

**Central Administrative Tribunal
Principal Bench**

**OA No.1888/2018
MA No.2850/2019 & MA No.2127/2018**

New Delhi, this the 26th day of September, 2019

**Hon'ble Justice Mr. L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Ms. Archana Wadhwa
W/o Sh. Deepak Wadhwa
R/o J-513, Sainik Farms, New Delhi.
2. Madhu Mohan Damodhar
S/o Late Sh. K.P. Damodhar Panicker
R/o 44/3, CGO Colony, Second Avenue
Besantnagar, Chennai.
3. Ms. Sulekha Beevi C.S.
D/o Dr. C. Saithu
R/o D-1, GPRA Quarters
Near Shastri Bhawan, 26
Haddows Road, Chennai.
4. M.V. Ravindran
S/o Late Sh. M.T. Veeraraghavan
Working at Custom Excise & Service Tribunal
Hyderabad.
5. Ramesh Nair, S/o Late Shri N.R. Chathu
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8th Floor, 79, Bhulabai Desai Road
Mumbai.
6. C.J. Mathew, S/o Sh. C.J. Mathew
R/o 2, Belvedere, 79
Bhulabhai Desai Road
Mumbai.
7. Raju, S/o Late Shri A.L. Ahuja
R/o G-26, Hyderabad Estate
Napeansea Road, Mumbai.

8. Santosh Kumar Mohanty
S/o Sh. Subas Chandra Mohanty
R/o D-5, Tower No.7, New Moti Bagh
New Delhi- 50.
9. Anil Choudhary
S/o Sh. Shyam Sunder Choudhary
R/o B-601, Vinayak Le Grand
16/12, Elgin Road Allahabad.
10. Anil G. Shakkarwar
S/o Sh. Gangadharro
R/o Flat No.G01 B Wing
Serling Appartment, 93 & 93-A
Muirroad, Ashok Nagar, Allahabad.
11. Ashok Jindal
S/o Late Shri R.K. Jindal
R/o Flat No.30
CPWD Colony, Sector 38-A
Chandigarh.
12. Devender Singh, S/o Sh. Tara Chand
R/o 23-B, Sector 38-A, CPWD Colony
Chandigarh.
13. P.K. Choudhary
S/o Sh. S.S. Choudhary
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Iron Side Road, Ballygunge
Kolkata.
14. S.S. Garg, S/o Sh. Hanuman Das
R/o 512, CPWD Complex
Sector-1, HSR Layout Bangluru
15. Durga Madhaba Misra
S/o Sh. Nilkantha Misra
R/o A-1103, ISCON River Side
Shahibaug, Ahmedabad.
16. V. Padmanbhan, S/o P.V. Krishnan
R/o B-5, Tower-5, New Moti Bagh
New Delhi-110023.Applicants

(By Advocate: Shri Rajeev Sharma)

Vs.

1. Union of India through its Secretary
Ministry of Finance, Deptt. Of Revenue.
2. Union of India
Through its Secretary
Ministry of DOPT, New Delhi. ...Respondents

(By Advocates: Shri R.K. Jain and Shri R.V. Sinha)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicants are Members, Judicial, functioning in the Customs, Excise and Service Tax Appellate Tribunal(CESTAT). They were appointed between 1996 and 2016. They were put in the pay scale of Rs.2,25,000/-. Their service conditions used to be governed by the Customs, Excise and Service Tax Appellate Tribunal (Recruitment and Conditions of Service) Rules, 1987. Recently, the Parliament has taken steps for the integration of the service conditions of the Chairman, Vice Chairman and Members of different Tribunals constituted under separate enactments. For that purpose, provisions were made in the Finance Act, 2017. Under Chapter 'S' thereof, it is provided that the Central Govt. may, by notification,

make rules to provide for qualifications, appointments, term of office, salaries and allowances, resignation, removal and other terms of conditions of service of the Chairperson, Chairman, Vice Chairman, Members etc. of the Tribunals, Appellate Tribunals as the case may be referred to in Column 2 of the 'VIII' Schedule appended to the Act. A notification was issued on 01.06.2010, in exercise of the Power under Section 184 of the Finance Act, 2017, framing the rules entitled, the Tribunal, Appellate Tribunal and other authorities (Qualifications, Experience and other Conditions of Members) Rules, 2017 (for short, the 2017 Rules).

2. To a large extent, the method of appointment and conditions of service of Chairman, Vice Chairman, Members of various Tribunals were sought to be unified. Rule 11 stipulated, the salary and allowances for the Chairman or President of the Tribunal, Appellate Tribunal or the Presiding Officer of the Security Appellate Tribunal, the salary was stipulated as 2 lakh 50 thousand (fixed) and for Vice Chairman, Vice President and Members of such Tribunals, the salary is stipulated as Rs.2,25,000/-. It is also mentioned that

they shall be entitled to draw the allowances as are admissible to Govt. of India Officers holding Group 'A' post carrying the same pay.

3. The applicants contend that the same salary structure ought to have been extended to them. It is stated that several Members who have been appointed in the recent past to CESTAT are drawing higher emoluments, while they are continuing with lesser pay. The President of CESTAT is said to have addressed letter dated 01.08.2017 in this behalf and it is stated that no action has been taken thereof. This OA is filed with a prayer to direct the respondents to extend the benefit of Rule 11 of 2017 Rules to them from the date of declaration with all consequential benefits.

4. The applicants contend that once the salaries are fixed through a legislative measure, there is absolutely no basis to deny the same to the members who are already functioning. They contend that it is totally impermissible in any system that enable payment of lesser salary to the officers appointed on earlier occasion compared to those who are appointed at a later point of time.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the applicants were appointed at a time when the 2017. Rules were not in force and their pay structure was decided according to the Rules in force, at the relevant point of time. It is also stated that the provisions of Section 184 of the Finance Act, 2017 and the Rules framed there under have prospective operation and even they are the subject matter of adjudication before the Hon'ble Supreme Court in Writ Petition No.189/2017.

6. We heard Shri Rajeev Sharma, learned counsel for the applicant and Shri Ranjan Tyagi, learned counsel for the respondents.

7. Many Tribunals have been constituted from time to time with the objective of getting the cases of particular categories adjudicated by them, ensuring the participation of the Members/officers who had experience in the field. The effort was also to reduce the burden on the Hon'ble High Court. Over the period, the number of Tribunals are increased. The service conditions of their Chairman, Vice Chairman and

Members were substantially different, be it in the context of appointment or emoluments and other benefits. The conditions of service of the President, Vice President and the Members of CESTAT were governed by the CESTAT Members (Recruitment and Conditions of Service Rules) 1987. The Govt. intended to bring about a semblance of uniformity on all these aspects. Provisions in this behalf, were made in the Finance Act, 2017. Chapter 'S' containing Sections 183 and 184 reads as under:-

"183. Notwithstanding anything to the contrary contained in the provisions of the Acts specified in column (3) of the Eighth Schedule, on and from the appointed day, provisions of section 184 shall apply to the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authorities as specified in column(2) of the said Schedule.

Provided that the provisions of section 184 shall not only apply to the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, Vice-President, Presiding Officer or, as the case may be, Member holding such office as such immediately before the appointed day.

184. (1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-

President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authorities as specified in Column (2) of the Eighth Schedule:

Provided that the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal Appellate Tribunal or other Authority shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided further that no Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed,-

- (a) in the case of Chairperson, Chairman or President, the age of seventy years;
- (b) in the case of Vice-Chairperson, Vice Chairman, Vice-President, Presiding Officer or any other Member, the age of sixty-seven years:

(2) Neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authority may be varied to his disadvantage after his appointment."

8. From a perusal of Section 184, it is evident that the Act empowered the Central Govt. to frame rules which would apply to the Chairman, Vice Chairman and Members of different Tribunals. Once such rules are

framed they would, in a way, replace the respective Rules which were governing the concerned Tribunals. Section 183 is almost protective in nature, in the sense, the Chairman, Vice Chairman and Members, who were already in office, shall not get affected and account of change of conditions, which may be stipulated under the rules, referable to Section 184.

9. The 2017 Rules were framed through Notification dated 01.06.2017. After the definition Clause the Rule 3 provided for qualifications, Rule 4 the method of recruitment, Rule 5 medical fitness, Rule 6 designation of members and Rule 7 removal of members, from the office. The term of office is stipulated under Rule 9. The provision relevant for the purpose of this case is Rule 11 which reads as under:-

"(1) The Chairman, Chairperson or President of the Tribunal, Appellate Tribunal or, as the case may be, Authority or the Presiding Officer of the Security Appellate Tribunal shall be paid a salary of Rs.2,50,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay.

(2) The Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or, as the case

may be, Member shall be paid a salary of Rs.2,25,000 and shall be entitled to draw allowances as are admissible to a Government of India Officer holding Group 'A' post carrying the same pay.

(3) A Presiding Officer of the Debt Recovery Tribunal or a Presiding Officer of the Industrial Tribunal constituted by the Central Government shall be paid a salary of Rs.1,44,200-2,18,200 and shall be entitled to draw allowances as are admissible to a Government of India officer holding Group 'A' post carrying the same pay.

(4) In case of a person appointed as the Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member, as the case may be, is in receipt of any pension, the pay of such person shall be reduced by the gross amount of pension drawn by him."

10. While Sub Rule 1 fixed the salary for the Chairman, Chairperson or President of the Tribunal, Sub Rule 2 fixed the salary of Vice-Chairman, Vice-Chairperson and Members of the Tribunals at Rs.2,25,000/- plus allowances that are admissible to Govt. of India officers holding a Group 'A' post carrying the same pay. It is a different matter that various aspects relating to the rules are under consideration of the Hon'ble Supreme Court. As of now, Members in the CESTAT as well as other Tribunals who are appointed

subsequent to the framing of the rules are drawing monthly salary of Rs.2,25,000/- and allowances. Whatever be the circumstances, the payment of less salary to the members who are appointed earlier, compared to those who were appointed later, cannot be supported or sustained in law. Further, the 2017 Rules do not provide for such a clarification nor there is even a remote indication, in that behalf.

11. Whether one applies the principle of a senior drawing lesser pay, compared to that of his junior, or two different sets of rules being operated in the context of payment of salary, the existing set of affairs cannot be countenanced. The exception carved out under Section 183 is in the form of protection in the context of the newly stipulated qualifications or age of superannuation. By no stretch of imagination that can be treated as a basis to deny the existing members, the benefit of the salary provided for under Rule 11 of the Rules.

12. It is a different matter that the very operation of the rules would depend upon the final outcome of the Writ Petition pending before the Hon'ble Supreme Court

in Writ Petition No.189/2017. Taking into account that aspect, we propose to confine the relief in this OA to prospective effect and leaving the issue about the entitlement of the applicants for arrears, dependent on the outcome of the proceedings pending before the Hon'ble Supreme Court.

13. We, therefore, allow the OA

- (a) directing that the applicants shall be entitled to be paid the salary in accordance with Rule 11 of Tribunal, Appellate Tribunal and other Authorities (Qualification, Experience and other Conditions of Service) Rules 2017 from the month of November, 2019 onwards.
- (b) It shall be open to the applicants, to raise the issue whether the salary provided for under Rule 11, was liable to be paid to them with effect from the date on which the said Rules came into force, once the Hon'ble Supreme Court decides the pending Writ Petition on the subject, finally.

There shall be no order as to costs. All the pending MAs shall stand disposed of.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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