

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1576/1999

New Delhi this the 17th day of August, 2000.

16

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Shri V. Radhakrishnan,
Ex-Member (A),
Central Administrative Tribunal,
Ahmedabad Bench,
Ahmedabad.

... Applicant

(By Shri Hari Shankar, Advocate)

-Versus-

1. Union of India through
Secretary, Department of Personnel
& Training, North Block,
New Delhi.

2. Registrar,
Central Administrative Tribunal,
Principal Bench,
Kasturba Gandhi Marg,
New Delhi-110001.

3. Finance & Accounts Officer,
Central Administrative Tribunal,
Curzon Road,
New Delhi-110001.

4. Dy. Registrar,
Central Administrative Tribunal,
Opp. Sports Club, Navrangpura,
Ahmedabad-380009.

... Respondents

(By Shri N.S. Mehta, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Applicant is a retired Member of the Central Administrative Tribunal. Prior to his joining as Member, he was in Indian Defence Accounts Service (IDAS) (1961 Batch). After serving the Government of India on different posts for a number of years, he sought voluntary retirement from IDAS before attaining the age of 55 years. He was appointed and posted as Administrative Member in the Ahmedabad Bench of the

16

Central Administrative Tribunal. Applicant's pay was governed by the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1985 (for short, 1985 unamended Rules) as also the relevant provisions of Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. Aforesaid 1985 unamended Rules were replaced by the Central Administrative Tribunal (Salaries, Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Amendment Rules, 1998 (for short, 1998 Amendment Rules).

2. Applicant retired from the Tribunal on 13.2.2000. While serving as Administrative Member at the Ahmedabad Bench of the Tribunal, he was served with a communication issued by the Financial Adviser and Chief Accounts Officer (FA&CAO) on 9.3.1999 (Annexure A-3) and another communication dated 6.5.1999, (Annexure A-4) issued by a Deputy Registrar of the Tribunal whereby certain emoluments which had been paid over to him were sought to be recovered from him. Aforesaid orders dated 9.3.1999 and 6.5.1999 are impugned in the present O.A. In addition, applicant has prayed for a declaration that Rule 3 of the unamended 1985 Rules, more particularly, proviso thereto as also the relevant provisions of Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 in so far as the same provide for deduction of the pensionary benefits from the salaries of the re-employed persons, are ultra vires as being irrational, arbitrary, unreasonable, discriminatory and violative of Articles 14, 16 and 21

of the Constitution. Rule 3 of the unamended 1985 Rules provides as under :

18

"The Chairman shall receive a pay of Rs.3500/- + a special pay of Rs.500/- p.m., a Vice-Chairman and a Member shall receive a pay of Rs.3500/- p.m. and Rs.3000/- p.m. respectively :

Provided that in the case of an appointment as a Chairman, Vice-Chairman or a Member of a person who has retired as a Judge of the High Court or who has retired from service under the Central Government or a State Government and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension and/or gratuity, employer's contribution to the compulsory Provident Fund or other forms of retirement benefits, the aforementioned pay shall be reduced by the gross amount of pension and pension equivalent of gratuity or employer's contribution to the compulsory Provident Fund or any other forms of retirement benefits, if any, drawn or to be drawn by him."

Rule 3 of the 1998 amendment Rules provides as under :

"The Chairman shall be entitled to a pay of Rs.30,000/- p.m., a Vice-Chairman shall be entitled to a pay of Rs.26,000/- p.m. and a Member shall be entitled to a pay in the scale of Rs.22,400-600-26,000/- p.m.

Provided that in the case of an appointment as a Chairman, Vice-Chairman or a Member of a person who has retired as a Judge of the High Court or who has retired from service under the Central Government or a State Government and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension and/or gratuity, employer's contribution to the compulsory Provident Fund or other forms of retirement benefits, the aforementioned pay shall be reduced by the gross amount of pension and pension equivalent of gratuity or employer's contribution to the compulsory Provident Fund or any other forms of retirement benefits, if any, drawn or to be drawn by him."

12.8

The Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 in so far as are relevant provide as under:-

19

"2. Application

(1) Save as otherwise provided in these orders, these orders shall apply to all persons who are re-employed in Civil Services and posts in connection with the affairs of the Union Government after retirement on pension, gratuity, and/or CSontributory Provident Fund benefits from the services of-

(a) Union Government including Railways, Defence, Posts and Telecommunications;

(b) State Governments and Union Territory Administrations; and

(c) Public Sector Undertakings, Local Bodies, Autonomous Bodies like Universities or Semi-Government Organizations like Port Trusts.

"4. Fixation of pay of re-employed pensioners

(a) Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b) (i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the re-employed post. Similarly, if the minimum of a the scale of pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. However, in all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

12.1

(c) The re-employed pensioner will in addition to pay as fixed under para.(b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:-

(i) in the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of service officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs.500 of the pension and pension equivalent of retirement benefits shall be ignored.

"5. Drawal of increments

Once the initial pay of a re-employed pensioner has been fixed in the manner indicated above, he may be allowed to draw normal increments in the time-scale of the post to which he is appointed as if the pay had been fixed at the minimum of the higher stage, as the case may be (i.e., before an adjustment on account of pension and pension equivalent of other forms of retirement benefits is made) provided that the pay and gross pension/pension equivalent of other retirement benefits taken together do not at any time exceed Rs.8,000 per month."

3. Provisos to 1985 unamended Rules and 1998 amendment Rules as also Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 provide for deduction of the retiral benefits from the salary payable to the Chairman, Vice-Chairmen and Members of the Central Administrative Tribunal.

4. As far as ex Defence personnel are concerned, the Government has issued OM No.3/1/95-Estt.(P-II) dated 4.4.1986 whereby ex Defence

Civilian personnel who have taken voluntary retirement before attaining the age of 55 years are held to be entitled for pay fixation on re-employment in the Central Administrative Tribunal after ignoring the first Rs.500/- of the pension which he was drawing from the Government prior to the 1998 amendment Rules and Rs.1500/- after the 1998 amendment Rules. (21)

5. As far as the challenge to proviso to Rule 3 of the 1985 unamended Rules is concerned, the same has been impugned by the applicant by contending as under:-

"the said proviso is absolutely arbitrary, irrational and discriminatory and violative of Articles 14 and 16 of the Constitution of India. The applicant submits that appointment of a person as Chairman, Vice-Chairman or Members of Central Administrative Tribunal is an independent appointment made under the Administrative Tribunals Act, 1985. The said Tribunal is a substitute for a High Court and is equal in status. The Tribunal is a judicial body distinct from other departments of the Government. The Members of the Tribunal are Judges discharging independent judicial functions of the State and, therefore, really speaking they cannot be considered to be employees or servants of the Central Government. They might have worked under the Central Government before and on their appointment in Central Administrative Tribunal they have to retire and they may be entitled to the pension for their old service. However, it is submitted that pension is given to an employee for his past services. It is not by way of charity or bounty given at the discretion of the Government. The pension is given in recognition of the long services of the person and is entitled to the pension as a part of his right to life. When such a person is offered another appointment or employment by the Government not merely by way of helping that person but because his services are required by the Government, such a person after new appointment is entitled to the full salary, allowances etc. fixed for the said post and any pensionary amount which such a person is entitled to draw for his past service cannot be deducted from the present salary. Doing so will cause great injustice to the person. There

12.1

is absolutely no rational justification for paying him less than what he is otherwise entitled to. He is not getting double service by doing two jobs simultaneously. He gets the pension amount for his past services from which he has now been completely disassociated and he is getting the present salary as he is discharging the duties and functions of present post. Neither the Constitution nor the law can permit the deduction of pension from the present salary of the person. Even otherwise also such deduction of pension from the salary of the so-called re-employed persons or payment of less salary because of the pension amount is really highly discriminatory. A person who has been appointed as fresh and not receiving any pension amount will get the full salary for the new post but persons retired from Government service and appointed like the applicant will be discharging the same duties and functions of the new post and yet will not be entitled to the full salary because his pensionary amount which he has got for his past services will be deducted from his present salary. There is no rational nexus between the two. The discrimination is clearly hostile and unreasonable. The applicant, therefore, submits that any provisions of the rules which provide for the reduction of pay by deduction of the pension amount will be arbitrary, irrational and unconstitutional. Similarly, the proviso to Rule 3 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 providing for such reduction is also equally arbitrary irrational and discriminatory both on the ground that such appointment cannot be considered to be re-employment and secondly such a provision is independently also arbitrary. The applicant, therefore, submits that the proviso to Rule 3 of the CAT (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 and the relevant provisions of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986 are arbitrary, irrational and discriminatory and violative of Articles 14 and 16 of the Constitution of India."

6. As far as the application of Central Civil Services (Fixation of Pay of Re-employed Pensioners) Rules, 1986 is concerned, this is what the applicant has submitted:-

22
S. J.

"The Hon'ble Supreme Court of India in 1994 Supp.3 SCC 502 has held that appointment to the Central Administrative Tribunal of persons working under the Central Government or the State Government cannot be considered as re-employment. The applicant, therefore, submits that his appointment as Administrative Member, Central Administrative Tribunal after his retirement before the age of superannuation cannot be considered to be re-employment and, therefore, CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986 which apply to re-employment cannot be made applicable to the case of the applicant and, therefore, the question of fixation of pay under the said orders does not arise. The applicant, therefore, submits that the applicant is entitled to the salaries and allowances and other conditions of service fixed for the Members of the Central Administrative Tribunal without any deduction whatsoever on the ground of re-employment and without application of the CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986. The applicant submits that deduction of any pensionary amount from the salary of the applicant on the basis of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986 is absolutely illegal and without any authority of law."

23

7. Shri Hari Shankar, learned advocate appearing on behalf of the applicant has urged that though the aforesaid benefit of ignoring certain amount of pensionary benefits for fixing pay may be justified for re-employed Defence Civilian personnel which can be considered to be a special class deserving a distinct and better treatment than others, there is no justification in fixing a fixed amount i.e., Rs.500/1500 for being ignored while fixing their pay. According to the learned counsel one can understand if the aforesaid benefit was given on certain percentage basis having regard to the retiral benefits drawn. Fixing uniform amount irrespective of the amount of pensionary benefits received, according to the learned counsel is arbitrary as the same does not seek to achieve any laudable object as by the

12.8

aforesaid provision unequals are treated as equals thereby offending the mandate contained in Articles 14 and 16 of the Constitution.

2A

8. As far as vires of proviso to Rule 3 is concerned, let us see how the proviso works in actual practice. This can best be illustrated by giving an example : 'A', 'B' and 'C' join the Tribunal as Members. Salary of Members under the Act is say Rs.100/- p.m. Now 'A' has retired with pension say of Re 1/- p.m., 'B' of Rs.2/-p.m. & 'C' has not rendered any service before joining. He, therefore, does not receive any pension. Now what the proviso permits or say ordains, Exchequer will pay 'A' Rs.99/-p.m., 'B' Rs.98/- p.m. & 'C' Rs.100/- p.m. Is this giving 'A', 'B' & 'C' equal pay for equal work? Is this the concept of equality which can be sustained in the teeth of Article 14 and 16 of the Constitution? And what about Article 21, a right to life, a right to live life with dignity. Pension is not a bounty or charity thrown at the begging bowl of a Government servant; it is a hard earned reward for having put in long years of toil. Pension is thus made payable to enable him to live a life with dignity. Can the Government, in the garb of the proviso be permitted to rob the Government servant of his hard earned benefits? Is the proviso just, rational and reasonable? We should think not, at least prima facie. The Supreme Court in the case of **State of Kerala and others v. M.Padmanabhan Nair**, (1985) 1 SCC 429 while dealing with a cas of delay in payment of pensionary benefits has observed:-

Se. J

" Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

25

Shri N.S.Mehta, learned advocate appearing on behalf of the respondents has contended that this Tribunal has no jurisdiction to entertain and try the present O.A. for two reasons; one, applicant in the instant case is an ex member of this Tribunal. He is or was, therefore, not an employee of the Central Government. We in the circumstances will not be in a position to entertain and try his service matter; and two, it will be impermissible for the Tribunal to entertain and examine the vires of a statute under which it is constituted. The Tribunal is constituted under Administrative Tribunals Act and Rules framed thereunder. It will, therefore, not be open to us to question the very law under which it owes its existence. In the circumstances, we are of the considered view that contentions advanced merit consideration at some length.

9. The question of jurisdiction of the Tribunal in the matter of granting reliefs in OAs instituted by and on behalf of members of the Tribunal was raised in Civil Appeal No.6020 of 1994 (**Union of India & Ors. v. Pratibha Bonnerjea & Anr.**) before the Supreme Court. However, the Supreme Court proposed not to go into the question of jurisdiction and proceeded to settle the next question of fixation of pension so that "the first respondent" was not driven from pillar

12.11

to post. The question whether the Tribunal had jurisdiction to entertain an application by a retired Vice-Chairman of the Tribunal also arose before the C.A.T. (Full Bench) in the matter of **Bhalchandra Chintamani Gadgil v. Union of India & Ors.**, (1997 (2) ATJ 303). It was held therein that the Tribunal did have jurisdiction to entertain an application filed by a retired Vice-Chairman of the Tribunal. The Judges of the High Court and Supreme Court are constitutional functionaries and therefore are not Government servants. Their appointment and service conditions are regulated by the provisions made in the Constitution of India. As against this, the provisions pertaining to appointment, terms and conditions of appointment and the mode of resignation and removal of the Members, Vice-Chairmen and Chairman of the Tribunal are provided in the Sections 6 to 9 of the Administrative Tribunals Act, 1985. They cannot, therefore, claim to be constitutional functionaries. Their mode of appointment, mode of removal and conditions of service are such as may be equated to any other Government employees of the Centre. Under the circumstances, it was held that this Tribunal has jurisdiction to entertain and decide disputes raised by any Chairman, Vice-Chairmen or Members of the Tribunal in regard to service matters.

10. In **Union of India v. K.B. Khare & Ors.**, 1994 Supp. (3) SCC 502, service in the C.A.T. was held to be one of judicial nature. It was held, "In our considered view the High Court has gone wrong in considering the service in the C.A.T. as

27

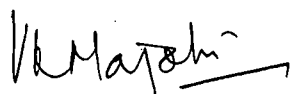
re-employment in connection with the affairs of the Union. On the contrary, an independent judicial service....." "In view of the conclusion that the first respondent is not a person reemployed on a post in connection with the affairs of the Union Government, we see no scope whatever for applying Central Civil Service (Fixation of Pay of Re-employed Pensioners) Order, 1986. However, reliance is placed on behalf of the respondents on a decision of the Supreme Court in the case of **L. Chandra Kumar** vs. **U.O.I.**, (1997) 3 SCC 261. Based on the decision, it is submitted that the Constitution Bench of the Supreme Court consisting of seven Judges has specifically excluded the jurisdiction of the Tribunal to entertain and examine any question regarding the vires of its parent statutes. According to the learned counsel, the Tribunal in the circumstances cannot rule upon the vires of Rules under the Administrative Tribunals Act, 1985.

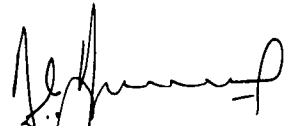
11. Having regard to the ratios of **L.Chandrakumar** and **K.B.Khare** (supra), in our view the submission advanced by the learned counsel for the respondents appears to be justified. In the circumstances though we find the contentions advanced by the applicant worthy of consideration, the same in view of the aforesaid decisions of the Supreme Court are not permissible at least at our hands.

De. J.

28

12. Present OA in the circumstances is returned to the applicant for presentation to the proper forum. Interim order earlier passed on 19.8.1999 will continue for a period of six weeks from the date of service of this order.


(V.K. MAJOTRA)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

sns