
(2002) 11 DEL CK 0161

In the Delhi High Court

Case No : Civil Writ Petition No. 4728 of 2001

Mr. Devendra Kumar Agrawal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-11-2002

Acts Referred:

Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1985 — Rule 10, 11, 12, 13, 14
High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 9(2)

Citation : (2003) 102 DLT 461 : (2003) 1 SLJ 177

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : G.D. Gupta and Sachin Sood, for the Appellant; Nishakant Pandey, for the Respondent

Final Decision : Allowed

Judgement

Vijener Jain, J.—Petitioner retired as Vice Chairman of the Central Administrative Tribunal, Jabalpur (for short "CAT") . Petitioner retired at the age of 58 years on superannuation w.e.f. 20.2.1988 as District Judge, Ghaziabad .He was subsequently appointed as Member of the CAT at Allahabad Bench, Allahabad w.e.f. 1.3.1988. After attaining the age of 62 years w.e.f.27.2.1992 he was appointed as Vice Chairman of the CAT, Jabalpur w.e.f. 15.5.1992. Petitioner retired as Vice Chairman of CAT w.e.f. 27.2.1995 after attaining age of 65 years.

2. By this writ petition, petitioner has contended that in view of Rule-15 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1985 (hereinafter referred to as "Rules") petitioners was entitled to pension under para 2 of Part III of First Schedule of High Court Judges (Salaries and Conditions of Service) Act, 1954 on the basis of the Rule 15-A of the said Rules.

3. Initially Rules 5 and 8 of the said Rules of 1985 governed entitlement of pension, gratuity and other retirement benefits of the Chairman, Vice Chairman

and members of the Tribunal. However, for such incumbents to the post of Chairman and/or Vice Chairman, who were working as Judge of the High Court at the time of their appointment on the aforesaid post of and/or vice Chairman, Rule 15 of Rules of 1985 provides that service conditions as contained in the Act of 1954 and rules made there under would apply to them. Rule 15-A of the said Rules provides that condition of services of Vice Chairman of the CAT shall be the same as those of High Court Judges. Rule 15-A of the said Rules of 1985 reads as follows:-

"Notwithstanding anything contained in Rule 5 to 15 of the said rules, the conditions of service and other perquisites available to the Chairman and Vice-Chairman of the Central Administrative Tribunal shall be the same as admissible to a serving Judge of a High Court as contained in High Court Judges (Conditions of Service) Act, 1954 and High Court Judges (traveling Allowances) Rules, 1956."

It is important to quote Rule 8 of Rules:-

Pension----(1) Every person appointed to the Tribunal as the Chairman, a Vice-Chairman or a Member shall be entitled to pension provided that no such pension shall be payable;

(i) if he has put in less than two years of service; or

(ii) if he has been removed from an office in the Tribunal under Sub-section (2) of Section 9 of the Act.

(2) Pension under Sub-rule (1) shall be calculated at the rate of rupees four thousand seven hundred and sixteen per annum for each completed years of service;

Provided that the aggregate amount of pension payable under this rule together with amount of any pension including commuted portion of pension, if any drawn or entitled to be drawn while holding office in the Tribunal shall not exceed the maximum amount of pension prescribed for a Judge of the High Court."

4. On the basis of Rule 8 it was contended before me by the counsel appearing for the respondent that entitlement of pension in respect of Chairman and Vice Chairman of CAT is governed by Rule 8 as the petitioner was appointed after he superannuated as a District Judge as a Member of CAT and thereafter as Vice Chairman.

5. On the other hand, Mr. G.D. Gupta, learned counsel appearing for the petitioner has contended that the petitioner was entitled to pension as Vice Chairman in the light of sub-para (a) and (b) of para 2 of Part III of First Schedule to High Court Judges (Salaries and Conditions of Service) Act, 1954, Same are reproduced below:-

"The pension payable to such a Judge shall be:-

(a) the pension to which he is entitled under the ordinary rules of his service if

he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and

(b) a special additional pension of Rs. 5200/= p.a. in respect of each completed year of service for pension provided that he pension under Clause (a) and the additional pension under Clause (b) together shall in no case exceed Rs. 1,56,000/= p.a. in the case of a Judge."

6. The only reason which has been given by the respondent for not granting the pension to the petitioner was that the petitioner has retired as a District Judge and not as a Judge of the High Court. The plea was taken that the petitioner was governed by the provisions of State Service Rules and not by provisions of High Court Judges (Salaries and Conditions of Service) Act, 1954. It was further contended that service rendered after retirement is not countable with the earlier services for computing the pension. It was also contended that as the petitioner never attained the position of a Judge of a High Court before retirement, his services did not have any relation with High Court Judges (Salaries and Conditions of Service) Act, 1954.

7. There is an obvious fallacy in the arguments of the respondent. In para 6 of the counter affidavit respondent admitted that the Chairman and Vice Chairman of the CAT have been given same service conditions as those of High Court Judges. Again in para 8 of the counter affidavit, respondent has stated that the claim of the petitioner that he was entitled to pension under Part III of First Schedule of the (Salaries Act, 1954 is accepted but the respondent has again taken inconsistent stand that the same representation of petitioner regarding fixing his pension was rightly denied to the petitioner as he had retired as District Judge before appointment as Member of CAT and after a short gap of few months as Vice Chairman of CAT. The question which has to be answered is whether the petitioner is entitled for pension under Rule 8 or Rule 15-A of the Rules. Rule 15-A of the Rules provided that notwithstanding anything contained in Rule 4 to 15 of the said rules, the conditions of service and other perquisites available to the Chairman and Vice Chairman of the CAT shall be same as admissible to a serving Judge of High Court as contained in High Court Judges (Salaries and Conditions of Service) Act, 1954 and High Court Judges (traveling Allowances) Rules, 1956. Therefore, it was of no consequence that petitioner retired as a District Judge as the said Rule 15-A has to be applied for limited purpose of applying the service conditions of High Court Judges as contained in the Act of 1954 to the Chairman and Vice Chairman of CAT. I am also not impressed with the arguments of the respondent that there was no continuity in service. In Union of India and others Vs. Pratibha Bonnerjea and another, Supreme Court had ruled that the conditions of service and other perquisites available to the Vice Chairman shall be the same as admissible to a serving Judge of a High Court. A serving Judge of a High Court is entitled to pension under Part III of the Act. The court held that the pension has to be same as admissible to a serving Judge of the High Court as per Rules made therein.

8. The appointment of the petitioner was challenged when he was appointed as Vice Chairman of the CAT. Supreme Court in Binay Kant Mani Tripathi Vs. Union of India and others, held that as the age of superannuation for the purposes of Vice Chairman was 65 years, Shri D.K. Agrawal was qualified to be a Judge of High Court and his appointment cannot be challenged on the ground that he has crossed the age of 62 years.

9. I do not see any force in the arguments of the respondent that the petitioner was appointed as a Vice Chairman after a gap of few months as continuity was not a condition precedent for applying the Act of 1954 as Act of 1954 governing the conditions of service of High Court Judges has to be applied for limited purpose for grant of pension. I do not see any force in the arguments of the respondent that the petitioner is entitled to pension under Rule 8 of the Rules in view of the interpretation given by the respondent. The Department of Personnel and Training issued a letter dated 27.8.1999, which is to the following effect:-

"No. A.11013/14/2000-AT

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel & Training

27 AUG 1999

To

The Registrar,

Central Administrative Tribunal,

Principal Bench,

Faridkot House,

Copernicus Marg,

New Delhi.

Sub: Revision of pension/family pension payable to Chairman and Vice-Chairmen of the Central Adm. Tribunal.

Sir,

I am directed to refer to your letter No. CAT/P./B./ Rev./ Pension/99-JA dated 31.3.1999, 6.5.1999 mentioned subject and to say that as per Rule 15A of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1985, the pension/family pension admissible to Chairman and Vice Chairman of the Central Adm. Tribunal is the same as those of the High Court Judges (Salaries and Conditions of Service) Act, 1954. As the pension/family pension admissible to High Court Judges has been revised w.e.f.1.1.1996 vide Department of Justice letter No.1. 11016/8/97-Jus. Dated 13.1.1999, the pension/family pension of Chairmen and

Vice Chairman of the CAT irrespective of the fact whether they retired before 1.1.96 also stand revised w.e.f. that date accordingly. While revising the pension in the case of those Chairman, Vice Chairman who were in position on or after 1.1.1996, it may be noted that the same has to be deducted from their revised pay as provided in (illegible) Central Administrative Tribunals (Salaries and Allowances of Chairman, Vice Chairman and Member (illegible)).

2. A copy of the Department of Justice O.M. dated 2.4.98 referred to in para 3 of Department of Justice letter dated 13.1.1999 is also sent herewith.

10. Rule 15-A extended the same conditions of service and other perquisites as are available to the serving Judge of the High Court to the incumbents of the posts of chairman and/or Vice Chairman of the CAT and to that extent the provisions of the Act and the Rules of 1985 were made inapplicable and that is what the tenor and contents of the aforesaid letter reproduced above and that aspect of the matter was not been taken into consideration by the respondent while rejecting the application of the petitioner for grant of pension in terms of Rule 15-A of the Rules. After coming into existence of Rule 15-A of the Rules, any provision, which was inconsistent with the said Rules, would not hold the field. The stand of the respondent that service in Tribunal is distinctly a separate service and cannot be considered as a service in continuation of the State Judicial Service, is contrary to provisions of para 2(a) of Part III of First Schedule of the Act of 1954 as this is contrary to the ratio of judgment of the Supreme Court reported as M.L. Jain and Another Vs. Union of India and Others, . Prior to insertion of Rule 15-A vide GSR 417(c) dated 31.3.1989 the pension of the petitioner had been governed by Rule 5 of said Rules but by insertion of Rule 15-A, Rule 5 became inapplicable due to non-obstante clause of Rule 15A. The arguments of the respondent that the pension was to be determined by the State Civil Service Act is also not tenable in view of what has been held in All India Judges" Association and Others Vs. Union of India and Others, that the judicial service is not service in the sense of "employment and the Judge are not employees. Supreme Court in All India Judges" Association and Ors. (supra) held:--

"It is not necessary to repeat here what has been stated in the judgment under review while dealing with the same contentions raised there. We cannot, however, help observing that the failure to realise the distinction between the judicial service and the other services is at the bottom of the hostility displayed by the review petitioners to the directions given in the judgment. The judicial service is not service in the sense of "employment". The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the

three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State Power are the Ministers, the Legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decision of the political executive. Similarly, the Legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the Legislators and the Judges and not between the Judges and the administrative executive. In some democracies like the USA, members of some State judiciaries are elected as such as the members of the legislature and the heads of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, Therefore, cannot be placed on a part with the members of the judiciary, either constitutionally or functionally."

11. Mr. Gupta, learned counsel for the petitioner, has also pointed out that Ms. Pratibha Bonerjee was paid pension for her tenure of Vice Chairman lasting less than three years under Part III of Schedule I of Act 1954. The tenure of Vice Chairman was treated at par for the purposes of services conditions as that of a Judge of High Court for determination of pension. In view of discussion above, I hold that grant of pension in terms of Rule 15-A of the Rules and service conditions of Act, 1954 has to be applied to the petitioner and his pension be determined in accordance with Part III of First Schedule to High Court Judges (Salaries and Conditions of Service) Act, 1954 and additional pay in accordance with Sub-paras (a) and (b) of para 2 of Part III of First Schedule to High Court Judges (Salaries and Conditions of Service) Act, 1954 on the basis of Rule 15-A of the said Rules and memo dated 27.8.1999 issued by the Department of Personnel and Training be fixed. Same may be fixed within a period of eight weeks. Petition is allowed. Rule is made absolute. There is no order as to costs.