

CASE NO.:
Appeal (civil) 4312-4317 of 1998

PETITIONER:
State Bank of India and Ors.

RESPONDENT:
Vs.
K.P. Subbaiah and Ors.

DATE OF JUDGMENT: 16/07/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T

WITH

CIVIL APPEAL NOS. 4621-24 OF 2003
(Arising out of SLP(C) Nos.15808-15811/1998)

WITH

CIVIL APPEAL NOS.4625-26 OF 2003
(Arising out of SLP(C) Nos.2998-2999/1999)

ARIJIT PASAYAT, J

Leave granted in SLP (C) Nos.15808-15811/98 and 2998-2999/99.

These appeals have their base on a judgment of the High Court of Karnataka at Bangalore disposing of writ petitions Nos.3426-27/1986 and writ petition Nos. 6432-35/1987.

The background scenario in which the present dispute appears, lies within a very narrow factual compass. Six persons who are the respondents in the appeal Nos. 4312-4317/98 (hereinafter referred to as 'the employees') were ex-servicemen in the Indian Army. They are appellants in the other appeals. After discharge from Army service they were employed by the State Bank of India (in short 'the Bank'). They were discharged from defence services during the period from 1.4.1982 to 1.9.1984 and joined the Bank on different dates during the period from 11.8.1983 to 7.6.1984. In terms of the Government of India's policy, the basic pay and the dearness allowance last drawn by them while in military service was to be protected while fixing their pay on absorption into public sector banks. During the period when the employees joined the bank, the pay and allowances payable to employees of the Bank were governed by the Third Bipartite Settlement which was operative from 1.9.1978. Having regard to the Government's policy and as per the decision of the Indian Banks Association (in short 'the Association'), all public sector banks followed the norms in the matter of fixation of pay as per the Third Bipartite Settlement. The Fourth Bipartite Settlement became

retrospectively operative from 1.7.1983. Under the said settlement, there is an upward revision in the pay scales and the basic pay of the employees were revised on stage to stage basis. The annual increments were also given to the concerned employees. When the matters stood thus, the Bank issued a Circular dated 12.10.1985 regarding fixation of pay relating to ex-servicemen employed in the public sector banks. This was the starting point of controversy. By Staff Circular dated 24.11.1986, the Bank notified that while dearness allowance and interim relief drawn by ex-servicemen shall qualify for protection as components of D.A., the other allowances like city compensatory allowance and H.R.A. did not qualify for such protection. Eleven types of emoluments admissible in defence services were to be protected on re-employment in the Bank. On the basis of the aforesaid Circulars dated 12.10.1985 and 24.11.1986 the pay last drawn by the employees stood reduced. This reduction was challenged by the employees before the High Court. Following questions were formulated by the High Court for consideration.

"(i) When the IV Bipartite Settlement was signed on 17.9.1984 bringing into force new scales of pay, with retrospective effect from 1.7.1983, what was the proper course to be adopted by the Bank, in the case of petitioners (who were appointed between 1.7.1983 and 17.9.1984):-

(a) whether the pay of petitioners had to be revised by fitment in the new scales of pay, on a stage to stage basis, with reference to the pay fixed under the III Bipartite Settlement, retrospectively from the date of petitioners entering with service (as contended by the petitioners); or

(b) Whether a fresh fitment in the new pay scales (under IV Bipartite Settlement) should have been effected to protect the pay and allowances last drawn when in Defence Service, in place of the earlier fitment in the old pay scales under the III Bipartite Settlement (as contended by the Bank).

(ii) If the revision of pay of petitioners, by fitment in the new scales of pay, on stage to stage basis, was contrary to the scheme under which petitioners were appointed, whether the Bank could subsequently rectify the error by re-fixation of pay of petitioners, by fitment in the new pay scales (under IV Bipartite Settlement) with reference to the last pay drawn in Defence Service.

(iii) Whether by resorting to such re-fixation the Bank can reduce the salary of the petitioners to a level which is less

than the salary at which they were appointed when they joined the services of the Bank even though the re-fixed salary protects the last pay drawn while in Defence service."

On consideration of rival stands, the High Court observed that Part (a) of first question was to be answered in the negative while part (b) of the said question was to be answered in the affirmative. Question No.(ii) was to be answered in the affirmative; question No.(iii) in the negative and finally it was concluded that the Bank's Circulars dated 12.10.1985 and 24.11.1986 were upheld subject to conclusions at paragraph 23(d) of the judgment. The memos prepared by the Bank revising the pay at the time of entry of the employees in the banks were quashed. It was declared that the Bank was entitled to correct the mistake committed by them in revising the pay of the employees by fitment in the new pay scales under IV Bipartite Settlement on stage to stage basis and were also entitled to re-fix the pay and D.A. on the basis of their entry into service with reference to the new pay scales under the IV Bipartite Settlement. But while doing so, the total pay packet of the employees should not be less than the total pay fixed when the employees entered the service of the Bank. In other words, the total pay fixed by the Bank when the employees entered its service should be protected. Consequently, while re-fixing the pay and allowances payable to the employees as on the date of entry into service under Circulars dated 12.10.1985 and 24.11.1986, the basic pay and D.A. of the employees should not be less than Rs.1319.99, Rs.1596.12, Rs.1380.50, Rs.1319.99, Rs.1582.61 and Rs.1582.61 respectively.

The relevance of these figures shall be dealt with a little later.

It was further held that the employees were entitled to further allowances on the basis of re-fixation subject to the minimum mentioned above.

Mr. K.N. Raval, Learned Solicitor General appearing for the appellants-Bank submitted that the conclusions of the High Court are erroneous because it proceeded on the basis as if a scale of pay was to be protected not the pay in terms of the policy decision. A bare reading of the relevant circular of the Government of India makes the position crystal clear that the protection was of the pay. It obviously meant that the employees were not to receive any amount below the last pay drawn by them. It had nothing to do with any scale of pay. The anomaly has arisen because the Fourth Bipartite Settlement was made retrospectively operative. In order to protect the pay, fixation of a scale was without an alternative. The employees cannot claim a double advantage by seeking a corresponding increase in the pay scale. Had the pay scale been in contemplation at the time of fixing the salary structure, the basic pay could not have been fixed at a higher figure and that would have avoided the claim of a corresponding scale of pay. It was submitted that if the High Court's view is accepted, it would mean conferring double benefit on the employees which was not a contemplated idea in protecting the pay.

Per contra, learned counsel appearing for the employees submitted that fixation of pay and retrospective operation

of the Fourth Bipartite Settlement were within the choice of the employer-Bank and employees had nothing to do with it. By indicating a particular scale of pay at the time of absorption, a right is conferred on the employee to get a corresponding higher scale of pay as and when there is revision of the scale of pay. Undisputedly, the employees were fitted in a particular scale of pay and as a natural corollary and consequence they were entitled to the corresponding scale of pay in terms of the subsequent Bipartite Settlement. He also submitted that the High Court was not justified in denying certain benefits for which the employees have filed appeals.

The rival contentions need careful consideration. Though a plea had been taken by the employees that unilateral revision of the scale of pay was violative of principles of natural justice, the same was abandoned by learned counsel for the employees during hearing of the case. It was submitted that all the relevant materials were placed before the High Court and, therefore, the issues should be decided on merits.

It would be relevant to quote the Circular dated 12.10.1985, which, inter alia, reads as follows:

"...Fitment of salary in cases of the ex-servicemen who joined the Bank's service after the revision of pay scale in September 1978 is being done on the basis of the protection of pay drawn by them prior to their retirement. Pursuant thereto, ex-servicemen employees who have joined the Bank on or after 1.7.1983 i.e. the date from which the wage revision of award staff in terms of the Fourth Bipartite Settlement came into effect retrospectively, but before 17.9.1984 (the date of settlement) have been fitted in the old scale of pay, on the basis of the protection of pay last drawn by them in the Armed Forces prior to their retirement.

(2) The question as to how their salary should be re-fixed under the Fourth Bipartite Settlement has been examined by the Central Office in consultation with IBA. According to IBA guidelines:

(a) The pay fixation in the case of ex-servicemen, who joined the Bank's service on or after July 1, 1983 may be made on the basis of protection of pay drawn in the Armed Forces or at a stage where the new basic pay plus dearness allowance corresponds to the basic pay plus dearness allowance drawn by them in the Armed Forces, whichever is higher.

(b) In the cases of those ex-servicemen who joined the Bank between July 1, 1983 and September 17, 1984 and were given

the fitment in the scale of pay under the Third Bipartite Settlement, they may be given re-fixation in the above manner, but if as a result of such re-fixation, their salary (pay + D.A.) is reduced, the recovery of excess payment for the period July 1, 1983 to September 17, 1984 be waived. Recoveries for subsequent period will be made where necessary in three to four instalments.

3. It has been decided to accept the IBA guidelines referred to above."

The effect of the Circulars dated 12.10.1985 and 24.11.1986 can be figuratively crystallized as follows:

Names	Stage	Effective date	Basic Pay	Permissible Allowances
Employee 939.00	A	14.6.1982	535/-	404.00
in W.P. 3426/1986 99	B	7.6.1984	545/-	774.
(K.P. Subbaiah) 75	C	7.6.1984	875/-	498.
55	D	7.6.1984	615/-	350.
1319.99				
1373.75				
965.55				
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Employee 60	A	1.4.1982	700/-	625.
in W.P. 3427/1986 1596.12	B	11.8.1983	705/-	891.12
(M. Shamanna) 1653.75	C	11.8.1983	1125/-	528.75
1367.10	D	11.8.1983	930/-	437.10
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Employee 90	A	1.6.1984	550/-	687.
in W.P. 6432/1987 1380.50	B	22.5.1984	580/-	900.50
(M. Meenakshi) 1460.00	C	22.5.1984	930/-	530.00
Sundaram 1287.40	D	22.5.1984	820/-	467.40
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Employee 40	A	1.9.1984	520/-	655.
in W.P. 6433/1987 1319.99	B	22.5.1984	545/-	774.99
(K.Sakkarias) 1373.75	C	22.5.1984	875/-	498.75
1216.75	D	22.5.1984	775/-	441.75
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Employee	A	29.2.1984	595/-	736.30

1331.30 in W.P. 6434/1987 1582.61 (S. Balasubramaniam) 1554.30 1373.75	B C D	22.5.1984 22.5.1984 22.5.1984	620/- 990/- 875/-	962.61 564.30 498.75
— Employee 40 1115.40 in W.P. 6435/1987 1582.61 (Kewal Kumar Vaid) 1554.30 1146.10	A B C D	1.9.1984 22.5.1984 22.5.1984 22.5.1984	520/- 620/- 990/- 730/-	595. 962.61 564.30 416.10

— Note (i) Stage 'A' refers to the Stage when the employees were discharged from military service.

(ii) Stage 'B' refers to the stage when the employees joined the service of the Bank and pay was fixed as per the Third Bipartite Settlement scales of pay.

(iii) Stage 'C' refers to the stage when the pay was revised on stage to stage basis, as per the Fourth Bipartite Settlement, with retrospective effect from 1.7.1983 (or in the case of employees from the date of their entry into service) corresponding to the salary fixed under the Third Bipartite Settlement.

(iv) Stage 'D' refers to the stage when pay and allowance was re-fixed by the Bank in pursuance of its Circular dated 12.10.1985.

(v) While calculating permissible allowances, HRA, and CA have been omitted. Only DA, ADA, GCB and IR taken for Stage 'A' and only DA taken for stages B, C and D.

There was some amount of controversy as to what was to be protected. With reference to Government of India's letter dated 28.1.1983 it was submitted by learned counsel for the employees that dearness allowance was to be excluded. We, however, notice that the stand was different before the High Court which proceeded on the basis that the protection was to be given in respect of the last pay drawn which was inclusive of D.A. It is also relevant to take note of the Association's letter dated 28.4.1982 in which a reference has been made to Government of India, Ministry of Finance's communication to the following effect:

"It has been decided that while fixing the pay of ex-servicemen in nationalized banks the basic pay plus D.A. last drawn by them in the military service would be protected and in this process their pension

upto Rs.125/- per month would be ignored. The banks may now be advised to take necessary action in this regard under intimation to us."

One thing is clear from various documents based on record that the intention as reflected in the policy of Government of India was to protect the last pay drawn of the concerned ex-servicemen in the armed forces.

Learned Solicitor General is, therefore, right in his submission that the protection related to pay and not to a scale of pay. Submission of learned counsel for the employees that after having been fitted to a scale of pay in force at the time of absorption as a natural corollary and consequentially a corresponding scale of pay in the subsequent settlement at first flush appears attractive. But it does not stand closer scrutiny. The apparent intention was to ensure that the ex-serviceman at the time of employment in the public sector bank does not get an amount as pay lesser than what he was drawing while in defence service. Perforce a scale of pay was to be fixed. It stands to logic that the employer while fixing pay has to fix it at a level of pay which would ensure compliance with the requirement that it is not less than the last pay drawn. The scale of pay on the basis of Third Bipartite Settlement applicable to clerical cadre was Rs.325-20-405-25-455-30-545-35-580-40-660-45-750-50-800-60-1160. After retrospective operation of the Fourth Bipartite Settlement, the scale became Rs.520-30-200-224580-35-685-45-820-55-930-60-990-65-1055-70-1195-85-1280-95-1660.

Strictly speaking, there is no fitment to a particular scale as contended by the employees. The fitment into a particular scale has to be considered in the background of the policy decision to ensure the payment of an amount not less than the last pay drawn. In that sense, it cannot be said that there was any fitment to a particular scale to attract the corresponding scale of pay in terms of subsequent settlement.

In Service jurisprudence the expressions 'pay' and 'Pay scale' are conceptually different connotations. Pay is essentially a consideration for the services rendered by an employee and is the remuneration which is payable to him. Remuneration is the recurring payment for services rendered during the tenure of employment. Pay and salary are necessarily not interchangeable concepts. Their meanings vary depending upon the provisions providing for them.

As per Concise Oxford Dictionary 8th Edn. (1990), the word 'pay' in its ordinary significance in relation to service means "to give what is due for services done". However, in the Service Jurisprudence, the expression 'pay' has technical connotation of its own. Fundamental Rule 9(21) throws some light on this aspect. The definition itself is as follows:

"9(21)(a)- Pay means the amount drawn monthly by a Government servant as-

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has

been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reasons of his position in a cadre, and

(ii) overseas pay, special pay and personal pay, and

(iii) any other emoluments which may be specially classed as pay by the President."

There are different types of pay like substantive pay, special pay, additional pay, personal pay and presumptive pay.

Public services comprise of different grades and, therefore, different pay scales are provided for different grades. The pay of an employee is in that background fixed with reference to a pay scale. This is necessary to be done because the pay of an employee does not remain static.

It has to be noted that an employee starts with a particular pay which is commonly known as initial pay and the periodical increases obtained by him are commonly known as increments. When the highest point is reached, the concerned employee becomes entitled to what is known as ceiling pay. It is, therefore, a graded upward revision.

The fixation of pay scales is essentially a function of the executive. They are closely inter-linked with evaluation of duties and responsibilities attached to the posts and the pay scales are normally linked with conclusions arrived at by expert bodies like the Pay Commission.

The degrees of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the tasks, hazard attendant on work and fatigue involved are some of the relevant factors which go into the process of fixing the pay scale. [See Delhi Veterinary Association v. Union of India and Ors. (1984 (3) SCC 1)]

As noted above, a pay scale has different stages starting with initial pay and ending with ceiling pay. Each stage in the scale is commonly referred to as basic pay. The emoluments which an employee gets is not only the basic pay at a particular stage, but also the additional amounts to which he is entitled as allowances e.g. D.A. etc. Therefore, when a question of pay protection comes, the basic feature is that the fitment or fixation of pay in a particular scale must be such as to ensure that the total emoluments are not reduced.

Ordinarily, a pay structure is evolved keeping in mind several factors, for example (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenue of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and

cause avoidable ripples in other cadres as well. [See Secretary, Finance Department and Ors. v. West Bengal Registration Service Association and Ors. (AIR 1992 SC 1203)]

The Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) by its letter dated 28.1.1983 had indicated what was to be protected. It is clearly spelt out therefrom that for the purpose of fixation of pay of ex-servicemen re-employed in the public sector banks, protection was to be given to total emoluments i.e. pay plus D.A. (instead of only pay) last drawn by ex-servicemen before their retirement from the Armed Forces. The initial guidelines were fixed by letter dated 2.2.1980 and the Indian Banks Association Circular dated 28.4.1982. The guidelines were partially modified by letter dated 28.1.1983 and it was stipulated that pay fixation in the case of ex-servicemen who joined service after revision of pay scale in September 1978 will be on the basis of protection of pay instead of pay plus D.A. drawn by them prior to retirement. In other words, their pay fixation will be in accordance with the office memorandum issued by the Ministry of Finance, Department of Expenditure dated 25.11.1958, 16.1.1964 and 19.7.1978. The stress, as is evident from various documents noted above, was on protection of total emoluments received by the concerned employee before retirement from the Armed Forces. The obvious intention was to, as indicated supra, see that the total emoluments do not fall below what was being received by him as pay plus last D.A. in Armed Forces. The Office memorandum dated 28.1.1983 is of considerable importance and is quoted below:

F.No.2/8/78-SCT(B)
Government of India
Ministry of Finance
Department of Economic Affairs
(Banking division)

New Delhi, dated the 28th January, 1983

To

The Chairman & Mg. Director (20 Nationalised Banks)

The Chairman, State Bank of India, Bombay.

The Mg. Directors: 7 subsidiaries of SBI

The Chief Officer, DPP. Reserve Bank of India, Bombay

The Chairman & Mg. Director: IDBI/IROI/IFCI.

Subject:- Ex-servicemen re-employed in Public Sector banks & fixation of pay.

Sir,

I am directed to invite reference to this Department's letter of even number dated 2.2.1980 and the Indian Banks' Association's circular No. PD/76/589/865 dated 28.4.1982 on the above subject. These two letters to be read together and accordingly for the purpose of fixation of

pay of ex-servicemen re-employed in the public sector banks, protection was to be given to total emoluments i.e. 'pay+DA' (instead of only pay) last drawn by ex-servicemen before their retirement from the Armed Forces.

2. In partial modification of the guidelines, conveyed through the aforesaid letters, it has been decided that :

(i) In respect of ex-servicemen, absorbed in banks' service prior to September 1978, if no recoveries were made on account of pension and pension equivalent of gratuity in excess of Rs.125/- p.m. such recovery may not be made with retrospective effect. However, in future the adjustment of pension will be made in accordance with the Department of Expenditure O.M.No.18(34)-E.III(B)/57 dated 25.11.1958 (copy enclosed) read with IBA's circular No.PD/76/589/865 dated 28.4.1982.

(ii) The pay fixation in the case of ex-servicemen who joined Banks' service after the revision of pay scales in September, 78 will however be on the basis of protection of "pay" (instead of pay + DA) drawn by them prior to retirement. In other words, their pay fixation will be in accordance with the following office memorandum issued by the Ministry of Finance, Deptt. Of Expenditure:

1. O.M. No.18(34)-E.III(B)/57 dated 25.11.1958.

2. O.M. No.7(34)-E.III/62 dated 16.1.1964.

3. O.M. No.5(14)-E.III(B)/77 dated 19.7.1978.

(Copies of these OMs are enclosed)

3. For the purpose of qualifying service, necessary to avail of housing loan, conveyance loan, etc. service rendered by the ex-servicemen in defence forces may be taken into account.

4. If certain number of years of service are prescribed as a minimum eligibility criteria for promotion from one cadre to another, rules in this regard may be suitably modified to give weightage to ex-servicemen on the basis of their service in the Defence Forces.

5. Receipt of this letter may please be acknowledged and action taken reported to this Department at an early date.

Hindi version of this letter will follow.

Yours faithfully,
Sd/-
(Ahmad Fareed)

Under Secretary to the Government of India."

There was no intention to protect any particular scale of pay. That being the position, the demand of a corresponding pay scale has no rational. The High Court was, therefore, clearly in error in holding that the scale of pay was the determinative factor. The direction that while re-fixing the pay and D.A. the total pay fixed when the petitioner entered into the bank's service has to be protected within the corresponding scale of pay, cannot be maintained and is indefensible.

Civil Appeal nos. 4312-4317 of 1998 are accordingly allowed.

In the connected appeals filed by the employees, challenge is to the observations of the High Court as noted above. It could not be shown as to how they suffer from any infirmity. We do not find anything wrong in the impugned conclusions of the High Court challenged by the employees to warrant interference. The appeals are dismissed. There shall be no order as to costs in all the appeals.