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

+ **W.P.(C) 7948/2017 & CM APPL. 32808/2017**

LIEUTENANT GOVERNOR AND ANR. Petitioners

Through: Mr. Anuj Aggarwal, Advocate.

versus

M.P. TYAGI AND ANR. Respondents

Through: Mr. Naresh Kaushik, Advocate for R-1.
Dr. Ashwini Bhardwaj, Advocate for R-2

**CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH**

**ORDER
11.02.2020**

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1. This petition is directed against the order dated 11th March, 2016 passed by the Central Administrative Tribunal, Principal Bench ('CAT') in TA No. 35/2013, whereby the prayer of the Respondents for a direction to the Petitioner/Department to treat the period from 13th December, 2001 to 12th December, 2004 as State Election Commissioner, as continuous service and to accordingly fix their pension in the scale of Rs. 7300-7600/-, was acceded to.

2. It appears that the Petitioner did file a Review Application before the CAT being RA No. 100/222/2017. A copy of the said order has been handed over to the Court today. It is seen that by the order dated 8th October, 2018, the Petitioner's RA came to be dismissed.

3. Significantly, in the aforesaid order dismissing the Petitioner's RA, the CAT in paras 5, 6 and 7 observed as under:-

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

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

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

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

7. From the order of the Tribunal in OA, we find that it did not turn upon the applicability of Rule 6 (1). Since the applicant in the OA had already retired from service and was in receipt of pension by the time he was appointed as Election Commissioner, Rule 6 (1) has no bearing on him. We are, therefore, of the view that amendment to rule 6 (1) of the Rules does not have any impact on the order passed by this Tribunal. R.A. is, therefore, dismissed. We, however, make it clear that we have not touched the merits of the matter, because the Writ Petition is pending before the Hon'ble High Court.”

4. Learned counsel for the Petitioner does not dispute that Rule 6 (1) of the Election Commissioner of National Capital Territory of Delhi (Conditions of Service and Tenure of Office) Rules, 1993 ('Rules'), is not applicable to the facts of the present case. Further, the CAT by its order dated 8th October, 2018 in the Petitioner's RA has taken note of the fact that the case of the present Respondents in their OA did not turn on Rule 6 (1) and the subsequent amendment to the said Rule.

5. In that view of the matter, the Court finds that there is no merit in this petition and dismisses it, as such. The pending application is also disposed of.

S.MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 11, 2020/HK