IN THE HIGH COURT OF JUDICATURE AT MADRAS
Date : 17.03.2021
CORAM:
THE HON'BLE MR. JUSTICE R.SURESH KUMAR
W.P.No.9866 of 2012

S.Manickavasagam ... Petitioner

Vs.

1.Secretary to Government,
Department of Personnel and Training,
Ministry of Personnel Public
Grievances and Pensions,
Lok Nayak Bhawan, New Delhi - 110 003.

2.The Central Administrative Tribunal,
Rep. by its Registrar, New Delhi.

3.The Chief Controller (Pensions),
Central Pension Accounting Office,
Trikoot - II Complex,
Bhikajicama Place,
New Delhi - 110 066. ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to pay the petitioner aggregate pension of Rs.40,000/- (Rupees Forty Thousand only) as monthly pension, by fixing his pension for services rendered as Member, Central Administrative Tribunal at Rs.6,500/-, with all consequential benefits, including arrears of pension arising therefrom, with interest @ 12% per annum from the date of accrual of such payment till the date of actual payment upon such arrears.

For Petitioner : Mr.P.V.S.Giridhar
for M/s.P.V.S.Giridhar & Sai Asso.

For Respondents : Dr.D.Simon
Central Govt. Standing Counsel

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ORDER

The prayer sought for herein is for a writ of mandamus directing the the respondents to pay the petitioner aggregate pension of Rs.40,000/- (Rupees Forty Thousand only) as monthly pension, by fixing his pension for services rendered as Member, Central Administrative Tribunal at Rs.6500/-, with all consequential benefits, including arrears of pension arising therefrom, with interest @ 12% per annum from the date of accrual of such payment till the date of actual payment upon such arrears.

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2.The short facts which are required to be noticed for the disposal of this writ petition are as follows:

(i) The petitioner entered service in the Customs and Central Excise Department after he was selected by the Union Public Service Commission and had been appointed to such service on 01.11.1971. Before he joined the service in the Customs and Central Excise Department, he had rendered service in the Army as Commissioned Officer and therefore, he was given seniority with effect from 1966 batch and his services were counted for pension purpose with effect from 14.02.1965.

(ii) In the said service in the Customs and Central Excise Department, the petitioner had been given various promotions and he reached the level of Chief Commissioner of Customs and Central Excise. While he was working in that post, his scale of pay was Rs.22400-525-24500 and with that pay scale in the capacity as Chief Commissioner of Customs and Central Excise, he retired from service voluntarily on 09.12.1998 before superannuation and since he retired voluntarily on 09.12.1998, before which, he was already selected and appointed to the post of Member of the Central Administrative Tribunal at Chennai Bench. Immediately i.e. on the next day of his voluntary retirement in the erstwhile service as Chief Commissioner, he joined in the Central Administrative Tribunal, Chennai Bench as Member on 10.12.1998. In that capacity as Member of Central Administrative Tribunal, Chennai, he served till 19.09.2004 and on attaining or completing the age of 62 years, he retired from service from the Central Administrative Tribunal, Chennai on 19.09.2004. Therefore, he has rendered five years and 9 months service between 10.12.1998 and 19.09.2004. Accordingly, after retirement, the pension already calculated and paid to the petitioner for his service rendered at Customs and Central Excise Department had been calculated at the rate of Rs.11,200/- per month and thereafter, for the service he rendered at Central Administrative Tribunal, Chennai, which is a second pension, for which, he is eligible to be calculated and paid a sum of Rs.1,800/- per month therefore, altogether an aggregate pension of Rs.13,000/- was paid.

(iii) In this context, it is to be noted that, as per the relevant rule governing the pension of a retired Member of the Central Administrative Tribunal, the total aggregate pension of any such Member retired from Central Administrative Tribunal service shall not exceed the pension, during the relevant point of time, being paid to a retired High Court Judge and in this context, since the pension payable to a retired High Court Judge was it was Rs.13,000/-, the petitioner's pension also accordingly was fixed at Rs.13,000/- that means Rs.11,200/- pension for the service rendered by him in Customs and Central

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Excise Department and Rs.1,800/- for the service, he has rendered as Member of the Central Administrative Tribunal put together Rs.13,000/- which is a cap or ceiling within which the pension of a retired Member of the Central Administrative Tribunal shall be fixed as per Rule 8, therefore, the said amount of Rs.13,000/- was calculated and paid to the petitioner as monthly pension.

(iv) In this context, it is the further case of the petitioner that, subsequently the 6th Pay Commission Recommendation was implemented with effect from 01.01.2006 and after its implementation, the pension of the petitioner was revised according to the revised pension for the service he has rendered as IRS of Customs and Central Excise Department, and it was calculated as Rs.33,500/- and for the service he has rendered at Central Administrative Tribunal, the pension was calculated by implementing the 6th Pay Commission Recommendation at Rs.6,055/-. Therefore, totally the aggregate pension was calculated as Rs.39,555/-, which was calculated and directed to be paid to the petitioner.

(v) Only in this context, there is a grievance for him, which, according to the petitioner, is a wrong calculation of the pension payable to the petitioner for the service he has rendered at Central Administrative Tribunal, Chennai Bench.

(vi) In this context, it is the case of the petitioner that, since the petitioner had rendered five years and 9 months service between 10.12.1998 and 19.09.2004 at Central Administrative Tribunal, Chennai, the said five years and 9 months service should be calculated, that means atleast six years should be calculated and accordingly, the relevant pension payable to the petitioner, being an erstwhile Member of the Central Administrative Tribunal, Chennai, shall be calculated and if that is calculated, it shall come for Rs.7,266/- and not Rs.6,055/- as calculated by the respondents and therefore, if the Rs.7,266/- is added with Rs.33,500/- being the pension for the service of the petitioner he rendered at Customs Department, the total pension would be more than Rs.40,000/-, however, it can be restricted to the maximum of Rs.40,000/- as per proviso to Rule 8, therefore atleast Rs.40,000/- pension should be paid to the petitioner with effect from 01.01.2006, of course by implementing the 6th Pay Commission Recommendation.

(vii) Since the said calculation has not been made and the respondents continue to pay the aggregate pension at Rs.39,555/- only instead of Rs.40,000/- thereby the petitioner was loosing Rs.445/- every month and correspondingly, as of now, after the 7th Pay Commission Recommendation, the loss would be more,

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according to the petitioner, every month. Therefore, projecting the aforesaid case, Mr.P.V.S.Giridhar, learned counsel appearing for the petitioner would contend that, if Rule 8 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 as amended by GSR 545(E) dated 22.07.2009 with effect from 01.01.2006 (hereinafter in short be called as 'the Rules') is applied, the revised pension as claimed by the petitioner, for which the petitioner is entitled to, can very well be calculated and be paid to the petitioner, therefore to issue a direction by way of mandamus, the learned counsel for the petitioner seeks indulgence of this Court.

3.Per contra, Dr.D.Simon, learned Central Government Standing Counsel appearing for the respondents, by relying upon the very same Rule i.e., Rule 8 of the Rules, has contended that, no doubt, the petitioner is entitled to get the pension for the service he has rendered in Customs and Central Excise Department, which was calculated at Rs.33,500/- and for the service he has rendered as Central Administrative Tribunal Member at Chennai, since it was five years and six months, it is calculated as five years, for which, as per the calculation, he was entitled to get Rs.6055/- as monthly pension, therefore, if both are put together the total aggregate pension would be at Rs.39,555/-. Therefore, the said amount having been calculated, is being paid to the petitioner every month and correspondingly the revised pension would have been made in respect of the petitioner by applying the recommendations of the 7th Pay Commission with effect from 01.01.2016 and accordingly, the revised pension also being paid, therefore the petitioner may not have any grievance in getting the said pension calculated and being paid to the petitioner.

4.In this context, the learned Standing Counsel appearing for the respondents has relied upon the following averments made in the counter affidavit filed by the respondents.

> "3.It is submitted that the quantum of pension for each completed year of service is revised by the Government from time to time. After implementation of recommendation of 6th CPC, Government issued Gazette notification G.R.545(E) dated 22.07.2009 revising the pension of Hon'ble Members of the Tribunal at the rate of Rs.14532/- per annum for each completed year of service. However the aggregate pension from previous service and the pension for service rendered as member in CAT shall not exceed the maximum ceiling of pension admissible to a High Court Judge. Thus the pension admissible to a High Court Judge is taken into account only for the purpose of applying maximum ceiling of pension and has no other relevance for computing the

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pension admissible to the Members of the Central Administrative Tribunal. Prior to revision of pension under 6th CPC the petitioner was in receipt of Rs.11200/- as pension for the service under Central Government Pension of Petitioner as Member was restricted to Rs.1800/- in terms of proviso Rule 8 of the condition of Service Rules. Thus he was in receipt of total pension as Rs.13000/-. After 6th CPC his pension from Central Government Service was revised to Rs.33500/- per month. As per the Government of India Gazette Notification dated 22.07.2009, the pension of Hon'ble Sh.S.Manickavasagam, Ex.Member for service rendered in Central Administrative Tribunal for five years was fixed at Rs.6055/- per month as follows:

(i) Pension for each completed year of service Rs.14532

(ii) Total pension per annum for five year service completed as Member Rs.14532 x 5 = Rs.72660/-

(iii) Pension per month Rs.6055/-."

5.By relying upon these averments, the learned Standing Counsel would vehemently contend that, the petitioner has not rendered six years service as claimed by him for the purpose of calculating pension for six years at Central Administrative Tribunal, Chennai, instead, he has rendered only five years 6 months, which only be construed as five years. Therefore, the five years completed service alone has to be taken into account, accordingly, it was taken into account and once the service of the petitioner has been taken as five years as per the calculation to be made under Rule 8, as quoted above, the petitioner shall be entitled to get the pension per month at Rs.6055/- for which the calculation made in this regard has been explained in the counter affidavit.

6.Therefore, the learned Standing Counsel for the respondents would submit that, the said calculation of pension for the completed five years service at Central Administrative Tribunal, Chennai Bench at Rs.6055/- is proper calculation based on Rule 8 and if that amount is added along with the pension payable to the petitioner for his service rendered at Customs Department, the total pension would come only at Rs.39,555/- and that amount is being paid. Therefore, the said fixation of pension compounding both services at Customs and Central Excise Department as well as the Central Administrative Tribunal, Chennai rendered by the petitioner, is perfectly in order, therefore, no interference is called for in such calculation of pension, which is being paid every month to the petitioner. Therefore, the prayer sought for by the petitioner to revise the pension to the extent of Rs.40,000/- i.e. on par with pension

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payable to the High Court Judge during the relevant point of time i.e. after the 6th Pay Commission Recommendation, may not be acceptable and therefore, the prayer sought for by the petitioner is liable to be rejected, he contended.

7.I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8.Insofar as the service rendered by the petitioner at two organisation that is firstly at Customs and Central Excise Department and subsequently, in the Central Administrative Tribunal at Chennai Bench as Member, is not in dispute.

9.Insofar as the service rendered by the petitioner at Customs and Central Excise Department is concerned, his service was taken into account for the purpose of pensionable benefits from 14.02.1965 and he demitted office on voluntary retirement on 09.12.1998, therefore the said period was taken into account, accordingly his pension was calculated by the respondents at the rate of Rs.33,500/- per month and in respect of this calculation, both sides have not disputed.

10.The only dispute arose is, how the pension payable to the petitioner for the service he has rendered at Central Administrative Tribunal, Chennai has to be calculated.

11.Both sides in this regard have relied upon Rule 8 of the Rules, referred to above and for easy reference, the said Rule is extracted hereunder:

> "8) Pension - (1) Every person appointed to the Tribunal as the Chairman, a Vice Chairman or a Member shall be entitled to pension provided that no such pension shall be payable.
>
> (i) if he has put in less than two years of service; or
>
> (ii) if he has been removed from an office in the Tribunal under
>
> sub-section (2) of section 9 of the Act.
>
> (2) Pension under sub-rule (1) shall be calculated at the rate of rupees fourteen thousand five hundred and third two per annum for each completed year of service:
>
> Provided that the aggregate amount of pension payable under this rule together with amount of any pension including commuted portion of pension if any drawn or entitled to be drawn while holding office in the Tribunal shall not exceed the maximum amount of pension prescribed for a Judge of the High Court."

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12.By relying upon this Rule, the learned counsel appearing for the petitioner has contended that, as per this Rule, there is a cap under the proviso, by which, the maximum pension payable to a retired Member of the Central Administrative Tribunal together with any other pension, shall not exceed the amount of pension prescribed for a Judge of a High Court.

13.In this context, if we look at the pension fixed to the petitioner for the service rendered by him at Central Administrative Tribunal, Chennai, it is a sum of Rs.6055/-.

14.How this Rs.6055/- has been arrived at has been explained by the respondents in para 3 of the counter affidavit, which has already been quoted herein above. In sub-rule (2) of Rule 8, it has been specifically mentioned that, the pension under sub-rule (1) shall be calculated at Rs.14,532/- per annum for each completed years of service. Here the calculation would be, Rs.14,532/- to be multiplied by the completed years of service of Member of Central Administrative Tribunal and that shall be divided by 12, which will be the monthly pension payable to a retired member of the Central Administrative Tribunal.

15.Accordingly, the respondents calculated that, Rs.14532/- x 5, that means 5 completed years of service as Central Administrative Tribunal Member by the petitioner, which is at Rs.72,660/- being the annual pension. Therefore, if it is divided by 12, a sum of Rs.6055/- would come/which would be a monthly pension payable to the petitioner as the retired Central Administrative Tribunal Member. This Rs.6055/- is added along with the pension for the service he has rendered at Customs and Central Excise Department which is Rs.33,500/-, hence the total pension would be (aggregate) at Rs.39,555/-. This is the calculation given by the respondents.

16.However, if we look at the facts, particularly the service rendered by the petitioner at Central Administrative Tribunal, Chennai, it is between 10.12.1998 and 19.09.2004.

17.The respondents though have taken the five completed years of service, have omitted to take the remaining nine months of service. In this regard, the contention of the respondents, as projected by the learned Standing Counsel is that, he has rendered only five years and not six years.

18.Whereas the fact remains that, it is five years and nine months service, therefore, if the remaining service of nine months is more than half i.e., more than 50% of the year, the law is well settled in this regard, such kind of service

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rendered in months, which is more than 50% of a year, that should be rounded as one year and therefore, the nine months period shall be treated as one year period as completed service, accordingly, the service rendered by the petitioner shall be taken as six years and not five years.

19.If the service of the petitioner at Central Administrative Tribunal, Chennai is taken into account as six years, the monthly pension payable to the petitioner would come as Rs.7266/-. If this Rs.7266/- is added to the pension of Rs.33,500/- payable to the petitioner for the service he rendered at Customs and Central Excise Department, the total sum would be Rs.40,766/-. This is the pension for which the petitioner is entitled to otherwise. However, because of the cap put in under proviso to Rule 8, as referred to above, the maximum aggregate pension of a retired Central Administrative Tribunal Member shall not go beyond the pension prescribed for the Judge of the High Court. During the relevant point of time, the pension of High Court Judge was Rs.40,000/-, therefore, the said total aggregate pension payable to the petitioner i.e. Rs.40,766/- should be restricted to Rs.40,000/-, hence, the said amount should have been calculated and paid to the petitioner instead of Rs.39,555/-.

20.Therefore, this Court has no hesitation to hold that, the petitioner is entitled to get the monthly pension of Rs.40,000/- from 01.01.2006 and correspondingly, he would be entitled to get the higher pension after revising his pension in both services after implementing the recommendation of the 7th Pay Commission with effect from 01.01.2016 and accordingly, his total aggregate pension should be calculated, of course within the ceiling as per the proviso to Rule 8 of the Rules, referred to above. In other words, such aggregate pension payable to the petitioner after implementation of 7th Pay Commission rates, shall not go beyond the pension prescribed for a Judge of the High Court.

21.In that view of the matter, this Court feels that, the calculation given by the respondents, by taking the five years service of the petitioner alone at Central Administrative Tribunal, Chennai Bench for the purpose of pensionable benefits may not be justifiable, instead, 6 years of the petitioner's service should have been taken into account and correspondingly, the aforesaid pension, as indicated, should have been calculated and paid to the petitioner.

22.In view of the aforesaid discussions and factual matrix, this Court is inclined to dispose of this writ petition with the following orders.

(i) That there shall be a direction to the respondents to calculate the pension payable to the petitioner by taking into account the total service

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rendered by the petitioner as a Member of the Central Administrative Tribunal, Chennai as six years instead of five years and accordingly, a sum of Rs.7,266/- as monthly pension shall be calculated from 01.01.2006 under the 6th Pay Commission Recommendation and the aggregate pension i.e., the pension payable to the petitioner for the service he has rendered in Customs and Central Excise Department as well as the service as a Member of Central Administrative Tribunal put together, the maximum pension shall be restricted to the pension prescribed for High Court Judge for the relevant point of time, which was Rs.40,000/- between 01.01.2006 till 31.12.2015 and consequently, the said aggregate pension of Rs.40,000/- shall further be revised by implementing the 7th Pay Commission Recommendation with effect from 01.01.2016 on the same lines of calculation as indicated above and accordingly the revised pension shall be calculated and be paid to the petitioner.

(ii) Needless to mention that, whatever be the difference of pension after revising the same by implementing both 6th and 7the Pay Commission, that shall also be calculated and arrears also shall be paid to the petitioner in one lumpsum. The aforesaid action shall be completed and orders shall be passed for disbursing the pension and arrears of pension, by the respondents, within a period of twelve weeks from the date of receipt of a copy of this order. It is further needless to mention that, the petitioner shall also be entitled to get 6% interest for the arrears of pension, that also shall be paid within a period of twelve weeks.

23. With these directions, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

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Sub Assistant Registrar

Sgl

To

1.Secretary to Government,
Department of Personnel and Training,
Ministry of Personnel Public
Grievances and Pensions,
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2.The Registrar,
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3.The Chief Controller (Pensions),
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+1cc to D.Simon, Advocate Sr.No.17004
+1cc to Giridhar & Sai, Advocate Sr.No.17048

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