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UNION OF INDIA & ORS.

v.

ANIL PRASAD

(Civil Appeal No. 4073 of 2022)

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MAY 20, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service Law – Re-appointment of retired Armed Force personnel – Fixation of Pay – Central Civil Services (Fixation of

- C *Pay of Re-employed Pensioners) Order, 1986 – Para 8 – Respondent-retired Armed Force personnel upon re-appointment in government service – Whether entitled to his basic pay being fixed at par with his last drawn pay, in view of Para 8 of the CCS Order – Held: Para 8 of the CCS Order does not provide that on re-employment in government service, a retired Armed Force personnel would be entitled to his basic pay being fixed at par with his last drawn pay – No entitlement of pay protection under Para 8 of the CCS Order – Manner of computation of pay as envisaged under Para 8 of the CCS Order clearly stipulates that the pay so arrived at should not exceed the basic pay (including the deferred pay but excluding other emoluments) last drawn by the respondent in the armed force – That does not mean that respondent is entitled to a pay equal to what was last drawn by him in the Armed Force – High Court erred in holding that retired Armed Forces personnel on re-appointment in the government service would be entitled to the last drawn pay as Armed Forces personnel.*
- D *Allowing the appeal, the Court*

HELD : 1.1. On a plain reading of Para 8 of the Central Civil Services (fixation of Pay of Re-employed Pensioners) Order,

- G *it is clear that an Emergency Commissioned Officer and a Short Service Commissioned Officer working in the Armed Forces on his employment to a civil post shall be entitled to advance increments equal to the completed years of service rendered in the Armed Forces on a basic pay equal to or higher than the minimum of the scale attached to the civil post in which they are employed. However, the pay arrived at should not exceed the basic pay last drawn by them in the Armed Forces. Therefore,*

on a true interpretation of Para 8, on re-employment in the government service, an employee working with the Armed Forces, on re-employment shall be entitled to advance increments equal to the completed years of service rendered by him in the Armed Forces on a basic pay equal to or higher than the minimum of the scale attached to the civil post in which he is employed. [Para 5.3][266-G-H; 267-A-B]

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1.2. Para 8 of the CCS Order makes a reference to two rates of pay in case of emergency commissioned officers and short-service commissioned officers being appointed in the government service: First, they may be granted advance increment equal to the completed years of service rendered by them in the armed forces on a basic pay equal to or higher than the minimum of the scale attached to the civil posts in which they are employed. The pay is to be fixed with reference to the scale attached to the civil posts in which they are employed; Second, while computing the pay in the aforesaid manner it should not exceed the basic pay last drawn by them in the armed forces. In other words, while computing the pay of the said officers who joined the civil posts their pay cannot exceed last drawn pay by them in the armed forces. In case it exceeds then it is capped to the last drawn pay in the armed forces. Therefore, a claim for the last drawn pay in the armed forces is not a matter of right. [Para 5.3][267-C-E]

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1.3. Applying the above in the present case, it is noted that the respondent was fixed at the entry level of PB-3 (Rs.15,600– Rs.39,100) in the armed forces and six advance increments equal to the number of years the respondent served in the Indian Army was added to the basic pay i.e. Rs.15,600/- = Rs.19,600/-. The Grade Pay fixed in the civil post is Rs.5,400/- and hence a total of Rs.25,080/- was the computed pay in the civil post. The said pay of Rs.25,080/- does not exceed the pay last drawn by the respondent in the armed forces. Hence, the pay so computed is just and proper. [Para 5.3][267-E-G]

2.1. Para 8 of the CCS Order does not indicate that the pay last drawn by the respondent in the armed forces should be the pay to be computed when he joined the civil post. There is no

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- A **entitlement of pay protection under para 8 of the CCS. The manner of computation of pay as envisaged under para 8 also clearly stipulates that the pay so arrived at should not exceed the basic pay (including the deferred pay but excluding other emoluments) last drawn by the respondent in the armed force. That does not mean that the respondent is entitled to a pay equal to what was last drawn by him in the armed force. [Para 5.3][267-G-H; 268-A]**

2.2. Also, para 8 of the CCS Order makes a reference to the civil post in which the personnel of armed force is to be employed with reference to the minimum scale of pay attached to the civil post and while computing the pay scale the last drawn pay in the armed force has no relevance in the sense that there is no pay protection that can be sought by the ex-personnel of armed force. The reference to the last drawn pay in the armed forces is only to ensure that the pay computed in the civil post in the manner envisaged in para 8 of CCS Order does not exceed the basic pay (including the deferred pay but excluding other emoluments) last drawn by the personnel in the armed forces. For example, if the minimum of the scale attached to the civil post is higher than the last drawn pay of the personnel in the armed force and while computing the pay for the civil post as envisaged under para 8 of CCS if it so exceeds then possibly the last drawn pay in the armed forces could be paid. The said Rule proscribes fixation of a pay exceeding the basic pay (including the deferred pay but excluding other emoluments) last drawn by the personnel in the armed forces in respect of the civil post to which an ex-armed force personnel is appointed. Thus, in a case where computation of pay exceeds last drawn pay in the armed forces then, in such a situation possibly the last drawn pay of such a personnel can be fixed. [Para 5.3][268-B-E]

3.1. In the present case while serving in the Armed Forces respondent was in the pay scale of Rs.15600 – 39100. The post on which he was re-employed in the government service also carries the pay scale of Rs.15600 – 39100 and he has been allowed advance increments of six years as he completed six years of service in the Armed Forces. However, his grade pay has been fixed at Rs.5400 being the grade pay which is available for the civil post. [Para 5.3][268-F]

3.2. Therefore, the pay fixation of the respondent in the government service was absolutely in consonance with para 8 of the CCS Order 1986. Para 8 does not provide that on re-employment in Government Services a retired Armed Force personnel would be entitled to his basic pay being fixed at par with his last drawn pay. Holding so will violate para 8 of the CCS Order. Under the circumstances the High Court has committed a grave error in observing and holding that the retired Armed Forces personnel on re-appointment in the government service would be entitled to the last drawn pay as Armed Forces personnel. Therefore, the impugned judgment and order passed by the High Court is unsustainable being contrary to para 8 of the CCS Order, 1986. [Para 5.4][268-G-H; 269-A]

Government of India & Ors. v. Captain (Retd.) Kapil Chaudhary [Decision of High Court of Delhi in Writ Petition (C) No.2331 of 2012]- referred to..

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4073 D
of 2022.

From the Judgment and Order dated 05.10.2021 of the High Court of Delhi at New Delhi in W.P. (C) No.2135 of 2020.

Ms. Aishwarya Bhati, ASG, Shiv Ram Pandey, Ms. Ruchi Kohli, E
Ms. Aakanksha Kaul, O. P. Shukla, Arvind Kumar Sharma, Advs. for the Appellants.

Vinay Kr. Garg, Sr. Adv., Ankur Chhibber, Nikunj Arora, Parv Garg, K. S. Rekhi, Amit Kumar, Santosh Kumar Pandey, Advs. for the Respondent. F

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.10.2021 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.2135 of 2020 by which the High Court has allowed the said writ petition preferred by the respondent herein and has held that the respondent – original writ petitioner being retired Army Force Personnel upon re-appointment in the government service, would be entitled to his basic pay being fixed at par with his last drawn pay, the Union of India and others have preferred the present appeal. G

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- A 2. The respondent – original writ petitioner was a Major in the Indian Army and was discharged from service 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.15600 - 39100 with grade pay of Rs.5400. The respondent – original petitioner claimed that as on the date of his discharge from the Indian Army, he was drawing pay of Rs.28340 with grade pay of Rs.6600, the same was entitled to be protected in terms of Para 8 of the Central Civil Services (fixation of Pay of Re-employed Pensioners) Order, 1986 (hereinafter referred to as ‘CCS Order’). The original writ petitioner made a representation which came to be rejected by an order dated 24.04.2019. Thereafter the original writ petitioner preferred the writ petition before the High Court claiming that he would be entitled to his basic pay being fixed at par with his last drawn pay. Before the High Court heavy reliance was placed on the decision of the Division Bench of the High Court in the case of **Government of India &Ors. Vs. Captain (Retd.) Kapil Chaudhary in Writ Petition (C) No.2331 of 2012**. By the impugned judgment and order, the High Court has allowed the said writ petition and has directed the appellants to rework the pay fixation of the original writ petitioner by holding that upon reappointment in government service the original writ petitioner being a retired Armed Force Personnel would be entitled to his basic pay being fixed at par with his last drawn pay.
- E 2.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in holding that on reappointment in the government service the original writ petitioner would be entitled to his basic pay being fixed at par with his last drawn pay, the Union of India and others have preferred this appeal.
- F 3. Ms. Aishwarya Bhati, learned ASG, appearing on behalf of Union of India – appellant herein has vehemently submitted that the impugned judgment and order passed by the High Court is on a misreading of Para 8 of CCS Orders.
- G 3.1 It is submitted that as per Para 8 of the CCS Order on reappointment, an Emergency Commissioned Officer and Short Service Commissioned Officer who join the government service will be granted advance increments equal to the completed years of service rendered by him in Armed Forces on the basic pay scale which will be equal to or higher than the pay scale of the re-employed organization i.e. the civil
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post/the government post and not on the last drawn pay by the personnel A
in the Armed Forces.

3.2 It is submitted that Para 8 of the CCS Order does not speak about retaining of the last drawn basic pay or fixation at the rate of last drawn pay. B

3.3 It is submitted that if the claim made by the respondent is allowed and it is held that on re-employment his pay fixation should be the last drawn pay in that case it violates the statutory provision of Para 8 of the CCS Order. C

Making above submission, it is prayed to allow the present appeal. D

4. Present appeal is vehemently opposed by Shri Vinay Kumar Garg, learned Senior Advocate appearing on behalf of the respondent. It is vehemently submitted by Shri Garg, learned Senior Advocate for the respondent that the impugned judgment and order passed by the High Court is absolutely in consonance with Para 8 of the CCS Order. E

4.1 It is submitted that the respondent was working as a Captain in the Army Medical Corps of the Indian Army. In the year 2007, CRPF issued advertisement inviting applications for the post of Assistant Commandant (Medical Officer) to which the respondent applied. In the meantime, vide order dated 15.07.2007, the respondent was released from the Indian Army. It is submitted that at the time of his discharge from the Indian Army in the rank of Major, his last pay was in the pay scale of Rs.15600 – 39100 and was drawing Rs.28340 as basic pay and grade pay at Rs.6600. It is submitted that subsequently he was appointed as Assistant Commandant (Medical Officer) in the year 2009 in the pay scale of Rs.15600- 39100 with grade pay at Rs.5400. It is contended that on re-employment his pay scale was required to be fixed at par with the pay scale he was drawing while in the Indian Army Service and as per the last drawn pay. It is submitted that as per Para 8 of CCS Order, though the appellants granted six increments i.e. for the number of years the respondent served in the Indian Army, however, the same was granted on the pay wrongly fixed by the appellants which ought to have been fixed at Rs.28340 i.e. the pay last drawn by the respondent in the rank of Major in the Army. F

4.2 It is submitted that his grade pay was also fixed at Rs.5400 instead of Rs.6600, which was lower than what the respondent was receiving at the time when he was in the Indian Army. It is urged submitted G

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- A that on a true interpretation of Para 8 of CCS Order, the High Court rightly observed and held that the respondent shall be entitled to the pay scale as per last drawn salary while working in the Indian Army. Hence, no error has been committed by the High Court in holding so is the submission.
- B Making the above submissions, it is prayed to dismiss the present appeal.
5. We have heard learned counsel for the respective parties at length.
- C 5.1 The short question which is posed for consideration before this Court is whether on re-employment in the government service, an employee who was serving in the Indian Army/in the Armed Forces shall be entitled to his pay scales at par with his last drawn pay?
- D 5.2 While answering the aforesaid question Para 8 of CCS Order which is relevant for our purpose is required to be referred to which is as follows:
- “8. Emergency Commissioned Officers and Short Service Commissioned Officers:
- E Emergency Commissioned Officers and Short Service Commissioned Officers who joined pre-officers who joined pre-commissioned training or were commissioned after 10.01.1968 may, on their appointment in Government service to unreserved vacancies, may be granted advance increments equal to the completed years of service rendered by them in Armed Forces on a basic pay (inclusive of deferred pay but excluding other emoluments) equal to or higher than the minimum of the scale attached to the civil post in which they are employed. The pay so arrived at should not, however, exceed the basic pay (including the deferred pay but excluding other emoluments) last drawn by them in the Armed Forces.”
- F 5.3 On a plain reading of the above provision an Emergency Commissioned Officer and a Short Service Commissioned Officer working in the Armed Forces on his employment to a civil post shall be entitled to advance increments equal to the completed years of service rendered in the Armed Forces on a basic pay equal to or higher than the minimum of the scale attached to the civil post in which they are
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employed. However, the pay arrived at should not exceed the basic pay last drawn by them in the Armed Forces. Therefore, on a true interpretation of Para 8 on re-employment in the government service, an employee working with the Armed Forces, on re-employment shall be entitled to advance increments equal to the completed years of service rendered by him in the Armed Forces on a basic pay equal to or higher than the minimum of the scale attached to the civil post in which he is employed.

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Para 8 of the CCS Order makes a reference to two rates of pay in case of emergency commissioned officers and short-service commissioned officers being appointed in the government service: First, they may be granted advance increment equal to the completed years of service rendered by them in the armed forces on a basic pay equal to or higher than the minimum of the scale attached to the civil posts in which they are employed. The pay is to be fixed with reference to the scale attached to the civil posts in which they are employed; Second, while computing the pay in the aforesaid manner it should not exceed the basic pay last drawn by them in the armed forces. In another words, while computing the pay of the said officers who joined the civil posts their pay cannot exceed last drawn pay by them in the armed forces. In case it exceeds then it is capped to the last drawn pay in the armed forces. Therefore, a claim for the last drawn pay in the armed forces is not a matter of right.

Applying the above in the present case, it is noted that the respondent was fixed at the entry level of PB-3 (Rs.15,600–Rs.39,100) in the armed forces and six advance increments equal to the number of years the respondent served in the Indian Army was added to the basic pay i.e. Rs.15,600/- = Rs.19,600/-. The Grade Pay fixed in the civil post is Rs.5,400/- and hence a total of Rs.25,080/- was the computed pay in the civil post. The said pay of Rs.25,080/- does not exceed the pay last drawn by the respondent in the armed forces. Hence, the pay so computed is just and proper.

Para 8 of the CCS Order does not indicate that the pay last drawn by the respondent in the armed forces should be the pay to be computed when he joined the civil post. There is no entitlement of pay protection under para 8 of the CCS. The manner of computation of pay as envisaged under para 8 also clearly stipulates that the pay so arrived at should not exceed the basic pay (including the deferred pay but excluding other

- A emoluments) last drawn by the respondent in the armed force. That does not mean that the respondent is entitled to a pay equal to what was last drawn by him in the armed force.

Also, para 8 of the CCS Order makes a reference to the civil post in which the personnel of armed force is to be employed with reference

- B to the minimum scale of pay attached to the civil post and while computing the pay scale the last drawn pay in the armed force has no relevance in the sense that there is no pay protection that can be sought by the ex-personnel of armed force. The reference to the last drawn pay in the armed forces is only to ensure that the pay computed in the civil post in C the manner envisaged in para 8 of CCS Order does not exceed the basic pay (including the deferred pay but excluding other emoluments) last drawn by the personnel in the armed forces. For example, if the minimum of the scale attached to the civil post is higher than the last drawn pay of the personnel in the armed force and while computing the pay for the civil post as envisaged under para 8 of CCS if it so exceeds then possibly D the last drawn pay in the armed forces could be paid. The said Rule proscribes fixation of a pay exceeding the basic pay (including the deferred pay but excluding other emoluments) last drawn by the personnel in the armed forces in respect of the civil post to which an ex-armed force personnel is appointed. Thus, in a case where computation of pay exceeds last drawn pay in the armed forces then, in such a situation E possibly the last drawn pay of such a personnel can be fixed.

In the present case while serving in the Armed Forces respondent was in the pay scale of Rs.15600 – 39100. The post on which he was re-employed in the government service also carries the pay scale of Rs.15600 – 39100 and he has been allowed advance increments of six

- F years as he completed six years of service in the Armed Forces. However, his grade pay has been fixed at Rs.5400 being the grade pay which is available for the civil post.

5.4 Therefore, the pay fixation of the respondent in the government service was absolutely in consonance with para 8 of the CCS Order

- G 1986. Para 8 does not provide that on re-employment in Government Services a retired Armed Force personnel would be entitled to his basic pay being fixed at par with his last drawn pay. Holding so will violate para 8 of the CCS Order. Under the circumstances the High Court has committed a grave error in observing and holding that the retired Armed H Forces personnel on re-appointment in the government service would

be entitled to the last drawn pay as Armed Forces personnel. Therefore, A
the impugned judgment and order passed by the High Court is
unsustainable being contrary to para 8 of the CCS Order, 1986.

6. In view of the above and for the reason stated above, present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside. Consequently, the writ petition preferred by the respondent before the High Court is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. B

Bibhuti Bhushan Bose

Appeal allowed.