

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

Date of Order: May 17, 2018

+ **W.P.(C) 3310/2016**

RAJIV AGARWAL & ORS Petitioners
Through: Ms. Jyoti Singh, Senior Advocate
with Mr. Himanshu Gautam, Advocate

versus

UNION OF INDIA & ORS Respondents
Through: Ms. Arti Bansal and Ms. Madhuri
Dhingra, Advocates for respondents No.1
to 4
Mr. Jagat Arora, Advocate for
respondents No.5 & 6

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Petitioners are Ex-Servicemen who have been absorbed in the respondent-Bank after the implementation of 6th Central Pay Commission and their grievance in this writ petition is that vide impugned letters (*Annexure P-1 Colly*), the fixation of their salary has been done on the basis of pay band + grade pay + element of military service and not on the basis of revised pay structure of 6th Central Pay Commission.
2. Impugned letters of August, 2015 (*Annexure P-1 Colly*) are assailed by learned Senior counsel for petitioners while relying upon Office Memorandum of 5th April, 2010 (*Annexure P-3*) which provides that the fixation of pay of personnel/Officers retired prior to 1st January,

2006 and who have been re-employed after 1st January, 2006 have to be fixed by notionally arriving at their revised basic pay at the time of retirement as if they have retired under the revised pay structure.

3. Learned Senior counsel for petitioner draws the attention of this Court to the '*last pay certificates*' (*Annexure P-5 Colly*) issued by the Army, to point out that '*last pay certificate*' gives revised basic pay notionally arrived at under the revised pay structure in terms of the 6th Central Pay Commission and the respondent-Bank ought to have acted upon it, to fix the revised basic pay. Thus, it is submitted on behalf of petitioners that impugned letters ought to be quashed and respondent-Bank be directed to fix the basic pay of petitioners under the revised pay structure in terms of the last pay certificates (*Annexure P-5 Colly*) issued by the Army.

4. On the contrary, learned counsel for the respondent-Bank relies upon the Guidelines for pay fixation of Ex-Servicemen re-employed in Public Sector Banks issued by the Indian Banks' Association on 1st February, 2014 (appended to the counter affidavit filed by the respondent-Bank), to submit that the impugned order is in consonance with the Guidelines of 1st February, 2014 and so, this petition merits dismissal.

5. Upon hearing and on perusal of impugned letters and the material on record, I find that in the matter of alleged discrimination in pay fixation of ex-servicemen re-employed in public sector banks, the Ministry of Finance vide Communication of 21st/22nd March, 2013 (*Annexure-1 to counter affidavit filed by respondent-Indian Banks*)

Association has called upon the Indian Banks' Association to frame uniform rules and regulations for fixation of pay of ex-servicemen re-employed in public sector banks in consonance with the Government of India policy in view of principle of fairness. Thereafter, *Guidelines for Pay Fixation of Ex-Servicemen/Ex-ECOs/SSCOs, re-employed in Public Sector Banks, on or after 01.01.2006* have been issued by Indian Banks' Association, which are appended to the counter affidavit filed by respondent-*Indian Banks' Association*. Although these Guidelines referred to DoPT's O.M. of 5th April, 2010 relied upon by petitioners' counsel, but it also refers to clarification given vide O.M. of 8th November, 2010 on the subject in hand. As per these Guidelines, ex-servicemen on joining the workman cadre in matter of pay fixation would have the protection of pay plus D.A. drawn by him at the time of release from Armed Forces. It is amply clarified in these Guidelines that the basic pay would include Stagnation Increment plus Rank Pay plus Dearness Pay and Dearness Allowance drawn at the time of retirement. These Guidelines are conspicuously silent on the revised basic pay in terms of 6th Central Pay Commission as claimed by petitioners.

6. In the considered opinion of this Court, impugned letters are in consonance with the aforesaid Guidelines. Unless a challenge is laid to the aforesaid Guidelines, impugned orders cannot be assailed as the O.M. of 5th April, 2010 relied upon by petitioner's counsel has been duly considered in the said Guidelines. In view thereof, liberty is granted to petitioners to assail the aforesaid Guidelines to enable them to lay an effective challenge to impugned letters.

7. With aforesaid liberty, this petition stands disposed of.

(SUNIL GAUR)
JUDGE

MAY 17, 2018

p/s

