

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

Reserved on: 12.12.2017
Pronounced on: 22.01.2018

+ **W.P.(C) 4410/2015**

DHARMENDRA SINGH RANA AND ORS. Petitioners
versus

THE GOVT. OF NCT OF DELHI AND ANR. Respondents

Through: Ms. Jyoti Singh, Sr. Advocate with Sh. Abhishek Choudhary, Advocates, for petitioners.

Sh. Gautam Narayan, ASC with Sh. R.A. Iyer, Advocate, for GNCTD.

Sh. Sanjoy Ghose with Ms. Urvi Mohan and Sh. Rhishabh Jetley, Advocates, for DHC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT

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1. The writ petitioners seek directions under Article 226 of the Constitution of India, that their pay and allowances should be fixed at the appropriate grade and stage, by the respondent authorities (i.e. the High Court establishment) by taking into account their previous service in the defence forces (Army or Indian Air Force, hereafter collectively called "the Forces"). They complain of illegality in the matter of pay fixation and arbitrariness.

2. On completion of their engagement in the Forces, the petitioners were discharged and became ex-servicemen. The fourth petitioner was released before completion of his initial engagement on medical grounds. The first petitioner joined on 01.05.2013 as Junior Judicial Assistant; the second petitioner joined on 21.06.2013 as Chauffeur; the third petitioner joined on

14.06.2013 as Chauffeur and the fourth petitioner joined on 20.03.2009 as Court Attendant. It is contended that though the petitioners are entitled to pay on re-employment, giving weightage to their previous public employment in the Forces and placing them at the relevant pay scale and stage of pay, the High Court establishment had not given that benefit; instead the pay and pay fixation resorted to is as if they are fresh entrants.

3. The petitioners cite Rule 4 of the *Central Civil Service Ex-Servicemen (Re-employment in Central Civil Service and Posts) Rules, 1979* and submit that the correct pay fixation formulae in their cases should be as follows, in order to illustrate the correct approach in the case of the first petitioner, being a Personnel Below Officer Rank (PBOR), is entitled to pay fixation as follows:

*“Last drawn Pay as per Corrigendum PPO
08/14/B/COR/24416/2014(Pay+GP+MSP+GCP pay) =
₹ 13640+4200+2000+240+= 20,080/-;
and as per last pay, the petitioner is entitled for Basic pay of
₹ 17,280/- + Grade pay ₹ 2,800/-.”*

It is stated that similarly, other petitioners are entitled for similar fixation.

4. The petitioners say that as direct recruits, they are entitled to proper fixation in accordance with the rules. They complain of discrimination between them and other ex-servicemen who joined departments of the Central Government. They refer to Sh. Ganesh Prasad Shaw, who joined the service in Ministry of Finance as Tax Assistant on 27.05.2013 and Sh. Prakash Chand who joined on 01.05.2013 in the same ministry of the Central Government; they are said to have been extended the benefit of the rules at

the stage of pay in the relevant grade, under the rules.

5. The respondents deny that the pay fixation or grant of benefits pursuant to their retirement and re-employment is either illegal or arbitrary. They also deny the charge of discrimination and urge that the question of giving undue benefits to anyone does not arise and is not borne out by the record. According to the respondents, pay fixation, after giving benefit of past service and pension, depends on the rank one held before retirement, etc. In case an officer superannuates at the time provided for, the benefit given by the rules is of one kind; in case of non-commissioned officers, the benefit is different. It is stated that the grant or denial of pay fixation in the grade, is not a matter of right but dependent upon the existing rules.

6. The relevant provision of the rules, i.e. Rule 4, reads as follows:

1. ...

4. Fixation of pay of re-employed pensioners

(a) Re-employed pensioners shall be allowed to draw pay only in the prescribed pay scale / pay structure of the post in which they are reemployed. No protection of the scales of pay / pay structure of the post held by them prior to retirement shall be given.

NOTE— Under the provisions of CCS (RP) Rules, 2008, revised pay structure comprises the grade pay attached to the post and the applicable pay band;

(b) (i).— In all cases where the pension is fully ignored, the initial pay on re employment shall be fixed as per entry pay in the revised pay structure of the re employed post applicable in the case of direct recruits appointed on or after 1-1-2006 as notified v/Je Section II, Part A of First Schedule to CCS (RP)Rules, 2008.]

(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial basic pay

on re-employment shall be fixed at the same stage as the last basic pay drawn before retirement. However, he shall be granted the grade pay of the re-employed post. The maximum basic pay cannot exceed the grade pay of the re-employed post plus pay in the pay band of ₹ 67,000, i.e., the maximum of the pay band PB-4. In all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

Illustration

A Colonel who retired with basic pay of ₹61,700 (grade pay ₹ 8,700; pay in the pay band ₹ 53,000) is re-employed as a Deputy Secretary in an organization with grade pay of ₹ 7,600. In this case, on re-employment, his basic pay will continue to be ₹ 61,700. However, his grade pay on re-employment will be at ₹ 7,600 and the pay in the pay band ₹ 54,100. Thereafter, the non-ignorable part of the pension will be reduced from the pay so fixed.

Note.— In the revised pay structure, basic pay is pay in the pay band the grade pay attached to the post.

(c) The re-employed pensioner will, in addition to pay as fixed under Para, (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are re employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation in the following extent;—

(i) In the case of Ex-servicemen who held posts below Commissioned Officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of Commissioned Service Officers belonging to the Defence Forces and Civilian pensioners who held

Group 'A' posts at the time of their retirement, the first ₹ 4,000 of the pension and pension equivalent retirement benefits shall be ignored.

It is evident that the rules applicable to officers who retire from the forces and others who so retire are different.

7. Rule 4 (a) enacts that the pay of a re-employed ex-servicemen shall be “*only in the prescribed pay scale/pay structure of the post in which they are reemployed*”. Rule 4 (b) provides that the pay in the case of re-employed ex-servicemen, where the pension is to be ignored has to be “*fixed as per entry pay in the revised pay structure of the re employed post applicable in the case of direct recruits*”. Rule 4 (d) deals with who can claim pay that takes into account pension for past service in the forces, and who cannot. Rule 4 (d) (i) states categorically that those who joined as ex-servicemen, after rendering service “*below Commissioned Officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.*” Rule 4 (d) (ii), however, states that in case of officers, pay fixation is to be resorted to in the pay scale prescribed to the post they join, after taking into account a part of their pension.

8. In the present case, the material on record shows that the petitioners were non-commissioned officers. They were entitled to pay fixation under the relevant rules, i.e. that attached to the new civilian post; their right to reckon past service for pay fixation can arise only if provided by the rules. So viewed, the relevant rules are Rule 4 (b) and (d) (i), since they are non-commissioned employees. Thus, their previous pay and pension has to be ignored.

9. In view of the above discussion, it is held that the petitioners' submissions lack merit. So far as the plea of discrimination is concerned, it is equally without substance, because the interpretation given by other departments in the Central Government cannot be considered as binding upon the High Court.

10. For the foregoing reasons, this Court is of the opinion that the reliefs claimed cannot be granted. The writ petition is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

JANUARY 22, 2018

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