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

Reserved on: 17.01.2019

Pronounced on: 23.01.2019

+ W.P.(C) 3223/2018 & CM APPLN. 13994/2018 & 24073/2018

SHANKER RAJU

..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Abhay Prakash, CGSC for UOI.
Mr. Arun Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby quashing and setting aside impugned orders dated 15.11.2017 and 13.09.2017. Consequently, declare the petitioner to be entitled to the benefit of judgments in *Government of Nct of Delhi and Ors. vs. All India Young Lawyers Association (Registered) and another: (2009) 14 SCC 49* and *P. Ramakrishnam Raju vs. Union of India & Ors.* decided in Supreme Court in *W.P.(C) 521/2002* and further direct the respondents to add ten years practice of the petitioner as an Advocate at Bar, towards qualifying service.

Consequently, revised the Pension and Gratuity of the petitioner and arrears be calculated and disbursed to the petitioner by issuing of a revised PPO, including incorporation of Family Pension.

2. The brief facts of this case are that the petitioner is a Law Graduate and was enrolled as an Advocate with Bar Counsel of Delhi on 12.10.1984. The petitioner was appointed as Member (Judicial) in Central Administrative Tribunal, Principal Bench on 12.10.2000. At the time of appointment, the petitioner was governed by CAT (Salaries and Allowances and Conditions of Service of Members) Rules, 1985. The petitioner was treated at par with the Additional Secretary to the Government of India, but in case of no express provision regarding conditions of service at par with secretary to the Government of India. The formula for Pension on completion of two years of service was at a rate of ₹4,716/- per annum for each completed year of service and the Pension was fixed as per Part III of Schedule of High Court Judges Conditions of Service Rules, 1954. The Pension formula was amended on 22.07.2009 by replacement of per annum amount for pension as ₹14,532/- per annum w.e.f. 01.01.2006. Copy of Service Rules are at annexure P-3 (Colly).

3. Further case of the petitioner is that he was initially appointed for a

term of five years and was extended for another term of five years. The petitioner demitted office on completion of his tenure on 10.12.2010. The pension of the petitioner on the formula as per 2009 Rules was fixed as ₹12,110/- per month. In a PIL filed on behalf of the Bar regarding addition of practice of ten years at Bar to the direct recruits to Delhi Higher Judicial Service was laid at rest by the Hon'ble Supreme Court in case of ***All India Young Lawyers Association (Supra)*** by holding that weightage of practice at Bar while computing pension and other retiral benefits would attract the best talent. Accordingly, ten years practice at Bar has been given weightage to direct recruits in Judicial Service. In year 2006, an amendment was carried out in A.T. Act, 1985 effective from 19.02.2007, whereby the service conditions of members of the Central Administrative Tribunal were brought at par with that of High Court Judges.

4. Mr. Shankar Raju, the petitioner in person submitted that the Hon'ble Supreme Court in a Constitution Bench Judgment in ***L.Chandrakumar vs. UOI: 1997 (3) SCC 261*** held the status of Central Administrative Tribunal as Court of first instance and also upheld the eligibility of an Advocate to be appointed as Member (Judicial) to be same as eligibility to the High Court Judge under Article 217 of the Constitution of India. This qualification of

ten years practice at Bar has not been altered as a qualification for a Member (Judicial) under the A.T. Amended Act, 2006 i.e., post 19.02.2007.

5. The pension of a Member (Judicial), irrespective of the appointment under Unamended or Amended A.T. Act, 1985 is fixed on the basis of a common formula i.e., Under Part III of First Schedule of High Court Judges (Salaries & Conditions of Service) Act, 1954. This has been admitted by the DOPT in an information furnished to Ex-Judicial Member, CAT, Sh. J. K. Kaushik on 08.04.2010 under RTI Act, 2005 which is at Annexure P-5 (Colly). The petitioner demitted office on completion of tenure of ten years on 10.12.2010. The pension was fixed on the basis of formula adopted by the DOPT reckoning only ten years service of the petitioner. Before the Hon'ble Supreme Court in various Writ Petitions including of P. Rama Krishnam Raju (supra), a question as to addition of ten years practice for the purposes of pension to the High Court Judges appointed from Bar was deliberated and adjudicated. The Hon'ble Supreme Court while discussing various provisions of Conditions of Service also relied upon the decision in *All India Young Lawyer Association (Supra)*. In this furtherance, the Hon'ble Court discussed three tier judicial system under the Constitution and discussed the case of Advocates, being Members of the Bar to join

Higher Judicial Services and on retirement get benefit of ten years addition to their service and observed the following in paras 19 and 24 of the Judgment in ***P. Rama Krishna Raju (Supra)***:-

“19) The Explanation (aa) appended to Article 217(2) of the Constitution of India envisages 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 a State, requiring special knowledge of law after he became an Advocate.” The explanation thus treats the experience of an Advocate at the Bar and the period of judicial office held by him at par.

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 advocates 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 counter 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.

6. Mr. Raju, further submitted that though the issue pertain to Judges appointed in High Court from the Bar, the Question of Law i.e., *ratio decidendi* was regarding counting of service of a Judicial Officer appointed on direct recruitment basis and counting of experience at Bar, being equivalent was found to be discriminatory in violation of Article 14 and 16 of the constitution. The concept of One Rank One Pension was treated as a must norm.

7. The petitioner in person further submitted that the Central Administrative Tribunal was constituted under Article 323A of the Constitution of India. The eligibility of a Member (Judicial) appointed from the Bar was *Mutatis-Mutandis* as laid down for High Court Judges under Article 217 of the Constitution of India. The DOPT vide communication dated 12.11.2015 addressed to CAT regarding pensionary benefits to Members (Judicial) coming from Bar, in the light of judgment of the Hon'ble Supreme Court consulted the Department of Expenditure and Justice and forwarded comments to the CAT for furnishing requested information. Copy of the communication is at Annexure P-7. The CAT furnished information to the DOPT on 11.01.2016 *inter alia*, contending that

prior to the amendment of the A.T. Act, the pension was calculated under CAT (Conditions of Service) Rules, 1985 and after the amendment, at par with High Court Judges under Part III of the First Schedule of Act of 1954. It was further informed that in 2009, CAT Act was further amended to raise the amount of pension and recommended addition of ten years practice as qualifying service, in case of Sh. N. Dharmadan, Retired Member (Judicial) prior to 19.02.2007 vide Annexure P-8. The petitioner made a representation to the DOPT on 15.02.2016 for fixation of pension reckoning Full Pension, as per DOPT OM dated 10.12.2009 as per High Court judges Act, 1954 vide Annexure P-9 (Colly). The petitioner, by way of a representation dated 07.03.2016 has sought extension of benefit of judgment in P. Rama Krishna Raju and All India Young Lawyers Association's case on various legal grounds vide Annexure P-10. The Family Pension was introduced in CAT and accordingly, a revised PPO was issued to the petitioner on 06.06.2016 vide Annexure P-11. It is further submitted that the CAT forwarded the representation of Member (Judicial) appointed from Bar for addition of ten years service as qualifying service to the DOPT. An information sought by the petitioner under RTI Act, 2005 divulged that a favourable note for addition of ten years practice to the petitioner, being pre-appointee of

19.02.2007 was sent to DOPT. Since matter pertaining to the same issue was sub-judice, before Hon'ble Kerala High Court, the DOPT informed the petitioner on 06.09.2016 that the matter is under consideration in consultation with Departments of Justice & Expenditure. The above documents are at Annexure P-12 (Colly).

8. It is further submitted that Retired Member (Judicial) from Bar Sh. N. Dharmadan filed W.P.(C) 30170/2014 before the Hon'ble High Court of Kerala at Ernakulam. The said petition was disposed of vide order dated 26.10.2016 on the statement of Central Government that the grievance of the petitioner therein, is being considered, to pass orders on the claim of the petitioner and other similarly situated persons. The said order is at annexure P-13.

9. The CAT in various communications to the DOPT forwarded the representation for Member (Judicial) appointed from Bar. DOPT vide its communication dated 02.06.2017 asked for particulars of Member appointed from Bar post 19.02.2007 only and this information was sent by the CAT, including the name of the petitioner. A communication from CAT dated 10.07.2017 and 25.08.2017 included the name of the petitioner in the list on the ground that though the DOPT has sought information regarding

Members appointed from 19.02.2007 to 31.05.2017, but the petitioner is also entitled to addition of ten years practice, as they are drawing Pension as per High Court Judges (Service Condition) Rules. The copy of the above referred documents are at Annexure P-14 (Colly).

10. The petitioner with a reference to DOPT letter dated 23.08.2017, whereby for addition of ten years service, only particulars of Members appointed from Bar post 19.02.2007 were called from CAT, made a representation to DOPT on 14.09.2017 taking number of legal grounds and referring to the discrimination meted out to the petitioner vide Annexure P-15. However, by an impugned order dated 13.09.2017 issued in reference to Sh. N. Dharmadan pursuant upon the judgment of Hon'ble High Court of Kerala to State that only Members who have been appointed from Bar on or after 19.02.2007 are being considered for addition of ten years practice for pension, pursuant upon judgment of the Supreme Court.

11. The petitioner submitted that it was on an irrational and arbitrary ground that the petitioner and other identical situated were appointed as Judicial (Member) under the Conditions of Service of 1985 and those Members appointed post 19.02.2007 had service conditions at par with High Court Judge. In this decision, the DOPT has violated Article 14 of the

Constitution of India and in oblivion of the fact that the petitioner's Pension was also determined under High Court Rules and that addition of ten years practice has nothing to do that High Court Judge or Conditions of Service. The discriminatory attitude and misinterpretation of judgment of Hon'ble Supreme Court resulted in denial of Fundamental Right of the petitioner. Copy of the impugned order is at Annexure P-2.

12. The petitioner further submitted that by another impugned communication/order addressed to Central Administrative Tribunal (CAT) by DOPT dated 15.11.2017, the earlier stand taken in order dated 13.9.2017 has been reiterated and only 17 members (Judicial) appointed from bar, post 19.2.2007 have been made entitled to the benefit vide Annexure P-1.

13. The petitioner pursuant upon decision of the DOPT dated 15.11.2017 made a representation for reconsideration of the issue vide representation dated 8.1.2018 which is at Annexure P-16. The said representation was favorably recommended by the CAT to the DOPT to take a decision vide communication dated 17.1.2018 vide Annexure P-17.

14. It is further submitted by the petitioner that in the relevant truncated High Court Judges, Conditions of Service Act, 1954, whereby in First Schedule Part III, the formula for determination of Pension meant for High

Court Judges is *mutatis mutandis* adopted by DOPT for fixing and revising the pension of the petitioner which is at Annexure P-18.

15. Pursuant upon the judgment of Hon'ble the Supreme Court in ***Ramakrishnam Raju vs. Union of India: 2014 (2) KLT 218*** (Supra), an amendment has been carried out in the High Court Judges Act, whereby in Schedule I part III, the minimum pension has undergone and upward revision to ₹45,016/- per completed year of service. The petitioner made a representation to the CAT for revising the pension of the petitioner in accordance with the amendment, which is pending implementation. The copy and Notification and request of the petitioner is at Annexure P-19 (Colly).

16. The petitioner further submitted that right to pension is a fundamental right of the petitioner under the Constitution of India. Above all, entitlement for correct and appropriate pension without any discrimination is also an important legal right of the petitioner. The respondents have misinterpreted and misunderstood the judgment of Hon'ble Supreme Court in ***P Ramakrishnam Raju (Supra)***. The respondents have taken the ratio of this judgment as to applicability only to High Court Judges. In this misconceived stand, the respondents have taken stand that Judicial Members

appointed from Bar, post 19.2.2007 are entitled for addition of ten years practice towards qualifying service. It is pertinent to note that after 19.2.2007, the service conditions of a member was brought at par with a High Court Judge. However the amendment has not bestowed a status of High Court Judge to the Judicial Members appointed on or after 19.2.2007.

17. In this view of the matter, if the interpretation and understanding of DOPT is accepted, then even the Judicial Members appointed after 19.2.2007 are not entitled to count ten years practice as they are not High Court Judges. What went in oblivion of DOPT is a fact that the question of law decided by the Hon'ble Supreme Court was not directed towards only High Court Judges, but has uniform and universal application to an advocate appointed on a judicial post directly with more than ten years practice at Bar. Accordingly, the Hon'ble Supreme Court has referred to the decision pertaining to higher judiciary in the judgment of ***P Ramakrishnam Raju***. What is required for addition of ten years practice to a Member (Judicial) appointed on direct recruitment basis towards qualifying service is that he should have been appointed on a judicial post. In fact, there is virtually no difference between a member (Judicial) appointed from Bar pre or post 19.2.2007. Both categories hold a judicial post of court of first instance

under the constitution of India. The eligibility conditions for appointment are identical. The pension of pre 19.2.2007 appointee Member (Judicial) from bar is fixed under High Court Act and Rules.

18. It is further submitted that the judgment in ***P Ramakrishnam Raju*** has laid down the *ratio decidendi* to the above effect. However, the respondents in understanding the judgment arbitrarily discriminated the petitioner on the facts of the case by misconstruing it in oblivion of judgments of Hon'ble Supreme Court in ***L Chandrakumar and All India Young Lawyers Association (Supra)***. This has prejudiced the petitioner and deprived him of Rightful Pension as compared to post 19.2.2007 appointees. Thus, the present petition deserves to be allowed.

19. On the other hand, Mr. Abhay Prakash, learned standing counsel for the Central Government submitted that the conditions of service of Chairmen and members of CAT were made equivalent to those applicable to Judges of the High Court pursuant to the amendment Act, 2006. Provisions of said amendment Act of 2006 came into force with effect from 19.2.2007. Before this amendment of 2006, the conditions of service of the Chairmen and members were regulated by the CAT (Service and allowances and conditions of service and chairman, vice chairman and members), Rules,

1985. The conditions of service of Chairman and Members of the Central Administrative Tribunal (CAT) have been amended and made equivalent to those applicable to Central Group A officers, under Finance Act, 2017 and under the new rules notified on 1.6.2017 are under judicial review before the Hon'ble Supreme Court of India.

20. Pursuant to the judgment of the Hon'ble Supreme Court, in WP (C) No. 521/2002 for reckoning 10 years' practice as an advocate for qualifying service for pensions of Judges of High Courts elevated from the Bar, the respondents have received representations from Judicial Members of CAT (appointed from Bar), with a request to grant similar benefits as they have also been practicing as an Advocate before the appointment to the post of Judicial Members in CAT and their service conditions were the same as applicable to Judges of the High Court.

21. Learned counsel further submitted that the matter was considered by the respondents in consultation with the Department of Legal Affairs and Department of Expenditure. As per rules dated 1.6.2017, service conditions of the Chairman and Members of CAT were amended and the conditions as applicable to Central Group A officers were made applicable to the Chairman and Members of CAT.

22. Therefore, in the light of the Supreme Court's order in *P Ramakrishna Raju vs. UOI & Ors. (Supra)*, it was decided that only those Judicial Members of CAT, who were appointed from Bar between 19.2.2007 to 31.5.2017, are to be considered eligible for grant of pensionary benefits.

23. Accordingly, the Judicial Members including the applicant, (petitioner herein), who was appointed before 19.2.2007 and therefore, are covered by the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 were intimated of the respondent's decision. The true copy of the intimation to the Judicial Members is annexed as Annexure A-1.

24. Accordingly, the present petition deserves to be dismissed.

25. I have heard learned counsel for the parties.

26. The pension payable to the Members of CAT is linked with the Pension of High Court Judges under Part III of 1st Schedule of High Court Judges (Salaries and Conditions of Service) Act, 1954. Since the status of the Member (Judicial) appointed before 19.02.2007 is equal to the Additional Secretary to the Government of India, the Pension is to be fixed proportionally to the Pension per annum payable to the Judge of High Court under Part III of Schedule 1. This fact has been admitted by the DOPT while

answering information sought by Ex-Member (Judicial) Sh. J.K.Kaushik under RTI Act, 2005 on 8.4.2010.

27. The Hon'ble Supreme Court while dealing with the case of a direct recruit to Delhi Higher Judicial Service in All India Young Lawyers Association Case referred to in **Ramakrishnam Raju's** case, held that 10 years practice at the Bar should be added for computing Pension. The said case did not pertain to a High Court Judge, but concerned higher judicial services at District Judge level. The Supreme Court in a subsequent judgement of **P. Ramakrishnam Raju** (Supra) upheld and reiterated the judgement in All India Young Lawyers Association and directed addition of 10 years service in view of Part I and III of the Judges conditions of service by holding as under:

“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 meager 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 meager 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.

27) In most of the States, the Judgeship of the High Court is offered to advocates who are in the age group of 50-55 years, since pre-eminence at the Bar is achieved normally at that age. After remaining at the top for a few years, a successful lawyer may show inclination to accept Judgeship, since that is the culmination of the desire and objective of most of the lawyers. When persons holding constitutional office retire from service, making discrimination in the fixation of their pensions depending upon the source from which they were appointed is in breach of Articles 14 and 16(1) of the Constitution. One rank one pension must be the norm in respect of a Constitutional Office.

28) When a Civil Servant retires from service, the family pension is fixed at a higher rate whereas in the case of Judges of the High Court, it is fixed at a lower rate. No discrimination can be made in the matter of payment of family pension. The expenditure for pension to the High Court Judges is charged on the Consolidated Fund of India under Article 112(3)(d)(iii) of the Constitution.”

28. The Constitution Bench of the Hon’ble Supreme Court in ***L. Chandrakumar Vs. UOI & Ors.: 1997 (3) SCC 261*** regarding status of the Central Administrative Tribunal observed as under:

“99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is

part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

29. The above observations clearly establishes that, the Central Administrative Tribunal has been a creation under Articles 323-A and 323-B of the Constitution of India. The Tribunal has been treated as a Court of First Instance in respect of Service Law. Moreover, the Tribunal has not been considered as a subordinate Court under the Jurisdiction of High Court as provided under Article 227 of the Constitution of India. The High Court has no power of superintendence over the Tribunal, but the jurisdiction of scrutiny has been allowed. Thus, the Tribunal has been treated mutatis

mutandis a District Court for the purposes of dispensation of justice as Court of First Instance though, the Tribunal has been treated at par with the High Court.

30. Accordingly, as per Section 6 of A.T.Act, 1985 as amended till date, the qualification for appointment of a Judicial Member is *sine qua non* of qualification of a Judge of a High Court laid down under Article 217 of the Constitution of India. All Members (Judicial) appointed from the Bar are eligible to be appointed as High Court Judges. Irrespective of the amendment of A.T.Act 1985 in 2006 w.e.f. 19.02.2007, the qualification for a Judge of the High Court has not been altered. In such view of the matter, the observation of the Hon'ble Supreme Court in ***Ramakrishnam Raju's case (supra)*** with a reference to the judgement in All India Young Lawyers Association's case makes alternatively, a Judicial member appointed prior to 19.02.2007 at par with a District Judge as the CAT being treated as Court of First Instance. Addition of ten years of practice to such Member as an Advocate, towards qualifying service, is also admissible to these Members. The stand of the DOPT contained in their communication dated 23.08.2017 to restrict the addition of ten years practice to only those Members (Judicial) appointed from Bar w.e.f. 19.02.2007 is without any logic, rationale and is

rather goes against the dicta in *Ramakrishnam Raju's case*. The stand brings inequality among equals and amounts to hostile discrimination violative of Articles 14 and 16 of the Constitution of India. The purported stand of DOPT appears to be cantered around amendment of A.T.Act, 1985 w.e.f. 19.02.2007 by which, the conditions of service of Member (Judicial) has been treated at par with a High Court Judge. However, the fact remains that Judicial Members appointed from the Bar are not High Court Judges but, by virtue of similarity in Service Conditions, are treated at par with the High Court Judges. This analogy is palpably arbitrary and promotes discrimination on the basis of cut-off date of 19.2.2007 without any reasonable nexus with the object sought to be achieved. In fact, the Hon'ble Supreme Court both in the case of subordinate Judiciary and High Court Judges, directed addition of ten years practice of an officer appointed from the Bar towards qualifying service computation of Pension on the ground that, the maximum age for an entry in service is 45 years and since the retirement age is 60 years, the incumbent would not be able to get Pension. The service of a Judicial Member appointed from Bar could not exceed 10 years both under Old and New A.T. Act. In such an event, the benefit of maximum pension is denied and accordingly, the addition of 10 years

practice to a direct recruit Advocate as Judicial Member in the Tribunal towards qualifying service of pension is implied and is a discerned principle on the basis of *Ratio decidendi* of Hon'ble Supreme Court in ***P. Ramakrishnam Raju's case***.

31. Accordingly, the DOPT has to follow the dicta of the Hon'ble Supreme Court. The judgement in ***Ramakrishnam Raju's case*** cannot be interpreted otherwise. The *Ratio decidendi* is to give added year of qualifying service of 10 years to an Advocate, as his practice on his being appointed to a subordinate higher judiciary or High Court. Since the Members (Judicial) appointed prior to 19.02.2007 fulfil the above criteria and in all respects including eligibility, discharge of functions and duties are at par with the Judicial Members appointed post 19.2.2007, no hostility or invidious discrimination could be meted out to them. In such view of the matter, the communication of DOPT dated 23.08.2017 does not stand scrutiny of law and is rather in violation of Articles 14 and 16 of the Constitution of India.

32. The RTI received by the petitioner also disclosed a communication dated 11.1.2016 sent by the Principal Bench of the Tribunal to the DOPT regarding pensionary benefits to the Judicial members of CAT coming from

Bar, in the backdrop of judgment in *P.Ramakrishnam Raju*. In this information, the CAT has referred to an amendment under Rule 8 of the CAT (Salaries & Allowances) Rules, amended on 22.7.2009. In this amendment, there has been a substitution in Sub-Rule 2 of Rule A whereby, the minimum pension has been increased from ₹7,074/- per annum to ₹14,532/- per annum w.e.f. 1.1.2006.

33. It is pertinent to mention here that, the pension is at par with pension of High Court judges' payable under Part III of 1st Schedule under High Court Judges Service Conditions Act of 1954. This shows that, the Judicial Members from Bar appointed prior to 19.2.2007 are also entitled to the same pension.

34. It is further pertinent to mention here that an order dated 15.11.2017 addressed to the Joint Registrar, CAT by the DOPT, a reference has been made to Section 8(3) of A.T. Amendment Act 2006 to contend that conditions of service of Members appointed post 19.2.2007 shall be at par with High Court Judges. It was further stated that 17 Members appointed post 19.2.2007 being eligible are being considered for benefit of addition of 10 years practice as qualifying service, as per the judgement of Hon'ble Supreme Court referred above. In this communication, CAT, Principal

Bench has been requested to redress the representation received on the subject which also includes the representation of the petitioner. The stand taken by the DOPT in its communication dated 15.11.2017 as to non-applicability of judgement in ***P. Ramakrishnam Raju (supra)*** is both factually and legally incorrect. The DOPT consistently in response to an information sought by former Member (Judicial) Sh. J.K. Kaushik, vide its communications dated 28.1.2010, 4.3.2010 and 8.4.2010 have accepted that the pension payable to the Members of CAT appointed before 19.2.2007 has been in proportion to the pension per annum payable to a Judge of High Court and also that the pension payable to the Members of CAT is being linked with the pension of High Court Judges payable under the provisions of Par III of First Schedule of the High Court Judges (Salaries & Conditions of Service) Act, 1954. It was also admitted that as per the above provisions of the High Court Act, the pension of Members of CAT appointed before 19.2.2007 has been revised from ₹7,074/- to ₹14,032/- w.e.f. 1.1.2006.

35. Pursuant upon judgment of ***Ramakrishnam Raju***, representation has been made by the petitioner to the Tribunal as well as DOPT for addition of 10 years practice as qualifying service and grant of revised pension and arrears of retiral benefits w.e.f. 1.1.2011. The CAT has taken up the cases of

Members, including the petitioner with the DOPT for addition of 10 years practice for pension vide communication dated 10.07.2017. A letter from DOPT dated 23.8.2017 called for only particulars of Members appointed from 19.2.2007 to 31.5.2017 for extending the benefit of judgment of Supreme Court. The Principal Bench of CAT in its communication dated 25.8.2017 addressed to DOPT also recommended for incorporation of the name of the petitioner and other similarly situated, for extending the benefit of Hon'ble Supreme Court judgments by addition of 10 years practice towards qualifying service. In this communication, the Ld. Tribunal had written that the petitioner and others are also entitled to the benefit of judgment of *P. Ramakrishnam Raju (supra)*, as they are entitled to draw pension as per High Court Judges Act. However, the DOPT did not consider its earlier stand treating the Judicial Member appointed from Bar at par with Members appointed post 19.2.2007 for the purpose of calculation and drawal of Pension, in accordance with High Court Judges conditions of service. In this furtherance, the latest communication of DOPT dated 15.11.2017 addressed to the petitioner and also Principal Bench is silent and there has been no consideration thereof, of the aforesaid fact.

36. It is pertinent to mention here that Unamended A.T.Act prior to 2006

and also post 2006 does not discriminate between the members Judicial appointed from the Bar, as the eligibility qualifications are identical i.e. 10 years practice as an Advocate. Moreover, in the judgment of ***P. Ramakrishnam Raju (surpa)***, the issue as laid down by way of ratio decidendi is that the service of a Judicial Officer is to be counted for fixation of pension and there was no valid reason as to why the experience at Bar cannot be treated as equivalent for that purpose. In this furtherance, the Hon'ble Supreme Court not only allowed addition of 10 years practice for an Advocate appointed from the Bar on a judicial post as qualifying service for determination of pension, but also applied uniformly to an Additional District Judge, High Court Judge as well as Supreme Court Judge. The petitioner being an appointee, even before 19.2.2007 was an Advocate with 10 years practice at Bar and was appointed on a judicial post under Article 323A of the Constitution of India. Thus, the stand taken by the DOPT in its communication dated 15.11.2007 is without consideration of the above facts and documentary proof and admissions. Mere reliance on Clause 8(3) of A.T. Amended Act, 2006 is inconsequential.

37. The stand of the respondent DOPT is that only those advocates who have been appointed under the AT Act of 2006 post 19.2.2007 are only

entitled to addition of 10 years Bar practice for pension, is a misconceived misinterpretation of the judgment of Supreme Court in ***P. Ramakrishnam Raju (supra)***. In the said judgment another judgement of the Supreme Court pertaining to District Judges appointed from Bar in Delhi was also involved, titled Govt. of NCT of Delhi Vs. All India Young Lawyer Association, whereby a claim for addition of 15 years service was sought for pension by the District Judges. The Supreme Court in ***P. Ramakrishnam Raju*** taking the logic that the lawyers directly appointed to judicial post from Bar have few years in judiciary as such the calculated pension is too meagre, accordingly maximum of 10 years the practice at Bar has been added to as qualifying service for pension to the District Judges appointed from Bar. In compliance of the judgement, the Delhi Higher Judicial Service Rules 1970 under Rule 26B proviso by an amendment dated 6.11.2009 effective from 24.2.2006, allowed addition of 10 years practice at Bar as qualifying service for pension.

38. It is also observed by the Supreme Court in ***P. Ramakrishnam Raju (supra)*** that in the three-tier judicial system provided by the Constitution, members of the Bar, who join the Higher Judicial Service at the District Judges level, on retirement, get the benefit of 10 years addition to their service

of the purposes of pension (Rule 26B of the DHJS Rules). Judges of the Supreme Court, who are appointed from the Bar given a period of 10 years to their service for the purposes of pension (Section 13A of the Amendment Act, 2005). However, the benefit of 10 years addition to their service for the purposes of pension is being denied to the Judges of the High Court appointed from the Bar, which is arbitrary and violative of Article 14 of the Constitution of India.

39. The Explanation (aa) appended to Article 217 (2) of the Constitution of India envisages 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.” Thus, treats the experience of an Advocate at the Bar the period of judicial office held by him at par.

40. The above ratio of the Supreme Court is clear that the Principle enunciated to count 10 years Bar practice of an advocate has not been restricted to only High Court Judges but is applicable qua an advocate having 10 years practice appointed on direct recruitment basis to a Judicial Post. Once it includes the post of ADJ, it cannot exclude the Judicial

Members appointed from the Bar in the tribunal even before 19.2.2007. This cut off date has no reasonable nexus with the object of redeeming an advocate a right of respectable pension in case of less service by addition of 10 years practice at bar as a qualifying service.

41. A similar issue came before High Court of Kerala at Ernakulam in WP(C) No. 32047 of 2017 in case of **N. Dharmadan v. Union of India and Ors.** decided on 5.4.2018 whereby the above mentioned High Court has held as under:

“9. The question to be considered is whether there can be a classification between the members for the purpose of pension reckoning the bar service. It is settled law in the light of D.S.Nakara v. Union of India [AIR 1982 SC 130] that there cannot be any invidious classification, on the basis of a cut off date. Though the Rules were applicable at the time of the appointment of the petitioner and till his demitting of office, the qualification prescribed for appointment of judicial member continues to be the same ever since the administrative Tribunals were established under the 1985 Act. Section 10 A cannot stand in the way of extending the benefit of the judgment in Ramakrishna Raju's case. The insertion of Section 10A can only be to protect the service conditions of those who were appointed before the insertion. It cannot be interpreted to deny a benefit which is available to the Members who got appointment from the bar as in the case of High Court Judges. Even though the salary was prescribed as per different rules the petitioner continues to get the pension and pensionary benefits as applicable to High Court Judges. In the case of applicability of the judgment in Ramakrishna Raju's case when all the High Court Judges

are eligible to get their pension fixed from 1.4.2004, it cannot be said that that benefit cannot be extended in the case of the petitioner just because he happened to be appointed before 19.2.2007. The cut off date fixed for the purpose of the extension of the benefit of the judgment is therefore unreasonable and arbitrary.”

42. Accordingly, in view of the above discussion and the settled legal position impugned orders dated 15.11.2017 (Annexure P-1) dated 13.09.2018 (Annexure P-2) are hereby set aside. Consequently, it is declared that the petitioner is entitled to get 10 years of his Bar practice along with his service as Judicial Member for the purpose of pension, as in the case of those Judicial Members appointed after 19.2.2007 and in case of High Court Judges. Consequently, the respondents are directed to add 10 years practice of the petitioner as an Advocate at Bar towards qualifying service and consequently revise the pension and gratuity of the petitioner and arrears to be calculated and disbursed to the petitioner by issuing of a revised PPO including incorporation of pension. The respondent shall take steps to revise the pension due to the petitioner within two months.

43. The writ petition is, accordingly, allowed.

CM APPL. Nos. 13994/2018 & 24073/2018

44. In view of the order passed in the present writ petition, these

applications have been rendered infructuous and are accordingly, disposed of such.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 23, 2019
rd/p/gb

