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

+ **W.P.(C) 10902/2019**

MANISH KUMAR SINGH

..... Petitioner

Through
versus

Mr. Naresh Kaushik, Advocate.

UNION OF INDIA & ANR

..... Respondents

Through

Mr. Jatin Puniyani, Advocate.
Mr. Akshay Amritanshu,
Advocate with Mr. Kartikey
Singh and Mr. Ashutosh Jain,
Advs.

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Date of Decision: 8th December, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

W.P.(C) 10902/2019 & CM APPL. 44035/2021

1. Present application has been filed by the applicant/petitioner seeking early hearing of the present petition.
2. Learned counsel for the petitioner states that this Court has already decided the issues involved in the present writ petition on 5th October, 2021 in *Anil Prasad Versus Union of India & Ors, W.P.(C) 2135/2020* following the decision in the case of *Kapil Chaudhary vs. Govt. of India & Ors, W.P.(C) 6701/2012*.
3. Issue notice.
4. Learned counsel for the respondents has no objection to the present application being allowed.
5. Keeping in view the said fact, present application is allowed

and the matter is taken up for hearing with consent of the parties.

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6. It is pertinent to mention that the present writ petition has been filed seeking number of prayers. However, learned counsel for the petitioner states that he wishes to press only prayers 'b' and 'c' of the present petition seeking a direction to the respondents to fix/re-fix the pay of the petitioner at Rs.30,310/-, being the last drawn pay by the petitioner in his previous department i.e. Indian Air Force.

7. Learned counsel for the petitioner states that the issue involved in the present writ petition has already been decided by a Division Bench of this Court in ***Capt. (Retd.) Kapil Chaudhar vs. Govt. of India & Ors, W.P.(C) 6701/2012***, wherein it has been held as under:-

“8. Whereas the Union of India would urge that as per para 8, the last sentence, would make it clear that the only embargo is that the pay so arrived should not exceed the basic pay drawn while in service in an Armed Force. But, the argument overlooks the preceding line where the expression is: ‘equal to or higher than the minimum of the scale attached to the civil post in which they are employed.

.....

10. Meaningfully read, paragraph 8 of the CCS (Fixation of Pay of re-employed Pensioners) Order 1986 would simply mean that a retired Armed Force Personnel, upon re-appointed in Government service, would be entitled to his basic pay being fixed at par with his last drawn pay.”

8. *Per contra*, learned counsel for the respondents states that the interpretation put by the Division Bench on para 8 of the CCS order in its judgment in ***Capt. (Retd.) Kapil Chaudhary*** (supra) is erroneous. He further submits that as the Special Leave Petition, being SLP(C) 20017-20018 of 2015, against the said judgment was dismissed on the

ground of delay, the same cannot be treated as a precedent for the present case. He submits that paragraph 8 of the CCS Order merely provides that while granting advance increments to the Officer, the basic pay cannot be fixed higher than what the officer was drawing in the Indian Air Force.

9. In fact, similar contentions had been raised by the respondents in the case of *Anil Prasad vs. Union of India & Ors.* (supra). The said judgment was authored by one of us (Hon'ble Mr. Justice Navin Chawla). The relevant portion of the said judgment is reproduced hereinbelow:-

“7. We see no reason to differ from the above interpretation placed by the predecessor bench of this Court in the aforesaid judgment.

8. In view thereof, we hold that the petitioner was entitled to protection of his last drawn Basic pay in the Indian Army, being ₹28,340. Insofar the grade pay is concerned, the learned counsel for the petitioner does not press the said relief.”

10. Accordingly, the present writ petition is allowed and the respondents are directed to re-work the pay fixation of the petitioner in accordance with the judgment of this Court within a period of eight weeks. Accordingly, with the aforesaid direction the present writ petition stands disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 8, 2021/AS