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

\+ W.P.(C) 7913/2020

SHANKER RAJU ..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. Vivek Goyal, CGSPC with Mr. Gokul Sharma, Mr. Shivam Singh & Mr. Rajiv Sharma, Advocates for UOI.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **13.05.2024**

1. Present writ petition is filed by the Petitioner seeking quashing of Pension Payment Order ('PPO') dated 09.12.2010, whereby his pension was allegedly wrongly fixed at Rs.12,110/- per month from 11.12.2010 instead of Rs.13,350/-, revised to Rs.24,220/- instead of Rs.26,700/-, vide PPO dated 18.06.2020, after extending the benefit of 10 years' practice at the Bar as an advocate and further revised to Rs.68,060/- under 7th CPC vide PPO dated 24.06.2020 w.e.f. 01.01.2016, instead of Rs.75,000/-. Challenge is also laid to DoPT Notification dated 30.08.2018. Writ of mandamus is sought for a direction to the Respondents to re-fix the initial pension at Rs.26,700/- per month w.e.f. 11.12.2010 with consequential revision at Rs.75,000/- under 7th CPC w.e.f. 01.01.2016 taking 20 years of qualifying service, linking his pension with a Judge of the High Court under Part III of the First Schedule of the High Court Judges (Salaries and Conditions of Service) Act, 1954 (hereinafter referred to as the "Part III of 1954 Act").

Petition was subsequently amended challenging the Cabinet decision dated 30.12.1994 and counter-affidavit was filed by the Respondents to the amended petition, which was taken on record.

2. Case of the Petitioner can be encapsulated as follows:-

(a) Petitioner was appointed as Member (Judicial) in the Central Administrative Tribunal (hereinafter referred to as the "Tribunal") on 12.12.2000 for a tenure of 5 years. His tenure was extended by another 5 years and he demitted office on 11.12.2010. At the time of Petitioner's appointment, the Administrative Tribunals Act, 1985 (hereinafter referred to as the "1985 Act") was the governing statute and for regulating the service conditions, the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1985 (hereinafter referred to as the "1985 Rules") were formulated on 10.08.1985. Rule 8 of 1985 Rules provides for Pension and Rule 16 is a Residuary provision stipulating that the conditions of service for which no express provision is available in the Rules shall be determined by rules and orders for the time being applicable to a Secretary to the Government of India belonging to Indian Administrative Service. Rules 8 and 16 are as follows:-

> *"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*
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> *(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 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.

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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."

(b) Under Rule 8(1) of 1985 Rules, pension payable to the Chairman, Vice-Chairman and Members of the Tribunal was at par, calculated at the rate of Rs.700/- for each completed year of service or a part thereof, irrespective of the number of years of service in the Tribunal and the maximum was not to exceed Rs.3,500/-. The 1985 Act was amended in the year 2007 by the Administrative Tribunals (Amendment) Act, 2006 (hereinafter referred to as the "2006 Act"), which came into force on 19.02.2007 and service conditions of the Members of the Tribunal appointed post the amendment including pension, were brought at par with a Judge of the High Court under Part III of 1954 Act, as per which pension is to be calculated multiplying 10 with Rs.16,020/- and then dividing by 12, which comes to Rs.13,350/- per month w.e.f. 11.12.2010 instead of Rs.12,110/- per month under 6th Central Pay Commission ('CPC') and gets revised to Rs.75,000/- per month with effect from 01.01.2016 instead of Rs.68,060/- per month under 7th CPC. Instead of fixing the pension applying this methodology, Respondent No.2 vide order dated 19.08.2009, prepared a table of Revision of Pension w.e.f. 01.01.2006 and for completed 10 years of service, monthly pension was erroneously fixed at Rs.12,110/- on the basis of Rs.14,532/- per annum, instead of Rs.16,020/- per annum, for Members appointed prior to the amendment of 1985 Act, including the Petitioner, with no rationale or plausible justification to do so.

(c) One of the retired Members (Judicial), Sh. J.K. Kaushik sought information regarding calculation and commutation of pension and DoPT vide letter dated 08.04.2010 informed him that pension payable to Members of the Tribunal was linked with pension of High Court Judges payable under Part III of 1954 Act and yet Respondents wrongly calculated pension at Rs.14,532/- instead of taking an amount of Rs.16,020/- for every completed year of service under the 6th CPC. The Tribunal, on a query by Department of Expenditure, vide letter dated 11.01.2016 reiterated that pension of the Members of the Tribunal appointed prior to amendment of 1985 Act, was to be fixed at par with High Court Judges under Part III of 1954 Act. Ministry of Law & Justice revised the pension of Judges of High Court and in Part III of 1954 Act, the amount for each completed year of service was revised to Rs.16,020/- per annum. An amendment was carried out post 7th CPC recommendations in the 1954 Act and in Part III of First Schedule, amount of Rs.16,020/- was substituted with Rs.45,016/- on 25.01.2018. When this substituted amount of Rs. 45,016/- is multiplied by 10 and divided by 12, the amount comes to Rs.37,500/- instead of Rs.34,030/-, which the Respondents have taken wrongly to arrive at a figure of Rs.40,836/-. On addition of 10 years practice of the Petitioner, as per the judgment of the Supreme Court in ***P. Ramakrishnam Raju v. Union of India and Others, (2014) 12 SCC 1***, the revised pension of the Petitioner would come to Rs.75,000/- plus DA w.e.f. 01.01.2016, which has been illegally denied to him. Part III of First Schedule is as follows:-

PART III

1. The provisions of this part apply to a Judge who has held any * pensionable post under the Union or a State (but is not a member of the Indian Civil Service) and who has not elected to receive the pension payable under Part I.

* Subs. by Act No. 57 of 1980: pensionable post.

2. The pension payable to such a Judge shall be -

(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension and

(b) a special additional pension of * Rs.16,020/- per annum in respect of each completed year of service for pension + (. . . . . . .)

* Subs. by Act No. 23 of 2009. -, w.e.f. 1.1.2006
+ Omitted by Act No. 7 of 1999

%Provided that the pension under clause (a) and the additional pension under clause (b) together shall no case exceed
* Rs.5,40,000/- per annum and the case of a Chief Justice and Rs. *4,80.000/- per annum in the case of any other Judge.
* Subs. by Act No. 23 of 2009. , w.e.f. 1.1.2006
% Ins. by Act No. 20 of 1988; after clause (b); Provided that. . . . . .

3. + Omitted.

(d) Bare perusal of Proviso to Part III of First Schedule shows that rate of pension payable to the Chief Justice and other Judges of the High Court is the same and the only difference is in regard to the maximum limit. The same position applies *mutatis mutandis* in case of Chairman and Vice-Chairman of the Tribunal after insertion of Rule 15(A) in the 1985 Rules w.e.f. 31.03.1989 as also to Members (Judicial), appointed post the amendment i.e. after 19.02.2007. Applying this analogy, members of the Tribunal appointed prior to 19.02.2007 will also be entitled to grant of special additional pension as provided under Part III of 1954 Act, as amended from time to time.

(e) Respondents have applied a formula of 'proportionate pension' for fixing the special additional pension for Members of the Tribunal, as stated in the counter affidavit. Under Part III of 1954 Act, the special additional pension is Rs.1600/- per annum for each completed year of service w.e.f. 01.01.1996 under the 5th CPC. But for Members of the Tribunal, the same was fixed at Rs.1450/- per annum, allegedly proportionately by taking mean pay of Chairman and Vice-Chairman. Principle of proportionality cannot be applied for more than one reason: (a) there is no provision either under the 1985 Act or 1985 Rules, which permits fixation of pension, taking the mean of the pay of the Chairman and Vice-Chairman; (b) this would run counter to the fixation methodology under Part III of 1954 Act for judges of the High Court with whom the pension of the Member is linked; (c) pension of Chairman and Vice-Chairman is the same i.e. Rs.1600/- per annum under 5th CPC for each completed year of service though their pay scales are different and if such mean is to be applied on the basis of pay-scales, the special additional pension for Vice-Chairman ought to have been fixed proportionately by multiplying Rs.1600/- with 8500/9000, which would be Rs.1511/- and to be more precise, Rs.1600 x 8000/9000 which would have been Rs.1422/-, which is not the course adopted for fixation of pension for the Vice-Chairman *albeit* the post was abolished later; and (d) formula based on the mean of the pay, as adopted by the Respondents, may have been good as a one-time measure but is now creating an anomalous situation, since the pay of the Members has increased to Rs.2,25,000/- under the 7th CPC i.e. has come in the Apex Scale.

(f) Respondents are creating a distinction between the Members appointed prior to 19.02.2007 and the Chairman and Vice-Chairman basis the pay-scales and qualifications of the latter, which is a misconceived approach as initially same pension was fixed for all at Rs.700/- p.a. with a ceiling of Rs.3,500/- under Rule 8(1) of 1985 Rules. Rule 8(1) provided parity in pension to the Members and this Rule was never amended and which is why in response to the application filed by Sh. Kaushik, DoPT stated that pension of the Member is also linked with the pension of High Court Judges under Part III of 1954 Act. In ***Union of India v. K.B. Khare and Others, 1994 Supp (3) SCC 502***, the Supreme Court held that Rule 8(1) is exhaustive and deals with pension of Members as well. Assuming there was no provision under Rule 8 for fixation of pension for Members of the Tribunal, recourse ought to have been taken to Rule 16 which is a Residuary provision and provides that conditions of service of the Chairman, Vice-Chairman or other Members for which no express provision is available in the rules, shall be determined by rules and orders for the time being applicable to a Secretary to the Government of India belonging to the Indian Administrative Service. An officer in Group-A of the level of Secretary gets paid equal to that of a High Court Judge and even by this analogy, Petitioner's pension ought to have been linked to the pension of a Judge of the High Court under Part III of 1954 Act. Comparison with the Additional Secretary is erroneous inasmuch as pay-scales of Members of the Tribunal were always higher than those of the Additional Secretary, commencing from 4th CPC and this is evident from the table hereunder. Moreover, assuming for the sake of argument, a comparison is to be made with the Additional Secretary, pay of the Additional Secretary under the 7th CPC is Rs.2,25,000/- and applying the DoPT principle, whereby pension is to be fixed at 50% of the minimum of the pay-scale, pension of the Petitioner should have been fixed at Rs.1,12,500/- w.e.f. 01.01.2016. Respondents cannot be permitted to approbate and reprobate at the same time. The comparative table of pay-scales is as follows:-

PAY SCALES:	**ADDL. SECRETARY**	**CAT MEMBER**
4th CPC	Rs.7300-7600	Rs.7300-8000
5th CPC	Rs.22400-24500	Rs.22400-26000
6th CPC	Rs.37400-67000 plus Grade Pay Rs.12000	Rs.75500-80000
7th CPC	Rs.182200-224100	Rs.225000

3. In a nutshell, case of the respondents as reflected from a reading of the counter-affidavit is that:

(a) Conditions of service of Chairman, Vice-Chairman and Members of the Tribunal were governed by 1985 Rules, when the Tribunal was established in 1985 under the 1985 Act. Pay of the Chairman was Rs.9000/-, that of Vice-Chairman was Rs.8000/- and of Members was in the pay-scale of Rs.7300-8000/- under the 3rd CPC, however, their pension was Rs.700/- per annum for each completed year of service under Rule 8(2) of 1985 Rules. Later, Rule 15(A) was inserted in the 1985 Rules and while conditions of service of Chairman and Vice-Chairman were made equivalent to those of Judges of High Court, service conditions of Members remain unchanged. When 1985 Act was amended by the 2006 Act, Sections 8(3), 10A and some other provisions were inserted. As per Section 8(3), conditions of service of Members were brought at par with those of the Judges of the High Court but only with respect to those appointed on or after 19.02.2007. Section 10A stipulated that "*The Chairman, Vice-Chairman and Member of a Tribunal appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 shall continue to be governed by the provisions of the Act and the rules made thereunder as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force….*" Constitutional validity of Section 8(3) was upheld by the Supreme Court in ***A.K. Behera v. Union of India and Another, (2010) 11 SCC 322***, wherein certain other amendments were also challenged and petition was dismissed and therefore, Petitioner cannot lay a claim to fixation of his pension at par with the pension of a High Court Judge, having been appointed prior to the Amendment of 1985 Act.

(b) Accordingly, from 31.03.1989, pension of Chairman and Vice-Chairman was revised to Rs.1600/- per annum i.e. equivalent to a High Court Judge under 4th CPC. For revision of pension of Members of the Tribunal, matter was examined by DoPT and Department of Expenditure. It was observed that pension is related to pay drawn before retirement and not to the functions performed. Since Members of Tribunal were drawing less pay than the Chairman and Vice-Chairman, allowing them the same rates of pension was not correct. It was, therefore, decided that in view of lesser qualifications of Members and lesser pay drawn by them, pension should be revised proportionate to their pay with respect of the Chairman and Vice-Chairman. In this light, with the approval of the Cabinet, 1985 Rules were amended vide Notification dated 20.01.1995, effective from 31.03.1989, revising the pension of the Members of the Tribunal as Rs.1450/- per annum for each completed year of service proportionately to that of the Chairman and Vice-Chairman i.e. Rs.1600/-. Figure of Rs.1450/- was arrived by calculation on the basis of proportionate mean pay of Chairman and Vice-Chairman i.e. Rs.9000/- and Rs.8000/-, respectively i.e. 7650/8500 x 1600 = 1440/- increased to Rs.1450/- for service of one year in the Tribunal.

(c) This principle of proportionality, as approved by the Cabinet, was followed for revision of pension under the subsequent Pay Commissions also. Under the 5th CPC, revised pension of Chairman was Rs.5200/-, equal to a Judge of the High Court under para 2(b) of Part III of 1954 Act. For revising the pension of the Member, Rs.5200/- was multiplied by Rs.1450/- and divided by Rs.1600/-, which came to Rs.4713/- and this was increased to Rs.4716/- and fixed as pension per annum for each completed year of service. Under the 6th CPC, formula adopted was: 16,020 x 4716/5200 = 14,529/- increased to Rs.14,532/- and likewise under 7th CPC, the revised pension was Rs.40,836/- and no error can be found with this methodology of pension fixation, which was with the approval of the Cabinet.

(d) The 1985 Act was amended vide 2006 Act, which came into force on 19.02.2007, whereby conditions of service of Members of the Tribunal appointed post 19.02.2007 were made equal to those of Judges of the High Court and hence, their pay-scales/pay and pension are the same as that of Judges of the High Court. However, in consonance with Section 10A of 1985 Act, Chairman/Vice-Chairman/ Members appointed prior to the Amendment shall continue to be governed by the provisions of the unamended Act and Rules, as if the Amendment had not come into force. Petitioner was appointed as Member of the Tribunal prior to the Amendment and as such, his pension was governed by the 1985 Rules, as amended from time to time. At the time of Petitioner's retirement on 10.12.2010, pension payable to a Member was Rs.14,532/- per annum and accordingly, his pension was fixed at Rs.14,532/- per annum for each completed year of service i.e. Rs.14,532/- x 10 = Rs.1,45,320/- per annum or Rs.12,110/- per month vide PPO dated 09.12.2010. Benefit of the judgment of the Supreme Court in ***P. Ramakrishnam Raju (supra)*** was extended to the petitioner and his pension was revised to Rs.24,220/- per month vide PPO dated 18.06.2020. Under 7th CPC, pension of the petitioner was revised to Rs.68,060/- per month and correctly so.

(e) Rule 8 of 1985 rules relates to and provides for pension of the Chairman, Vice-Chairman and Members of the Tribunal and therefore, Rule 16, which is the Residuary provision, has no applicability to the case of the Petitioner. Petitioner cannot claim parity with the Chairman/Vice-Chairman or the Judges of the High Court as the pay-scales of the Member of the Tribunal were historically lesser and different, which is evident from the table below:-

Sl. No.	Pay Commission	Pay Scale		
		Chairman	Vice-Chairman	Member
1	4th CPC	Rs. 9000/-	Rs. 8000/-	Rs. 7300-8000/-
2	5th CPC	Rs. 30000/-	Rs. 26000/-	Rs.22400-26000/-
3	6th CPC	Rs. 90000/-	Rs. 80000/-	Rs. 75500-80000/-
4	7th CPC	Rs. 250000/-	Rs. 225000/-	Rs. 205400-224400/-

4. I have heard the Petitioner, who appears in person and the learned Central Government Senior Panel Counsel for the Respondents.

5. Petitioner has filed this petition challenging the initial fixation of his pension vide PPO dated 09.12.2010 at Rs.12,110/- and subsequent revision under the 7th CPC. Direction is sought to the Respondents to re-fix the pension at par with Judges of the High Court in accordance with Part III of 1954 Act and grant arrears w.e.f. 11.12.2010, the date of Petitioner's retirement. Be it noted that it is today an undisputed fact that Petitioner's

pension was initially fixed at Rs.12,110/- on his retirement but later benefit of judgment of the Supreme Court in ***P. Ramakrishnam Raju (supra)*** was extended to him and counting his 10 years practice at the Bar, pension was revised to Rs.24,220/- vide PPO dated 18.06.2020. Consequently, pension was revised to Rs.68,060/- w.e.f. 01.01.2016 under the 7th CPC. Petitioner has challenged the PPOs, Cabinet decision, 1994 and DoPT Notification dated 30.08.2018. However, no order has been passed by the Respondents rejecting the claim for revised pension and his representation is also pending.

6. There can be no quarrel on the legal proposition that fixation and revision of pension is the domain of the Respondents and Courts cannot substitute their views or direct fixation in a particular manner. However, it is equally settled that Courts can examine the decision-making process to see if there is any arbitrariness in the process and this becomes more significant in a claim relating to pension fixation. Right to pension has been held by the Supreme Court to be akin to fundamental right to property and it needs no re-iteration that pension is not a bounty of the State. Petitioner has flagged several issues in support of his claim for re-fixation of pension in the present petition, some of which have been encapsulated above and as per him the erroneous fixation has caused and is continuing to cause a financial loss to him. According to the Petitioner, he is entitled to parity in pension with the Chairman/Vice-Chairman as existed under Rule 8(1), whereunder pension was fixed for all at Rs.700/- per annum, for each completed year of service. Main plank of the argument is that pension of Members appointed prior to amendment of 1985 Act by the 2006, Act is also linked to fixation of pension of a judge of the High Court under Part III of 1954 Act, a fact

allegedly admitted by DoPT in its response to RTI application filed by one of the retired Judicial Members of the Tribunal. Petitioner has also *inter alia* flagged that there is no provision under the 1985 Act or 1985 Rules, which provides or permits the Respondents to apply the principle of proportionality in fixing his pension, whereby mean is taken of the pay of the Chairman and the Vice-Chairman. These issues, in my view, need a serious examination and consideration by the Respondents, especially the formula of proportionality, for which no provision or reasoning has been pointed out in the counter affidavits and rightly, the petitioner also agrees during the course of hearing that the appropriate course of action at this stage would be to remand the matter back to the Respondents to examine and re-look at the issues raised in this petition and the representation made earlier and pass a reasoned order.

7. Accordingly, this petition is disposed of with a direction to the Respondents to treat this writ petition as a representation and examine all the issues and contentions raised therein, in light of the applicable statutory provisions and rules and in accordance with law. After examining the issues raised, Respondents shall pass a reasoned and speaking order, within a period of 3 months from today. The order so passed shall be communicated to the Petitioner, within 2 weeks from the date of the decision, who shall be at liberty to challenge the same in case of any surviving grievance, by taking recourse to available legal remedies.

8. Needless to state that this Court has not expressed any opinion on the merits of the case.

JYOTI SINGH, J

MAY 13, 2024/*B.S. Rohella*