

LPA No. 763 of 2016(O&M)

Sr. No.227

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 763 of 2016(O&M)

Date of Decision: August 17, 2017

Ex.Naik Jagjit Singh

.....Appellant

VS.

Union Bank of India and others

....Respondents

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

Present:- Mr.R.D.Bawa, Advocate for the appellant.
Mr. K.K.Gupta, Advocate for the respondents.

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MAHESH GROVER, J (ORAL)

This Letters Patent Appeal arising out of the challenge to the judgment dated 28.03.2016 passed by the Writ Court declining interference in the claim of the petitioner who sought a mandamus i.e pay of Rs.2,040/- on his joining the bank on 04.03.1987 be refixed in terms of the circular dated 30.06.1987.

The petitioner retired from the respondent bank on 28.02.2005 and on 22.01.2010 he gathered knowledge i.e last pay drawn from the Army was liable to be protected at the time of his re-employment in the year 1987 in terms of the circular dated 30.06.1987 (Annexure P2). Upon making the claim, the bank declined the benefit on the ground of delay and for want of record(Annexure P9). The Writ Court took a similar view that the claim was raised belatedly to decline interference.

Before us an argument has been raised that the circular was not

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to his knowledge when the petitioner joined in March 1987, with the circular coming into existence merely three months thereafter entitling to the benefit of refixation of pay.

Subsequently, it has been averred in the writ petition and urged before us that the circular was never got noted from the petitioner and thus, he was kept in dark about his legitimate dues. The respondent bank, in turn, has pleaded delay and lack of record to deny the benefit of the refixation to the petitioner.

We have perused the circular dated 30.06.1987, the relevant of which may be extracted here below:-

“Refixation formula for Ex-servicemen re-employed as Award Staff on or after 01.07.1983

The pay fixation of Ex-servicemen re-employed in the Bank on or after 1st July,1983, as Award Staff will be done as under with effect from 01.07.1983, or the date of joining of the concerned Ex-servicemen, whichever is later.

The Basic Pay (inclusive of Good Conduct Badge Pay & Classification Pay) plus D.A including Additional D.A, Dearness Pay & Interim Relief drawn by them at the time of their release from Defence Forces will be protected. The figure of pay plus D.A admissible in the Bank will be fixed with reference to this protection. In other words, the Basic Pay of re-employed Ex.servicemen in Banks would be fixed at such a stage that, after adding D.A component admissible on this Basic Pay, the last emoluments (Basic Pay inclusive of Good conduct Badge Pay & Classification Pay + D.A H.R.A) drawn

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by him at the time of his release from the Armed Forces is protected.

Any fitment given earlier to Ex-servicemen re-employed as Award Staff between 01.07.1983 till date will be reworked out and salary will be refixed following the formula narrated hereinabove. If anybody has been given higher fitment earlier, the difference amount between the earlier fitment and the present fitment will be recovered from him.

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All concerned are requested to take a careful note of the above and send their applications for refitment to the respective Manager, Department of Personnel, Central Office.

On receipt of such applications, the Manager, Dept. of Personnel will work out the fitment and it shall be communicated to the re-employed Ex-servicemen. The acceptance of refitment / option should be exercised in writing within a period of one month from the date of receipt of letter of fitment / option.”

Learned counsel for the appellant contends that it was the duty of the bank to have granted him fixation as it was intended to benefit Ex-servicemen employed with the bank on or after 01.07.1983 and simply because he did not opt for it would be inconsequential as it casts a duty of the bank itself to apply this circular when the appellant entered in service in 1987 and there was no precondition of any option to be exercised to obtain the benefit of the circular.

We are in complete agreement with the contentions raised

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before us by the appellant. If the circular contemplated pay fixation of Ex-servicemen re-employed in the bank on or after 01.07.1983 in terms of the formula prescribed, there would be no occasion for the bank to deny such benefit to the appellant when he gained employment in 1987, with the circular coming into existence merely three months thereafter. It is also common knowledge that the strength of the Security Guards in any bank or a branch thereof is restricted to few employees and it would thus, be expected that any beneficial circular to the employees would be got noted from them so as to enable them to get the benefits thereof.

Be that as it may, we are otherwise also of the opinion that exercise of option, considering the kind of benefit would be inconsequential as it does not imply a switch over from one scheme to another. The term used in the circular is pay fixation which is an entitlement to an employee regardless of the fact whether he has sent an option or not, rather it casts a duty on the bank to ensure compliance of the circular. In our opinion, the bank has conveniently and unjustifiably kept away the benefit of the circular from the petitioner and are further of the opinion that delay in such a case is not be fatal to the cause espoused by the petitioner in the writ proceedings as also in the present appeal.

The judgments of this Court relied upon by the learned counsel for the respondents in **Bal Krishan v. State of Punjab and others 2012(4) SCT 712,** and **Gurdeep Kaur v. State of Punjab and others** passed in **CWP No. 2092 of 2014, decided on 05.02.2014** which was upheld by the **Hon'ble Division Bench of this Court in LPA No. 806 of 2014(O&M), decided on 25.05.2015** would thus, not be applicable considering that it was the duty of the bank to have fixed the pay of its employee.

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We, therefore, accept the appeal and direct that the benefits of pay fixation in terms of the circular be made admissible to the appellant forthwith preferably within a period of four months from the date of receipt of certified copy of this order.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

17.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No