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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision:26th July, 2016*

\+ W.P.(C) 6247/2016

K.S. CHAUDHARI, J (RETD.)

..... Petitioner

Through: Mr. R.R. Kumar, Adv.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Amrita Prakash, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **26.07.2016**

1. The challenge in the writ petition is, to the letter dated April 13, 2016, whereby the respondent No.1 has, in its communication to the respondent No.2 rejected the representation of the petitioner dated October 14, 2015 for stepping up of his pay to the extent of salary drawn by Dr. S.M. Kantikar, a Non-Judicial Member. The aforesaid letter dated April 13, 2016 has been passed by the respondent No.1 in compliance with the order dated March 16, 2016 passed by this Court in a earlier writ petition filed by the petitioner being W.P(C) No.2243/2016, wherein the respondents were directed to decide the petitioner's said representation within four weeks.

2. The facts are, the petitioner retired as a Judge of the High Court of Rajasthan. On May 23, 2012 he was appointed as a Member of the National Consumer Disputes Redressal Commission (for short 'NCDRC') and is at present serving as a Judicial Member of the NCDRC. At the time of joining as Member, the petitioner had opted for 'remuneration of last pay drawn less pension' as provided under Rule 11(1A) (a) of the Consumer Protection Rules, 1987. Dr. S.M.Kantikar also joined as a Member of the NCDRC on March 4, 2013. He neither retired as a Secretary to the Govt. of India nor was a retired Judge of a High Court. On August 26, 2014, a letter was issued by the respondent No.1, wherein it was decided that the pay of Dr. S.M.Kantikar shall be fixed in the 6th CPC equivalent of pay-scale of Rs.24050-26000/- (5th CPC) per month along with other benefits under Rule 11(1A) (b) of the Consumer Protection Rules.

3. It is contended by the learned counsel for the petitioner that in fact the pay of Dr. S.M.Kantikar was fixed at Rs.75,500/- with effect from March 4, 2013 under Rule 11(1A) (a). According to him, when in terms of order dated August 26, 2014, Dr. Kantikar's pay was fixed in the scale of Rs.24050-26000/- under Rule 11(1A) (b), his pay having been fixed under Rule 11(1A) (a), the petitioner is also entitled to the same benefit of

change in the fixation inasmuch he should also be allowed to get the pay fixed on basic honorarium with effect from March 4, 2013, the date when Dr. S.M.Kantikar was appointed and his pay fixed, which resulted in his drawing a higher pay than petitioner. According to him, the petitioner having been appointed earlier than Dr. S.M.Kantikar, a subsequent appointee being a junior, cannot draw a higher pay.

4. Having heard the learned counsel for the petitioner, I note that Rule 11, which relates to salary, honorarium and other allowances of the President and Members of the NCDRC provides as under:-

> *"11. Salaries, honorarium and other allowances of the President and Members of the National Commission—(1) The President of the National Commission shall be entitled to salary, allowances and other perquisites as are available to a sitting Judge of the Supreme Court.*
>
> *(lA) The other members of the National Commission appointed on whole time basis shall be entitled to the following honorarium and other allowances with effect from the 1st day of April, 2006, namely:-*
>
> *(a) the members shall be paid twenty-three thousand rupees per month by way of honorarium:*
>
> *Provided that the members, who are retired Judges of High Courts or retired Secretaries to the Government of India shall have the option to either receive consolidated honorarium of twenty-three thousand rupees per month*

or receive remuneration of last pay drawn less pension;

(b) a woman who has not held an office of profit earlier, on appointment as a member shall be entitled to a pay in the scale of Rs.24050-26000 per month along with other benefits;

(c) the members shall be provided with Government accommodation or receive house rent allowance of twenty five thousand rupees per month in lieu thereof;

(d) the members shall be paid conveyance allowance at the rate of ten thousand rupees per month, if no chauffeur driven government vehicle is provided in which event one hundred fifty liters of petrol shall be supplied or the price thereof shall be paid;

[Explanation. - For the purpose of this clause, if the members are not provided with chauffeur driven government vehicle or if the members do not opt for hired vehicle in lieu of conveyance allowance, the members shall be paid conveyance allowance per month at the rate often thousand rupees and the cost of one hundred fifty liters of petrol]

(e) the members shall be entitled to telephone facility with the maximum amount of two thousand eight hundred rupees per month reimbursable, including mobile phone and broadband facility at residence;

(f) the members shall be entitled to :-

(i) twenty days' half pay leave;

(ii) earned leave in proportion in a year in lieu of the

number of days of vacation not taken;

(in) eight days' casual leave;

(iv) leave travel concession equivalent to the entitlements of a Secretary to the Government of India to one's home town or any place in India in a block of four years;

(v) no leave encashment on leave travel concession.

(2) The members shall be entitled to traveling and daily allowances on official tours equivalent to the entitlements of Group 'A' Officers of the Central Government, including the following

(i) Within the country - Business / Club class by Air /AC 1st Class by train.

(ii) International - First Class, except for the member in the pay scale of Rs.75,800-80,000 in whose case business class travel will apply.

(3) The honorarium or the salary, as the case may be, and other allowances shall be defrayed out of the Consolidated Fund of India."

5. A perusal of aforesaid Rule would reveal that in terms of proviso to clause 11(1A) (a), the Members who are retired judges of the High Courts or retired Secretary to the Govt. Of India shall have the option either to receive consolidated honorarium or receive remuneration of '*last pay drawn less pension*'. The petitioner had given his option to receive remuneration of '*last pay drawn less pension*'. No provision has been shown, with regard to change of option. The petitioner was at liberty to

opt for a consolidated honorarium. In the absence of any rule, the option once given cannot be changed.

6. That apart, noting the relief, as prayed for by the petitioner, if granted would lead to an anomalous situation, inasmuch as the petitioner is seeking remuneration on the basis of 'last pay draw less pension' from the date of his joining on May 28, 2012 till March 3, 2013 and with effect from March 4, 2013 on consolidated honorarium. In other words, seeking both the remunerations as contemplated by the proviso clause, is impermissible under the Rule. If such a prayer is granted, the same would amount to re-writing the Rule. Remuneration received once, on an option would hold good throughout the tenure of the Member.

7. Insofar as the submission of the learned counsel for the petitioner seeking parity with the case of Dr. S.M.Kantikar inasmuch as his pay initially having been fixed under Rule 11(1A) (b) and later changed to 11(1A) (a) is concerned, Rule 11(1A) (b) is applicable to only a woman Member, who has not held an office of profit earlier, her pay shall be fixed in the scale of Rs.24050-26000/- with other benefits. Admittedly, Dr. S.M. Kantikar not being a woman Member, the Rule 11(1A) (b) shall not be applicable to him. It is only 11(1A) (a), which is applicable to his case. The respondents have at page 49 of the paper book fixed the pay of

Dr.Kantikar at Rs.75,500/- with effect from March 4, 2013 under Rule 11(1A) (a), which is the right fixation.

8. That apart, I note, the plea as urged by learned counsel for the petitioner, was not the case of the petitioner in his representations dated October 14, 2015 and November 3, 2015 that the change allowed in the case of Dr. Kantikar be allowed in his case as well. Rather, it was the case of the petitioner, that a junior Member cannot draw more salary than a senior. Insofar as this submission is concerned, I note, the appointment in the NCDRC is made in terms of Section 20(3) of the Consumer Protection Act, 1986. The same is reproduced as under:-

> *"20(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:*
>
> *Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:*
>
> *Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) :*
>
> *Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such*

resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned."

9. A perusal of the Rule would show that the appointment of a Member is tenural; for a term of 5 years or up to the age of 70 years, whichever is earlier. When appointment is on tenural basis, there is no concept of seniority. As such, the concept of stepping up of pay shall not be applicable in such appointments. The petitioner is not entitled to the reliefs as prayed for. The petition is dismissed.

V. KAMESWAR RAO, J

JULY 26, 2016/*ak*