

(2018) 05 DEL CK 0227
In the Delhi High Court
Case No : W.P.(C) 3310 OF 2016

RAJIV AGARWAL & ORS

APPELLANT

Vs

UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Citation : (2018) 05 DEL CK 0227

Hon'ble Judges : SUNIL GAUR

Bench : Single Bench

Advocate : Jyoti Singh, Himanshu Gautam, Arti Bansal, Madhuri Dhingra, Jagat Arora

Final Decision : Disposed Of

Judgement

SUNIL GAUR , j.

1. Petitioners are Ex-Servicemen who have been absorbed in the respondent-Bank after the implementation of 6th Central Pay Commission and their

grievance in this writ petition is that vide impugned letters (Annexure P-1 Colly), the fixation of their salary has been done on the basis of pay band +

grade pay + element of military service and not on the basis of revised pay structure of 6th Central Pay Commission.

2. Impugned letters of August, 2015 (Annexure P-1 Colly) are assailed by learned Senior counsel for petitioners while relying upon Office

Memorandum of 5th April, 2010 (Annexure P-3) which provides that the fixation of pay of personnel/Officers retired prior to 1st January, 2006 and

who have been re-employed after 1st January, 2006 have to be fixed by notionally arriving at their revised basic pay at the time of retirement as if

they have retired under the revised pay structure.

3. Learned Senior counsel for petitioner draws the attention of this Court to the last pay certificates (Annexure P-5 Colly) issued by the Army,

to point out that last pay certificate gives revised basic pay notionally arrived at under the revised pay structure in terms of the 6th Central Pay

Commission and the respondent-Bank ought to have acted upon it, to fix the revised basic pay. Thus, it is submitted on behalf of petitioners that

impugned letters ought to be quashed and respondentBank be directed to fix the basic pay of petitioners under the revised pay structure in terms of the

last pay certificates (Annexure P-5 Colly) issued by the Army.

4. On the contrary, learned counsel for the respondent-Bank relies upon the Guidelines for pay fixation of Ex-Servicemen re-employed in Public

Sector Banks issued by the Indian Banks Association on 1st February, 2014 (appended to the counter affidavit filed by the respondent-Bank), to

submit that the impugned order is in consonance with the Guidelines of 1st February, 2014 and so, this petition merits dismissal.

5. Upon hearing and on perusal of impugned letters and the material on record, I find that in the matter of alleged discrimination in pay fixation of ex-

servicemen re-employed in public sector banks, the Ministry of Finance vide Communication of 21st/22nd March, 2013 (Annexure-1 to counter

affidavit filed by respondent-Indian Banks Association has called upon the Indian Banks Association to frame uniform rules and regulations

for fixation of pay of ex-servicemen reemployed in public sector banks in consonance with the Government of India policy in view of principle of

fairness. Thereafter, Guidelines for Pay Fixation of Ex-Servicemen/Ex-ECOs/SSCOs, re-employed in Public Sector Banks, on or after 01.01.2006

have been issued by Indian Banks Association, which are appended to the counter affidavit filed by respondent-Indian Banks Association.

Although these Guidelines referred to DoPT's O.M. of 5th April, 2010 relied upon by petitioners' counsel, but it also refers to clarification

given vide O.M. of 8th November, 2010 on the subject in hand. As per these Guidelines, exservicemen on joining the workman cadre in matter of pay

fixation would have the protection of pay plus D.A. drawn by him at the time of release from Armed Forces. It is amply clarified in these Guidelines

that the basic pay would include Stagnation Increment plus Rank Pay plus Dearness Pay and Dearness Allowance drawn at the time of retirement.

These Guidelines are conspicuously silent on the revised basic pay in terms of 6th Central Pay Commission as claimed by petitioners.

6. In the considered opinion of this Court, impugned letters are in consonance with the aforesaid Guidelines. Unless a challenge is laid to the aforesaid

Guidelines, impugned orders cannot be assailed as the O.M. of 5th April, 2010 relied upon by petitioner's counsel has been duly considered in the

said Guidelines. In view thereof, liberty is granted to petitioners to assail the aforesaid Guidelines to enable them to lay an effective challenge to

impugned letters.

7. With aforesaid liberty, this petition stands disposed of.