

(2022) 11 DEL CK 0003

In the Delhi High Court

Case No : Letter Patent Appeal No. 453 Of 2021

Ajit Kumar Pande Ex-Member Judicial

APPELLANT

Vs

UOI And Ors

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 217(2)(b)
Railway Claims Tribunal (Salaries and Allowances and Conditions of Service of
Chairman, Vice Chairman and Members) Rules, 1989 — Rule 8
Delhi Higher Judicial Service Rules, 1970 — Section 26B
Railway Claims Tribunal Act, 1987 — Section 5(3)(a)

Citation : (2022) 11 DEL CK 0003

Hon'ble Judges : Satish Chandra Sharma, CJ; Subramonium Prasad, J

Bench : Division Bench

Advocate : R. Krishnaa Morthi, Mohit Jaiswal, D. C. Narholia, Jagjit Singh, Vipin Chaudhary, Kalyani Arora, Arjun Wadhwa

Final Decision : Dismissed

Judgement

Satish Chandra Sharma, CJ

1. The present Letters Patent Appeal (LPA) has been filed under Clause 10 of the Letters Patent Act and is arising out of the judgment & order dated 04.10.2021 passed by the learned Single Judge in W.P.(C.) No. 1201/2021 titled Ajit Kumar Pande, Ex-Member (Judicial) RCT Vs. Union of India, Through Chairman Railway Board.

2. The facts of the case reveal that the appellant before this Court has filed a writ petition for issuance of a writ, order, or direction directing the respondent/ Union of India (UOI) to take into account 10 years of practice as a Lawyer for the purpose of calculating the pension in addition to the qualifying service of the appellant as Member (Judicial) of the Railway Claims Tribunal (RCT). The appellant has also prayed for other reliefs in the writ petition. The learned Single Judge has dismissed the writ petition vide impugned judgment dated 04.10.2021.

3. The facts of the case further reveal that the appellant/ petitioner was enrolled as an Advocate with the Bar Council of Delhi (BCD) on 24.04.1990 and he also cleared the Advocate-on-Record Examination on 15.10.1998. Pursuant to an advertisement issued by UOI, the appellant/ petitioner was selected and appointed on 20.04.2015 to the post of Member (Judicial), Kolkata Bench of the RCT. The petitioner joined the aforesaid post on 22.04.2015 and was transferred to various Benches of the RCT. He successfully completed his 5 years tenure as Member (Judicial) of the RCT on 21.04.2020.

4. The facts further reveal that the appellant/ petitioner was appointed in response to a notification dated 10.09.1989 issued by the Ministry of Railways. The service conditions of the appellant/ petitioner were governed by the statutory provisions as contained under the Railway Claims Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1989 (hereinafter referred to as Rules of 1989). The qualification for appointment as Chairman, Vice-Chairman and Members finds place under the Railway Claims Tribunal Act, 1987 (hereinafter referred to as Act of 1987). The statutory provisions providing qualifications for appointment to the post of Chairman, Vice-Chairman and other Members are reproduced as under:

"5. Qualifications for appointment as Chairman, Vice-Chairman or other Member.
—(1) A person shall not be qualified for appointment as the Chairman unless he—

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of a Vice-Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years; or

(c) has, for at least five years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India; or

(d) has, for at least five years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways; or

(e) has, for a period of not less than three years, held office as a Judicial Member or a Technical Member.

(3) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has, for at least three years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(4) A person shall not be qualified for appointment as a Technical Member unless he has, for at least three years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways.

(5) Subject to the provisions of sub-section (6), the Chairman, Vice-Chairman and every other Member shall be appointed by the President.

(6) No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India."

5. The aforesaid statutory provision makes it very clear that 10 years practice as an Advocate is a mandatory qualification and the petitioner/ appellant – as he was having 10 years of experience as a practicing Advocate, was appointed to the post of Member (Judicial) on 20.04.2015.

6. The appellant/ petitioner – after his retirement, made a claim for counting of 10 years of practice as an Advocate for the purpose of calculating pension in addition to qualifying service rendered by him as Member (Judicial) of RCT. He placed reliance on the judgment delivered by a Division Bench of this Court in LPA 286/2019 titled Union of India & Another Vs. Shanker Raju; and a judgment delivered by the Hon'ble Supreme Court in Govt. of NCT of Delhi and Others Vs. All India Young Lawyers Association (Regd.) & Another, (2009) 14 SCC 49.

7. On 20.04.2020, the appellant/ petitioner submitted a representation to the Chairman of the RCT with a request to add 10 years practice as an Advocate towards qualifying service for the purpose of calculation of pension and gratuity. A request was made to issue the Pension Payment Order (PPO) only after adding 10 years practice as an Advocate at Bar. The request of the appellant/ petitioner was not accepted by the Chairman, RCT and the Chairman forwarded the representations of the appellant/ petitioner to the Railway Board. On 04.08.2020, the Joint Director, Railway Board informed the appellant/ petitioner that under the RCT Rules, there is no provision for payment of gratuity and also informed that 10 years of practice period cannot be taken into account for the purpose of calculating pension as there is no such Rule which entitles the appellant/ petitioner for taking into account the period of practice of 10 years for computing qualifying service. Meaning thereby, the request of the appellant was rejected by the respondents, and in those circumstances, the writ petition was preferred before the learned Single Judge.

8. The appellant/ petitioner contended before the learned Single Judge that he is entitled to pension and he is also entitled for taking into account 10 years of

practice as an Advocate for computing the qualifying service. To bolster his contentions, the appellant/ petitioner stated before the learned Single Judge that Section 5(3)(a) of the Act of 1987 provides that a person shall not be qualified for appointment as a Judicial Member unless he is, or has been, or is qualified to be, a Judge of a High Court. The appellant/ petitioner also stated before the learned Single Judge that Article 217(2)(b) of the Constitution of India provides that a person can be appointed as a Judge of a High Court in case he is having 10 years of practice at Bar. Heavy reliance was placed upon the judgment in Shanker Raju (supra) and All India Young Lawyers Association (supra) for the purpose of taking into account 10 years of practice at Bar for calculation of qualifying service.

9. The respondents before the learned Single Judge have denied the claim of the appellant/ petitioner and the respondents submitted that the issue of pension vis-à-vis the appellant's claim is specifically governed by Rule 8 of the Rules of 1989 and is subject to the terms & conditions of his appointment letter. Insofar as reliance placed on the judgments in Shanker Raju (supra) and All India Young Lawyers Association (supra) is concerned, it was contended that no relief can be granted to the appellant/ writ petitioner as the judgments were delivered in respect of separate class of persons/ officers, i.e. the Delhi Higher Judicial Service (DHJS) and the Judicial Members attaining superannuation after serving the Central Administrative Tribunal (CAT). It was argued before the learned Single Judge that Members of the CAT are governed by different set of Rules and the Members of the RCT are governed by different set of Rules.

10. The learned Single Judge did not agree with the contentions of the writ petitioner and the writ petition was dismissed by the learned Single Judge. The relevant extract of the order passed by the learned Single Judge – which is contained in paragraphs 14 to 21, read as under:

"14. I have gone through the judgments in detail. Mr. Jagjit Singh is right in stating that the judgment in the case of All India Young Lawyers Association (supra) was concerning the Officers of the DHJS, who were appointed to the service, being Advocates practicing at the Bar. The Supreme Court while reducing the period from 15 years to 10 years has not interfered, with respect to the grant of benefit of counting of the period of practice put in by an Advocate by stating as under:-

"5. In the Delhi Higher Judicial Service, direct recruitment to 25% of posts is made from amongst the members of the Bar who have completed seven years' practice at the Bar. The minimum age for entry is thirty-five years and the maximum age is 45 years. The main contention of the writ petitioner (Respondent 1 herein) before the High Court was to include the fifteen years' practice at the Bar. If a candidate joins at the age of 35 years and retires at the age of 60 years, if not elevated to the Bench of the High Court, he would not be able to get full pension as for getting full pension one should have thirty-three years of service whereas the total service rendered by a member who joins at

the age of 35 years will be twenty-five years of service.

6. The High Court, on the administrative side, brought this fact to the notice of the Government by writing a letter in the year 1987. Though repeated reminders were sent to the Government, no decision was taken by the Government till the end of 2005 and only on 2-2- 2006 by a letter, the Government has indicated that it was agreeable to give weightage of seven years of practice at the Bar while computing the pension and other retiral benefits for direct recruits.

7. Learned counsel appearing for the State contended that the reason why the Government has agreed to give weightage of seven years' practice at the Bar is that because in the case of direct recruitments to the Delhi Higher Judicial Service, a member should have seven years' practice at the Bar and that is why the Government thought it fit to give weightage of seven years.

8. Learned counsel appearing for the first respondent Association submitted that the High Court was right in directing the Government to give weightage of fifteen years' practice at the Bar while computing pension and other retiral benefits because otherwise most of the members of the Delhi Higher Judicial Service would not be able to get full or adequate/reasonable pension at the time of retirement. It is also submitted that better conditions of service should be made available to the persons who are direct recruitees from the Bar otherwise the best talent would not be attracted for selection.

9. Learned counsel appearing for Respondent 2, High Court of Delhi has also brought to our notice the fact that the request was made by the High Court in the year 1987 and despite repeated reminders, the Government has acceded to the request only in the year 2006 by its Letter dated 2-2-2006. It is also brought to our notice by the learned counsel appearing for Respondent 2 that in the States of Punjab, Haryana and Gujarat, weightage of ten years' practice at the Bar is given in the case of direct recruits while computing pension and other retiral benefits.

10. We have considered the various contentions raised before us. Learned counsel appearing for the State vehemently contended that only the period of seven years' practice at the Bar is to be added because the minimum qualification to enter into the Delhi Higher Judicial Service as a direct recruit is seven years' practice at the Bar. That reason, by itself, does not appear to be justifiable as the total period of service for getting maximum or full pension is thirty-three years as per the general rules of the Government of Delhi.

11. Learned counsel for the State submitted that if fifteen years' practice at the Bar is added, then there is an apprehension that after joining the Delhi Higher Judicial Service and working for a shorter period, members may quit the job because even after working for a shorter period, they will get the proportionate pension if their past practice of 15 years at the Bar is added.

12. Having regard to the facts of the case and having heard learned counsel for

the parties, we deem it appropriate that 10 years' practice at the Bar or such other number of years, whichever is less, could be added while computing pension and other retiral benefits in the case of a direct recruit to the Delhi Higher Judicial Service. We order accordingly.

13. Insofar as apprehension of learned counsel for the State is concerned, we make it clear that weightage of ten years' practice at the Bar will be given only if the direct recruit, who joins the Delhi Higher Judicial Service, actually works for minimum ten years in the Delhi Higher Judicial Service and then retire so as to enable them to get reasonable/adequate pension at the time of retirement because as per the general rules to be eligible for minimum pension, a person should have completed at least ten years of service. The Government of NCT of Delhi is directed to suitably insert Rule 26(B) in the Delhi Higher Judicial Service Rules, 1970."

15. From the above, it is clear that the Supreme Court, while upholding the grant of benefit for counting the period of practice put in at the Bar by an Advocate has directed that 10 years of practice be given to a direct recruitee, who joins the service and has worked minimum for a period of 10 years in the service before retiring. I may state here that joining the service between the ages of 35 to 45 years, a DHJS Officer puts in at least 15 years of service before demitting the office, which is not the case here, since the appointment of the petitioner was only for a period of five years and upon completion of five years, he demitted the office. This plea, that he being qualified to be a High Court Judge, was appointed as Member (Judicial) and as such 10 years of practice at the Bar need to be counted for the pension is unmerited for the reason that the pension as a Member (Judicial) shall still be governed by the Rules of 1989 which have been implemented in his favour and he is drawing pension. In any case, the judgment of the Supreme Court was concerning Officers of the DHJS, which is not the case here.

16. The reliance placed by the petitioner on the judgment of Shankar Raju (supra) is also of no help to the petitioner. Mr. Jagjit Singh is right in contending that the Administrative Tribunals Act, 1985 was amended to bring the conditions of service for Member (Judicial) in CAT at par with the Judges of the High Court. The issue before the Division Bench of this Court in Shankar Raju (supra) was whether the benefit of the amendment which was brought about on February 19, 2007, should also be given to the Member (Judicial), who was appointed before that date from the Bar. The argument on behalf of the Union of India was that there are two classes of Member (Judicial) in the CAT, those appointed prior to February 19, 2007, and those appointed thereafter, and therefore they cannot be treated at par for grant of pension. This plea was negated by this Court in paragraphs 21 and 22 wherein the Court has held as under:-

"21. The Court is unable to agree with the submission. The question here is not about the eligibility to be appointed as Member (Judicial) of the CAT. Here, the question is about adding 10 years of practice at the bar to the qualifying service

for the purposes of pension. It is nobody's case that Respondent did not fulfil the eligibility condition for being appointed as Member (Judicial) of the CAT and being given a further extension for another 5 years. Those appointed as Members (Judicial) from the bar prior to 19th February 2007 and those appointed thereafter form the same class. They are from the same source. The object of the amendment brought about with effect from 19th February 2007 is to treat such Members (Judicial) appointed from the bar no different from those appointed from the bar as Judges of the High Court. Even for the purposes of pension, as is evident from the response of the DOPT, there was to be no difference between Members (Judicial) appointed from the bar and those appointed from the bar as Judges of the High Court. What is sought to be done is to take the date 19th February 2007 as a marker for creating two classes of Members (Judicial) based on their dates of appointment. This creating of a 'class within a class' is not based on any intelligible differentia. It defeats the objective of equating Members (Judicial) of CAT with Judges of the High Court for the purposes of their terms and conditions of service.

22. Once the legislature decided to equate the terms of service of Members (Judicial) of the CAT with that governing Judges of the High Court, it is plain that among Members of CAT there can be no discrimination between those appointed prior to 19th February 2007 and those appointed thereafter only for the purposes of pension. They do not come from different sources but from the same source i.e. the bar. The law in relation to this is well settled."

17. Finally, this Court in paras 29 and 30 has held as under:-

"29. In the present case, there was no introduction of a new scheme of pension on 19th February 2007. On the contrary the conscious decision to equate the terms of services of the Chairman and Members of the CAT with those of High Court Judges was given effect to. By denying those appointed as Members (Judicial) of the CAT prior to 19th February 2007 the benefit of adding the years of practice at the bar to the qualifying service for pension, the Respondents are in fact seeking to divide one class of persons viz., Members (Judicial) of CAT into two groups and subjecting them to different treatment. This has been held to be impermissible in a large number of decisions including D.S. Nakara v. Union of India (1983) 1 SCC 305, Krishna Kumar v. Union of India (1990) 4 SCC 207, Indian ExServices League v. Union of India (1991) 2 SCC 104, V. Kasturi v. Managing Director, State Bank of India(1998) 8 SCC 30 and Union of India v. Dr. Vijayapurapu Subbayamma (2000) 7 SCC 662.

30. Consequently, this Court finds no error having been committed by the learned Single Judge in negating the plea of the Appellant that for the purposes of pension, Members (Judicial) of the CAT appointed prior to 19th February 2007 and serving as such on that date would not be entitled to add 10 years of their practice in the bar to the qualifying service."

18. In view of the aforesaid conclusion of the High Court, the petitioner cannot

seek the benefit of the judgment in the case of Shankar Raju (supra).

19. That apart, Mr. Jagjit Singh has, during his submissions drawn my attention to the judgment of the Supreme Court in Madras Bar Association v. Union of India, W.P.(C) No. 804/2020, rendered on November 27, 2020, wherein the Supreme Court while considering the Tribunal Rules of 2020, which were notified on February 12, 2020, held Chairpersons, Vice-Chairpersons and Members of the Tribunals appointed prior to February 12, 2020, shall be governed by the parent Statutes and Rules as per which, they were appointed.

20. It is an admitted case of the petitioner that he was appointed prior to February 12, 2020. If that be so, the terms and conditions of appointment of the petitioner as Member (Judicial) RCT shall necessarily be governed under the Rules of 1989 which have been implemented in his favour.

21. In view of my above discussion, the petitioner is not entitled to any relief. The petition is dismissed. No costs."

11. This Court has carefully gone through the statutory provisions as contained in the Act of 1987 and the Rules framed thereunder as well as the judgments in the cases of Shanker Raju (supra) and All India Young Lawyers Association (supra).

12. This Court has also heard learned counsel for the parties at length on the grounds raised in the present appeal.

13. The undisputed facts of the case reveal that the limited controversy which requires consideration of this Court is: "whether the period of 10 years at Bar preceding the appellant's appointment as a Member (Judicial) of the RCT, is to be calculated for the purpose of payment of pension to the appellant, or not".

14. The learned Single Judge has dismissed the writ petition holding that the pensionary provisions applicable to the appellant/ petitioner are governed by the Rules of 1989. The substance and essence of the impugned judgment is that in the presence of specific Rules to this effect, the appellant/ petitioner cannot seek payment of pension in the manner which is different from the one prescribed by the Rules of 1989.

15. This Court has carefully gone through the judgments in Shanker Raju (supra) and All India Young Lawyers Association (supra). Insofar as Shanker Raju (supra) is concerned, the Hon'ble Court had adjudicated the matter in the context of Judicial Members of the CAT. The issue in that matter had been "whether adding of 10 years of experience at Bar for computation of pension for Judicial Members of the CAT after a cut-off date was reasonable". The Hon'ble Court had held that the Judicial Members of the CAT being a class in itself, by introducing a cut-off date, two classes were being formed within a class, which was impermissible. The issue is not at all related to the issue in hand, and in any event, Members of the CAT are governed by a different set of Rules specifically applicable to them.

16. So far as the judgment delivered in All India Young Lawyers Association (supra) is concerned, the judgment was delivered by the Hon'ble Supreme Court in the context of the DHJS which is governed by a specific set of Rules. In the present case, the learned Single Judge has rightly differentiated between DHJS and RCT as two separate class of service. In All India Young Lawyers Association (supra), the Hon'ble Supreme Court upheld the benefit of adding practice years to a direct recruit, who joins the service and has worked minimum for a period of 10 years in the service before retiring. The appellant's appointment in the present case was for a limited period of 5 years, and after completion of 5 years, the appellant demitted the office.

17. The appellant/ petitioner has placed reliance on a judgment in Madras Bar Association Vs. Union of India, W.P.(C.) No. 804/2022 decided by Hon'ble Supreme Court on 27.11.2020. The Hon'ble Supreme Court was dealing with the Tribunal Rules, 2020 which were notified on 12.02.2020. The Hon'ble Supreme Court in the said case has held that Chairpersons, Vice-Chairpersons and Members of the Tribunal appointed prior to 12.02.2020 shall be governed by the parents Statutes and Rules as per which they were appointed. In the present case, the appellant/ writ petitioner was appointed prior to 12.02.2020, and therefore, the terms & conditions of appointment of the appellant/ petitioner as Member (Judicial) of RCT shall certainly be governed under the Rules of 1989 and the same has already been implemented in his favour.

18. In the considered opinion of this Court, the learned Single Judge was justified in holding that the appellant/ petitioner shall not be entitled for adding 10 years of practice period as an Advocate as there is no such provision under the Act of 1987 and the Rules framed thereunder in 1989.

19. This Court does not find any reason to interfere with the impugned order, and therefore, the appeal is devoid of any merit. The same is dismissed accordingly.