

Delhi High Court

G.C.Srivastava vs Union Of India And Ors on 16 December, 2022

NEUTRAL CITATION NO:2022/DHC/005616

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Reserved on : 12th Sep
Pronounced on: 16th Dec

+ W.P.(C) 108/2013
G.C.SRIVASTAVA
Through: Mr. R. V. Sinha, Mr.
and Mr. Amit Sinha, A

versus

UNION OF INDIA AND ORS
Through: Mr. Anurag Ahluwalia,
with Mr. Danish Faraz
Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

CHANDRA DHARI SINGH, J.

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:-

"(a) call for the relevant records of the respondents;

(b) quash the order F.No.2/4/2008-JA dated 19.1.2012 (Annexure-P impugned), order dated 21.3.2012 (Annexure- P-1 impugned) and order dated 16.4.2012 (Annexure-P-2 impugned) issued by the respondents herein to the extent and has allowed payment of lesser amount of gratuity;

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(c) issue an appropriate writ/direction to the respondents to treat the claim of the petitioner for treating service rendered by him in I.A.S. and further with CAT as single spell for the purpose of gratuity in view of the judgement of this Hon'ble Court in "Devender Kumar Agarwal" (supra);

(d) direct the respondents to pay the balance amount of gratuity amounting to Rs.5,30,533 (Rs.

10,00,000 minus Rs.3,50,000 minus Rs. 1,19,467 = Rs.5,30,533) to the petitioner along with interest thereon @ 18% per annum from the date the same became due till the date of actual payment.

(e) Direct the respondents to pay interest @ 18% p.a. on the payment of Rs. 1,19,467/- from the date the same became due till actual payment thereof;

(f) award cost of the present petition in favour of the petitioner and against the respondents..."

FACTUAL MATRIX

2. The brief facts of the case are that the petitioner had joined the Indian Administrative Service (IAS) in 1967 and retired therefrom on 30th June, 2003 on attaining the age of superannuation.

3. After retirement from the service as Civil Servant (IAS), the petitioner was re-employed by Government of India as Member Secretary of the Twelfth Finance Commission with effect from 1st July, 2003 to 31st December, 2004 and thereafter, by the Government of Uttaranchal (Now Uttarakhand) as Chairman of the Second State Finance Commission from 2nd May, 2005. Subsequently, the petitioner joined the Central Administrative Tribunal (hereinafter referred to as 'CAT') as Vice- Chairman of the Jabalpur Bench on 23rd March, 2006, wherefrom he Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 retired on 30th June, 2008 on attaining the age of 65 years. Vide their sanction order no. 19/2009 dated 30th April, 2009, the respondents paid amount of leave encashment to the petitioner as admissible under the Rules. In May, 2009, the petitioner was informed by the respondent no. 2 vide letter dated 26th May, 2009 addressed to the respondent no. 3 that "in view of the Sub-Section 3 of Section 17A of the High Court Judges Act, 1954, (hereinafter "The Act, 1954") the gratuity to the petitioner is not admissible".

4. Thereafter, the petitioner submitted a representation to the respondent no. 2 on 29th July, 2009 drawing its attention to the circular/letter bearing no. L-11016/2/2009-June of the Ministry of Law and Justice (Department of Justice). However, the said representation was rejected by the respondent no. 2.

5. Subsequently, the petitioner submitted another representation on 2nd October, 2009 clarifying the statutory and legal position qua the valid claim of the petitioner. Vide letter dated 2nd March, 2010, the said representation of the petitioner was again rejected by the respondents. The petitioner made another effort and again made a representation in October, 2009. The same was also rejected by the respondent no. 2 vide letter dated 19th January, 2012. Aggrieved by the aforementioned impugned orders, the instant petition has been filed.

SUBMISSIONS (on behalf of the Petitioner)

6. Learned counsel appearing on behalf of petitioner submitted that the impugned order dated 19th January, 2012 passed by the respondents is Signature Not Verified Digitally Signed By:GAURAV

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perverse and contrary to the facts of the instant case. It is submitted that the ratio of the judgment of Union of India & Ors vs. Pratibha Bonnerjea & Anr (1995) 6 SCC 765 passed by the Hon'ble Supreme Court is not applicable in the instant case.

7. It is submitted by learned counsel appearing on behalf of petitioner that the petitioner was neither a High Court Judge before his appointment as Vice-Chairman, CAT nor did he seek grant, enhancement or revision of his pension. It is further submitted that the petitioner retired as an IAS officer who retired in 2003 and his pension was sanctioned on his retirement as an IAS officer much before he joined CAT in March, 2006. The claim of the petitioner is distinguishable from the aforesaid judgment of. Pratibha Bonnerjea (Supra), which has been referred to and relied upon by the respondent while passing the impugned order and rejecting the representation of the petitioner. It is further submitted that the claim of the petitioner would have been covered under Part-III and not under Part-I of First Schedule of the High Court Judges (Salaries and Conditions of Service) Act, 1954.

8. Learned counsel appearing on behalf of petitioner submitted that the petitioner is covered by the judgment dated 7th November, 2002 passed by this Court in WP(C) No.4728/2001 titled "Devender Kumar Aggarwal Vs Union of India". He has relied on the following paragraphs:-

" 11. Mr. Gupta, learned counsel for the petitioner, has also pointed out that Ms. Pratibha Bonerjee was paid pension for her tenure of Vice Chairman lasting less than three years under Part III of Schedule I of Act 1954. The tenure of Vice Chairman was treated at part for the purposes of service Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 conditions as that of a Judge of High Court for determination of pension. In view of discussion above, I hold that grant of pension in terms of Rule 15-A of the Rules and service conditions of Act, 1954 has to be applied to the petitioner and his pension be determined in accordance with Part III of First Schedule to High Court Judges (Salaries and Conditions of Service) Act, 1954 and additional pay in accordance with sub- paras (a) and (b) of para 2 of Part III of First Schedule to High Court Judges (Salaries and Conditions of Service) Act, 1954 on the basis of Rule 15-A of the said Rules and memo dated 27.8.1999 issued by the Department of Personnel and Training be fixed. Same may be fixed within a period of eight weeks. Petition is allowed. Rule is made absolute. There is no order as to costs."

9. It is submitted that as under Section 17(A)(2) of the Act, 1954, the amount of gratuity is required to be calculated by combined service rendered in CAT with the earlier pensionable service. It is further submitted that despite having admitted that the petitioner is entitled to amount of gratuity under Section 17(A)(2) of the Act, 1954, the respondent wrongly calculated the amount of gratuity under Section 17(A)(3) of the Act, by taking into account only the service rendered by the petitioner in CAT. It is also submitted that Section 17(A)(3) of the Act is not applicable to the case of the petitioner and therefore, any calculation of the amount of gratuity on the basis of norms laid down in the said Section is legally untenable.

10. It is also submitted that as per the clarification in the explanation given under Section 17(A)(3) read with Section 14 of the Act, Section 17(A)(3) is applicable to a Judge "who is not a member of the Indian Civil Service or has not held any other pensionable post under the Union Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 or a State and includes a Judge, who being a Member of the Indian Civil Service or having held any other pensionable post under the Union or a State." In other words, gratuity under Section 17(A)(3) is to be calculated for those whose cases fall under Part-I of the First Schedule. Since the case of the petitioner clearly falls under Part-III of the First Schedule, calculation of gratuity amount has to be done under Section 17(A)(2) and not Section 17(A)(3) of the Act, 1954.

11. Learned counsel appearing on behalf of petitioner submitted that therefore, reasons which have been given while rejecting the representation of the petitioner are illegal, untenable and contrary to the law settled as well as the provisions of the statute. Hence, it is liable to be set aside.

(on behalf of the Respondents)

12. Learned Standing Counsel appearing on behalf of respondent no. 1 vehemently opposed the instant petition and submitted that the petitioner is not entitled for any relief as prayed for in the present petition as there is no illegality or error in the impugned order. It is submitted that after his retirement from IAS on 30th June, 2003, the petitioner joined CAT as Vice Chairman, w.e.f. 23rd March, 2006. He retired from CAT on 30th June, 2008. The petitioner was not being paid the gratuity for his tenure as Vice-Chairman, CAT as he did not complete the requisite service of two years and six months for making him eligible for gratuity as per Section 17(3)(i) of the Act, 1954. The matter was referred to the Department of Justice for clarification, which clarified that the petitioner was holding a pensionable post under the Union/State before his Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 appointment as Vice-Chairman in CAT and is entitled to pensionary benefits under Part-III of the First Schedule of the Act, 1954. As per the advice of Department of Justice, CAT paid an amount of Rs. 1, 19,467/- as gratuity to the petitioner.

13. It is vehemently submitted that the petitioner has now filed the present writ petition for payment of gratuity in terms of Part-II of the Act, 1954, so that his service in CAT may be clubbed with his Services as Civil Servant. However, after his retirement from IAS, he has joined CAT after a gap of about two years and nine months. During this period, he had worked as member, Twelfth Finance Commission and Chairman, Second State Finance Commission, Uttarakhand. Therefore, the service of the petitioner as Vice-Chairman in CAT cannot be treated as service in continuation. It is further submitted that the age of superannuation for a civil servant is 60 years. On his superannuation as a civil servant on 30 th June, 2003, the petitioner ceased to be a member of that service. His assignment as Member Secretary, Twelfth Finance Commission and with the Government of Uttarakhand cannot be clubbed with his regular service rendered as member of the Civil Servant (IAS).

14. Learned counsel appearing on behalf of respondent no. 1 vehemently submitted that Petitioner's tenure as Vice Chairman in CAT, Jabalpur Bench was a separate assignment and it cannot be clubbed with his services as an IAS, as he had joined CAT after his retirement and that too after a gap of about two years eight months and twenty two days. Therefore, his pensions, gratuity etc, for his services rendered as Vice- Chairman, CAT is to be paid separately, subject to ceiling mentioned in the Act, 1954.

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15. Learned counsel appearing on behalf of respondent no. 1 submitted that the leave encashment of Vice-Chairman, CAT is governed by Section 4(A) of the Act, 1954, which states as under:-

"4(A) A Judge shall be entitled in his entire service including the period of service rendered in a pensionable post under the Union or State or on re-employment, if any, to claim the cash equivalent of leave salary on his retirement in respect of the period of earned leave at his credit, to the extent of the maximum period prescribed for encashment of such leave under the All India Service (Leave) Rules, 1955."

16. Learned counsel appearing on behalf of respondent no. 1 submitted that the petitioner has been paid gratuity for his tenure as Vice-Chairman, CAT in terms of Part-III of the Act, 1954. It is further submitted that Part- II of said Act does not apply to the case of the petitioner. The petitioner has no case on merits and the competent authority while rejecting his representation has taken due care of the entire facts as well as legal aspects in the case. Hence, there is no illegality in the impugned order and the instant petition, being devoid of any merit, is liable to be dismissed.

FINDINGS AND ANALYSIS

17. Heard learned counsel for the parties and perused the record.

18. To appreciate the arguments advanced by learned counsel for the parties and for the purpose of proper adjudication of the instant matter, it is necessary to reproduce the relevant provisions of the Act, 1954, which are reproduced herein below:-

"17A. Family pensions and gratuities.-- ...(2) Where any Judge, who has elected to receive the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48
NEUTRAL CITATION NO:2022/DHC/005616 pension payable to him under Part II or Part III of the First Schedule, retires, or dies in circumstances to which section 17 does not apply, gratuity, if any, shall be payable to the person or persons entitled thereto 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 gratuity.

(3) The rules, notifications and orders for the time being in force with respect to the grant of death cum-retirement gratuity benefit to or in relation to an officer of the Central Civil Services, Class I

(including the provisions relating to deductions from pension for the purpose) shall apply to or in relation to the grant of death-cum-retirement gratuity benefit to or in relation to a Judge who, being in service on or after the 1st day of October, 1974, retires, or dies in circumstances to which section 17 does not apply, subject to the modifications that--

(i) the minimum qualifying service for the purpose of entitlement to the gratuity shall be two years and six months;

(ii) the amount of gratuity shall be calculated on the basis of 9 [ten days] salary for 10 [each completed six months period] of service as a Judge;"

" Schedule 1-

PART II

1. The provisions of this Part apply to a Judge who is a member of the Indian Civil Service and who has not elected to receive the pension payable under Part I.

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

(a) the pension to which he is entitled under the ordinary rules of the Indian Civil 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 Signature Not Verified Digitally Signed By:GAURAV SHARMA
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(b) the additional pension, if any, to which he is entitled under paragraph 3;

Provided that the pension under clause (a) and the additional pension under clause (b) together shall shall in no case exceed Rs. 5, 40,000 per annum in the case of a Chief Justice and Rs. 4, 80,000 per annum in the case of any other Judge...

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.

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 a 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, Provided that the pension under clause (a) and the additional pension under clause (b) together shall in no case exceed Rs. 5,40, 000 per annum in the case of a Chief Justice and Rs.4,80,000 per annum in the case of any other Judge.

19. After considering the arguments advanced by learned counsel for the parties and the relevant provisions of the Act, the following issue is framed for further consideration:

Whether the petitioner can legitimately in law, claim any right to option to combine the two services to get one consolidated pension
Signature Not Verified Digitally Signed By:GAURAV SHARMA
Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 as a Vice-Chairman of the CAT and his prior services as a civil servant in several capacities in the Centre or State.

20. As per the statutory provisions of the Administrative Tribunals Act, 1985, it is required that only after retirement, a person should be appointed as a Member/Vice-Chairman of the Tribunal. In the instant case, the petitioner retired from the service of IAS on 30th June, 2003 on attaining the age of superannuation. Thereafter, he joined two commissions, the first, by Government of India as Member Secretary of the Twelfth Finance Commission and the other by Government of Uttaranchal (Now Uttarakhand) as Chairman of the Second State Finance Commission. After a gap of about two years and nine months, he joined CAT as a Vice-Chairman. In view of the facts and circumstances, there are no provisions under the Statute for clubbing the period of two services rendered as a civil servant as well as the Vice-Chairman of the CAT, after the gap of more than two years and eight months.

21. In the case of Union of India vs. K.B. Khare and Ors, (1994) Supp (3) SCC 502, the Hon'ble Supreme Court held as under:

"XX"

12. The Administrative Tribunal Act, 1985 was passed in the year 1985. The Act means to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State of any local or other authority within the territory of India or under the control of the Government of India or of (any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution) and for matters
Signature Not Verified Digitally Signed By:GAURAV SHARMA
Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 connected therewith or incidental thereto. Section 4 deals with establishment of a Tribunal. It reads as under : "4. (1) The Central Government shall, by notification, establish an Administrative Tribunal, to be known as the Central Administrative Tribunal, to exercise the jurisdiction powers and authority conferred on the Central Administrative Tribunal by or under this Act."

Section 5 talks of composition of Tribunal. It reads as under: "5. (1) Each Tribunal shall consist of a Chairman and such number of Vice- Chairman (and Judicial and Administrative Members) as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof."

Section 6 of the Act deals with qualifications for appointment of Chairman, Vice-Chairman or other Members. Section 8 of the Act deals with term of office. That reads as under : "The Chairman, Vice Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re- appointment for another term of five years: Provided that no Chairman, Vice-Chairman or other member shall hold office as such after he has attained,-

a) in the case of the Chairman or Yice-Chairman, the age of sixty five years, and

b) in the case of any other Member, the age of sixty-two years.

Section 10 of the Act deals with salaries and allowances, which reads as under:

"The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, Vice- Chairman and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 other terms and conditions of service of the Chairman, Vice- Chairman or other member shall be varied to his disadvantage after his appointment.

13. Then, we come to Section 35 of the Act. That enables the State Government to make rules. There are also two other Sections namely; 36 and 36-A conferring power on the appropriate government to make rules and power to make rules retrospectively. We are not concerned with these two sections.

14. In exercise of power under Section 35(2)(c) of the Act which deals with salaries and allowances payable to, and the other terms and conditions of, the Chairman, Vice- Chairman and other Members (supplement to Section 10) by G.S.R. No. 644 (E) dated 10.8.1985, Central Administrative Tribunal (Salaries, and allowances and Conditions of Service of Chairman, Vice- Chairman and Members) Rules 1985 were made. Rule 5 of the Rules which reads as follows requires that if a person belonging to State Service is to be appointed as a Member of Central Administrative Tribunal, he will have to retire voluntarily from State service:

"(1) The Chairman, a Vice-Chairman or a Member who, on the date of his appointment to the Tribunal, was in service under the Central Government or a State Government, shall seek retirement

from such service before his appointment to the Tribunal and in the case of a sitting Judge of a High Court who is appointed as Chairman, a Vice-Chairman, his service in the Tribunal shall be treated as actual service within the meaning of para 11(b)(i) of Part 'D' of the Second Schedule to the Constitution.

(2) On such retirement as is provided for in sub-rule (1), the Chairman, Vice-Chairman and Member

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(i) shall be entitled to receive pension and gratuity in accordance with the retirement rules applicable to him;

(ii) shall not be allowed to carry forward his earned leave but shall be entitled to receive cash equivalent Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 to leave salary, if any, in accordance with the rules applicable to him prior to his retirement."

15. Rule 8 of the Rules is important since it deals with pensions. It reads as under :

"(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 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." It is clear from Rule 8 that it is exhaustive as rightly contended by Mr. Altaf Ahmed, learned Additional Solicitor General. It deals with the pension of the Chairman, Vice-Chairman or the Members. It also lays down the qualifying service of pension and prescribe the rate of Rs. 700 per annum for every completed year of service. The ceiling limit of pension is fixed at Rs. 3,500. The proviso is also important because in no case the pension so fixed shall exceed the maximum amount of pension prescribed for a Judge of the High Court. Rule 16 of the Rules reads as under:

"The condition 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 Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION

NO:2022/DHC/005616 and orders of the time being applicable to a Secretary to the Government of India belonging to the Indian Administrative Service."

16. A careful reading of the above provisions clearly establishes that they do not envisage linking of past service with a service in the Tribunal which is a quasi-judicial body. In this connection, it is usefully refer to S.P. Sampath Kumar v. Union of India, in answering the question whether the Administrative Tribunal could be regarded as equally effective and efficacious in exercising the power of judicial review as the High Court acting under Articles 226 and 227 of the Constitution. It was held as under: (SCC p. 131, para

5) "It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Arts. 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have same modicum or legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained Judges in the High Courts and the Supreme Court."

22. In the case of V.S. Mallimath vs. Union of India & Anr., (2001) 4 SCC, 31, the Hon'ble Supreme Court held as under:-

"XXX

5. Coming to the question whether a Member of the Human Rights Commission, is entitled to gratuity for the period he serves the Commission, it appears that there has been no Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 such provision in the Rules, entitling a Member to claim gratuity. Rule 10 of the Rules, however stipulates that the conditions of service of the Chairperson and the Members for which no express provision is made in the Rules, shall be determined by the rules and orders applicable to a Secretary to the Government of India belonging to Indian Administrative Service. So far as the service conditions of a Secretary to the Government of India belonging to the Indian Administrative Service is concerned, the same is governed by a set of Rules framed under Section 3(1) of the All India Services Act, 1951 called the All India Services(Death-cum- Retirement Benefits) Rules, 1958. Under the aforesaid Rules, retirement gratuity is granted to a Member of the Service, who retires or is required to retire under Rule 16, as provided in Rule 17 of the Rules. The amount of gratuity is computed under Rule 18. The enabling provisions contained in Rules 16, 17 and 18 do not provide for payment of gratuity for a re-employed person. The President of India, however in supersession of all the earlier orders in relation to fixation of pay of re-employed pensioners, promulgated an Order called the Central Civil Services (Fixation of Pay of Re-employed

Pensioners) Orders, 1986. The aforesaid order applies to all the persons who are re-employed in Civil Services and posts in connection with the affairs of the Union Government, after retirement on getting pension, gratuity and/or Contributory Provident Fund benefits. Rule 14 of the aforesaid orders, stipulates that re-employed officers shall not be eligible for any gratuity/death/retirement gratuity, for the period of re-employment, except in those cases covered in Rules 18 and 19 of the Central Civil Services (Pension) Rules, 1972. The petitioners case is not covered under the aforesaid provisions of the Central Civil Services (Pension) Rules, 1972. Therefore, the question for consideration is whether the appointment of the petitioner as a Member of the Human Rights Commission would tantamount to re-employment. In the absence of any definition of the expression re-

employment and applying the common parlance theory, the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 conclusion is irresistible that the said appointment would tantamount to re-employment and, therefore, for such period of service as Member of the Human Rights Commission, no gratuity would be payable.

6. The only other question that remains for consideration is the claim of encashment of leave. Under the Rules, Rule 4 entitles a person, on appointment as Chairperson or as a Member for earned leave and half pay leave on medical certificate and extraordinary leave. Rule 4(2) is relevant for our purpose which unequivocally indicates that on the expiry of the term of office in the National Commission, the Chairperson and Members shall be entitled to receive cash equivalent of leave salary in respect of earned leave, standing to his credit subject to the condition that the maximum of leave encashed under this sub-rule or at the time of retirement from previous service, as the case may be or taken together shall not in any case exceed 240 days. The petitioner did encash the cash equivalent of leave for the period of 240 days, when he retired as the Chief Justice of Kerala High Court. In accordance with Rule 4 of the Rules, he had earned, earned leave for 68 days. But he has not been allowed to encash the same, since he had already encashed the maximum period of 240 days under sub-rule (2) of Rule 4, which sub-rule provides for encashment of leave. The petitioners contention however is that the expression previous service in sub-rule (2) must refer to the preceding service, which the petitioner had served as Chairperson of the Central Administrative Tribunal and since he had earned only 161 days of earned leave as Chairman of the Central Administrative Tribunal, the maximum period provided under sub-rule (2) will not apply to his case, even though he has encashed the leave for 240 days, as the Chief Justice of Kerala High Court. On a bare reading of the aforesaid provisions contained in sub-rule (2) of Rule 4, we are unable to accept this contention inasmuch as what is intended in the aforesaid rule is that no-one would be allowed to encash leave for a period more than 240 days and since the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 petitioner did encash the earned leave for 240 days as the Chief Justice of Kerala High Court, he would not be entitled to further encashment for the period of 68 days of earned leave, which he might have earned as a Member of the Human Rights Commission under Rule 4(1) of the Rules. The petitioner, therefore, has rightly not been allowed to encash his leave in question. In view of our conclusions on the three items of claim made by the petitioner, we do not

see any violation of fundamental rights of the petitioner and as such this petition under Article 32 is dismissed."

23. The services rendered by the petitioner as a civil servant and the Vice-Chairman are clearly distinguishable from each other on the basis of Constitutional provisions contained separately in Part XIV and XIV A of the Constitution of India. The appointment, functions, removal and retirement procedure in both the services are clearly distinguishable from one another with respect to the aforesaid provisions of the Constitution. While the petitioner has superannuated from administrative services in 2003, his appointment as Vice-Chairman in CAT, instated him to a quasi-judicial authority.

24. Now, the issue to be determined before this Court is Issue (a) i.e. whether the two services rendered by the petitioner after a gap of more than 2.5 years as an IAS officer (1967-03) and as Vice-Chairman, CAT (2000-08) can be clubbed together for calculation of net gratuity payable to him. For the purpose of calculation of the retirement benefits as well as the gratuity amount for civil servants, they are governed by CCS Pension Rules, 1972 (hereinafter "Rules, 1972"). Nowhere in these rules, there is a mention of re-employment and gratuity payable at the termination of such re-employment. Rule 16 of Rules, 1972 speaks only of extension of Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 services in certain exceptional circumstances, denoting a clear indication of the intent of legislation. In the instant case, there is a gap of more than 2.5 years between the services rendered by the petitioner after his superannuation from the civil services, the services in the light of above statutory provisions cannot be treated as continuation of services. The general meaning of gratuity that is payable to an employee is the monetary amount paid to the employee of an organization as a token of appreciation for his work. The petitioner herein, has worked in two different organs of the State and at two different points of time with a gap of more than 2.5 years. The first service was rendered to the Union of India in the capacity of an IAS officer and the other one was rendered to the CAT as a Vice-Chairman, which is a quasi-judicial authority.

25. In the case of R. Kuppu Rao & Ors vs. Union of India, Department of Personnel and Training, (2002) SCC OnLine AP 1120, the High Court of Andhra Pradesh at Hyderabad held as under:-

" xxxxxxxxxxxxxxxx

10. We have no doubt in our mind that the service in the CAT is neither re-employment nor an employment in connection with the affairs of the Union or the State Government. It is an appointment to an independent autonomous Tribunal but the Union of India and the State Government in terms of the Act under which the Tribunals have been created have power to lay down the conditions of service and in any case it is for the employer to decide what salary has to be paid to those who man such Tribunals. As has been mentioned herein above, even the Constitution of India permits deduction of pension if received by a person for his past service on appointment as a Judge of Supreme Court or of the High Court. Under section 9 of Part-D of Schedule-II of the Constitution the pay for the Chief Justice of India and

the Judges of the Supreme Court has been Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 mentioned and under section 10 the salary of Chief Justice of the High Court and the Judges of the High Courts has been laid down. Both contain the following proviso; the proviso contained in section 9 is reproduced;

"Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced-

(a) by the amount of that pension, and

(b) if he has, before such appointment received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof by the amount of that portion of the pension, and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity."

11. When the salary of a Judge of the Supreme Court or High Court or Chief Justice of India or Chief Justice of High Court can be reduced by the amount of pension he was receiving in respect of his past service in terms of the provisions of the Constitution, it can be reduced for members of the Tribunal as well. We do not find any illegality. Besides, when the order of appointment was passed in favour of the petitioner and it was made clear to him that the pension received by him shall be reduced from his salary he had not only joined service without prejudice but continued to serve the Tribunal till 1998 and filed the Writ petition after 4 years of his joining the Tribunal at the completion of his tenure.

12. A case of the similar nature came up before the Supreme Court in V.S. Mallimath vs. Union of India Justice Mallimath who was the petitioner in this case retired as Chief Justice of High Court of Kerala. After his retirement he was appointed as Member of the National Human Rights Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 commission. The case of Justice Mallimath was, after retiring as Chief Justice of Kerala High Court on 11-6-91 he was appointed as Chairman of the Central Administrative Tribunal on 5-12-91, on his retirement from the Tribunal he was appointed as Member of the National Human Rights Commission on 14-4-94 and continued as Member of the Commission till he attained the age of 70 years. While he continued as Member of the National Human Rights Commission he was not paid full salary which he was entitled to under the relevant Rules, on the other hand deductions were made under the proviso to Rule-3(b) of the National Human Rights Commission Chairperson and Members (Salaries, Allowances and other conditions of service) Rules, 1993. Now, let us see what was the rule 3 (b) of the rules concerning the salary and

allowances to the Members of the National Human Rights Commission. Rule- 3(b) lays down;

"3(b) a Member, a salary which is equal to the salary of a Judge of the Supreme Court:

Provided that if the Chairperson or a Member at the time of his appointment was in receipt of, or being eligible so to do, had elected to draw, a pension (other than disability or wound pension) in respect of any previous service under the Government of the Union or Government of a State, his salary in respect of service as a Chairperson or as the case may be a Member shall be reduced:

(i) by the amount of that pension;

(ii) if he had, before assuming office, received, in lieu of a portion of pension due to him in respect of such previous service, the commuted value thereof by the amount of that portion of the pension; and

(iii) by any other form of retirement benefits, being drawn or availed of or to be drawn or availed of by him."

13. Rule-3 with proviso in case of Members of the National Human Rights Commission is paramateria with Rule-3 of the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 Andhra Pradesh Administrative Tribunal (Salaries, Allowances and conditions of service of Chairman, Vice Chairman and Members) Rules, 1989. This Writ petition was dismissed by the Supreme Court and the rule was not found illegal. For these reasons, we do not find any merit in the Writ petition which is accordingly dismissed."

26. While rejecting the representation of the petitioner, the respondent has passed the following order(s):-

"I am directed to refer to D.O. letter dated 02.10.2009 received from Hon'ble Dr. G.C. Srivastava, Ex. Vice- Chairman on the subject mentioned above and to say that the same was forwarded to DOP&T for clarification. DOP&T vide latter No.A-11013/28/2010-AT dated 29.12.2011 (copy enclosed) has stated that the representation of Hon'ble Dr. G.C. Srivastava. Ex. Vice- Chairman, CAT. Jabalpur Bench was examined in consultation with the Department of Justice for maximum gratuity of Rs.10.00 lakh for his earler service and as Vice- Chairman in CAT is not tenable in view of observation of the Supreme Court in the Pratibha Banerjee case that quantum of pension is separately payable for the period of service rendered as Vice-Chairman of the Tribunal. The DOP&T has therefore clarified that Hon'ble Dr. G.C. Srivastava, Ex Vice-Chairman may be granted gratuity for his service of 2 year 3 months and 7 days as Vice-Chairman in terms of section 17(A)(2) of High Court Judges (Conditions of Service) Act, 1954.

It is, therefore, requested that the necessary Sanction Order to draw the amount from the Pay & Accounts Office. Central Administrative Tribunal, New Delhi may please be issued accordingly under intimation to this office"

27. A careful reading of Section 4, 5 and 8 of the Administrative Tribunal Act, 1985 and Rules 5 and 8 of the Rules clearly establishes that Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 they do not envisage linking of the past service with the service in the Tribunal which is quasi-judicial body. The service in the CAT is not a re-employment in the service in the CAT, being an independent judicial service, the appointment to that service is on tenure basis. Therefore, it is difficult to accept the arguments advanced by learned counsel appearing on behalf of petitioner to club two services for retiral benefits.

CONCLUSION

28. In view of the foregoing discussions, this Court does not find any force in the arguments advanced by learned counsel appearing on behalf of petitioner to interfere in the impugned order dated 19th January, 2012 passed by the competent authority.

29. Considering the facts and circumstances as well as the foregoing discussions, it is an admitted fact that two services rendered by the petitioner cannot be seen as services in continuation as the two services were rendered after a gap of more than 2.5 years in two different capacities. In the absence of any definition of the expression "re-employment" and applying the common parlance theory, the irresistible conclusion is that the appointment of the petitioner as Vice-Chairman, CAT would not tantamount to re-employment and therefore, clubbing of the two services rendered as Civil Servant and Vice-Chairman, CAT cannot be clubbed as the benefits arising out of the same cannot be given.

30. Keeping in view the facts and circumstances as well as the reasons stated in the foregoing paragraphs, this Court does not find any cogent reason to interfere in the impugned order. Hence, the instant petition, Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48 NEUTRAL CITATION NO:2022/DHC/005616 being devoid of any merit, stands dismissed. Pending applications, if any, also stand dismissed.

31. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH) JUDGE DECEMBER 16, 2022 Dy/ms Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.12.2022 18:09:48