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

% **Date of decision: 07th February, 2022**

+ W.P.(C) 7483/2012
D.B. MATHUR ..... Petitioner
Through: Mr. Kamaldeep Dayal, Adv.

versus

PUNJAB NATIONAL BANK ..... Respondent

Through: Mr. Jagat Arora, Adv. for Bank.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. This writ petition has been preferred seeking the following reliefs:

> "(a) issue an appropriate Writ in the nature of a Writ of Certiorari or any other Resources appropriate Writ quashing the order dated 5.11.2009 passed by the General Manager, Human Resources Development Division, New Delhi of the Respondent-Bank;
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> (b) issue an appropriate Writ, Order or Direction directing the Respondent to re-fix the pay of the Petitioner by including an increment equivalent to 24 years of service (including pre-commissioned training period) of the Petitioner in the Army with effect from 14.8.89 in accordance with Circular No. 30/91 dated 14.8.91 issued by the Respondent-Bank;"

2. The genesis of the dispute relates to the claim of the petitioner for his fitment in an appropriate scale of pay under the respondent Bank in which he came to be employed after serving in the Armed Forces. The dispute had travelled earlier to this Court with the petitioner instituting W.P.(C) 2932/2005 wherein the petitioner had contended that the Bank had incorrectly fixed the initial pay of the petitioner consequent to re-

employment. The aforesaid writ petition came to be dismissed by the Court both on merits as well as on the ground of delay and laches.

3. Aggrieved by the aforesaid judgement, the petitioner preferred LPA No.474/2008 which came to be disposed of by a Division Bench of the Court on 25 August 2009. Since that order would have some bearing on the submissions which have been addressed before this Court, the same is being extracted hereinbelow: -

> "Present Letters Patent Appeal has been filed challenging the judgment and order dated 21st May, 2008 whereby appellant-petitioners writ petition impugning fixation of his pay on re-employment with respondent-Bank after his retirement from Army was dismissed.
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> Learned counsel for appellant-petitioner submits that learned Single Judge has failed to take into consideration the effect of Circular bearing No. 30/91 dated 14th August, 1991 which provided that persons commissioned in the Armed Forces between 1st November, 1962 to 10th January, 1968 are to be provided an increment equal to the years of service in the army.
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> However, learned counsel for respondent-Bank submits that the aforesaid Circular was applicable only in the cases of pay fixation of Ex-Emergency Commissioned Officers/Short Services Commissioned Officers who are re-employed in the respondent-Bank after release from the Army. He submitted that these instructions are not applicable in the case of appellant-petitioner who had joined the Army through NDA and is an Officer pensioner.
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> We have perused the aforesaid Circular dated 14th August, 1991 and we are of the view that it applies to all Commissioned Officers irrespective of the fact that whether they joined the Army through NDA or otherwise.
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> Consequently, we direct respondent-Bank to consider afresh the representation of appellant-petitioner with regard to fixation of his pay. The said representation shall be disposed of within eight weeks from the date of its receipt.
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> Accordingly, present appeal is disposed of in the above terms."

4. As is evident from a reading of the judgement rendered on the LPA, the Court essentially took into consideration the submission of the petitioner that the learned Judge while proceeding to dismiss the writ

petition had failed to take into account the provisions of the Circular dated 14 August 1991 which had provided for the grant of increments equal to the numbers of years of service rendered in the Armed Forces to be taken into consideration while fixing initial pay. The Court on perusal of the aforesaid Circular proceeded to reject the submission addressed on behalf of the Bank that it would stand restricted in its application to Ex-Emergency Commissioned Officers and Short Services Commissioned Officers only. The Court held that the Circular of 14 August 1991 would apply to all Commissioned Officers irrespective of whether they had joined the Armed Forces through the NDA or otherwise. The matter in consequence was remanded to the respondents for taking a decision afresh. It is pursuant to the aforesaid directions that the impugned order of 05 November 2009 has come to be passed.

5. The respondents while passing the impugned order have essentially placed reliance upon the instructions contained in the Personnel Division's Circular of 08 February 1988 which had mandated that while fixing the pay of erstwhile members of the Armed Forces who come to join the Bank on re-employment, it would be ensured that their fixation is in a scale of pay which does not exceed the total emoluments drawn by them at the time of their release. The respondents also take into account the fact that the Circular of 14 August 1991 had come to be subsequently withdrawn in terms of a subsequent Personnel Division's Circular dated 04 July 1996.

6. Upon hearing learned counsel for parties, this Court on 27 January 2022 encapsulated the issues which arose for consideration in the following terms:-

"Having heard learned counsels for parties, the Court notes that the essential grievance of the petitioner is with respect to his fitment in an appropriate scale under the respondent – Bank.

In an earlier round of litigation which had ensued, a learned Judge of the Court had proceeded to hold against the petitioner, in terms of the judgment rendered on 21 May 2008. The learned Judge held against the petitioner both on merits as well as on the ground of delay and laches. That judgment was subjected to an intra court appeal being LPA No.474/2008. That LPA was disposed of by the Court on 25 August 2009, noting and accepting the submission of the petitioner that the respondent – Bank had failed to evaluate the claim of the petitioner bearing in mind the Circular of 14 August 1991. Taking note of the aforesaid fact, directions were framed for the respondent – Bank to examine the claim of the petitioner afresh. That claim has come to be negated by the respondent(s) in light of the order impugned herein.

As this Court reads the impugned order, it finds that the respondent has proceeded on the essential premise of erstwhile officers of the Armed Forces being accorded pay protection and their fitment being related to the last pay that was drawn by them at the time of their retirement under their previous employers. They have thereafter proceeded to observe and record that the petitioner, at the relevant time of his entry into service in the respondent – Bank, was placed in a pay scale which resulted in him drawing emoluments higher than that which was drawn by him at the time of his retirement from the Armed Forces. This recital as appearing in the impugned order is not questioned or assailed by learned counsel for the petitioner in the course of his submissions addressed today.

Learned counsel for the petitioner on the other hand would contend that the directions issued by the Court on the aforenoted LPA required the respondent – Bank to evaluate the claim of the petitioner strictly in accordance with the Circular of 14 August 1991 and it is this exercise which the respondent – Bank has woefully failed to undertake.

However, and prima facie, as this Court reads the Circular of 14 August 1991, it essentially appears to clarify the issue of whether pre-commissioned service was liable to be taken into consideration for the purposes of calculation of increments that were to be taken into account for the purposes of pay fixation. The petitioner has also not been able to demonstrate that the issue of pay fixation was delinked from the emoluments that were last drawn by an employee of the Armed Forces at the time of his retirement and that the Circular of 14 August 1991 ushered in a completely new regime."

7. When the matter was taken up today, Mr. Dayal, learned counsel for

the petitioner, has taken the Court through the Guidelines as framed and adopted by the Bank and which stands placed along with the counter affidavit filed by the respondents herein. Mr. Dayal placing reliance upon those Guidelines contends that the directive of taking increments into consideration while approaching the issue of fitment in an appropriate pay scale had clearly delinked it from the injunct of being restricted to the last pay drawn. According to learned counsel, wherever the restriction with respect to the last pay drawn was to be retained, it was specifically provided for in the policy as adopted by the Bank. In order to buttress the aforesaid submission, Mr. Dayal has placed reliance on Paragraph 5.6 of the Guidelines as adopted by the Bank which reads thus: -

> "5.6. Pay fixation of Ex-Emergency Commissioned Officers/Short Service Commissioned Officers
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> i) Re-employment before 1.2.1984
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> An ex-ECO/SSCO who joined pre-commissioned training or was commissioned in Armed Forces during the period.1.11.1962 to 10.1.1968 and after release from armed forces was appointed in officer's cadre would be given the benefit of number of years of service put in by him as Ex-ECO or SSCO with reference to the pay point corresponding to the minimum or the lowest scale applicable to officers in the Bank. To. Illustrate, if the officer is inducted in the Junior Management. Grade Scale I viz.700-1800 his pay may be fixed at least as many stages above the minimum as the number of years of service for which benefit in pay fixation is given. The benefits may be extended from 1st April; 1980.
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> If the officer is inducted in a higher pay scale as compared to the lower pay scale applicable to officers in the Bank, it should be ensured that he gets at least the benefit in pay which would have accrued to him by giving him the weightage of the number of years of service put in as ECO/ SSCO with reference to the minimum of the lowest scale.
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> An ex-ECO/SSCO who joined pre-commissioned training or was commissioned after 10.1.1968 may be granted advance increments equal to the completed years of service rendered by him in armed forces on a pay (inclusive of deferred pay out excluding other emoluments) equal to or higher than the minimum of the scale attached to the bank post. The pay so arrived at should not, however, exceed the pay (including the

deferred pay but excluding of other emoluments) last drawn by him in the armed forces. The refixation, of pay will be affective from 1.11.1984.

The pay of ex-ECOS/SSCOs who have been appointed before 1-11-1984 may be fixed on a notional basis from the dates of their appointments and arrears may be allowed only w.e.f., 1-11-1984.

(ii) 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. The pay fixation cases of post 1.12.1984 ex-ECOs/SSCCs will be re-opened; if otherwise settled "and revised as per these instructions. The benefits of pay fixation will be available to those ex-ECOs/ SSCOS who join in Junior Management Grade Scale I (i.e., the lowest rank in officer's cadre) in the Bank.

The arrears, if any, too will be paid with reference to their dates of joining or 1.11.1984. whichever is later.

(iii) 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., Public Sector Banks may review the past cases and re-fix the pay wherever necessary." *(emphasis supplied)*

8. It was, additionally, submitted that the respondents while fully aware of the subsequent Circular of 04 July 1996 having come to be issued, failed to bring the same to the attention of the Court while it had proceeded to dispose of the LPA. In view of the above, learned counsel for the petitioner would contend, that the principles of res judicata and constructive res

judicata debarred them from placing reliance on the subsequent circular and denying the petitioner the benefits of 14 August 1991.

9. In order to appreciate the submissions as addressed, it would be apposite firstly to revert to the Circular of 14 August 1991 which forms the cornerstone of the claim as raised by the petitioner here. As is manifest from a reading of that Circular, the same essentially dealt with the question of whether the benefit of pre-commissioned training period was liable to be extended for the purposes of pay fixation. The respondent/Bank in terms of that Circular and upon consideration of the various representations having been received by it, proceeded to record its decision in the following terms:-

> "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.
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> 2. Those who joined bank services after 24.8.81
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> 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).
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> 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. The copies of the discharge certificate may also be sent duly…. irrespective of increment….."

10. The aforesaid extract establishes that the respondent in light of the various representations received resolved to take the services rendered during the pre-commissioned training period into account while computing the number of increments that may be presumed to have been earned. However, and undisputedly, the aforesaid policy was ultimately withdrawn in terms of the subsequent Circular of 04 July 1996 which reads thus: -

> "Reg: Pay fixation of Ex-ECOS/SSCOS on Re-employment in bank.
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> ********
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> 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.
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> 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. <u>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</u>.
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> In view of the present guidelines, it has been decided to review the cases of x-service Officers whose pay had been fixed after taking into account the period of pre-commissioned training while computing the total length of service rendered by them in the forces. Such cases will be reviewed at

the Personnel Division and the concerned Zonal Offices will be intimated about the refixation of pay shortly." (emphasis supplied)

11. The Circular of 04 July 1996 has taken into consideration the fact that pre-commissioned training period is one where personnel discharge services in the Armed Forces without being accorded the rank of a Commissioned Officer or being placed in a particular scale of pay. It has borne in mind that during that period, personnel are only entitled to a stipend. Taking the aforesaid stand, it has then proceeded to record that accordingly in all cases where such benefits may have been extended, they would have to be reviewed. If it be the admitted position that personnel during the pre-commissioned training period are not accorded a particular pay scale, the Court fails to countenance how the Circular of 14 August 1991 can enure to the benefit of the petitioner.

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.

13. The submission of learned counsel that the Circular of 04 July 1996 even if it were to be read as withdrawing the Circular of 14 August 1991, would only operate insofar as Ex-Emergency Commissioned Officers and Short Services Commissioned Officers would also not merit consideration or acceptance since, undisputedly both 14 August 1991 and 04 July 1996, in strict terms applied and dealt with cases of Ex-Emergency Commissioned Officers and Short Services Commissioned Officers only. It was only while interpreting the Circular of 14 August 1991 that the Court in the course of disposing of the LPA had held that its benefits could not be restricted to Ex-Emergency Commissioned Officers only but would also apply to Permanent Commissioned Officers. That very logic would equally apply to the subsequent circular and clearly demolishes the contention of learned counsel that the Circular of 04 July 1996 would not apply to Permanent Commissioned Officers.

14. It becomes equally important to note that the Guidelines which are relied upon by learned counsel for the petitioner appear to be a compendium of the various policy measures adopted by the Bank while dealing with the question of fitment and prescription of a scale of pay from time to time. Significantly, however, both clauses (i) and (ii) of Paragraph 5.6 carry the stipulation that under no circumstances can the fitment result

in the employee being placed in a pay scale which exceeds the last pay drawn by him while discharging duties in the Armed Forces.

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 negatived 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.

16. Accordingly, and for all the aforesaid reason, the Court finds no merit in the challenge of impugned order, the writ petition stands dismissed.

YASHWANT VARMA, J.

FEBRUARY 7, 2022/*neha*