

(2021) 10 DEL CK 0104

In the Delhi High Court

Case No : Civil Writ Petition No. 2135 Of 2020

Anil Prasad

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 05-10-2021

Acts Referred:

Central Civil Services (Fixation Of Pay Of Re-Employed Pensioners) Order, 1986 — Rule 8

Citation : (2021) 10 DEL CK 0104

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Ankur Chhibber, Rakesh Kumar

Final Decision : Disposed Of

Judgement

Navin Chawla, J

The petition has been heard by way of video conferencing.

1. This petition has been filed by the petitioner contending that the respondents have wrongly fixed his basic pay at the rate of Rs.19,680 with grade pay of Rs.5,400 instead of Rs.28,340 with grade pay of Rs.6,600, thereby wrongly implementing Paragraph 8 of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order, 1986 (hereinafter referred to as the "CCS Order").

2. The learned counsel for the petitioner submits that the petitioner was a Major in the Indian Army and was discharged from the services on 15.07.2007. He was appointed as an Assistant Commandant (Medical Officer) in the Central Reserve Police Force, in the pay scale of Rs.15,600 - Rs.39,100 with grade pay of Rs.5,400 vide appointment letter dated 30.06.2006. The petitioner claims that as on the date of his discharge from the Indian Army he was drawing pay of Rs.28,340 with grade pay of Rs.6,600, the same was entitled to be protected in terms of Rule 8 of the CCS Order.

3. The learned counsel for the petitioner has placed reliance on the judgment dated 18.03.2013, passed by the Division Bench of this Court in a batch of petitions including WP(C) 2331 of 2012, titled Govt. of India & Ors. v. Capt. (Retd.) Kapil Chaudhary, to contend that this Court, interpreting Paragraph 8 of the CCS Order, has held that a retired Armed Force personnel upon re-appointment in government service would be entitled to his basic pay being fixed at par with his last drawn pay.

4. On the other hand, the learned counsel for the respondents submits that the pay of the petitioner has been rightly fixed as Rs.19,680 with grade pay of Rs.5,400. He submits that the interpretation put by the Division Bench on para 8 of the CCS Order in its judgment in Capt. (Retd.) Kapil Chaudhary (supra) is erroneous. He further submits that as the Special Leave Petition, being SLP(C) 20017-20018 of 2015, against the said judgment was dismissed on the ground of delay, the same cannot be treated as a precedent for the present case. He submits that paragraph 8 of the CCS Order merely provides that while granting advance increments to the Officer, the basic pay cannot be fixed higher than what the officer was drawing in the Indian Army.

5. We have considered the submissions made by the learned counsels for the parties.

6. In Capt. (Retd.) Kapil Chaudhary (supra), a Division Bench of this Court, interpreting paragraph 8 of the CCS Order, has held as under:

"9. It would be nobody's case that upon re-employment a person would be entitled to a basic pay exceeding the last drawn basic pay. Such a claim would obviously be not even acceptable from a common sense point of view. But a claim to the last drawn basic pay being retained would obviously be a logical argument.

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

11. To this extent the view taken by the Tribunal as per the impugned order dated July 27, 2011 is correct warranting W.P.(C) No.2331/2012 filed by the Union of India to be dismissed. "

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

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

9. Accordingly, the Order dated 15.05.2017 fixing the basic pay of the petitioner, as also the Order dated 24.04.2019 rejecting the representation of the petitioner,

are quashed. The respondents shall re-work the pay fixation of the petitioner in accordance with the judgment of this Court within a period of eight weeks.

10. The petition is disposed of in the above terms.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e- mail.