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W.A.No.478 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

Coram

The Hon'ble Mr. Justice **PARESH UPADHYAY**
and
The Hon'ble Mr. Justice **D.BHARATHA CHAKRAVARTHY**

W.A.No.478 of 2022
and C.M.P.No.3454 of 2022

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

.. Appellant

Vs.

1.S.Manickavasagam

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

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

..Respondents

Appeal preferred under Clause XV of Letters Patent against the
order dated 17.03.2021 made in W.P.No.9866 of 2012.

For Appellant .. Mr.D.Simon

For Respondents .. Mr.Sai Srujan Tayi for R1



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JUDGMENT

(Delivered by **PARESH UPADHYAY, J.**)

1. Challenge in this appeal is made to the order dated 17.03.2021 recorded on W.P.No.9866 of 2012. This appeal is by the respondent – authorities of the Union of India, Department of Personnel and Training.

2. The dispute is, whether the service of five years and nine months put in by the writ petitioner as the Member of the Central Administrative Tribunal should be calculated as five years or six years, for the purpose of calculation of pension. Learned single Judge has held that, the service of five years and nine months needs to be rounded as six years. It is this order which is challenged in this appeal.

3. Mr.D.Simon, learned Advocate for the appellants has drawn the attention of this Court to the relevant Rules, more particularly Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 as amended vide Notification dated 31.03.1989 to contend that, since by the amendment the words 'or a part thereof'



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are deleted from Rule 8(2), it would necessarily mean that only completed year of service has to be counted for the purpose of payment of pension and the rounding off thereof to the nearest year is not required. It is submitted that the direction by learned single Judge is erroneous and therefore this appeal be entertained.

4. On the other hand, learned Advocate for the contesting respondent – original writ petitioner has submitted that even after the said amendment in Rule 8, Rule 16 also needs to be kept in view which would fortify the ultimate conclusion arrived at by learned single Judge. It is submitted that therefore no interference be made and this appeal be dismissed.

5. Having heard the learned advocates for the respective parties and having considered the material on record, this Court finds as under:

5.1. The point at issue before this Court is, whether the service of the five years and nine months put in by the writ petitioner should be calculated as five years or six years for the purpose of calculation of pension. Learned single Judge has, in paragraph 17 and 18, observed



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as under:-

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"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 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."



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5.2. The above finding and the consequential directions need to be viewed vis-a-vis the Rules holding field. The relevant rule, as it stood before amendment, as referred to by learned Advocate for the appellant, reads as under:-

"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 seven hundred per annum **for each completed year of service or a part thereof** and irrespective of the number of years of service in the Tribunal, the maximum amount of pension shall not exceed rupees three



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thousand five hundred per annum:

Provided that the aggregate amount of pension payable under this rule 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 the maximum amount of pension prescribed for a judge of the High Court."

5.3. The amendment therein vide the notification dated 31.03.1989, which is heavily relied on behalf of the appellant, reads as under:-

"3. In rule 8 of the said rules, in sub-rule (2) the words or a part thereof" shall be omitted."

5.4 The conjoint consideration of the above would lead to a situation where, by the original rule, even if the Member of the Tribunal has put in only five years and one month of service were entitled to six years of service, that part is done away with by the Government, by the amendment and therefore the normal rule, which is otherwise applicable qua other Central Government Officers will be



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applicable qua the Members of the Tribunal as well. The same is mandated under Rule 16 of the said rules, which reads as under:-

"16. Residuary provision: The Conditions of service of the Chairman, Vice-Chairman or other Member for which no express provision is available in these rules shall be determined by the rules and orders for the time being applicable to a Secretary to the Government of India belonging to the Indian Administrative Service."

5.5 Once the above is kept in view, we find that, when any Central Government Officer on retirement was entitled to rounding off of his service to the nearest year is permissible, it would be arbitrary to hold that, in view of the amendment in 1989 Notification, the same would not be available to the Members of the Central Administrative Tribunal. The conjoint consideration of the Rules lead to the situation that, the ultimate finding by learned Single Judge that five years and nine months service of the writ petitioner needs to be counted as a service of six years for the purpose of calculation of his pension, can not be termed to be an error. We confirm the finding of the learned single Judge and this appeal therefore needs to be dismissed.



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5.6 We find that, this is the case where even cost may also be required to be imposed, however considering the status of the writ petitioner, that he was a Member of the Central Administrative Tribunal, we have not imposed the cost against the appellant / State, however we observe that, the action of the appellant of compelling the Member of the Central Administrative Tribunal to file a writ petition for his grievance before this Court itself was too harsh, and in any case, filing of this appeal was an avoidable litigation.

6. For the above reasons, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(P.U.J.,) (D.B.C.J.,)
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