

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 498/98

Date of Decision : 26th Feb, 2003

P.P.Srivastava

Applicant

Shri V.D.Vadhavkar

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.G.Rege

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt. Shanta Shastri, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.No.498/98

Dated this the 26th day of Feb., 2003.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

P.P.Srivastava,
Lastly Member (Administration),
Central Administrative Tribunal,
Mumbai Bench,
Mumbai.

...Applicant

By Advocate Shri V.D.Vadhavkar

vs.

1. Union of India
through the Secretary,
Deptt.of Personnel &
Training, Ministry of
Personnel, Public Grievances
& Pension, Govt. of India,
North Block, New Delhi.

2. The Registrar,
Central Administrative Tribunal,
Principal Bench,
61/35, Copernicus Marg,
Near Kamani Auditorium,
New Delhi.

...Respondents

By Advocate Shri V.G.Rege

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the direction to the respondents to pay the 'Gratuity' for his services rendered as Member, Central Administrative Tribunal with interest @ 12% p.a. till actually paid.

Shri V.G.Rege

..2/-

2. The brief facts leading to the OA. are that the applicant was a permanent employee of the Government of India working as Chief Personnel Officer with the Central Railway. He was selected for the post of Member (Administrative), Central Administrative Tribunal. After seeking voluntary retirement, as is required by the Rules, from the Central Railway the applicant joined as Member (A) Central Administrative Tribunal. The post being the tenure post, after serving for five years (w.e.f. 20.5.1993 to 19.5.1998) the applicant's services as Member (A) came to end.

3. When the applicant took voluntary retirement from Central Railway, he was paid Death-cum-Retirement Gratuity of Rs. One Lakh, the maximum permissible as per ceiling limit then existing as per Rules.

4. The grievance of the applicant is that Central Administrative Tribunal (Salary and Allowances and condition of service of Chairman, Vice Chairman and Members) Rules, 1985 provides for entitlement of pay, pension, leave encashment, Leave Travel Concession, accommodation etc. but are silent in regard to payment of 'Gratuity'. The applicant avers that he is entitled to 'Gratuity', on the grounds detailed in para 7,8 in the OA. which we are dealing ^{with} in detail in subsequent paras.

Sign - - ..3/-

5. The claim of the applicant is resisted by the respondents on the ground of jurisdiction as well as on merits. The Bench has heard the matter regarding jurisdiction and passed the detailed order dated 31.10.2002 arriving to the finding that the Tribunal has jurisdiction to decide the dispute in question.

6. On merits, the claim is resisted by the respondents on the ground of estoppel in view of the Rules, namely, Central Administrative Tribunal (Salary and Allowances and condition of Service of Chairman, Vice Chairman and Members Rules, 1985.

7. The fact that the ceiling limit of Death-cum-Retirement Gratuity is raised from Rs. One lakh to Rs. 3.5 lakhs on account of recommendations of the Vth Central Pay Commission w.e.f. 1.1.1996, is one of the grounds ^{taken} that as the date of birth of the applicant is 21.7.1939, he must have been superannuated in the Central Railway on 31.7.1997 and at the relevant time he must have been entitled to Gratuity Rs. 3.5 lakhs. In our considered opinion, this ground can not be raised in view of the judgement of Apex Court reported in (1986) 3 SCC 501 - State Government Pensioners' Association & Ors. vs. State of Andhra Pradesh which is extracted below :-

"Provision for payment of gratuity on stepped up basis prospectively from a specified date of retirement is not unconstitutional. Even if that part of the notification which provides for enforcement with effect from the specified date is struck down it will operate only prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date and received gratuity on the then prevailing basis. In order to make it retrospective, the notification should have an express provision to that effect."

P. J. N. 4/-

8. The main thrust of the applicant is on Rule 16 of Central Administrative Tribunals (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1985 which is extracted below :-

"16. Residuary provision.-- The conditions of service of the Chairman, Vice-Chairman or other Members for which no express provision is available in these rules shall be determined by the rules and orders for the time being applicable to a Secretary to the Government of India belonging to the Indian Administrative Service."

9. It is true that the applicant as a Member of Central Administrative Tribunal is entitled to avail the conditions of service as applicable to Secretary to Government of India belonging to the Indian Administrative Services, in absence of express provision with regard to the same.

10. The learned counsel for the applicant first relied on the definition of the word 'Pension' as incorporated in Article 366 (17) of the Constitution and argued that 'Pension' included Gratuity. We are extracting the said provision below :-

"Article 366 - In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say.

(17) "Pension" means a pension, whether contributory or not of any kind what so ever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscription to a provident fund."

SLM 5.5/-

11. The perusal of the same makes it clear that the said definition is restricted in its application to the Constitution of India that to 'unless the context otherwise requires', we are unable to extend the definition to the present case when the applicability of the definition is limited to the constitution itself with further restriction of 'unless the context otherwise requires' to the present case.

12. The word 'Gratuity' has not been defined in the Central Administrative Tribunal (Salary and Allowances and Condition of Service of Chairman, Vice-Chairman and Members) Rules, 1985 and Administrative Tribunals Act, 1985.

13. The learned counsel for the respondents relied on the decision reported in 2001 SCC (L&S) 629 - V.S. Malimath vs. Union of India & Anr. and argued that the residuary provision as incorporated in National Human Rights Commission Chairman and Members (Salaries, Allowances and other Condition of Service) Rules, 1993 is para materia with the provisions contained in Rule 16 of Central Administrative Tribunals Act, 1985 which was subject of consideration before the Apex Court and the finding is contained in Para 5 of the said judgement which we extract below :-

"5. Coming to the question whether a Member of the Human Rights Commission is entitled to gratuity for the period he serves the Commission, it appears that there has been no such provision in the Rules, entitling a Member to claim gratuity. Rule 10 of the Rules, however

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stipulates that the conditions of service of the Chairperson and the Members for which no express provision is made in the Rules, shall be determined by the rules and orders applicable to a Secretary to the Government of India belonging to Indian Administrative Service. So far as the service conditions of a Secretary to the Government of India belonging to the Indian Administrative Service is concerned, the same is governed by a set of Rules framed under Section 3(1) of the All India Services Act, 1951 called the All India Services (Death-cum-Retirement Benefits) Rules, 1958. Under the aforesaid Rules, retirement gratuity is granted to a Member of the service, who retires or is required to retire under Rule 16, as provided in Rule 17 of the Rules. The amount of gratuity is computed under Rule 18. The enabling provisions contained in Rules 16, 17 and 18 do not provide for payment of gratuity for a re-employed person. The President of India, however, in supersession of all the earlier orders in relation to fixation of pay of re-employed pensioners, promulgated an order called the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order, 1986. The aforesaid Order applies to all the persons who are re-employed in civil services and posts in connection with the affairs of the Union Government, after retirement on getting pension, gratuity and/or contributory provident fund benefits. Rule 14 of the aforesaid Order, stipulates that re-employed officers shall not be eligible for any gratuity/death/retirement gratuity, for the period of re-employment, except in those cases covered in Rules 18 and 19 of the Central Civil Services (Pension) Rules, 1972. The petitioner's case is not covered under the aforesaid provisions of the Central Civil Services (Pension) Rules, 1972. Therefore, the question for consideration is whether the appointment of the petitioner as a Member of the Human Rights Commission would tantamount to re-employment. In the absence of any definition of the expression "re-employment" and applying the common parlance theory, the conclusion is irresistible that the said appointment would tantamount to "re-employment" and, therefore, for such period of service as Member of the Human Rights Commission, no gratuity would be payable."2

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stipulates that the conditions of service of the
 Corporation and the Members for which no express
 provision is made in the Rules, shall be
 determined by the Rules and orders applicable to
 a Secretary to the Government of India belonging
 to Indian Administrative Service. So far as the
 service conditions of a Secretary to the
 Government of India belonging to the Indian
 Administrative Service is concerned, the same is
 governed by a set of Rules framed under Section
 3(1) of the All India Services Act, 1951 called
 the All India Services (Death-cum-Retirement
 Benefits) Rules, 1958. Under the aforesaid Rules,
 retirement gratuity is granted to a Member of the
 service, who retires or is required to retire
 under Rule 16, as provided in Rule 17 of the
 Rules. The amount of gratuity is computed under
 Rule 18. The enabling provisions contained in
 Rules 16, 17 and 18 do not provide for payment of
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 Pay of Re-employed Pensioners) Order, 1986. The
 aforesaid Order applies to all the persons who
 are re-employed in civil services and posts in
 connection with the affairs of the Union
 Government, after retirement on getting pension,
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 gratuity for the period of re-employment, except
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 The petitioner's case is not covered under the
 aforesaid provisions of the Central Civil
 Services (Pension) Rules, 1972. Therefore, the
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 Human Rights Commission would tantamount to re-
 employment. In the absence of any definition of
 the expression "re-employment" and applying the
 common parlance theory, the conclusion is
 irresistible that the said appointment would
 tantamount to "re-employment" and, therefore,
 for such period of service as Member of the Human
 Rights Commission, no gratuity would be
 payable."

He further argued that in view of the said decision, the applicant's case has no merit and it is liable to be dismissed.

14. We have carefully considered the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order, 1986 and on perusal of the same, we are of the considered opinion that the applicant is governed by Rule 2 (a) of the said order and is not covered by any exception attached to the said Rule.

15. The learned counsel for the applicant argued that probably the provision for Gratuity is not expressly made in Rules known as Central Administrative Tribunals (Salary and Allowances and Condition of Service of Chairman, Vice Chairman and Members) Rules, 1985 for the reason that as per eligibility mentioned in Section 6 of Act known as Administrative Tribunals Act, 1985, for being selected[✓] to the post of Member, the person might have^{been} left^{with} two to three years for superannuation and by that time every benefit available to the pensioner has accrued to him. We have some restrictions in accepting the said proposition for the reason that "a person qualified to be the High Court Judge" is also entitled for consideration and posting as Member/Vice Chairman in view of Section 6(2)(a) & 6(3)(a) of the Administrative Tribunals Act, 1985, as such, it can not be accepted in a broad sense applicable to all Members and Vice Chairmans.

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16. We certainly find that a person recruited from the Bar qualified to be the High Court Judge in view of Article 217 of the Constitution read with Section 6(2)(a) & 6(3)(a) of the Administrative Tribunals Act, 1985 shall not be governed by the Central Civil Services (Fixation of Pay of Re-employed Pensioners Order 1986 and in consequence the Residuary provision as contained in Rule 16 of Central Administrative Tribunals (Salary and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1985 shall be entitled to Gratuity and his pay is fixed without any deduction. We restrain ourselves from making any observation regarding discrimination created by the said Rules and leave the matter to the Government for consideration while selection is made in view of the 'economy' sought every where.

17. While framing Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order, 1986, the Rules known as C.A.T. (Salary and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1985 were in existence. The legislature did not ^{think} ~~thought~~ it proper to have an exception in respect of the persons governed by the said Rules, we leave the matter for consideration by the Government. It is also worth mentioning that the applicant was appointed on 20.5.1993 after coming into force of the order known as Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order, 1986.

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18. In the result, in our considered opinion, there is no merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

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(SMT. SHANTA SHASTRY)

MEMBER (A)

P. (S.L.)

(S.L. JAIN)

MEMBER (J)

mrj.

26-2-03

Order/Judgement despatched
to Applicant/Respondent (s)
on 6-3-03