

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: October 04, 2021

+ W.P.(C) 1201/2021

AJIT KUMAR PANDE, EX-MEMBER (JUDICIAL) RCT

..... Petitioner

Through: In person

versus

UNION OF INDIA, THROUGH: CHAIRMAN RAILWAY
BOARD,

..... Respondent

Through: Mr. Jagjit Singh, Sr. Panel
Counsel with Mr. Preet Singh,
Mr. Vipin Chaudhary &
Ms. Rashmi Malhotra, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

1. The present petition has been filed by the petitioner with
the following prayers:-

*“The Petitioner, therefore, prays that in the facts and
circumstances of the present case this Hon'ble Court
may be pleased to:-*

*(a) issue writ of mandamus/certiorari or any other
appropriate writ or Direction in the like nature to the
Respondent Direct the Respondents to grant the benefit
of the judgments passed by the Hon'ble Delhi High
Court in a judgment LPA 286/2019 titled as Union of
India Vs. Shankar Raju & Government of NCT Delhi*

Vs. All India Young Lawyers Association (Registered)” (2009) 14 SCC 49” and take into account 10 years of practice for the purposes of calculating the pension in addition to qualifying service of the applicant as Member Judicial of the Railway Claims Tribunal for pension; and

b) issue writ of mandamus/certiorari or any other appropriate writ or Direction in the like nature to the Respondent And further to direct the respondents to grant the pension so calculated after taking into account the practice period from the date the petitioner demitted office i.e. 21.04.2020; and

c) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. It is the case of the petitioner and so contended by him that he was enrolled as an Advocate with the Bar Council of Delhi on April 24, 1990. He also cleared the exam for Advocates on Record and was duly enrolled as such on October 15, 1998. On April 20, 2015, the petitioner was appointed to the post of Member (Judicial) Kolkata Bench of Railway Claims Tribunal ('RCT', for short). He joined the said post on April 22, 2015. He continued to work in the Kolkata Bench of the RCT till January 18, 2016. On January 19, 2016, the petitioner was transferred to the Secunderabad Bench of the RCT where he worked till January 19, 2018. Thereafter, on June 10, 2019, he was transferred to the Gauhati Bench of the RCT where he worked till

he completed his five years' tenure on April 21, 2020.

3. It is the submission of the petitioner that his appointment was governed by the Notification dated September 10, 1989, of the Ministry of Railways by which the Railway Claims Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice-Chairman and Members) Rules, 1989 ('Rules of 1989', for short) were notified. He stated that in terms of Section 5 of the Railway Claims Tribunal Act, 1987 ('Act of 1987', for short), which stipulates qualifications for appointment as Chairman, Vice-Chairman and other Members; a person shall not be qualified for appointment as a Member (Judicial) unless he is, or has been, or is qualified to be a Judge of a High Court. According to him, in view of the said provision, he was selected for the post of Member (Judicial) RCT being found as qualified to be a Judge of a High Court and as per Article 217 of the Constitution of India, the qualifications needed for appointment to the post of a Judge of a High Court, is that one must have at least 10 years of practice as an Advocate. He stated that since the issue of gratuity is pending before the Supreme Court, he is not making a prayer with regard to the said claim.

4. According to him, the claim in this petition is primarily with regard to counting of 10 years of practice as an Advocate for the purpose of calculating pension in addition to qualifying service of the petitioner as Member (Judicial) of the RCT, for pension. In support of this claim, the petitioner has relied upon the judgment of the Division Bench of this Court in *Union of India and Anr. v. Shankar Raju, LPA 286/2019*, and also of Supreme Court in *Government of NCT of Delhi and Ors. v. All India Young Lawyers Association (Registered) and Anr., (2009) 14 SCC 49*.

5. He stated the above judgments fundamentally relate to grant of benefit of 10 years of practice as an Advocate to the Officers of the Delhi Higher Judicial Service ('DHJS', for short) and the Members of the Central Administrative Tribunal ('CAT', for short), who were appointed from the Bar. In other words, he is seeking a similar benefit, as was given to the Officers of DHJS / Member (Judicial) of CAT. He stated that respondent No.3 directed the calculation of the pension of the petitioner through the Gauhati Bench on March 24, 2020, without taking into account the experience at the Bar, which is contrary to the law.

6. He also stated, at the time of relinquishment of Charge, he made a request to the Hon'ble Chairman of the RCT, Principal Bench on April 20, 2020, praying for two reliefs; firstly his entitlement of gratuity under the provisions of the Payment of Gratuity Act, 1972 and also for calculation of pension after taking into account 10 years of practice at the Bar, in view of the aforesaid judgments. The respondent Nos.1 and 2 declined to accept the judgments of this Court and the Supreme Court and have denied the benefit through a letter dated August 04, 2020, in communication to the Registrar, RCT by stating as under:-

*"The Registrar,
Railway Claims Tribunal,
13/15 Mall Road,
Delhi-54.*

Dated: 04.08.2020

Sub: Request for Gratuity and Pension by Shri A.K. Pande, Ex-Member (Judl.), RCT, Guwahati.

Please refer to your letter dated 10.07.2020 quoted above on the subject. It may be mentioned that there is no provision of gratuity in "Railway Claims Tribunal (Salaries and Allowance and Conditions of Service of Chairman. Vice-Chairman and Members) Rules, 1989." Further, the service conditions of Members of RCT (Judicial & Technical) are different from that of Central Administrative Tribunal (CAT). With effect from February, 2007, the service conditions of Members of CAT has been made at par with that of High Court Judges till the new Tribunal Rule came into force on 12.02.2020. Therefore, the provision of

taking into account 10 years practice period of Advocate who are elevated to High Court Judges (which was applicable for CAT Members) is not applicable to Members of RCT as per extant RCT Rule, 1989.

Accordingly, Shri A. K. Pande may be informed that he is not entitled for payment of gratuity as per extant Rule, 1989. RCT/PB has informed in their letter dated 10.07.2020 that the pension of Shri A. K. Pande, has been processed as per RCT Rule, 1989.”

7. The petitioner has taken me through the judgments of this Court in ***Shankar Raju (supra)*** and also of Supreme Court in ***All India Young Lawyers Association (supra)***. He seeks the counting of 10 years of practice along with the service put in by him at the RCT for grant of pension.

8. On the other hand, Mr. Jagjit Singh, learned counsel for the respondents would submit that the petitioner was appointed as Member (Judicial) in RCT as per provisions of the Act of 1987 and as such, his appointment was governed by the Rules of 1989. Paragraph 3 of the appointment letter dated April 20, 2015, issued by the Ministry of Railways to the petitioner mentions that the service conditions including pension as Member (Judicial) in RCT shall be governed by the terms and conditions of his appointment. He also stated that Section 8 of the Rules of 1989 clearly stipulates that every person appointed to the Tribunal as

Chairman, Vice-Chairman or Member, shall be entitled to a pension, provided that no such pension shall be payable to such a person:- (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 8 of the Act of 1987.

9. Mr. Jagjit Singh stated that the pension is calculated at the rate of Rs.40,836/- *per annum* for each completed year of service and is subject to the condition that the aggregate amount of pension payable together with the 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 Rs.13,50,000/- *per annum* and the provisions of the Rules of 1989 are uniformly implemented with regard to the Vice-Chairman / Members of the Tribunal.

10. Insofar as the claim of the petitioner for counting of 10 years of practice as an Advocate for calculation of pension in RCT by relying upon the judgment of this Court in ***Shankar Raju (supra)*** and also of Supreme Court in ***All India Young Lawyers Association (supra)*** is concerned, he stated, the same have no applicability as they have been passed with regard to the Officers

of DHJS and also Member (Judicial), who retired from CAT. That apart, he stated that the appointment of the Member of the CAT was governed by the Administrative Tribunals Act, 1985 and the same was last amended w.e.f. February 19, 2007, by which the service conditions of Member (Judicial) of CAT was brought at par with the Judges of the High Courts, whereas the petitioner on his appointment, continued to be governed by the service conditions for Member (Judicial) of RCT which are at variance with the Service Conditions of Member (Judicial) of CAT. A Member of the RCT has not been equated with the Judges of the High Court. He stated, he cannot even seek parity with the Officers of DHJS.

11. Insofar as the Tribunal Rules of 2020 framed by the Central Government are concerned, there is no provision of pension for Members of any Tribunal in India.

12. But in any case, the petitioner being governed by the provisions of the Act of 1987 and also the Rules of 1989, has rightly been granted the pension in terms thereof.

13. Having heard the learned counsel for the parties, the issue which arises for consideration is a very short one, whether the

petitioner is entitled to the counting of 10 years of practice at the Bar, along with the qualifying period put in by him as Member (Judicial) in RCT. Reliance was placed by the petitioner on the judgment of this Court in *Shankar Raju (supra)* and also of Supreme Court in *All India Young Lawyers Association (supra)*.

14. I have gone through the judgments in detail. Mr. Jagjit Singh is right in stating that the judgment in the case of *All India Young Lawyers Association (supra)* was concerning the Officers of the DHJS, who were appointed to the service, being Advocates practicing at the Bar. The Supreme Court while reducing the period from 15 years to 10 years has not interfered, with respect to the grant of benefit of counting of the period of practice put in by an Advocate by stating as under:-

“5. In the Delhi Higher Judicial Service, direct recruitment to 25% of posts is made from amongst the members of the Bar who have completed seven years' practice at the Bar. The minimum age for entry is thirty-five years and the maximum age is 45 years. The main contention of the writ petitioner (Respondent 1 herein) before the High Court was to include the fifteen years' practice at the Bar. If a candidate joins at the age of 35 years and retires at the age of 60 years, if not elevated to the Bench of the High Court, he would not be able to get full pension as for getting full pension one should have thirty-three years of service whereas the total service rendered by a member who joins at the age of 35 years will be twenty-five years of

service.

6. The High Court, on the administrative side, brought this fact to the notice of the Government by writing a letter in the year 1987. Though repeated reminders were sent to the Government, no decision was taken by the Government till the end of 2005 and only on 2-2-2006 by a letter, the Government has indicated that it was agreeable to give weightage of seven years of practice at the Bar while computing the pension and other retiral benefits for direct recruits.

7. Learned counsel appearing for the State contended that the reason why the Government has agreed to give weightage of seven years' practice at the Bar is that because in the case of direct recruitments to the Delhi Higher Judicial Service, a member should have seven years' practice at the Bar and that is why the Government thought it fit to give weightage of seven years.

8. Learned counsel appearing for the first respondent Association submitted that the High Court was right in directing the Government to give weightage of fifteen years' practice at the Bar while computing pension and other retiral benefits because otherwise most of the members of the Delhi Higher Judicial Service would not be able to get full or adequate/reasonable pension at the time of retirement. It is also submitted that better conditions of service should be made available to the persons who are direct recruitees from the Bar otherwise the best talent would not be attracted for selection.

9. Learned counsel appearing for Respondent 2, High Court of Delhi has also brought to our notice the fact that the request was made by the High Court in the year 1987 and despite repeated reminders, the Government has acceded to the request only in the year 2006 by its Letter dated 2-2-2006. It is also brought to our notice by the learned counsel appearing for Respondent 2 that in the States of Punjab, Haryana

and Gujarat, weightage of ten years' practice at the Bar is given in the case of direct recruits while computing pension and other retiral benefits.

10. We have considered the various contentions raised before us. Learned counsel appearing for the State vehemently contended that only the period of seven years' practice at the Bar is to be added because the minimum qualification to enter into the Delhi Higher Judicial Service as a direct recruit is seven years' practice at the Bar. That reason, by itself, does not appear to be justifiable as the total period of service for getting maximum or full pension is thirty-three years as per the general rules of the Government of Delhi.

11. Learned counsel for the State submitted that if fifteen years' practice at the Bar is added, then there is an apprehension that after joining the Delhi Higher Judicial Service and working for a shorter period, members may quit the job because even after working for a shorter period, they will get the proportionate pension if their past practice of 15 years at the Bar is added.

12. Having regard to the facts of the case and having heard learned counsel for the parties, we deem it appropriate that 10 years' practice at the Bar or such other number of years, whichever is less, could be added while computing pension and other retiral benefits in the case of a direct recruit to the Delhi Higher Judicial Service. We order accordingly.

13. Insofar as apprehension of learned counsel for the State is concerned, we make it clear that weightage of ten years' practice at the Bar will be given only if the direct recruit, who joins the Delhi Higher Judicial Service, actually works for minimum ten years in the Delhi Higher Judicial Service and then retire so as to enable them to get reasonable/adequate pension at the time of retirement because as per the general rules to be eligible for minimum pension, a person should have

completed at least ten years of service. The Government of NCT of Delhi is directed to suitably insert Rule 26(B) in the Delhi Higher Judicial Service Rules, 1970.”

15. From the above, it is clear that the Supreme Court, while upholding the grant of benefit for counting the period of practice put in at the Bar by an Advocate has directed that 10 years of practice be given to a direct recruit, who joins the service and has worked minimum for a period of 10 years in the service before retiring. I may state here that joining the service between the ages of 35 to 45 years, a DHJS Officer puts in at least 15 years of service before demitting the office, which is not the case here, since the appointment of the petitioner was only for a period of five years and upon completion of five years, he demitted the office. This plea, that he being qualified to be a High Court Judge, was appointed as Member (Judicial) and as such 10 years of practice at the Bar need to be counted for the pension is unmerited for the reason that the pension as a Member (Judicial) shall still be governed by the Rules of 1989 which have been implemented in his favour and he is drawing pension. In any case, the judgment of the Supreme Court was concerning Officers of the DHJS, which is not the case here.

16. The reliance placed by the petitioner on the judgment of *Shankar Raju (supra)* is also of no help to the petitioner. Mr. Jagjit Singh is right in contending that the Administrative Tribunals Act, 1985 was amended to bring the conditions of service for Member (Judicial) in CAT at par with the Judges of the High Court. The issue before the Division Bench of this Court in *Shankar Raju (supra)* was whether the benefit of the amendment which was brought about on February 19, 2007, should also be given to the Member (Judicial), who was appointed before that date from the Bar. The argument on behalf of the Union of India was that there are two classes of Member (Judicial) in the CAT, those appointed prior to February 19, 2007, and those appointed thereafter, and therefore they cannot be treated at par for grant of pension. This plea was negated by this Court in paragraphs 21 and 22 wherein the Court has held as under:-

“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.”

17. Finally, this Court in paras 29 and 30 has held as under:-

“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 ExServices 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.”

18. In view of the aforesaid conclusion of the High Court, the petitioner cannot seek the benefit of the judgment in the case of ***Shankar Raju (supra)***.

19. That apart, Mr. Jagjit Singh has, during his submissions drawn my attention to the judgment of the Supreme Court in ***Madras Bar Association v. Union of India, W.P.(C) No. 804/2020***, rendered on November 27, 2020, wherein the Supreme Court while considering the Tribunal Rules of 2020, which were notified on February 12, 2020, held Chairpersons, Vice-Chairpersons and Members of the Tribunals appointed prior to February 12, 2020, shall be governed by the parent Statutes

and Rules as per which, they were appointed.

20. It is an admitted case of the petitioner that he was appointed prior to February 12, 2020. If that be so, the terms and conditions of appointment of the petitioner as Member (Judicial) RCT shall necessarily be governed under the Rules of 1989 which have been implemented in his favour.

21. In view of my above discussion, the petitioner is not entitled to any relief. The petition is dismissed. No costs.

V. KAMESWAR RAO, J

OCTOBER 04, 2021/ak