(in) Re-employment on or after 12.1984*

*Pay of an ex-ECO/SSCO who joined Bank on or after 1.2.1984 will be fixed in the Bank in the revised scale of pay at the minimum of the pay scale. Thereafter, he will be allowed as many increments as the completed years of service he had put in the Armed Forces subject to the condition that the total emoluments in the re employed post do not exceed the total emoluments (Pay+DA-ADA-IR) he was drawing at the time of his release from the Armed Forces. **In case this total exceeds the total emoluments drawn at the time of release from Armed Forces, the basic pay in the re- employed post will be fixed at such a stage, where the total emoluments would be either equal or just less than the total emoluments he was drawing at the time of his release from the Armed Forces.**" (emphasis supplied)*

17. A collective reading of the 1988 Circular, 1991 Circular and 1996 Circular would show that originally, the 1988 Circular was issued to clarify the fixation of pay of ex-ECO/SSCOs only, upon reemployment. Thereafter,

an extra element of pre-commission training was added vide the 1991 Circular, which eventually came to be withdrawn by way of the 1996 Circular. Out of these three circulars, only the 1991 Circular used a terminology which did not specify that it was applicable to ECO/SSCOs only. The remaining two circulars clearly specified the same. In view of the same, we find merit in the Respondent's contention that the 1991 Circular was merely issued as a clarification to the previous circular of 1988 and since the 1988 Circular applied to ECO/SSCOs only, a clarification issued against the same could not have applied to a different class of employees. A clarificatory circular cannot operate on a more expansive scale than the main circular itself. Thus, none of these circulars was meant to operate on the permanent commissioned officers, as the Appellant is, and they were operative with respect to an entirely different class of officers.

18. The contention of the Appellant that the impugned order was barred by *res judicata* also deserves to be rejected at the outset. We assign two reasons for the same. *Firstly*, the previous order was passed without considering the 1996 Circular as it was never placed before the Court, and *secondly*, the order impugned before us was passed while adjudicating upon a fresh order of the Respondent rejecting the representation of the Appellant. Thus, the impugned order was an adjudication on a fresh cause of action and not on an already adjudicated cause of action. The law pertaining to the applicability of *res judicata* prohibits the adjudication of a cause of action which has already been adjudicated upon by a competent forum. In this case, the Respondent's order in question was never adjudicated previously by this Court. It was a fresh order passed in response to the directions of this Court

in the first round of litigation. Thus, it was a fresh cause of action and there was no bar on the judicial review of the same.

19. In view of the preceding discussion, we find the present appeal to be lacking in merit. There is no infirmity in the order passed by the Ld. Single Judge, and accordingly, we uphold the same.

20. The present appeal stands dismissed. Interim applications, if any, stand disposed of.

21. Parties to bear their own costs.

**(SATISH CHANDRA SHARMA)**  
**CHIEF JUSTICE**

**(SUBRAMONIUM PRASAD)**  
**JUDGE**

**JANUARY 23, 2023**