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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3609 OF 2014

Shri B. N. Chauhan

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

Mr. Prashant R. Suryawanshi i/by Mr. Gajanan M. Savagave for petitioner.

Mrs. Anjali Neel Helekar a/w Mr. Dashrath Dube for respondent nos.1 to 3.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: FEBRUARY 1, 2023

P.C.:

- 1.** The petitioner was initially employed in Army. He was released from the Army as per Rules. He is drawing Army pension. The petitioner was re-employed in civil post under respondent no.3.
- 2.** The grievance of the petitioner is that the Office Memorandum of the year 2010 is not properly considered while fixing the pay-scale and pay band of the petitioner. The learned counsel for the petitioner submits that the respondents have not properly fixed the initial pay of the petitioner on the petitioner's re-employment after his retirement from Army. The learned counsel submits that on re-employment on the civil post, the respondent no.3 is supposed to fix the initial basic pay in accordance with rules and instructions issued by the Department of Personnel Training (DoPT)/Ministry of Defence. The petitioner is entitled to have the pay fixed by the respondents in terms of the said rules, i.e., the initial pay on re-employment should 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 1st January, 2006 as notified in the First Schedule of Central Civil Services (Revised Pension) Rules, 2008. According to the learned counsel, the Tribunal has not considered this aspect in its correct perspective and thereby has arrived at erroneous conclusion.

3. The learned counsel for the respondents supports the order passed by the Tribunal and submits that the petitioner is drawing pension and as such, is allowed pay only in the prescribed pay-scale of the post in which he is re-employed and is not entitled to protection scales of pay/pay structure of the post held by him prior to retirement.

4. We have considered the submissions advanced by the learned counsel for the parties.

5. The Tribunal has considered the relevant provisions of the Office Memorandum dated 5th April, 2010 issued by the DoPT. The same deals with the applicability of Central Civil Services (Revised Pension) Rules, 2008 to persons re-employed in Government service after retirement. Clauses 4(a) and 4(b)(i) is relevant. The same read thus: -

“Para – 4(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 re-employed. 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 C.C.S. (R.P.) Rules, 2008, revised pay structure comprises the Grade Pay attached to the post and the applicable Pay Band.

Para – 4(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 01.01.2006 as notified vide Section – II, Part - ‘A’ of First Schedule to CCS (RP) Rules, 2008.”

6. It is not disputed that the petitioner is drawing pension. The case of the petitioner would have been accepted if the petitioner would not have taken the benefit of pension. As the petitioner has opted for the benefit of pension, the petitioner certainly would be governed by Clause 4(a), as reproduced supra. The Tribunal has not committed any error.

7. The writ petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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signed by
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DASHARATH
PANDIT
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