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

+ **LPA 286/2019 & CM APPL.20155/2019 (stay)**

UNION OF INDIA & ANR Appellants

Through: Mr.Arun Bhardwaj, Advocate.

versus

SHANKER RAJU Respondent

Through: Respondent in person.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
30.04.2019

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Dr. S. Muralidhar, J.:

1. The Union of India has in this appeal challenged an order dated 23rd January 2019 passed by the learned Single Judge allowing the writ petition filed by the Respondent and declaring that he is for the purposes of calculating the 'qualifying service' for pension, entitled to add 10 years of his practice at the bar along with his service as Member (Judicial) of the Central Administrative Tribunal ('CAT') as in the case of those Members (Judicial) of CAT appointed after 19th February 2007.

2. The facts in brief are that the Petitioner was enrolled as an Advocate with the Bar Council of Delhi on 12th October 1984. He was appointed Member (Judicial) in the CAT, Principal Bench, on 12th October 2000. At the end of the Respondent's initial term of appointment as Member (Judicial) for 5

years, he was granted an extension by another term of 5 years. He demitted office on 10th December 2010.

3. The Respondent's appointment as such was governed by the CAT (Salaries and Allowances and Conditions of Service of Members) Rules, 1985 ('1985 Rules'). The formula for pension on completion of 2 years of service was @ Rs.4716/- per annum for each completing year of service. Pension was fixed as per Part III of the First Schedule to the High Court Judges Conditions of Services Act, 1954 ('HCJ Act'). The pension formula was amended on 22nd July 2009 by replacement of per annum amount for pension as Rs.14532/- with effect from 1st January 2006. The pension of the Respondent as per the amended formula of 2009 was fixed at Rs.12,110/- per annum. This was based only on his ten years' service as Member (Judicial) without adding a further 10 years of practice at the bar to the period of 'qualifying service' for pension.

4. The Young Lawyers Association (Registered) filed a public interest litigation ('PIL') in this Court *inter alia* seeking a mandamus to the Govt. of NCT of Delhi ('GNCTD') that the actual period of practice at the bar, subject to a maximum 15 years, should be added to the total qualifying service while computing the pension and other retiral benefits in the case of direct recruits in the Delhi Higher Judicial Service. This Court in ***All India Young Lawyers Association (Registered) v. GNCTD 2006 (128) DLT 29*** allowed the prayer and directed that Rule 26 (B) should be inserted in the Delhi Higher Judicial Services Rules, 1970 and weightage of 15 years of practice or such other number of years of practice at the bar, whichever is

less, should be given to the direct recruits while computing their pension and other retiral benefits.

5. The said judgment was appealed against in the Supreme Court. In ***Government of NCT of Delhi v. All India Young Lawyers Association (Registered) (2009) 14 SCC 49*** the Supreme Court partly allowed the appeal and deemed it appropriate to direct that ‘10 years practice at the bar or such other number of years or whichever is less, should be added while computing pension and other retiral benefits in the case of a direct recruit through the DHJS’. In order to be eligible for pension, a person should have completed at least 10 years as DHJS.

6. Meanwhile, in 2006, an amendment was carried out in the Administrative Tribunals Act, 1985 (‘AT Act’) by Administrative Tribunals (Amendment) Act 2006 with effect from 19th February 2007. Under Section 6 (2) (b) a person shall not be qualified for appointment as “a Judicial Member, unless he is or has qualified to be a Judge of a High Court or he has for at least two years held the post of a Secretary to the Government of India in the Department of Legal Affairs or the Legislative Department including Member- Secretary, Law Commission of India or held a post of Additional Secretary to the Government of India in the Department of Legal Affairs and Legislative Department at least for a period of five years.” It is important to note that the qualification that the candidate “is or has qualified to be a Judge of a High Court” existed even prior to the amendment and this was satisfied by the Respondent in the present case. Under the amended Section 8 (3) of the AT Act, the “conditions of service of Chairman and Members

shall be the same as applicable to Judges of the High Court.” The formula for calculation of a pension of a Member (Judicial) CAT remained unchanged. It was on the basis of common formula to be found under Part III of the First Schedule of the HCJ Act.

7. Further a new Section 10 A was introduced in the AT Act which read thus:

“10A. Saving terms and conditions of service of Vice- Chairman.-

The Chairman, Vice-Chairman and Member of a Tribunal appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force:

Provided that, however, such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Amendment) Act, 2006 , may on completion of their term or attainment of the age of sixty- five or sixty- two years, as the case may be, whichever is earlier may, if eligible in terms of section 8 as amended by the Administrative Tribunals (Amendment) Act, 2006 be considered for a fresh appointment in accordance with the selection procedure laid down for such appointments subject to the condition that the total term in office of the Chairman shall not exceed five years and that of the Members, ten years.”

8. The fact that on 22nd July 2009, the 1985 Rules were amended to implement the recommendations of the Sixth Central Pay Commission and the pension payable to those who were appointed before 19th February 2007 was revised from Rs.7074 to Rs. 14,532 per annum with effect from 1st

January 2006, was an indication that irrespective of Section 10 A introduced in the AT Act by the 2006 amendment, the pension payable even to those appointed prior to 19th February 2007 was amenable to revision. Further, it was linked to the pension payable to Judges of the High Court, for the purpose of calculating as a proportion thereof as per the formula under Part-III of the First Schedule to the HCJ Act.

9. One Shri J.K.Kaushik, a former Member (Judicial) CAT, made a request for revision of pension for those who had retired after 1st January 2006. In a reply dated 4th March 2010 given to him by the Department of Personnel and Training ('DOPT'), Ministry of Personnel, Public Grievances and Pensions, Government of India he was informed that his request could not be acceded to 'as pension of members of the CAT was never fixed on the basis of pension formula applicable to Government servants'. It was pointed out that the service conditions of Members of the CAT were governed by the 1985 Rules amended from time to time and the payment of pension was 'always linked with the pension of High Court Judges.' It was fixed on the basis of a common formula under Part III of the First Schedule to the HCJ Act. Shri Kaushik was reminded that while Government servants were eligible for pension only after completion of 10 years' service, Members of CAT will eligible for pension after completion of 2 years service.

10.1 The question whether High Court Judges appointed from the bar under Article 217 (2) (b) of the Constitution of India, on retirement were entitled for an addition of 10 years to their qualifying service for the purposes of their pension arose for consideration in the Supreme Court in

P.Ramakrishnam Raju v. Union of India (2014) 3 S.L.R. 599. The Supreme Court was approached with a number of petitions under Article 32 of the Constitution by former judges of the various High Courts as well as by the association of retired judges of the Supreme Court and the High Courts, elevated from the bar.

10.2 The Supreme Court took note of its judgment in ***Kuldip Singh v. Union of India (2002) 9 SCC 218***. In that case, an interim order had been passed by the Supreme Court on 24th September 2002 pursuant to which Section 13A was added to the Supreme Court Judges (Salaries and Conditions) of Service Act, 1958 ('SCJ Act') stating that a period of 10 years shall be added to the service of a Judge who qualified for appointment as such under Article 124 (3) (b) of the Constitution, for the purposes of his pension. Consequent thereto, the writ petition was dismissed as withdrawn.

10.3 The Supreme Court in ***P.Ramakrishnam Raju v. Union of India (supra)*** also took note of the decision in ***All India Young Lawyers Association (Registered) v. GNCTD (supra)***. While allowing the claim, the Supreme Court declared that for pensionary benefit, 10 years practice as an advocate be added as qualifying service for the Judges elevated from the bar. Further, in order to remove the arbitrariness in the matter of pension it was directed that the reliefs are to be reckoned from 1st April 2004 the date on which Section 13A was inserted in the HCJ Act and the SCJ Act. *Inter alia*, it was observed as under:

“24. When persons who occupied the Constitutional Office of Judge, High Court retire, there should not be any discrimination

with regard to the fixation of their pension. Irrespective of the source from where the Judges are drawn, they must be paid the same pension just as they have been paid same salaries and allowances and perks as serving Judges. Only practicing Advocates who have attained eminence are invited to accept Judgeship of the High Court. Because of the status of the office of High Court Judge, the responsibilities and duties attached to the office, hardly any advocate of distinction declines the offer. Though it may be a great financial sacrifice to a successful lawyer to accept Judgeship, it is the desire to serve the society and the high prestige attached to the office and the respect the office commands that propel a successful lawyer to accept Judgeship. The experience and knowledge gained by a successful lawyer at the Bar can never be considered to be less important from any point of view vis-a-vis the experience gained by a judicial officer. If the service of a judicial officer is counted for fixation of pension, there is no valid reason as to why the experience at Bar cannot be treated as equivalent for the same purpose.

25. The fixation of higher pension to the Judges drawn from the Subordinate Judiciary who have served for shorter period in contradistinction to Judges drawn from the Bar who have served for longer period with less pension is highly discriminatory and breach of Article 14 of the Constitution. The classification itself is unreasonable without any legally acceptable nexus with the object sought to be achieved.

26. The meagre pension for Judges drawn from the Bar and served for less than 12 years on the Bench adversely affects the image of the Judiciary. When pensions are meagre because of the shorter service, lawyers who attain distinction in the profession may not, because of this anomaly, accept the office of Judgeship. When capable lawyers do not show inclination towards Judgeship, the quality of justice declines.”

11. The case of the Respondent was that the CAT was constituted under

Article 323A of the Constitution of India and the eligibility of a Member (Judicial) appointed from the bar was the same as laid down for High Court Judges under Article 217 of the Constitution of India. The Respondent gave representations on 15th February 2016 and 7th March 2016 seeking the extension of the benefits of the judgments in ***P.Ramakrishnam Raju*** (*supra*) and ***All India Young Lawyers Association (Registered)*** (*supra*) to Members (Judicial) of the CAT who had been appointed prior to 19th February 2007.

12. One retired Member (Judicial) who had been appointed to the CAT from the bar, Shri N. Dharmadan filed W.P. (C) 301670 of 2014 before the High Court of Kerala. He had served as Member (Judicial) between 10th July 1989 and 9th July 1994. In his writ petition he sought directions to Respondent to fix his pension and gratuity by reckoning his qualifying service as 15 years. On 26th October 2016 the Central Government informed the Kerala High Court that the matter was gaining its attention. The writ petition was disposed of directing the Central Government to ‘consider the past orders of the Petitioner’s claim along with those similarly situated persons.’

13. Thereafter, there were several requests made to the DOPT forwarding representations of the former Member (Judicial) appointed from the bar for adding 10 years of practice for the purpose of qualifying service for the purposes of pension.

14. By an order dated 13th September 2017 issued in reference to the case of Shri Dharmadan, it was decided by the DOPT that only those Members (Judicial) appointed from the bar on or after 19th February 2007 were being

considered for addition of 10 years practice for pension consequent upon the judgment of the Supreme Court in ***P.Ramakrishnam Raju*** (*supra*) case.

15. By a subsequent communication dated 15th November 2017, the DOPT reiterated that only the 17 Members (Judicial) appointed between 19th February 2007 and 31st May 2017 were eligible to be considered for the benefits in terms of the orders of the Supreme Court and the proposal of such Members (Judicial) were under consideration of the Government. The explanation offered by the Respondent was that the conditions of service of the Chairman and Members of the CAT were made equivalent to those Judges of the High Court by the Administrative Tribunals (Amendment) Act, 2006 with effect from 19th February 2007. Prior to this their conditions of service were regulated by the 1985 Rules. Therefore, only those Members (Judicial) appointed from the bar on or after 19th February 2007 were to be considered for grant of pensionary benefits in light of judgment in ***P.Ramakrishnam Raju*** (*supra*).

16. Shri N. Dharmadan went back to the High Court of Kerala questioning the above decision. A learned Single Judge allowed the writ petition by a judgment dated 5th April 2018 holding that the cut off date of 19th February 2007 fixed for the purpose of extension of benefit of the judgment in ***P.Ramakrishnam Raju*** (*supra*) is unreasonable and arbitrary. It was held that Section 10 A of the AT Act “cannot stand in the way of extending the benefit of the judgment in *Ramakrishnam Raju’s* case.” This Court is informed that the appeal against the above decision is pending before a Division Bench of the Kerala High Court.

17. The learned Single Judge has in the impugned judgment in the present case agreed with the Respondent that there is no rational basis for discriminating between Members (Judicial) of the CAT appointed from the bar prior to 19th February 2007 and those appointed thereafter for addition of 10 years practice at the bar for the purposes qualifying service for pension. The learned Single Judge referred to explanation (aa) appended to Article 217 (2) of the Constitution which states that:

“in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or State, requiring special knowledge of law after he became an advocate.”

18. It was held that once the eligibility condition for being appointed as Member (Judicial) was equated with that of a Judge of the High Court, there was no rational basis for denying the Members (Judicial) appointed from the bar prior to 19th February 2007, the benefit of addition of 10 years of bar practice for the purposes of pension.

19. It was pointed out by Mr.Arun Bhardwaj, learned counsel appearing for the Appellant, that Shri A.K.Behra had filed W.P. (C) 261 of 2007 challenging the amended Section 8 (3) of the AT Act. There the Supreme Court was considering whether the denial of an extension of the tenure of a Member (Judicial) in terms of the amended AT Act was violative of Article 14 of the Constitution? While rejecting the said challenge, the Supreme Court observed:

“the Parliament, in exercise of powers under Article 323A of the Constitution, has the right to change the service conditions of Members of the Administrative Tribunals. The service conditions of Members have been upgraded to that of a High Court Judge, which cannot be regarded as illegal or unconstitutional. A Member who was appointed prior to 19.02.07, cannot claim for extension of his term for a further period of five years as per the qualification laid down in the unamended Act, since the eligibility conditions of Members appointed prior to and after 19.02.07 are different.”

20. On the above basis it is sought to be argued by Mr. Bhardwaj that there are two classes of Member (Judicial) of the CAT - those appointed prior to 19th February 2007 and those appointed thereafter. Therefore, they cannot be treated at par even for the purposes of pension.

21. The Court is unable to agree with the submission. The question here is not about the eligibility to be appointed as Member (Judicial) of the CAT. Here, the question is about adding 10 years of practice at the bar to the qualifying service for the purposes of pension. It is nobody's case that Respondent did not fulfil the eligibility condition for being appointed as Member (Judicial) of the CAT and being given a further extension for another 5 years. Those appointed as Members (Judicial) from the bar prior to 19th February 2007 and those appointed thereafter form the same class. They are from the same source. The object of the amendment brought about with effect from 19th February 2007 is to treat such Members (Judicial) appointed from the bar no different from those appointed from the bar as Judges of the High Court. Even for the purposes of pension, as is evident from the response of the DOPT, there was to be no difference between Members

(Judicial) appointed from the bar and those appointed from the bar as Judges of the High Court. What is sought to be done is to take the date 19th February 2007 as a marker for creating two classes of Members (Judicial) based on their dates of appointment. This creating of a ‘class within a class’ is not based on any intelligible differentia. It defeats the objective of equating Members (Judicial) of CAT with Judges of the High Court for the purposes of their terms and conditions of service.

22. Once the legislature decided to equate the terms of service of Members (Judicial) of the CAT with that governing Judges of the High Court, it is plain that among Members of CAT there can be no discrimination between those appointed prior to 19th February 2007 and those appointed thereafter only for the purposes of pension. They do not come from different sources but from the same source i.e. the bar. The law in relation to this is well settled.

23. The question in *S. Seshachalam v. Chairman Bar Council of Tamil Nadu AIR 2015 SC 816* was whether the denial of payment of Rs. 2 lakhs under the Tamil Nadu Advocates’ Welfare Fund Act to the kin of Advocates who enrolled after retiring from service and were receiving pension, gratuity and terminal benefits was violative of Article 14 of the Constitution? Upholding the law the Supreme Court held that “there is reasonable classification between the advocates who had set up practice after demitting their office from the Central/State government/Organization and advocates who have set up practice straight from the law college.” It was held that “retired officials who joined legal profession constitute a

separate class and the disentitlement of the benefit of lump sum welfare fund to this group of advocates cannot be said to be unreasonable.” In that process, the Supreme Court explained:

“21. Article 14 of the Constitution of India states that "The State shall not deny to any person equality before the law of the equal protection of the laws within the territory of India". Article 14 forbids class-legislation but it does not forbid reasonable classification. The classification however must not be "arbitrary, artificial or evasive" but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred whom and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfill the following two conditions:- Firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary

is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.”

24. In the present case, the artificial classification of two groups of Members (Judicial) CAT only for the purposes of pension based on an arbitrary cut off date fails the above twin test under Article 14 of the Constitution. Neither is it based on an intelligible differentia ‘which distinguishes persons or things that are grouped together from others left out of the group’ nor does it have a rational nexus to the object sought to be achieved by the amendments to the AT Act which became effective from 19th February 2007.

25. The object of the said amendment is to ensure that the best possible talent from the bar is able to be attracted for appointment as Member (Judicial) of the CAT. Even in ***P.Ramakrishnam Raju*** (*supra*) it was observed when persons holding constitutional office retired from service, discriminating amongst them in the matter of fixation of their pensions depending upon the source from which they are appointed ‘is in breach of Articles 14 and 16(1) of the Constitution.’ It was re-emphasized that ‘one rank one pension must be the norm in respect of constitutional office.’ The CAT is a judicial body recognised as such under Article 323 A of the Constitution. The law explained in ***P.Ramakrishnam Raju*** (*supra*) with regard to judges of the High Court will apply on all four to Members (Judicial) of CAT.

26. Just as was done in ***P.Ramakrishnam Raju*** (*supra*), in order to eliminate arbitrariness in its application, the benefit of the amendment to the AT Act

should be reckoned from 19th February 2007, the date of the amendment. There are at least two approaches to implementing the above decision. One is to treat the phrase "to be reckoned from" used by the Supreme Court in the said decision to mean that the benefit of adding 10 years' practice will be available to all retired High Court judges after 1st April 2004 irrespective of their dates of appointment. A more conservative approach is to confine the relief to those retiring or ceasing to hold office after that date.

27. Even if one adopts the more conservative approach flowing from the decision in ***P.Ramakrishnam Raju*** (*supra*), the relief flowing from the 2006 amendment to the AT Act shall be available to all Members (Judicial) serving as such as on the date of the amendment i.e. 19th February 2007 irrespective of their dates of initial appointment. The other scenario viz., concerning those like Shri N Dharmadan who ceased to be Members (Judicial) prior to 19th February 2007 need not be examined here. That question will be answered in the proceedings concerning Shri Dharmadan which are pending. As far as the Respondent here is concerned, since he was serving as Member (Judicial) on 19th February 2007, even adopting the more conservative approach, he will be entitled to have ten years of practice at the bar for purposes of qualifying service for pension.

28. Mr. Bhardwaj placed reliance on the decision in ***Union of India v. S.R.Dhingra*** (2008) 2 SCC 229 to argue that Article 14 has no application in a situation where two sets of employees of the same rank retiring at different points of time are paid different rates of pension. In that decision it was observed that 'the employer can fix a cut off date for introducing a new

pension/retirement scheme or for discontinuance of any existing scheme.’ It was further observed that an introduction of a benefit retrospectively or prospectively fixing a cut off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment would still be discriminatory.

29. In the present case, there was no introduction of a new scheme of pension on 19th February 2007. On the contrary the conscious decision to equate the terms of services of the Chairman and Members of the CAT with those of High Court Judges was given effect to. By denying those appointed as Members (Judicial) of the CAT prior to 19th February 2007 the benefit of adding the years of practice at the bar to the qualifying service for pension, the Respondents are in fact seeking to divide one class of persons viz., Members (Judicial) of CAT into two groups and subjecting them to different treatment. This has been held to be impermissible in a large number of decisions including *D.S. Nakara v. Union of India* (1983) 1 SCC 305, *Krishna Kumar v. Union of India* (1990) 4 SCC 207, *Indian Ex-Services League v. Union of India* (1991) 2 SCC 104, *V. Kasturi v. Managing Director, State Bank of India* (1998) 8 SCC 30 and *Union of India v. Dr. Vijayapurapu Subbayamma* (2000) 7 SCC 662.

30. Consequently, this Court finds no error having been committed by the learned Single Judge in negating the plea of the Appellant that for the purposes of pension, Members (Judicial) of the CAT appointed prior to 19th February 2007 and serving as such on that date would not be entitled to add 10 years of their practice in the bar to the qualifying service.

31. No grounds have been made out for interference. The appeal is accordingly dismissed. The application is also dismissed.

CM APPLs.20157/2019 & 20158/2019 (exemption)

32. Allowed, subject to all just exceptions.

CM APPL.20156/2019 (delay)

33. For the reasons explained in the application, the delay in filing the appeal is condoned. The application is allowed.

CAV 456/2019

34. The Respondent who is in person has entered appearance. The caveat is discharged.

S.MURALIDHAR, J.

I.S.MEHTA, J.

APRIL 30, 2019

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(corrected and uploaded on 9th May, 2019)