

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

R.A./100/222/2017
T.A./100/35/2013
M.A./100/3857/2017

New Delhi, this the 8th day of October, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Lieutenant Governor, Delhi
Raj Niwas, Delhi
2. Govt. of NCT of Delhi
Through its Chief Secretary
Players Bhawan, Indraprastha Secretariat,
I.P. Estate, New Delhi ... Review Applicants

(Through Ms. Rashmi Chopra, Advocate)

Versus

1. Mr. M.P. Tyagi
S/o Shri Dalip Singh
D-512, Hum Sub CGHS
Plot No.14, Sector-IV, Dwarka,
New Delhi-110078
2. Union of India
Through its Secretary,
Ministry of Home Affairs
North Block, New Delhi

(Through Shri Naresh Kaushik, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

This Review Application (RA) is filed with a prayer to review the order dated 11.03.2016 passed by this Tribunal in TA 35/2013. The applicant in RA, who happens to be respondent

in OA, has also moved the Delhi High Court by filing a Writ Petition. However, during the course of hearing, it emerged that there was some discrepancy as to the date of amendment to the Election Commissioner of National Capital Territory of Delhi (Conditions of Service and Tenure of Office) (Amendment) Rules 2001. Through an amendment, sub-rule 1 of Rule 6 was dropped. However, it was proceeded as though, the amendment was caused on 3.12.2002 whereas the correct date is 3.12.2001. Since the applicant was appointed as Election Commissioner on 13.12.2001, the dates became relevant.

2. We heard Ms. Rashmi Chopra, for the review applicant and Shri Naresh Kaushik, for the review respondent.

3. The issue before the Tribunal was as to whether the applicant was entitled to the pension payable to the Secretary to Government of NCT of Delhi as provided in Rule 6 (2) of the aforesaid Rules. Rule 3 which is to the effect that in case a person appointed as Election Commissioner was in receipt of pension, his salary shall stand reduced to that extent, also became relevant.

4. The Tribunal took into account the various contentions advanced by both the parties and directed as under:

- "(i) The communications dated 9th June, 2005, 9th August, Advice of the Finance Deptt.(A/Cs) and communication dated 20th February, 2006 are quashed.
- (ii) The respondents are directed to treat the period from 13.12.2001 to 12.12.2004 during which the applicant functioned as Election Commissioner as continuous service and fix his pension at the end of it in the scale

of Rs.7300-7600/- and to grant him the amount of difference between the two.

(iii) The order shall be implemented within a period of three months from the date of receipt of certified copy of this order."

5. The purport of these directions is that the applicant in the OA shall be entitled to be paid the difference between the pension which he was already receiving, on the one hand and the one which is payable to the post Secretary to GNCT of Delhi, on the other; by the Delhi Administration.

6. Rule 6 (1) of the Rules reads as under:

"(1) A person who immediately before the date of assuming office as the Election Commission was in service of Govt., shall be deemed to have retired from service on the date on which he enters upon office as the Election Commissioner but his subsequent service as the Election Commissioner shall be reckoned as continuing approved service counting for person in service to which he belonged."

This applies to cases where the incumbent, who is already in service of government, is appointed as Election Commissioner. In such cases, he will be deemed to have retired from the service of the government and the service, which he renders as Election Commissioner, shall be treated as the one in continuity of the earlier service. This provision was dropped through the amendment in question.

7. From the order of the Tribunal in OA, we find that it did not turn upon the applicability of Rule 6 (1). Since the applicant in the OA had already retired from service and was in receipt of pension by the time he was appointed as Election Commissioner, Rule 6 (1) has no bearing on him. We are, therefore, of the view

that amendment to rule 6 (1) of the Rules does not have any impact on the order passed by this Tribunal. R.A. is, therefore, dismissed. We, however, make it clear that we have not touched the merits of the matter, because the Writ Petition is pending before the Hon'ble High Court.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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