217 (71 cases)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1) **CWP-5370-2014**
Date of Decision:21.08.2023

JASBIR SINGH .... Petitioner

Versus

UNION OF INDIA & ORS ..... Respondents

2) **CWP-13885-2014 (O&M)**

HANUMAN DAS & ORS ....Petitioners

Versus

UNION OF INDIA & ORS ....Respondents

3) **CWP-19766-2014**

ANAND KUMAR & ANR ....Petitioners

Versus

UNION OF INDIA & ORS .....Respondents

4) **CWP-26350-2014 (O&M)**

RAJIV KUMAR GUPTA AND ORS ....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

5) **CWP-2033-2015 (O&M)**

RAMESH KUMAR & ORS ....Petitioners

Versus

UNION OF INDIA & ORS .....Respondents

6) **CWP-93-2015**

ROHIT KUMAR AND ORS ....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

7) **CWP-17588-2014 (O&M)**
INDER MOHAN SHARMA AND ORS. ....Petitioners

Versus

UNION OF INDIA AND ORS. ....Respondents

8) **CWP-14081-2015**

DINESH CHAKRAVORTY ....Petitioner

Versus

UNION OF INDIA AND ORS. ....Respondents

9) **CWP-18955-2015**

GURJIT SINGH ......Petitioner

Versus

UNION OF INDIA & ORS ....Respondents

10) **CWP-12517-2015**

ASHWANI KUMAR VASHISHTH ....Petitioner

Versus

UNION OF INDIA & ORS ....Respondents

11) **CWP-20550-2015 (O&M)**

DHEERAJ KUMAR AND ORS ....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

12) **CWP-20581-2015 (O&M)**

PAWAN GUPTA AND ORS ....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

13) **CWP-26013-2015**

TEJPAL & ORS ....Petitioners

Versus

UNION OF INDIA & ORS ....Respondents

14) **CWP-19836-2018 (O&M)**

MAHESH KUMAR SINGH AND OTHERS ....Petitioners

Versus

SYNDICATE BANK AND ORS ....Respondents

15) **CWP-1491-2016**

RAM MEHAR SINGH DULL & ORS ....Petitioners

Versus

UNION OF INDIA & ORS ....Respondents

16) **CWP-17430-2016**

DILBAGH SINGH ....Petitioner

Versus

UNION OF INDIA AND ORS ....Respondents

17) **CWP-22799-2017 (O&M)**

SATISH KUMAR ....Petitioner

Versus

STATE BANK OF INDIA & ORS ....Respondents

18) **CWP-25258-2018**

KULDEEP SINGH AND ORS ....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

19) **CWP-9718-2021**

RUPESH KUMAR AND ORS ....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

20) **CWP-9708-2021 (O&M)**

SHRI SHAILESH KUMAR AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ....Respondents

21) **CWP-9734-2021**

GOVIND SINGH TOMAR ....Petitioner

Versus

STATE BANK OF INDIA ....Respondent

22) **CWP-9709-2021**

MUNNA RAM AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ....Respondents

23) **CWP-9731-2021**

KAMAL KISHORE SHUKLA ....Petitioner

Versus

STATE BANK OF INDIA ....Respondent

24) **CWP-9738-2021**

SANJAY KUMAR SATYARTHI AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ....Respondents

25) **CWP-9735-2021**

M.K.SURESH AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ....Respondents

26) **CWP-9732-2021**

SAMPURNANAND DHAR DWIVEDI ....Petitioner

Versus

UNION BANK OF INDIA AND ORS ....Respondents

27) **CWP-9730-2021**

NEERAJ KUMAR RAI ....Petitioner

Versus

STATE BANK OF INDIA AND ORS ....Respondents

28) **CWP-9736-2021**

MANISH SHRIVASTAVA AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ....Respondents

29) **CWP-9737-2021**

DIPAMKER BHATTACHARYA ....Petitioner

Versus

UNION OF INDIA AND OTHERS ....Respondents

30) **CWP-9739-2021**

DALIP KUMAR SINGH AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ....Respondents

31) **CWP-9723-2021**

APURBA KUMAR SADHU ....Petitioner

Versus

STATE BANK OF INDIA AND ORS ....Respondents

32) **CWP-9812-2021**

SATYENDRA KUMAR DIXIT ....Petitioner

Versus

UNION OF INDIA AND ORS ....Respondents

33) **CWP-9799-2021**

SANTOSH KUMAR AND ORS ....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

34) **CWP-9814-2021**

MANOJ SHARMA ....Petitioner

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UNION OF INDIA AND ORS ....Respondents

35) **CWP-9809-2021**

NAND KISHOR SHARMA ....Petitioner

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36) **CWP-9815-2021**

SHIV KUMAR SHARMA ....Petitioner

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37) **CWP-9811-2021**

LAXMI NARAIN SINGH ...Petitioner

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38) **CWP-9808-2021**

MANOJ KUMAR ....Petitioner

Versus

UNION OF INDIA AND ORS ....Respondents

39) **CWP-9806-2021**

RAVINDRA KUMAR GUPTA ....Petitioner

Versus

UNION OF INDIA AND ORS ....Respondents

40) **CWP-9802-2021**

YOGESH KUMAR SHARMA ....Petitioner

Versus

UNION OF INDIA AND ORS ....Respondents

41) **CWP-9800-2021**

JAY PRAKASH ....Petitioner

Versus

UNION OF INDIA AND ORS ....Respondents

42) **CWP-9801-2021**

ANAND PRAKSH SHARMA ....Petitioner

Versus

UNION OF INDIA AND ORS ....Respondents

43) **CWP-9804-2021**

MANOJ KUMAR AND ORS ....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

44) **CWP-9817-2021**

SARVESH KUMAR ....Petitioner

Versus

UNION OF INDIA AND ORS ...Respondents

45) **CWP-9818-2021**

SUBHASH CHANDER SHUKLA ....Petitioner

Versus

UNION OF INDIA AND ORS ...Respondents

46) **CWP-9819-2021**

HEERA LAL AND ANR .....Petitioners

Versus

UNION OF INDIA AND ORS ....Respondents

47) **CWP-10123-2021**

SUSANTA DEBNATH ....Petitioner

Versus

STATE BANK OF INDIA AND OTHERS ...Respondents

48) **CWP-10128-2021**

PRITPAL SINGH AND OTHERS ...Petitioners

Versus

UNION OF INDIA AND OTHER ...Respondents

49) **CWP-10129-2021**

SHAKSHAM THROUGH ITS PRESIDENT ...Petitioner

Versus

UNION OF INDIA AND OTHERS ...Respondents

50) **CWP-10130-2021**

KALI SHANKAR TRIWEDI ...Petitioner

Versus

UNION OF INDIA AND OTHERS ....Respondents

51) **CWP-10131-2021**

PANKAJ KUMAR ADHIKARI AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ...Respondents

52) **CWP-10132-2021**

RAGHUBANSH LAL SINGH AND OTHERS ...Petitioners

Versus

UNION OF INDIA AND OTHERS ...Respondents

53) **CWP-9712-2021**

JOYDEEP MUKHOPADHYAY ....Petitioner

Versus

STATE BANK OF INDIA AND ORS ....Respondents

54) **CWP-9716-2021**

SRI DEB KUMAR KUNDU ....Petitioner

Versus

STATE BANK OF INDIA AND ORS ....Respondents

55) **CWP-10024-2021**

RAJENDRA PRASAD SAINI AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ...Respondents

56) **CWP-10023-2021**

PYARE LAL POONIA ...Petitioner

Versus

STATE BANK OF INDIA AND OTHERS ...Respondents

57) **CWP-10026-2021**

KRISHAN KUMAR SHARMA AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ...Respondents

58) **CWP-10021-2021**

RAJENDER PRASAD ...Petitioner

Versus

STATE BANK OF INDIA AND OTHERS ...Respondents

59) **CWP-10027-2021**

RAKESH KUMAR SAINI AND OTHERS ...Petitioners

Versus

THE MANAGING DIRECTOR SBBJ AND ANOTHER ..Respondents

60) **CWP-10028-2021**

DILEEP KUMAR AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ...Respondents

61) **CWP-10031-2021**

BRAJESH KUMAR AND OTHERS ....Petitioners

Versus

UNION OF INDIA AND OTHERS ...Respondents

62) **CWP-9719-2021**

JUGAL PAL ...Petitioner

Versus

STATE BANK OF INDIA AND ORS ....Respondents

63) **CWP-9797-2021**

K.S. SHANDILYA AND ORS ...Petitioners

Versus

THE STATE BANK OF INDIA AND ORS ...Respondents

64) **CWP-9796-2021**

GMV RAMANA AND ORS ...Petitioners

Versus

STATE BANK OF INDIA AND ORS ....Respondents

65) **CWP-9794-2021**

VELLANKI VAMSI KRISHNA AND ORS ....Petitioners

Versus

THE STATE BANK OF INDIA AND ORS ...Respondents

66) **CWP-9793-2021**

BVSLP REDDY AND ORS ....Petitioners

Versus

THE STATE BANK OF INDIA AND ORS ...Respondents

67) **CWP-9791-2021**

V. RAMAKRISHNA AND ORS ....Petitioners

Versus

THE STATE BANK OF INDIA AND ORS ...Respondents

68) **CWP-9792-2021**

JUTTADA NAGESWARA RAO AND ORS ...Petitioners

Versus

THE STATE BANK OF INDIA AND ORS ...Respondents

69) **CWP-9789-2021**

P. CHAKRAVARTHY AND ORS ....Petitioners

Versus

THE STATE BANK OF INDIA AND ORS ....Respondents

70) **CWP-9795-2021**

G.VENKATA KRISHNA SIVA KUMAR ....Petitioner

Versus

STATE BANK OF INDIA AND ORS ...Respondents

71) **CWP-25217-2014 (O&M)**

NIRMAL SINGH & ORS ....Petitioners

Versus

UNION OF INDIA & ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Navdeep Singh, Advocate and
Ms. Apoorva Pushkarna, Advocate for the petitioner in CWP No.13885-2014; CWP-2033-2015, CWP-1491-2016, CWP-5370-2014 and CWP-17588-2014.

Mr. Yogesh Goyal, Advocate for the petitioner CWP-9730-2021, CWP-9731-2021,CWP-9736-2021, CWP-9737-2021 in CWP-17588-2014.

Mr. Rishav Sharma, Advocate for the petitioner in CWP-25217-2014, CWP-26350-2014 and CWP-93-2015.

Mr. Arun Kumar Batra, Advocate for the petitioner in CWP-14081-2015, CWP-12517-2015.

Mr. Sandeep Bansal, Advocate for the petitioner in CWP-19836-2018.

Mr. Manoj Tanwar, Advocate for the petitioner in CWP-25258-2018.

Mr. Brijeshwar Singh Kanwar, Advocate for
Mr. Chaman Deep, Advocate for Union of India/respondent Nos.2, 4, 5 and 6 in CWP-19836-2018.

Mr. Anupam Gupta, Senior Advocate with
Mr. Akshay Jain, Advocate and
Mr. Vikas Chatrath, Advocate and
Ms. Madhu Dayal, Advocate
Mr. Sukhpal Singh, Advocate and
Mr. Gautam Pathania, Advocate for respondent- SBI.

Mr. H.S.Baidwan, Advocate
for Union of India-respondent Nos.1, 2, 4 and 5- in CWP-13885-2014, CWP-25217-2014, CWP-26350-2014, CWP-2033-2015, CWP-14081-2015, CWP-20550-2015, CWP-

1491-2016 and CWP-20581-2015.

Mr. Karan Kumar Jund, Central Govt. Counsel
for UOI/respondents in CWP-5370-2014, CWP-12517-2015,
CWP Nos.9712, 9719, 9723, 10123 of 2021.

Ms. Anita Balyan, Senior Panel Counsel
for Union of India-respondent in CWP-25258-2018

Mr. Anil Chawla, Senior Panel Counsel
for Union of India in CWP Nos. 5370 and 13885 2014; 14081 and 26013 of 2015, 9708, 9801, 9804, 9811 & 9817-2021.

Mr. Shashank Bhardari, Advocate
for respondents No.3 and 6- Bank in CWP-26013-2015.

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JAGMOHAN BANSAL, J. (Oral)

1. By this common order a bunch of petitions is disposed of since issue involved in all the petitions and prayer sought is common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP No.5370 of 2014.

2. The petitioner through instant petition is seeking setting aside of letter dated 17.02.2014 (Annexure P-8). The petitioner is further seeking direction to respondents to include element of Military Service Pay (for short 'MSP') while fixation of pay on re-employment.

3. The brief facts of the case which are necessary for the adjudication of present writ petition are that the petitioner is an ex-serviceman who retired from Indian Air Force on 31.10.2008. The petitioner after being superannuated from Indian Air Force joined State Bank of Patiala as 'Cashier-cum-Clerk' on 07.09.2009 and on the date of filing of writ petition was working with National Dairy Research Institute Branch at Karnal. Prior to 6th Central Pay Commission (CPC), the

essential components of the pay structure of ex-servicemen used to be basic pay, rank pay plus classification pay, good service pay etc. These components used to be protected on re-employment, however, 6th Central Pay Commission abolished erstwhile system of basic pay scales and system of pay bands plus grade pay came to be introduced. To extend edge to defence services over civil services, element of Military Service Pay (for short 'MSP') came to be introduced.

4. Ministry of Defence vide resolution dated 30.08.2008 issued clarification with respect to recommendations of 6th pay commission. It was clarified that recommendations of the commission in respect of defence personnel shall be accepted without any material change. Annexure 1 to the resolution disclosed decision of Government with respect to recommendations of the 6th pay commission. The relevant extracts of the Annexure read as:

Sr. No.	Recommendation of the VI CPC	Decision of the Government
1.	XXXXXXX	XXXXX
2	Military Service Pay The military service pay (MSP) will be extended to all the posts in the Defence Forces up to the level of Brigadier/equivalent. MSP being a new element, no arrears shall be paid on this account. It will however, be considered for purposes of fixation of pay and pension (para No. 2.3.12). The military service pay shall count as pay for all the purposes except for	Accepted subject to the following modifications:- In the case of existing Major Generals and Lt. Generals, MSP could be taken into account notionally for fixation of pay on 1.1.2006 with actual arrears being admissible prospectively.

	computing the annual increment(s). However, status of the defence forces officers would be determined by the grade pay attached to their post as is the case with civilians (Para 2.3.13)	

5. Ministry of Defence vide letter dated 24.07.2009 issued clarification with respect to pay and allowances of retired/released armed forces officer on re-employment in the armed forces. In the said letter, it was clarified that officers re-employed on or after 01.01.2006 shall be allowed to draw pay in the revised pay structure. MSP and DA thereon shall be payable from 01.09.2008, however, an amount of equivalent to the revised pension effective from 01.01.2006 or thereafter shall be deducted from his pay so fixed in accordance with general policy of the Government. The relevant extracts of the letter dated 24.07.2009 read as:

> *"Subject : Pay and allowances of Retired/Released Armed Forces Officers on re-employment in the Armed Forces.*
>
> ***4. Officers Re-employed on or After 01 Jan 2006*** *Officers who are re- employed on or after 1.1.2006 shall be allowed to draw pay only in the revised pay structure.*
>
> > ***(a) Officers who retired from Pre-revised Scales of Pay and were Re-employed in the Revised Pay Structure.*** *The initial pay in the pay band shall be fixed in the revised scale in accordance with Para 7 of SAI/SNI/SAFI with reference to the rank held at the time of retirement. Grade Pay will be granted in accordance with Para 5 below. Military Service Pay and DA thereon shall be payable only from 01.09. 2008. However, an amount of equivalent to the revised pension (excluding the ignorable portion of pension) effective from 01 Jan 2006 or after shall be deducted*

from his pay so fixed in accordance with the general policy of the Govt. on fixation of pay of re-employed officers.

(b) Officers Who Retired and are Re-employed in the Revised Scale of Pay. *The initial pay shall be fixed at the same stage in the revised scale as the last pay drawn. Grade Pay will be granted in accordance with Para 5 below. Military Service Pay and DA thereon shall be payable only from 01.09.2008. Having fixed the pay in the manner indicated, an amount equivalent to the revised pension (excluding the ignorable portion of pension) effective from 01 Jan 2006 or after shall be deducted from his pay so fixed in accordance with the general policy of the Govt. on fixation of pay of re-employed officers."*

6. Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training (for short 'DoPT') vide office memorandum dated 08.11.2010 clarified that in respect of re-employment of ex-servicemen taking place on or after 01.01.2006, pre-retirement pay for those who retired after 01.01.2006 means the pay in the pay band plus grade pay. It was further clarified that since the element of MSP was not reckoned in the pay fixation on re-employment, it need not be reduced from pension either. The relevant extracts of memorandum dated 08.11.2010 read as:

"As per these orders, for pre-2006 retirees rank pay is included as a part of pay but for post-2006 retirees, the MSP is not reckoned in the pre-retirement pay for the purpose of pay fixation on re-employment. However, for pension purposes the reckonable emoluments are- basic pay + grade pay + MSP + NPA wherever admissible. Therefore, while MSP is

> *not taken into consideration for the purpose of pay fixation on re-employment the element of MSP in pension is deducted.*
>
> *It has been decided in consultation with the Department of Expenditure, that since the element of MSP is not reckoned in the pay fixation on re-employment, it need not be reduced from the pension either. Hence, in respect of all those Defence officers / personnel, whose pension contains an element of MSP, that need not be deducted from the pay fixed on re-employment."*

7. Department of Financial Service, Ministry of Finance vide circular dated 23.03.2012 clarified that ex-serviceman who are re-employed with the banks and have retired on or after 01.01.2006 are eligible to pay fixation based on the pay drawn by them at the time of discharge from the defence services which would include band pay plus grade pay but ***does not include MSP***. The relevant extracts of the clarification dated 23.03.2012 read as:

> *"In this context, we have already forwarded DoP&T's OM No. 3/19/2009 Estt. Pay-II dated 8.11.2010 (copy attached) to you for compliance in which it is clearly clarified that in respect of re-employment taking place on/or after 01.01.2006 pre-retirement pay for those who retired after 01.01.2006 means the pay in the pay band plus grade pay. Therefore Ex-servicemen re-employed in the banks who retired on/or after 01.01.2006 are eligible to pay fixation in banks based on the pay drawn by them at the time of discharge from the Defence Services which would include band pay Plus grade pay but does not include MSP."*

8. The aforesaid clarification dated 23.03.2012 came to be withdrawn by letter dated 28.08.2012. It was further clarified that all the

Banks and Insurance Companies would follow principles and procedures stipulated in DoPT letter dated 08.11.2010.

9. The Department of Financial Services (Welfare) vide communication dated 17.02.2014 issued guidelines for fixation of pay of ex-serviceman re-employed in Public Sector Banks on or after 01.01.2006. In the guidelines, it was made clear that MSP has not been included in pre-retirement pay as per definition given by Ministry of Defence vide letter dated 24.07.2009. The protection of the component of MSP in re-fixation of pay in Bank has been excluded. The relevant extracts of the Annexure enclosed with said letter read as:

2.1. Ex-servicemen joining in workmen cadre:

"(ii) In case of officers who retired before 1.1.2006 and also those who retired after 1.1.2006 in the pre-revised pay scales without opting for the revised pay scales promulgated on or after 1.1.2006 the pay will be ***basic pay including stagnation increment*** *and* ***Rank Pay*** *plus* ***Dearness Pay*** *and* ***Dearness Allowance*** *drawn at the time of retirement. As such, the figure of pay plus D.A. admissible in the Bank will be fixed with reference to this protection i.e. pay as mentioned above plus DA and relevant stage of the basic pay in the re-employed scale will be determined after deducting DA admissible in the Bank from the figure protected. For the purpose of fixation of pay on re-employment, the pay would mean the basic pay plus the special allowance/special pay as the case may be, attached to the re-employed post.(where applicable). As the MSP has not been included in pre-retirement pay as per the definition given by the Ministry of Defence vide letter No.1/69/2008/D(Pay/Service) dated 24.7.2009, the protection of the component of*

MSP in re-fixation of pay in Bank has been excluded. Moreover, the ex- servicemen on re-employment in the banks are allowed to draw entire pension i.e. entire pension is ignored and not reduced from the re-fixed pay. As such, they will get the benefit of the component of Military Service Pay (MSP), if any, in their pension from the Government."

10. The respondent-Bank in view of aforesaid communications declined to extend benefit of MSP in pay fixation of ex-serviceman. The petitioner being ex-serviceman has preferred present writ petition assailing communication dated 17.02.2014 whereby MSP has been ordered to be excluded from pay fixation on re-employment.

11. A battery of advocates representing the petitioners, *inter alia*, would submit that respondents have wrongly placed reliance upon letter dated 24.07.2009 while issuing impugned letter dated 17.02.2014. The letter dated 24.07.2009 of Ministry of Defence deals with re-employment of defence personnel in the defence services and it does not deal with re-employment of defence personnel in civil services. If a defence person is re-employed in defence services, MSP is included in the pay, thus, there is no dispute of inclusion of MSP in the pay whereas if an ex-serviceman is employed in civil services, to extend edge to defence personnel, MSP deserves to be included in pay fixation. The Ministry of Finance has withdrawn its letter dated 23.03.2012 and restored position as per DoPT letter dated 08.11.2010. Once Ministry of Finance has asked the Banks and Insurance Companies to follow procedures stipulated in DoPT letter dated 08.11.2010, there was no question to exclude MSP from pay fixation. Prior to 2006 in the 'Compendium of Government Guidelines in the Matter of Re-

employment of Ex-serviceman' it has been clarified that pay includes rank pay, good services/conduct pay, classification pay etc. Prior to 2006, defence personnel were entitled to edge over civilians in the form of rank pay, good conduct pay, clarification pay etc. On the anvil of 6th pay commission, the edge was extended by way of MSP which is quite evident from the report of the 6th pay commission. In para 2.3.12 and 2.3.13, it has been categorically clarified that MSP would be considered part of pay for pay fixation.

12. Per contra, learned Senior counsel representing the respondent-Bank would submit that Bank has not floated its instructions and being instrumentality of Union has followed instructions issued by Union of India. Ministry of Finance, Ministry of Defence and Ministry of Personnel and Public Grievances and Pension have issued different instructions which to some extent are contradictory to each other and this contradiction has led to present controversy. There is need of composite instructions to be issued by Ministry of Finance after seeking opinion of other Ministries.

The Ministry of Finance, Department of Financial Services has issued communication dated 03.11.2021 wherein instructions issued by DoPT and MoD have been noticed. The Ministry has not expressed its opinion and simply forwarded circulars/clarifications of DoPT and MoD to different organizations/authorities for disposing representations/grievances of concerned employees and defending Court cases.

DoPT vide Office Memorandum dated 05.04.2010 has issued slew of clarifications with respect to persons re-employed in

Government services after retirement. It has been clarified that benefit of MSP granted to defence personnel while reckoning pension shall not be withdrawn, however, they will not be granted MSP while working in civilian organizations. The question of grant of MSP to such officers while re-employed in civilian organizations does not arise.

DoPT vide Office memorandum dated 01.05.2017 has clarified its position. In para 8 of the memorandum, it has been clarified that while the pension of re-employed pensioners will include the element of MSP, however, they will not be granted MSP as part of pay while working in civilian organizations.

DoPT vide Office Memorandum dated 26.11.2020 while re-considering its earlier circulars has reiterated its position with respect to MSP. In para 4, it has been clarified that MSP would form part of pension, however, it would not be part of pay while working in civilian organizations.

13. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

14. From the perusal of record and arguments of both sides, sole question which arises for the adjudication of this Court is whether element of Military Service Pay (MSP) granted to Defence Personnel would be considered for pay fixation while their re-employment in civilian organizations.

15. The prime contention of the petitioner for claiming inclusion of MSP while pay fixation is that MSP is an edge granted to Defence Personnel over civilian and respondent while issuing impugned circular dated 17.02.2014 has wrongly interpreted circular dated 24.07.2009

issued by Ministry of Defence. The petitioner is further attempting to allege that the respondent while issuing impugned circular was swayed by opinion of Indian Banks Association. As per petitioner impugned circular is based upon circular dated 24.07.2009 of MoD which is applicable to re-employment of Defence Personnel in defence services whereas case of petitioners is re-employment of ex-servicemen in civilian organizations.

The petitioner while raising above issue is heavily relying upon circular dated 08.11.2010 issued by DoPT and circular dated 28.08.2012 issued by Ministry of Finance, Department of Financial Services. By circular dated 28.08.2012, the Ministry of Finance has withdrawn its circular dated 23.03.2012 and opined that Banks and Insurance Companies should follow principles and procedures enumerated in DoPT letter dated 08.11.2010. The relevant extracts of circular dated 08.11.2010 at the cost of repetition are reproduced as below:

> *"As per these orders, for pre-2006 retirees rank pay is included as a part of pay but for post-2006 retirees, the MSP is not reckoned in the pre-retirement pay for the purpose of pay fixation on re-employment. However, for pension purposes the reckonable emoluments are- basic pay + grade pay + MSP + NPA wherever admissible. Therefore, while MSP is not taken into consideration for the purpose of pay fixation on re-employment the element of MSP in pension is deducted.*
>
> *It has been decided in consultation with the Department of Expenditure, that since the element of MSP is not reckoned in the pay fixation on re-*

> *employment, it need not be reduced from the pension either. Hence, in respect of all those Defence officers / personnel, whose pension contains an element of MSP, that need not be deducted from the pay fixed on re-employment."*

From the perusal of above quoted paragraphs of circular dated 08.11.2010, it can be culled out that DoPT was never of the opinion that MSP should be reckoned for the purpose of pay fixation on re-employment. DoPT has formed an opinion that MSP is part of pension and this element should not be reduced from the pension. It has been further clarified that if pension carries element of MSP that need not be deducted from the pay fixation on re-employment. It is general policy of the Government that pension is deducted from pay granted on re-employment. The DoPT has clarified that MSP would continue to form part of pension, however, said element would not be deducted from pay while deducting pension. The opinion of DoPT can be understood by an example. Suppose pension of an employee is Rs.1,000/- which includes MSP Rs.100/-. While determining pay on re-employment, as a General Principle, pension is excluded from pay. Suppose pay is fixed Rs.5,000/- on re-employment, a sum of Rs.900/- as pension would be excluded though ex-serviceman is getting pension Rs.1,000/-.

16. Writ petition assailing circular dated 17.02.2014 was filed in 2014. During the pendency of petition a lot of water has flown. DoPT has come up with multiple clarifications with respect to issue involved. DoPT vide Office Memorandum dated 25.04.2010 categorically opined that while pension would include element of MSP, however, ex-servicemen will not be granted MSP while working in civilian organizations. Para

3(iii) of the memorandum dated 05.04.2010 reads as:

> *"**(iii) Treatment of Military Service Pay (MSP):** MSP is granted to Defence Forces officers/personnel while they are serving in the Defence Forces. Accordingly, on their re-employment in civilian organizations, including secret organizations under the Cabinet Secretariat umbrella, the question of grant of MSP to such officers/personnel does not arise. However, the benefit of MSP given to all retired Defence Forces officers/personnel by reckoning it at the time of calculation of their pension (notionally in the case of pre-1.1.2006 pensioners) should not be withdrawn. <u>Accordingly, while the pension of such re-employed pensioners will include the element of MSP, they will not be granted MSP while working in civilian organizations."</u>*

17. The DoPT vide Office Memorandum dated 01.05.2017 again clarified its position with respect to MSP. The DoPT has dealt with different issues relating to pay fixation and treatment of MSP was one of them. DoPT has opined that while pension of such re-employed pensioner would include the element of MSP, however, they will not be granted MSP as part of pay while working in civilian organizations. Para 8 (ii) of Office Memorandum dated 01.05.2017 reads as:

> *"**(ii) Treatment of Military Service Pay (MSP):** MSP is granted to Defence Forces officers/personnel while they are serving in the Defence Forces. Accordingly, on their re-employment in civilian organizations, including secret organizations under the Cabinet Secretariat umbrella, the question of grant of MSP to such officers/personnel does not arise. However, the benefit of MSP in the pension should not be withdrawn. **<u>Accordingly, while the pension of such</u>***

> ***<u>re-employed pensioners will include the element of MSP, they will not be granted MSP as part of pay while working in civilian organizations.</u>*** *Also, in respect of all those Defence Officers / personnel, whose pension contains an element of MSP and whose pay on re-employment is subject to deduction of pension (excluding the ignorable portion, if any), the element of MSP as contained in the pension shall be ignored while deducting the pension at the time of pay fixation. In other words, the MSP portion of the pension need not be deducted from the pay fixed on re-employment."*

18. DoPT vide Office Memorandum dated 08.09.2020 has reiterated its opinion expressed vide instructions dated 05.04.2010 and 08.11.2010. DoPT has concluded that MSP would not be included while pay fixation on re-employment. Paragraph (xi) of the Office Memorandum dated 08.09.2020 reads as:

> *"(xi) Insofar as the treatment of MSP on pay fixation on re-employment is concerned, this Department's extant instructions issued vide para 3(iii) of OM No. 3/19/2009 Estt.(Pay-II) dated 5.4.2010 and OM of even no. dated 8.11.2010 provide that, MSP is not taken into consideration for the purposes of pay fixation on re-employment in civilian organizations. Also, since the element of MSP is not reckoned in the pay fixation on re-employment, it is not reduced from the pension either. Hence, in respect of all those Defence officers/personnel (where non-ignorable part of pension is required to be deducted), whose pension contains an element of MSP, that need not be deducted from the pay fixed on re-employment."*

19. The DoPT vide Office Memorandum dated 26.11.2020 has

reiterated its earlier position. The DoPT considering its earlier circular dated 05.04.2010 & 01.05.2017 has clarified that MSP is not granted to Defence Forces officers/personnel on their re-employment in civilian organizations, however, the benefit of MSP in the pension should not be withdrawn. Para 4 of the memorandum dated 26.11.2020 reads as:

> *"4. The instructions relating to treatment of MSP on re-employment have been laid down in para 3(iii) of OM dated 5.4.2010 which has further been clarified in OM dated 8.11.2010. Also, Para 8(ii) of OM No. 3/3/2016-Estt.(Pay-II) dated 1.5.2017 provides instructions relating to treatment of MSP on re-employment. These instructions provide that, MSP is granted to Defence Forces officers/personnel while they are serving in the Defence Forces. Therefore, MSP is not granted to Defence Forces officers/personnel on their re-employment in civilian organizations. However, the benefit of MSP in the pension should not be withdrawn.* ***Accordingly, while the pension of such re-employed pensioners will include the element of MSP, they will not be granted MSP as part of pay while working in civilian organizations.*** *Further these instructions provide that all those Defence Officers / personnel, whose pension contains an element of MSP and whose pay on re-employment is subject to deduction of pension (excluding the ignorable portion, if any), the element of MSP as contained in the pension shall be ignored while deducting the pension at the time of pay fixation. In other words, the MSP portion of the pension need not be deducted from the pay fixed on re-employment."*

20. From the perusal of Office Memorandum dated 05.04.2010,

08.11.2010, 01.05.2017, 08.09.2020 and 26.11.2020, it is quite lucid that constant opinion of DoPT is that MSP would form part of pension, however, element of MSP would not form part of pay on re-employment of ex-servicemen. The contention of petitioner that impugned circular dated 17.02.2014 is based upon Ministry of Defence letter dated 24.07.2009 becomes irrelevant as soon as different clarifications issued by DoPT are noticed. DoPT in its couple of Office Memorandums has clarified that MSP would form part of pension, however, it would not be reckoned while pay fixation of ex-servicemen on re-employment in civilian organizations.

The petitioner is further relying upon calculation made by respondent- Banks prior to 2006. It is pleaded case of both sides that w.e.f 01.01.2006 recommendations of 6th Pay Commission came to be implemented. In the wake of recommendations of 6th Pay Commission, pay fixation of all the Government employees came to be materially changed. The element of MSP was not in existence prior to 01.01.2006, thus, elements considered while pay fixation prior to 2006 cannot be made basis to determine whether MSP should be included in pay of ex-serviceman on re-employment in civilian organizations or not.

21. The petitioners are further relying upon recommendations of 6th Pay Commission. On being asked, both sides have conceded that recommendations of 6th Pay Commission are not binding upon PSU(s). DoPT in its clarifications has gone to the extent that its instructions are not binding on PSU(s), Trusts and Banks which are governed by their own set of rules and regulations. The petitioners have also placed reliance upon report of Ministry of Defence wherein it has been clarified that

letter dated 24.07.2009 of Ministry of Defence is applicable to re-employment of Defence Personnel in defence services and not re-employment in civilian organizations. The opinion of Ministry of Defence is clear that MSP should be included in pay while pay fixation in civilian organizations, however, said opinion cannot be made basis to ignore letters of DoPT as well as stand of respondents who had formed an opinion that MSP would not be included in pay on re-employment of ex-servicemen in civilian organizations. It is a pure financial matter which is going to create extra burden on Banks if MSP is included in pay. The petitioners have failed to produce any statutory provision or rule of business or terms and conditions of service to conclude that a clarification issued by Ministry of Defence is binding on public sector undertakings which are neither directly or indirectly managed or controlled by Ministry of Defence. In the absence of any binding precedent or statutory provision or rule of business, this Court does not find it appropriate to conclude that Banks are bound by clarification issued by Ministry of Defence which is going to create financial burden upon respondents.

22. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be dismissed and accordingly dismissed.

23. In the wake of confusion created by different departments resulting into inclusion of MSP in the pay at one point of time, it is hereby directed that respondent-Bank despite any commitment on the part of employees, shall not effect any recovery with respect to payment already made.

24. Before parting with the judgment, this Court would hasten to add that Ministry of Finance vide circular dated 03.11.2021 has forwarded letters/instructions of Ministry of Defence and DoPT to different organizations/authorities, however, Ministry of Finance has neither expressed its own opinion nor directed the authorities to act in a particular manner. It is well-known fact that ex-servicemen are re-employed on account of their sacrifice for the nation, their dedication and discipline to job. The defence personnel are treated differently from civilians and recognizing their service they are extended edge over civil servants. It is high time for the Ministry of Finance to take a call and put entire litigation to rest. This Court in view of above discussion cannot conclude that petitioners are entitled to inclusion of MSP in their pay on re-employment in civilian organizations, however, Ministry of Finance after seeking opinion of different stake holders can form a uniform policy and resolve the issue. Therefore, Secretary Government of India, Ministry of Finance, Department of Financial Services, is hereby directed to look into the matter and resolve the issue at the earliest possible.

(JAGMOHAN BANSAL)
JUDGE

21.08.2023
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*