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

% *Date of Decision: 10th July, 2023*

\+ W.P.(C) 8940/2021 and CM APPLs. 27807/2021 & 14888/2022

BANASHRI GUHA NEOGI AND OTHERS ..... Petitioners
Through: Mr. Divyanshu Sahay, Ms. Shradha Narayan and Mr. Akshay Sahay, Advocates.

versus

UNION OF INDIA AND OTHERS ..... Respondents
Through: Ms. Aakanksha Kaul, Mr. Aman Sahani and Mr. Digvijay Prasad, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This writ petition has been filed by the Petitioners assailing the Notification dated 01.10.2020 issued by Department of Financial Services, Ministry of Finance, Government of India, which excludes 'special allowance' for the purpose of fixation of pay on deputation. Petitioners have also sought quashing of all consequential orders fixing/re-fixing their pay and/or seeking recovery, as the case may be.

2. Shorn of unnecessary details, factual matrix to the extent relevant and captured in the writ petition is that Petitioners No.1 to 9 are serving as Recovery Officers at the Debts Recovery Tribunals ('DRTs'); Petitioners No.10 to 14 are serving on the post of Assistant Registrars; Petitioners No.15 to 20 are Registrars; Petitioner No.21 is

serving as Registrar at Debts Recovery Appellate Tribunal ('DRAT') and Petitioners No.22 to 23 were working as Assistant Registrar and Recovery Officer, respectively and have served their deputation period at the respective DRTs and returned to their parent bank. Impugned Notification dated 01.10.2020 has been issued by Respondent No.1 directing the respective DRATs/DRTs to act according to the Notification dated 01.10.2020.

3. It is averred in the writ petition that 'pay' and other conditions of service of the Petitioners in their parent banks are governed and regulated by Officers' Service Regulations framed by their respective parent banks, and amended from time to time pursuant to wage revisions for Officers vide Joint Notes signed between the Indian Banks' Association ('IBA') and Officers' Associations.

4. By the 7th Joint Note signed between IBA and Officers' Associations on 25.05.2015, salaries of officers of the Public Sector Banks, including the Petitioners, were revised w.e.f. 01.11.2012 after communication of 'no objection' by the Government of India. By this Note, 'special allowance' was introduced as a component of pay and along with the applicable Dearness Allowance ('DA') thereon, is a part of Basic Pay. Petitioners state that they had been drawing the 'special allowance' while working at their parent banks since 7th Joint Note was implemented in all the concerned banks. Necessary circulars have also been issued to this effect by the banks and amendments have been carried out in the respective Officers' Service Regulations. Petitioners continued to draw the 'special allowance' as part of their Basic Pay even when they were deputed at the respective DRAT/DRTs. It is further averred that the appointment orders issued

to all Petitioners provided that their pay and other terms of conditions on deputation will be regulated in accordance with DoPT O.M. dated 17.06.2010 and para 5.1 thereof provides for fixation of salaries and emoluments taking into account the Last Pay Certificates ('LPCs')/last salary slips issued by the parent banks. Petitioners exercised option in terms of para 4.1 of the O.M. and elected to draw pay attached to the *ex-cadre* posts to which they were appointed on deputation, except for Petitioners No.3, 11 and 16, who opted for Bank's pay.

5. It is further stated that except Petitioners No.1, 12, 18 and 21, even in respect of those Petitioners who joined on deputation posts after the impugned Notification was issued, Basic Pay was fixed including 'special allowance' in view of the LPCs issued by the parent Banks. However, by the impugned Notification, Respondent No.1 has illegally dissected and excluded 'special allowance', which is an essential component of pay drawn by the Petitioners in the parent organizations and also issued consequential orders fixing the pay of Petitioners No.1, 12, 18 and 21 and re-fixing the pay of Petitioners No. 2, 13 and 14, excluding 'special allowance'. Recovery of the allowance paid is sought from Petitioners No.2 and 14. This has compelled the Petitioners to approach this Court.

6. Challenging the Notification and consequential pay fixation/re-fixation orders, learned counsel appearing on behalf of the Petitioners contended as follows:

(A). Impugned Notification is manifestly arbitrary, discriminatory and unconstitutional. In view of the Service Rules governing the pay of the Petitioners in their respective parent cadre posts as also certification by the parent banks that DA is paid on 'special allowance', Respondent No.1 has no power to dissect and exclude an essential components of 'pay drawn/admissible' to the Petitioners on regular basis in the parent organization. 'Special allowance' is a part of and a percentage of the Basic Pay and is universally applicable to all Bank officers across the country and is neither a variable nor linked to any incentive. In ***Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir and Others, (2020) 17 SCC 643,*** the Supreme Court held that where an emolument/wage is universally, necessarily and ordinarily paid to all across the board, such emolument/wage will be Basic wage/Basic pay. 'Special allowance' was admitted to all service bank officers w.e.f. 01.11.2012 by the 7th Joint Note dated 25.05.2015 and was subsequently revised under the 8th Joint Note dated 11.11.2020, w.e.f. 01.11.2017 in the following terms:

SCALE	REVISED SPECIAL ALLOWANCE PAYABLE TO PETITIONERS (W.E.F. 01.11.2017)
I – III	16.40% of Basic Pay + applicable DA thereon.
IV – V	19% of Basic Pay + applicable DA thereon.
VI – VII	20% of Basic Pay + applicable DA thereon.

(B). Notification dated 24.11.2009 issued by Respondent No.1 itself clarifies that all pay on which DA is paid is to be treated as 'Basic Pay' for purpose of fixation of pay of Bank officers appointed on deputation in DRATs/DRTs. 'Special allowance' is in the nature of additional Basic Pay till the time the officers serve in the banks and which is why DA is paid on the 'special allowance' and is to be reckoned for pay fixation, contrary to the stand of Respondent No.1.

(C). Entitlement of the Petitioners to count 'special allowance' for fixation of pay upon deputation in DRTs is clearly saved by para 5.1

of O.M. dated 17.06.2010 read with Note-1 appended to para 5 of the said O.M. This is fortified by the fact that pay, whether under Para 5.1(i) or 5.1(ii)(b) is to be fixed after adding one increment and so on, on the 'existing pay in the Pay Band of the parent cadre post' or 'to the pay in the parent cadre post in the scale of his regular parent post'. Note-1 appended to para 5 provides that Basic Pay means 'pay drawn/admissible' in the parent post. Therefore, in view of the said Notification, Respondents are under a mandate and obligation to regard 'special allowance' as part of pay. Even going by the definition of 'pay' under Regulations 3(*k*) read with 3(*l*) and Explanation (a) to Regulation 21(6) of the Officers' Service Regulations, 'special allowance' is an essential component of pay as distinguished from emoluments defined in Regulation 3(e) thereof. Respondents are bound by O.M. dated 17.06.2010 governing the 'pay and other terms and conditions' of Petitioners on deputation and are obliged to fix the pay after considering the existing pay or pay in the parent cadre posts of the Petitioners.

(D). Section 7(3) of The Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as '1993 Act') provides that salaries and allowances and other conditions of service of Recovery Officers and other officers and employees of a Tribunal shall be such as may be prescribed. Insofar as DRATs are concerned, Section 12 of 1993 Act provides that provisions of Section 7 (except those relating to Recovery Officer) shall, so far as may be, applied to an Appellate Tribunal. The appointment letters issued to all Petitioners provide that their pay and other terms and conditions of deputation will be regulated in accordance with DoPT O.M. dated 17.06.2010, as amended from time to time.

(E). Even otherwise, it is a fundamental principle of fitment that pay fixation must be carried out in a manner such that pay of a deputationist is not reduced and is at par with his pay fixation in the parent cadre and Para 5.1(ii)(b) of O.M. dated 17.06.2010 professes and recognizes this principle and provides for taking into consideration all emoluments of the borrowing organization on which DA is admissible. It stipulates pay fixation by providing that pay may be fixed at the stage in the Pay Scale/Level in Pay Matrix of the *ex-cadre* post at which total emoluments admissible in the *ex-cadre* post equal the emoluments drawn in the cadre. Illustration 1 in Notification dated 24.09.2013 is illustrative of the method of pay fixation employed under para 5.1(ii)(b) of O.M. dated 17.06.2010 which provides that Basic Pay in PSU plus one increment plus any other allowance in which normal DA is admissible plus DA payable on date of relieving from PSU is equated with Pay Scale of *ex-cadre* post. The earlier pay fixation orders applied the said formula correctly taking into account 'special allowance' while fixing the pay of the Petitioners.

(F). The basic premise on which the impugned Notification is based is itself incorrect that as per the Bipartite Settlement, 'special allowance' is not reckoned towards pension, including NPS, PF and gratuity. The aim and objective of O.M. dated 17.06.2010 is to preserve and protect the pay and emoluments drawn by deputationists in their parent cadre posts and therefore the test is not whether 'special allowance' is reckonable for pension, etc. but the test is whether it is an emolument on which DA is paid in the borrowing organization and if the answer to the question is in the affirmative, then 'special allowance' cannot be excluded for pay fixation.

(G). It is trite that every employee has a right to be paid the correct and full salary and allowances throughout his tenure in accordance with the applicable Rules. ***[Ref.: M.R. Gupta v. Union of India and Others, (1995) 5 SCC 628].*** Payment of salary/allowances lower than what is due or offered at the time of inviting applications for deputation amounts to changing the conditions of service, which is impermissible in law. ***[Ref.: Bihar State Beverages Corporation Limited and Others v. Naresh Kumar Mishra and Others, (2019) 5 SCC 110].*** Rights flowing from and under the relevant service Rules cannot be altered from an anterior date or retrospectively to the detriment of employees and the impugned action is hit by Articles 14 and 16 of the Constitution of India. Petitioners cannot be subjected to loss of pay merely because they have proceeded on deputation as even deputationists have an indefeasible right to be treated fairly and equally. ***[Ref.: Ashok Kumar Ratilal Patel v. Union of India and Another, (2012) 7 SCC 757].***

7. *Per contra,* arguments on behalf of Respondent No.1 can be captured as follows:

(A). Respondent No.1 had issued a Circular dated 24.11.2009 to all DRTs and DRATs informing them that the matter was taken up with the Ministry of Finance and it has been decided that while determining pay in the bank, all pay on which DA was being paid should be treated as Basic Pay for fixation of pay in the DRT and for this purpose, LPC giving break up of pay and allowances drawn at the time of deputation should be obtained from the respective bank and bank should certify that DA was being paid on Basic Pay, stagnation increment, etc., however, there was no mention that 'special allowance' was to be treated as 'pay'.

(B). The Joint Note dated 25.05.2015 on salary revision for officers between IBA and Officers' Association clearly mentioned at point No.6 that 'special allowance' with applicable DA thereon shall not be reckoned for superannuation benefits i.e. pension including NPA, PF and gratuity. Further, O.M. dated 17.06.2010 stipulates in Para 4.1 that an employee on deputation may elect to draw either the pay in the scale of pay of deputation/foreign service post of his/her basic pay in the parent cadre plus deputation allowance plus personal pay, if any and there is no provision for including the special allowance. This is the reason that in the impugned Notification dated 01.10.2020, Respondent No.1 brought to light that some of the DRATs/DRTs were including component of 'special allowance' drawn by Bank Officers in their parent banks for fixation of pay on deputation, which was incorrect and had come under scrutiny of audit. It was brought to the notice of DRATs/DRTs that 'special allowance' was not 'pay' and is not treated so for purpose of determining pension, including NPS, PF and Gratuity, in the parent banks, as per the Bipartite Settlement dated 25.05.2015.

(C). Bank employees fall under the 'Reverse Foreign Service' category and as per DoPT O.M. dated 02.03.2021, Petitioners do not have an option to elect to draw pay in the parent organization. 'Special allowance' has been mentioned as pay component in 11th Bipartite Settlement dated 11.11.2020 between IBA and Workmen Union and not in the settlement between IBA and Officers' Associations.

Petitioners are under the 'Officers' category of the banks and are not covered by point No. 6 in the Settlement. Similarly, reliance placed by the Petitioners on the DRT Circular dated 24.09.2013 is misplaced as the Circular pertains to Presiding Officers of DRTs and not ROs, ARs or Registrar of DRATs and DRTs. Moreover, the LPC dated 29.11.2017 issued by PNB in the case of Petitioner No.11 reflects payment of 'special pay' and not 'special allowance' and the two are wholly different concepts. While the former is a component given to an employee for doing the duty outside the purview of his duty, the latter is paid with DA but is not a pay component and does not merge with the basic salary.

8. I have heard the learned counsels for the parties and examined their respective contentions.

9. Petitioners herein are officers of Public Sector Banks nationalized vide the Bank Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, employed in different periods. Pay and emoluments and other conditions of service of the Petitioners in their parent posts in the Banks are governed and regulated by Officers' Service Regulations framed by the respective Banks and amended from time to time, pursuant to wage revisions for officers. Petitioners were appointed on deputation on different statutory posts such as Recovery Officer, Assistant Registrar and Registrar on different dates between 2015 and 2020 in the DRATs/DRTs. It is undisputed that the terms and conditions of the services of the Petitioners on deputation are governed by DoPT O.M. dated 17.06.2010 and this is clearly stipulated in their appointment letters.

10. In view of the common ground between the parties to the *lis* on the O.M governing the terms of appointment on deputation, rival stands of the Petitioners and the Respondents will have to be examined and tested in the light of O.M. dated 17.06.2010. The moot question that arises for consideration before this Court is whether 'special allowance' drawn by the Petitioners in their parent cadre posts in the Banks is to be included as a necessary component of 'pay' for the purpose of fixation of salary and allowances on deputation with DRATs/DRTs.

11. Para 4 of O.M. dated 17.06.2010 enables an employee appointed on deputation/foreign service to exercise an option to elect to draw either the pay in the scale of pay of deputation/foreign service post or his/her Basic Pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any. Borrowing Authority is required to obtain option of the employee within one month from the date of joining the *ex-cadre* post unless the option has already been furnished and the option once exercised shall be final. Paras 4.1 to 4.3 are extracted hereunder, for ready reference:-

> *"4. Exercise of option*
>
> *4.1 An employee appointed on deputation/foreign service, may elect to draw either the pay in the scale of pay of deputation/foreign service post or his/her basic pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any. However, in case of Government employees on deputation/ foreign service to CPSEs, this option will not be allowed and their pay will be governed in terms of the orders issued by Department of Public Enterprises vide OM dated 26.11.2008 and clarifications issued thereafter.*
>
> *4.2 The borrowing authority shall obtain the option of the employee within one month from the date of joining the ex-cadre post unless the employee has himself furnished the option.*
>
> *4.3 The option once exercised shall be final."*

12. Para 5 of the O.M. dated 17.06.2010 deals with pay fixation on deputation. Para 5.1 provides for pay fixation when an employee on deputation/foreign service elects to draw pay in the scale of pay attached to the *ex-cadre* post. Clause (i) thereof deals with deputation from Central Government to Central Government while Clause (ii) deals with fixation of pay on deputation in Foreign Service/Reverse Foreign Service. It is a categorical averment of the Petitioners in the writ petition that upon joining the respective DRATs/DRTs, all Petitioners elected to draw pay attached to the *ex-cadre* posts to which they were appointed, save and except, Petitioners No.3, 11 and 16, who opted for Bank's Pay. Para 5.1(i), (ii) and Note-1 are extracted hereunder:-

> *"5. <u>Pay fixation</u>*
>
> *5.1 When an employee on deputation/Foreign Service elects to draw pay in the scale of pay attached to the ex-cadre post, his/ her pay may be fixed as under:*
>
> *(i) <u>Deputation from Central Government to Central Government</u>*
>
> *If the scale of pay/Grade Pay of the ex-cadre post is higher, the pay may be fixed after adding one increment to the existing pay in the Pay Band of the parent cadre post. The grade pay corresponding to the ex-cadre post would thereafter be granted in addition to this pay in the pay band. However, in cases where the fixation of pay in the ex-cadre post involves change of Pay Band also, if the pay in the pay band after adding the Increment is less than the minimum of the pay band corresponding to the grade pay of the ex-cadre post, the pay in the pay band will be fixed at the minimum of the Pay Band.*
>
> *In case the Grade Pay/scale of employee's cadre post and the ex-cadre post are Identical, the employee would continue to draw his/her existing basic pay.*
>
> *In case the Grade pay of the ex-cadre post is upto Rs 10000, the Basic Pay, from time to time after pay fixation should not exceed the maximum of the pay band PB-4 (Rs.67000) plus the grade pay of the post held on deputation. In case the ex-cadre post is in the HAG or HAG+ pay scale, the Basic Pay, from time to time after pay fixation should not exceed Rs. 79000 or Rs.80000 respective.*

(ii) <u>In foreign service/ Reverse Foreign Service</u>

(a) when the pay scale of the post in the parent cadre and that attached to ex-cadre post are based on the same index level and the DA pattern is also same, the pay may be fixed as under (i) above.

(b) If the appointment is made to a post whose pay structure and/ or DA pattern is dissimilar to that in the parent organisation, pay may be fixed by adding one increment to the pay in the parent cadre post in the scale of his regular parent post (and if he/she was drawing pay at the maximum of the scale, by the increment last drawn) and equating the pay so raised plus dearness allowance (and additional or ad-hoe dearness allowance, Interim relief etc., if any) with emoluments comprising of pay plus DA, ADA, Interim relief etc., if any, admissible, in the borrowing organisation and the pay may be fixed at the stage in the pay scale of the ex-cadre post at which total emoluments admissible in the ex-cadre post as above equal the emoluments drawn in the cadre.

...

Note-1: The term parent post and basic pay means the post held on regular basis in the parent organisation and pay drawn/ admissible in such a post respectively.

....”

13. Pay fixation under para 5.1(i), where the scale of pay/Grade Pay of the *ex-cadre* post is higher, involves fixation after adding one increment to the existing pay in the Pay Band of the parent cadre post. Grade Pay corresponding to the *ex-cadre* post is thereafter granted in addition. In cases where fixation of pay involves change of Pay Band also, if the pay in the Pay Band after adding the increment is less than the minimum of the Pay Band corresponding to the Grade Pay of the *ex-cadre* post, pay in the Pay Band will be fixed at minimum of the Pay Band. Where however the scales are identical in the two posts, employee would continue to draw the existing Basic Pay.

14. Para 5.1(ii) provides for fixation of pay on deputation to Foreign Service/Reverse Foreign Service and sub-para (b) stipulates

that if appointment is made to a post whose pay structure and/or DA pattern is dissimilar to that in the parent organization, pay may be fixed by adding one increment to the pay in the parent cadre post in the scale of his regular parent post and equating the pay so raised plus DA with emoluments comprising of pay plus DA, ADA, interim relief, etc., if any, admissible in the borrowing organization. The pay may be fixed at the stage in the pay scale of *ex-cadre* post at which total emoluments admissible in the *ex-cadre* post equal the emoluments drawn in the cadre. Note-1 thereto provides that the term ‘parent post’ and ‘basic pay’ mean the post held on regular basis in the parent organization and pay drawn or admissible in such a post.

15. To complete the chronology of facts, it needs a reiteration that during the period of deputation of the Petitioners, Respondent No.1 issued the impugned Notification dated 01.10.2020 directing the DRATs/DRTs that ‘special allowance’ drawn by the Petitioners/Bank officers in general in their parent posts will not be reckoned for fixation of pay on deputation to the said Tribunals. Consequent orders of fixation/re-fixation of pay and/or recovery were also issued and are also impugned by the Petitioners in the present writ petition.

16. Plain reading of Para 5.1(i) reflects the methodology/formula for fixation of pay by adding one increment to the existing pay in the Pay Band of the parent cadre post and in addition thereto, granting the Grade Pay of the corresponding *ex-cadre* post. Since the O.M deals with fixation for all Central Government departments, the expression ‘Pay in the Pay Band’ in Para 5.1(i) can be seen in light of its definition in CCS (Revised Pay) Rules, 2008 (hereinafter referred to as ‘Pay Rules’) to mean pay drawn in the running Pay Bands specified

in Column 5 of the First Schedule to the said Rules. 'Grade Pay' is the fixed amount corresponding to the pre-revised pay scales/posts. 'Basic Pay' in the revised pay structure means pay drawn in the prescribed Pay Band plus the applicable Grade Pay but does not include any other type of pay like special pay, etc. Going by the definition of 'pay' under the Officers' Service Regulations of the Public Sector Banks, it is defined to mean Basic Pay including stagnation increments. It needs to be noted that wherever the Petitioners, while on deputation, opted to draw pay in the scale of pay of *ex-cadre* post, fixation was accordingly done and as an illustration, fixation in case of Petitioner No.21/Sh. Rajmani Sinha is as follows:-

F. NO.1-112/PF/2015/DRT-II
DEBTS RECOVERY TRIBUNAL – II, DELHI
GOVERNMENT OF INDIA/MINISTRY OF FINANCE
DEPARTMENT OF FINANCIAL SERVICES
4TH FLOOR JEEVAN TARA BUILDING
PARLIAMENT STREET, NEW DELHI:- 110001
****

Dated: 19th August, 2015.

OFFICE ORDER

Consequent upon his appointment to the post of Assistant Registrar in Debts Recovery Tribunal – II, Delhi on deputation basis with effect from 13th August, 2015 (FN) and having opted the Pay Band-3 of Rs.15600-39100/- + Grade Pay of Rs.6600/-, the Pay of Shri Rajmani Sinha is fixed in accordance with the Department of Personnel & Training's O.M. No. 6/8/2009-Estt. (Pay-II) dated 17th June, 2010 as amended from time to time in the Pay in Pay Band Rs.38180/- + Grade Pay Rs.6600/- with effect from 13.08.2015 (FN) as per details given below:-

After adding on Notional Increment salary of Parent Organization (PNB)

Notional Salary in Punjab National Bank after adding one increment last earned in the scale of pay (59170-1650/2-62470-1800/2-66070)(Revised)	***Amount (In Rs.)***
Basic Pay	*60,820.00*
Dearness Allowance	*22,750.00*

Professional Quali.	*1,680.00*
Fixed Personal Pay	*1,830.00*
Spl. Allowance (D.A.)	*8,296.00*
Total	***95,376.00***

Pay drawn in Punjab National Bank in the scale of pay (59170-1650/2-62470-1800/2-66070)(Revised)	***Amount (In Rs.)***
Basic Pay	*59,170.00*
Dearness Allowance	*22,149.00*
Professional Quali.	*1,680.00*
Fixed Personal Pay	*1,830.00*
Spl. Allowance (D.A.)	*8,071.00*
Total	***92,900.00***

His next date of increment will be 01.07.2016.

This issues with the approval of Hon'ble Presiding Officer, DRT-II, Delhi.

Pay Fixation in the Debts Recovery Tribunal – II, Delhi i.e. Central Government in Pay Band – 3 of Rs.15600-39100 + Grade Pay 6600/- as under:-

Pay Particulars	***Amount (In Rs.)***
Pay in Pay Band	*38,180.00*
Grade Pay	*6,600.00*
Dearness Allowance @ 113%	*50,601.00*
Total	***95,381.00***

17. On the other hand, where the option was exercised for fixation on the basis of salary of the parent department, the fixation was done according to Para 5.1(ii)(b) and by way of illustration, fixation in case of Petitioner No.11/Sh. Mahender Singh Yadav is as under:-

"Government of India
(Ministry of Finance, Dept. of Financial Services)
DEBTS RECOVERY TRIBUNAL-II
3rd Floor, Bhikhubhai Chambers, Opp. Deepak Petrol Pump, Paldi, Ellisbridge, Ahmedabad – 380 006, Phone No. 079-26579342, 26579343, Fax No. 079-26579341
…………………………………………………………………………………

No. DRT-II/AHD/PF-38/2017-18/ *Date: 28/01/2018*

ORDER

Consequent upon joining of Shri Mahender Singh Yadav, Sr. Manager, PNB as Assistant Registrar in this Tribunal wef 06.11.17(FN) in terms of Notification No. F.No.B/46/2017-DRT(Pt.) dtd. 28/09/2017 of Govt. of

India, Ministry of Finance, Department of Financial Services, he has opted for salary of his parent department.

Accordingly, his pay is fixed in terms of Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training OM No. 6/8/2009-Esst.(Pay II) dtd. 17/06/2010 as under:-

Pay in Parent Department (As per LPC)		***Pay fixation in DRT***	
Basic Pay	*51,490.00*	*Basic Pay*	*51,490.00*
Dearness Allowance	*27435.72*	*Dearness Allowance*	*27,435.72*
House Rent Allowance	*4,306.77*	*Professional Qualification*	*1,680.00*
City Compensatory	*870.00*	*Fixed Personal Pay*	*1619.00*
Professional Qualification	*1,680.00*	*Special Allowance*	*6,050.00*
Fixed Personal Pay	*1,619.00*	***Total (Basic + 5% DA)***	***88,274.72***
Special Allowance	*6,050.00*		
Total	***93,451.49***	*Basic Pay*	*84,071.16*
Basic as per fitment in 7th CPC (Level 11, 9)			*85, 800.00*
Deputation Allowance (Rule Swamy Handbook - 2018 Page -95)			*8,580.00*
DA @ 5% on Basic			*4,290.00*
HRA @ 24% on Basic			*20,592.00*
TA (7,200/- + 5%)			*7,560.00*
Total (Gross)			***1,26,822.00***

Date of Next Increment – 01/07/2018.

This is issued with the approval of competent authority."

18. As the pay fixation orders would indicate, at the relevant point in time, special allowance was taken into consideration for pay fixation and one increment was granted in accordance with para 5.1 of O.M. dated 17.06.2010. The question that, however, posits is if the Petitioners can insist that the special allowance granted to them as employees of the Banks/parent cadre ought to be included in pay

fixation on deputation. The answer to this question lies in Para 5.1(i) and/or Para 5.1(ii)(b). To the extent the Petitioners argue that the benchmark/ yardstick for fixation has to be pay in the parent cadre, they are only partially correct. Whether it is fixation under Para 5.1(i) or Para 5.1(ii)(b), the yardstick is pay in the Pay Band/pay in the Pay Scale of the parent cadre/regular parent post. Once this pay is taken into consideration, the O.M. postulates adding one increment to the figure arrived at and in case of fixation under Para 5.1(i), Grade Pay of the cadre post is to be added along with applicable DA. Likewise, under Para 5.1(ii), to the Basic Pay, Dearness Allowance will be added. Other allowances such as HRA, TA, Educational Allowance, LTC, etc. will be regulated with mutual consent of the lending and borrowing organizations as provided under Para 7.6(b). Allowances such as DA/Medical Facilities/Leave are to be regulated as per provision of Para 7.6(c). There is no mention whatsoever of inclusion of special allowance payable in the parent post for pay fixation on deputation in Para 5.1 of the O.M. dated 17.06.2010.

19. In fact, a close reading of the O.M. dated 17.06.2010 shows that insofar as special allowance is concerned, the borrowing department has the discretion to allow, in addition to deputation (duty) allowance, under special circumstances, any special allowance attached to the post held by the employee in his parent department by suitably restricting the deputation (duty) allowance and this too will require prior approval of DoPT. It is only where special allowance is attached to the scale of pay of the *ex-cadre* post and the employee has opted to draw pay in that scale that he shall be entitled to draw such special allowance in addition to the pay in the scale and this would not be

admissible if he has opted to draw pay in the parent cadre. This is apparent from a reading of Paras 7.2 and 7.3 of the O.M. dated 17.06.2010, which are as follows:-

> *"7. <u>Admissibility of pay, allowances & benefits while on deputation/foreign service</u>*
>
> *...........*
>
> *7.2 Any special allowance granted to an employee in the parent Department under FR 9(25) or a corresponding rule of parent organisation should not be allowed in addition to deputation (duty) allowance. However, the borrowing department may allow in addition to deputation (duty) allowance, under special circumstances, any special allowance attached to the post held by the employee in his/her parent Department, by suitably restricting the deputation (duty) allowance. This will require the specific and prior approval of Department of Personnel & Training.*
>
> *7.3 In case special allowance is attached to the scale of pay of the ex-cadre post and the employee has opted to draw pay in that scale, then, in addition to the pay in that scale, he will also be entitled to draw such special allowance. However, such special allowance will not be admissible if he has opted to draw pay in the parent cadre scale/grade pay plus deputation (duty) allowance."*

20. This position gets further clarified by reading Para 7.6 which deals with admissibility of allowances and benefits while on deputation and Para 7.6 (a) provides that such allowances as are not admissible to regular employees of corresponding status in the borrowing organization shall not be admissible to Officers on deputation, even if they were admissible in the parent organization. The rationale and objective of the aforesaid Paragraphs of the O.M. is obviously to rule out any dichotomy or anomaly in pay fixation which results in discrimination of pay fixation between the regular employees of the borrowing department and the deputationists. Para 7.6 (a) to (c) is extracted hereunder for ready reference:-

> *"7.6 <u>Admissibility of allowances and benefits while on deputation/ foreign service.</u>*

(a) Such allowances as are not admissible to regular employees of corresponding status in the borrowing organisation shall not be admissible to the officer on deputation/foreign service, even if they were admissible in the parent organisation.

(b) Following allowances will be regulated with mutual consent of the lending and borrowing organisation:

(i) HRA/Transport Allowance

(ii) Joining time and Joining Time Pay.

(iii) Travelling Allowances and Transfer T.A.

(iv) Children Education Allowance.

(v) LTC.

(c) Following allowances/facilities will be regulated in accordance with the rules as explained against each:

(i) Dearness Allowance - The employee shall be entitled to dearness allowance at the rates prevailing in the borrowing organisation or in the lending organisation depending on whether he has opted to draw pay in the pay scale/grade pay of the ex-cadre post or the parent grade plus deputation (duty) allowance.

(ii) Medical Facilities - This will be regulated in accordance with the rules of the borrowing organisation.

(iii) Leave - An officer on deputation/foreign service shall be regulated by the Leave Rules of the parent organisation. If however an employee proceeds from vacation department to non-vacation department, or vice-versa, he shall be governed by Leave Rules of the borrowing organisation. At the time of reversion from the deputation post to the parent cadre, the borrowing organisation may allow him/her leave not exceeding two months. The employee should apply for further leave to his Cadre Controlling Authority."

21. From a conjoint reading of Paras 5.1 and 7 of O.M. dated 17.06.2010, it is clear that pay fixation of the Petitioners on the deputationist posts in DRATs/DRTs will not entail inclusion of the special allowance drawn by them in their parent posts in their respective banks.

22. The argument on behalf of the Petitioners that special allowance being a percentage of the Basic Pay drawn by the Petitioners in their parent cadre posts on which DA is paid ought to be considered for fixation of pay on deputation. Emphasis was laid on the point that

special allowance being a component of pay cannot be excluded in pay fixation. Special allowance, according to the Petitioners, was introduced for serving Officers of the Banks by 7th Joint Note dated 25.05.2015 which provides that w.e.f. 01.11.2012, Officers shall be paid special allowance as under:-

SCALE		SPECIAL ALLOWANCE PAYABLE (W.E.F. 01.11.2012) [P-6 @130, PARA. 6]
Scale I-III	:	7.75% of Basic Pay + applicable Dearness Allowance thereon
Scale IV-V	:	10% of Basic Pay + applicable Dearness Allowance thereon
Scale VI-VII	:	11% of Basic Pay + applicable Dearness Allowance thereon

23. The special allowance was revised pursuant to the 8th Joint Note/11th Bipartite Settlement dated 11.11.2020 as follows:-

SCALE	REVISED SPECIAL ALLOWANCE PAYABLE (W.E.F. 01.11.2017) [P-29 (COLLY) @219, PARA.8]
I – III	16.40% of Basic Pay + applicable DA thereon.
IV – V	19% of Basic Pay + applicable DA thereon.
VI – VII	20% of Basic Pay + applicable DA thereon.

24. An added argument was that special allowance is an emolument covered by Para 5.1(ii)(b) of O.M. dated 17.06.2010 and that the crucial test for determining whether an emolument forms part of Basic Pay is 'universality'. According to the Petitioners, special allowance is paid to all Officers across all Banks universally, necessarily and ordinarily and is not a variable and being a component of the Basic Pay and cannot be excluded from pay fixation. The arguments canvassed by the Petitioners do seem appealing at the first blush, but in my view, cannot be accepted to be correct.

25. It is true that special allowance is paid as a certain percentage of the Basic Pay drawn by the Petitioners in their parent post and

Dearness Allowance as applicable is also paid on the special allowance. However, the question here is not of fixation of pay in the Banks but of pay fixation on deputation, which is admittedly and entirely governed by the O.M. dated 17.06.2010 and Para 5.1 does not envisage inclusion of special allowance. Even otherwise, the argument that special allowance is a part of the Basic Pay is wholly flawed. As the tables itself indicate, special allowance is a certain percentage of the Basic Pay and not the Basic Pay and this position is amply clear from the salary slip of Petitioner No.1 annexed as Annexure P-16 to the writ petition where Basic Pay, DA, Special Allowance are all shown under separate heads. Para 5.1(i) only envisages adding one increment to the pay in the Pay Band of the parent cadre post plus Grade Pay of the *ex-cadre* post. Likewise, under Para 5.1(ii)(b), pay fixation entails adding one increment to pay in the scale of pay of the parent cadre post with DA and other emoluments. Taking the case of the Petitioners that pay fixation is regulated by Para 5.1(ii)(b), the emoluments cannot include special allowance as the word 'emoluments' is qualified with examples that follow and significantly by the words 'if any, admissible in the borrowing organization'. The contention is further negated by a clear proscription in Para 7.6 that no allowance which is not payable to regular employees of the borrowing organization will be paid to the deputationist.

26. Emphasis was laid on the definition of 'pay' as prescribed under Explanation (a) to Regulation 21(6) incorporated by Notification dated 27.03.2020 amending the Punjab National Bank (Officers') Service Regulations, 1979 to contend that pay for the purpose of Dearness Allowance shall mean Basic Pay including Stagnation Increments plus

Special Allowance. This plea, in my view, is wholly irrelevant since the question before this Court is not of pay fixation in the Banks but fixation of pay on the deputation post, which admittedly is governed and regulated by O.M. dated 17.06.2010 and the parameters for fixation of pay cannot fall outside the provisions of Para 5.1 of the said O.M.

27. Insofar as reliance on the letter dated 24.11.2009 is concerned, the same was issued prior to the O.M. dated 17.06.2010, which has been issued by the DoPT as a self-contained O.M., in consultation with Department of Expenditure, Ministry of Finance to consolidate all earlier orders on the subject and regulate transfers, pay fixation, deputation allowance, etc. for the deputation/Foreign Service tenure. Another important facet of the matter is and which is really the heart and soul of the impugned Notification dated 01.10.2020 is that admittedly, even though special allowance is universally paid to all Officers and is not a variable, yet it is not to be included for the purpose of fixing pensionary/retiral benefits including NPS, PF and Gratuity as per the Bipartite Settlement dated 25.05.2015. This position is not questioned by the Petitioners and is itself a pointer to the fact that special allowance is not a part of the Basic Pay but is only a percentage thereof added to the Basic Pay. Respondents were right in their submission in contending that there is a difference between 'special allowance' and 'special pay' and which is why special/personal pay continues to be admissible on deputation/ Foreign Service. Had the special allowance been treated as a part of the Basic Pay even by the Banks, the same would not have been excluded in fixing the pensionary benefits.

28. Reliance by the Petitioners on the judgment of the Supreme Court in ***Regional Provident Fund Commissioner (II) West Bengal (supra),*** is not correct. Reading of the judgment shows that in the said case, the question involved before the Supreme Court was that if the special allowances paid by the establishment to its employees would fall within the expression 'Basic Wages' under Section 2(b)(ii) read with Section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Relevant would it be to note that in the said case Section 2(b) defined 'back wages' to mean all emoluments earned by an employee while on duty/leave/holidays. The Supreme Court noted that while basic wage under the Act had been defined to include all emoluments paid in cash in accordance with the terms of employment but it carved out certain exceptions and exclusion of Dearness Allowance finds inclusion in Section 6. Interpreting the provisions of the Act, definitions of the term 'basic wage' in the dictionaries and the Act being a piece of beneficial, social, welfare legislation, the Supreme Court held that wages which are universally, necessarily and ordinarily paid to all employees across the board are basic wages. This interpretation was in light of the fact that the legislation under consideration was a social security measure where the employer is required to make deductions from the wages of the employees and contribute an equal amount for deposit with the Provident Fund Organization. The judgment will be inapplicable to the present case since deputation of the Petitioners is governed by a specific O.M. laying down methodology of pay fixation on deputation and no other factors can be imported in the said methodology/formula.

29. The other judgments relied upon by the Petitioners also would

not aid the Petitioners for the simple reason that there is no vested right in seeking inclusion of special allowance for fixation of pay on deputation in light of the O.M. dated 17.06.2010 and Petitioners are bound by the terms of deputation which are regulated by the said O.M.

30. In view of the reasons given above, this Court finds no merit in the writ petition and the same is accordingly dismissed upholding the Notification dated 01.10.2020 issued by Department of Financial Services, Ministry of Finance, Government of India. For the same reason, the impugned orders pertaining to fixation/re-fixation of pay cannot be quashed and are upheld.

31. It may, however, be noted that some of the Petitioners were deputed to DRATs/DRTs prior to the issuance of the impugned Notification and therefore, it is left open to them to make a comprehensive representation to the Respondent to consider the aspect of recoveries, if any, prior to 01.10.2020. Upon representations being received, if any, a considered decision shall be taken by Respondent No.1 and thereafter a reasoned and speaking order shall be passed on this aspect, which needless to state shall be communicated to the representationists. Liberty is granted to those aggrieved by the order that may be passed, to take recourse to legal remedies restricted to the issue of recoveries for the period commencing from joining the deputationist posts till 01.10.2020.

32. Pending applications are accordingly dismissed.

JYOTI SINGH, J

JULY __10__, 2023/kks