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W.P. No.19729 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.B.BALAJI

W.P. No.19729 of 2023

N.R.Chandran

.. Petitioner

Versus

1. The Secretary,
Department of Personnel and Training,
No.112, North Block,
New Delhi 110001,
Email: secy_mop@nic.in
2. The Chief Controller (Pension)
Central Pension Accounting Office
Ministry of Finance: Department of Expenditure
Trikoort-II, Bhikaji Cama Place,
New Delhi - 110 066.
E-mail. bhupal.nanda@nic.in
3. The Joint Registrar (JA),
Central Administrative Tribunal,
Principal Bench,
61/35, Copernicus Marg,
New Delhi-110 001
E-mail: cat-delhi@nic.in



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4. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 600104.
Email: ddocatmas.tn@nic.in

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, directing the respondents to pay pension by adding 10 years of service for the purpose of calculating pension with effect from 19.02.2007 with consequential arrears of pension, gratuity & other sums due to the petitioner along with interest.

For petitioner : Mr.V.Perumal

For respondents : Mr.C.Kulanthaivel, for RR1 to 3

ORDER

(The Order of the Court was made by D.KRISHNAKUMAR, J)

This petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondents to pay pension by adding 10 years of service for the purpose of calculating pension with effect from 19.02.2007 with consequential arrears of pension, gratuity & other sums due to the petitioner along with interest.

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2. It is the case of the petitioner that after serving 30 years in the Bar Council, he joined as a Judicial Member of the Central Administrative Tribunal, Madras on 16.10.1989 and retired from the said post on 31.10.1991. The petitioner is now receiving a monthly pension of Rs.16,146/- from the Government of India.

3. It is the grievance of the petitioner that for calculating pension of a retired Judicial Member of Central Administrative Tribunal, a period of 10 years should be added to the service, but the same was not done in his case. Since the conditions of service of Chairman and the Members of the Central Administrative Tribunal are same as applicable to the Judges of a High Court, the aforesaid provision is clearly applicable to his case.

4. The learned counsel for the petitioner submitted that it is decided by the legislature to equate the terms of service of the Judicial Members of the Central Administrative Tribunal with that governing the Judges of the High Court and that there cannot be any discrimination between those appointed prior to 19.02.2007 and those appointed, thereafter for the



purpose of calculation of pension. In this regard, the learned counsel for the petitioner relied upon the decision of the Division Bench of the High Court of Delhi in the case of ***Union of India and another vs. Shanker Raju reported in 2019 SCC Online Del 3843***. The relevant portion of the said judgment reads as follows:

"23. 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



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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.

24. 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.

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31. 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



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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 Ex- Services 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."

5. Aggrieved by the above order passed by the Division Bench, the Union of India preferred SLP (C) No.18860 of 2019 before the Supreme Court. The Supreme Court pleased to dismiss the above SLP with the following observations:

"The Special Leave petition is dismissed. We, however make it clear that the monetary benefit will be granted only with effect from 19.02.2007, from which date the newly



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appointed Judicial Members are entitled to this benefit. The arrears be paid within six months from today failing which they shall carry interest at the rate of 9% per annum."

6. According to the petitioner, in view of the above judgment, the petitioner is entitled for addition of 10 years of service in the bar for the purpose of pension benefit with effect from 19.02.2007 and also entitled for consequential monetary benefit. Therefore, he made a representation, dated 27.10.2022 to that effect to the respondents, but the said representation is still pending.

7. The learned Senior Panel Counsel appearing for the respondents 1 to 3 submitted that the first respondent is the competent authority to consider the petitioner's representation and if a fresh representation is given, the same will be considered in accordance with law.

8. In the light of the above submissions made by the parties and considering the limited scope of the prayer sought for in the Writ Petition, the petitioner is directed to give a fresh representation to the first respondent



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within a period of four weeks from the date of receipt of a copy of this order.

On receipt of such representation, the first respondent shall consider the same as per law in the light of the order of the Division Bench of the Delhi High Court in the case of ***Shanker Raju*** (referred to supra), as early as possible within a period of six weeks, thereafter.

9. With the above directions, the Writ Petition is disposed of.

No costs.

[D.K.K., J] [P.B.B., J.]
21.07.2023

Speaking order: Yes/No
Index : Yes/No
pvs



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To

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