

N. Gopalakrishnan Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Jan-31-2001

Judge : A Haridasan

Appellant : N. Gopalakrishnan

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The applicant who joined the Indian Railway Accounts Service on 4th November, 1957, took voluntary retirement in November, 1989 and was appointed as the Member of the Railway Claims Tribunal for a tenure of 5 years from 8th November, 1989. On completion of the tenure, the applicant retired on 7th November, 1994. His additional pension for the service as Member of the Railway Claims Tribunal was fixed at the rate of Rs. 293/- per month or 3,500/- per annum taking into account the 5 years of his service. Sub-rule 2 of Rule 8 of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairmen and Members) Rules, 1989 was amended by notification No. N. GSR 185 (E) dated 11.4.96 and the amended Sub-rule 2 of Rule 8 reads as follows:- "8(2) Pension under Sub-rule (1) shall be calculated at the rate of rupees one thousand four hundred and fifty per annum for each completed year of service subject to the condition 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 rupees Four thousand per annum." However the Railway Board

issued order dated 27.8.97 extending the benefit of the amendment of Rule 8(2) with retrospective effect from 8.11.1989. The additional pension of the applicant was refixed by order No. PEN/B-432/SE-94/GRC/BK-2/P-96/2889 dated 10.12.97 (Annexure A2) at Rs. 484/- per month. According to the applicant he is entitled to get a monthly additional pension of Rs. 604/- for his 5 years of service because the applicant's pension for the Railway service being only Rs. 3350/- even if the additional pension of Rs. 604/- is added, that would not exceed Rs. 4000/-. Aggrieved by the alleged wrong fixation of the additional pension of the applicant, the applicant made a representation on 1.5.98. The representation was rejected by the second respondent by Annexure A3 letter on the ground that the Railway Board had vide letter No. 94/TC/(RCT) 2-2 Pt. dated 1.5.98 clarified that service for part of the year would not be taken into account for calculation of pension and only completed year of service would be taken into account. Dissatisfied with the fixation of his monthly pension at Rs. 484/- as against Rs. 604/- which is actually due to him, and the reasons stated in Annexure A3 order, the applicant has filed this application seeking to have the impugned orders Annexures A2 and A3 set aside, declaring that the applicant is entitled to have his monthly pension fixed at the rate of Rs. 604/- per mensem for the service rendered by him as Member of the Railway Claims Tribunal, taking into consideration the entire service of 5 years rendered by him and for direction to the second respondent to refix the applicant's pension at the rate of Rs. 604/ per mensem with effect from the date of his retirement, with all consequential benefits and to pay to the applicant interest at the rate of 18% per annum on the amount of arrears due to the applicant to be calculated at least from the date of Annexure A2 upto the date of full and final payment.

2. The respondents contend that the service of the applicant as Member of the Railway Claims Tribunal being not on a civil post or apost in connection with the affairs of the Union Govt., the Tribunal has no jurisdiction to entertain the application. They further contend that as the impugned orders are dated 10.12.97 and 12.5.98, the application filed in the year 2000 is not maintainable. On merits, the respondents contend that in accordance with the order dated 27.8.97 of the Railway Board, the amendment of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members)

Rules, 1989, having been given retrospective effect, the applicant is not entitled to count full 5 years of his service because he had availed 40 days of leave without pay and therefore his services was only for a period of 4 years, 10 months and 20 days, leaving out part of the year, the applicant can be paid pension only for service of 4 years and therefore the impugned order is perfectly in order, contend the respondents.

(i) Whether the Tribunal has got jurisdiction to entertain this application, (iii) In view of the amendment to Rule 8(2) of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairmen and Members) Rules, 1989 notified by GSR 185 E dated 11.4.96, the applicant is entitled to get pension for 5 years as claimed by him or only 4 years, as contended by the respondents.

4. Now we will take up the first question first. Learned Counsel of the respondents argued that a Member of the Railway Claims Tribunal cannot be held to be a holder of a civil post or one who is reemployed in connection with the affairs of the Union Government. In support of this argument he relied on the ruling of the Hon'ble Supreme Court in *Union of India v. K.B. Khare and Ors.*, AIR 1995 SC 771=1994(3) SLJ 102 (SC).

The learned Counsel argued that the Apex Court has held that the services of a Member of the Central Administrative Tribunal cannot be considered as reemployment in connection with the affairs of the Union and that as the rules regarding the conditions of service of the Members of the Central Administrative Tribunal and that of the Members of the Railway Claims Tribunal are similar, the same principle would apply in the case of a Member of the Railway Claims Tribunal and therefore it has to be held that the services of a Member of the Tribunal cannot be considered as a re-employment in connection with the affairs of the Union and therefore the Tribunal does not have jurisdiction to entertain this application. We are afraid that the reliance placed on the ruling of the Apex Court is really misplaced. In *K.B. Khare's* case, the Apex Court was considering the question whether Sri Khare who voluntarily retired from service as a Senior District Judge from the M.P. Judicial Service and appointed as a Member of the Central

Administrative Tribunal was entitled to have his service in the Tribunal as Member clubbed with his M.P. Judicial Service for fixing his qualifying service for pension under Rule 8A of the All India Service (Death-cum-Retirement Benefit) Rules, 1958. After quoting the Rule 8 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1985, the Apex Court observed as follows:- "19. 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 for 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 and orders of the time being applicable to a Secretary to the Government of India belonging to the Indian Administrative Service." 20. 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, AIR 1987 SC 386 : (1987 Lab IC 222) 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 Article 226 and 227 of the Constitution. It was held as under: "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 (sic) up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 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." 21. In our considered view, the High Court has gone wrong in considering the service in C.A.T. as re-employment in connection with the affairs of the Union. On the contrary, an independent judicial service, the appointment in the C.A.T. is on tenure basis.

The pension relating to such post is clearly governed by Rule 8 of the Rules quoted above, are at the risk of repetition, we may state is exhaustive in nature. If that be so, there is no scope for resort to Rule 16 at all. If the first respondent had to resign from Judicial service because of the statutory requirement under Rule 5 of the Rules (quoted above), we are unable to see as to how both the services namely Senior District Judge in the State Judicial Service and a Member in the C.A.T. could be clubbed. Such a clubbing is not contemplated at all. From this point of view, we find it difficult to accept the reasoning of the High Court that the matter of option to club the two services for pension is a subject on which the Rules are silent and the residuary provision in Rule 16 of the Rules intends to fill the gap by supplementing the Rules by rules applicable to the Secretary to the Government of India." Relying on the observations of the Apex Court in paragraph 21 "in our considered view, the High Court has gone wrong in considering the service in C.A.T. as reemployment in connection with the affairs of the Union", the learned Counsel of the respondents argued that the service in Railway Claims Tribunal being on similar terms cannot be considered as re-employment in connection with the affairs of the Union and therefore, this Tribunal has no jurisdiction to entertain the application. The Apex Court while holding that the High Court went wrong in considering the service as a Member in the Central Administrative Tribunal as re-employment in connection with the affairs of the Union, took into consideration the observations of the Constitution Bench of the Hon'ble Supreme Court in Sampath Kumar v. Union of India, AIR 1987 SC 386=1987(1) SLJ 1 (SC) that the Administrative Tribunal had to decide questions involving interpretation and applicability of Articles 14, 15, 16 and 311 of the Constitution and the validity of Legislative enactments which are so difficult and complex that they baffle the minds of even trained Judges in the High Court and the Supreme Court. In the light of the above observations, the Apex Court held that the services of a Member of the Central Administrative Tribunal is of a judicial

nature and that such service cannot be linked with the service under the M.P. State Judicial Service as the provisions of Rule 8 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 were complete in itself and therefore a clubbing seeking the aid of residuary Rule 16 was not called for. There is no pronouncement of the Apex Court that the Railway Claims Tribunal is an independent judicial service. The status of the Central Administrative Tribunal and that of Railway Claims Tribunal are not identical. Therefore it cannot be said that in view of the ruling in K.B. Khare 's case, this Tribunal has no jurisdiction to entertain an application from a retired Member of the Railway Claims Tribunal.

5. The question whether the Central Administrative Tribunal has got jurisdiction in the service matters of the Members of the Railway Claims Tribunal came up for consideration before the Madras Bench of the Central Administrative Tribunal in B.R. Nair v. Union of India and Anr., (1993) 25 ATC 314. Quoting from the judgment of the Full Bench of the Tribunal in Rehmat Ullah Khan v. Union of India, (1989) 10 ATC 656 (FB)=1989(2) SLJ 293 (FB) and various texts, the Bench observed as follows:- "Coming to the specific question whether a casual worker is entitled to come before the Tribunal, the Full Bench held: "In our opinion, it would be unfair to deprive such a person from coming to the Tribunal merely on the ground that he does not hold a civil post. If he has rendered service to the Union or for the affairs of the Union, the nature of his job being civil, we do not see why he should be deprived of a right to approach the Tribunal and seek relief in appropriate cases."(emphasis supplied.) The words that we have reproduced above with emphasis, read with the definitions and discussions preceding provide as clear an enunciation as one could desire of the expression "civil service of the Union" as occurring in Section 14 of the Administrative Tribunal Act. It would cover all persons who render service to the Government of Union or who render service in connection with the affairs of the Union other than the categories of persons exempted in Section 2 of the Administrative Tribunals Act, and are paid by the Union. In the light of the above interpretation, it is easy to see that the Members of the Railway Claims Tribunals come under the category of persons appointed to a "civil service of the Union". From the preamble to the Railway Claims Tribunal Act, which has been quoted and from Section 13 dealing with the jurisdiction, powers

and authority of the Claims Tribunal which we have also extracted earlier, it is clear that the Members of the Tribunal are rendering service in connection with the affairs of the Union. They also fulfil many of the other tests of a civil servant such as being paid from the Public Funds, in this case the Railway Fund, which is part of the Consolidated Fund of India, they are appointed by the President, they may be removed from service by the President, albeit on certain specific grounds and in the manner laid down in the Railway Claims Tribunal Act. Their salaries and allowances and other terms and conditions of service are regulated by the Government by rules. All these go clearly to show that Members of the Railway Claims Tribunal come within the ambit of Section 14 of the Administrative Tribunals Act." 6. Even after the pronouncement of the judgment in K.B. Khare's case by the Apex Court, the Jaipur Bench of the Central Administrative Tribunal in Chandra Sekhar Goyal v. Union of India and Ors., (1997) 35 ATC 495=1997(2) SLJ 451 (Jaipur) (CAT), following the judgment of the Madras Bench of the Tribunal held in B.R. Nair's case that the Central Administrative Tribunal has jurisdiction to entertain an application in regard to service conditions of the Members of the Railway Claims Tribunal. In view of the above legal position, I am of the considered view that this Tribunal has got jurisdiction to entertain this application.

7. We will now take the question of limitation. The impugned orders in this case are Annexures A2 dated 10.12.97 refixing the pension of the applicant at Rs. 484/- with effect from 8.11.94 and Annexure A3 order by which the representation of the applicant for correct fixation of pension was rejected on the ground that he did not have 5 completed years of service and would be entitled to get pension only for 4 years dated 12.5.98. The Original Application challenging the Annexures A2 and A3 orders was filed on 22.5.2000 as the application has been filed more than one year from 13.5.98, the respondents contend that the same is barred by limitation. The matter relates to fixation of correct pension. So long as the pensioner remains alive and gets monthly pension, as and when he is not paid the due pension on each month he gets a separate cause of action. Therefore the claim for payment of correct pension is a continuing cause of action. The Apex Court has in M.R. Gupta v. Union of India and Ors., 1995 (5) SCC 628 held that the claim to be paid the correct salary computed on the basis of proper pay fixation is a right which

subsists during the entire tenure of service and can be exercised at the time of each payment of the salary and is therefore a continuing cause of action, though the question of limitation might arise in deciding payment of consequential reliefs including arrears. The above dictum of the Supreme Court is equally applicable in the case of a pensioner seeking correct fixation and payment of pension. The contention of the respondents therefore that the application is barred by limitation is untenable.

8. Now we come to the third point. The Sub-rule 2 of Rule 8 of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Rules, 1989 before it was amended by GSR 185 (E) dated 11.4.96 read as follows:- "(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 Rs. 3,500 per annum." The Sub-rule 2 as amended by Notification No. GSR 185 dated 11.4.96 reads as follows:- "8(2) pension under Sub-rule (1) shall be calculated at the rate of rupees one thousand four hundred and fifty per annum for each completed year of service subject to the condition 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 rupees four thousand per mensem." As the applicant retired prior to 11.4.96 as per the rules then existing he was given pension reckoning 5 years of service in full.

When his pension was revised in terms of the amended rule by the impugned order dated 10.12.97 he was given a monthly pension of Rs. 484/- with effect from the date of his retirement namely 8.11.94 taking into account only 4 years of service. When the applicant raised his grievance he was told that only completed years of service would be taken into account under the amended rule and therefore the pension fixed taking into account 4 years of service was the correct pension payable to him. Section 9 of the Railway Claims Tribunal Act, 1987 reads as follows : "9. Salaries and allowances and other terms and conditions of service of Chairman, Vice Chairman and other Members--The salaries and allowances

payable to, and the 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.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Members shall be varied to his disadvantage after his appointment." As per the provisions contained in Rule 8 of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Rules, 1989 at the time of the applicant's appointment, pension was to be calculated at the rate of Rs. 700/- per annum for each completed year of service or part thereof.

So even if the 40 days of leave without pay availed of by the applicant is excluded in computing the qualifying service for pension, the applicant under the rules which applied to him at the time of his appointment and till his retirement he would have been entitled to reckon entire tenure of 5 years. He had been granted pension accordingly. The amendment of the rule by No. N. GSR 185 dated 11.4.96 deleting "or a part thereof cannot affect the applicant's tenure in view of the provisions contained in proviso to Section 9 of the Railway Claims Tribunals Act. Therefore even if it is assumed that the service of the applicant as contended by the respondents in their reply statement was only for a period of 4 years 10 months and 20 days, the applicant would be entitled to get pension for the entire period of 5 years. Even otherwise since a Member of the Railway Claims Tribunal is entitled to extraordinary leave without pay and allowances upto a maximum period of 180 days in one term of office in terms of Rule 6 of the Rules and as there is no provision in Rule 8 regarding pension or in any other rule that the extraordinary leave shall not be reckoned as service, the contention of the respondents that the applicant's service fall short of 5 years, is untenable. The Rule 8 is complete in itself and there is no scope for introducing any of the provisions of Central Civil Services Pension Rules in it.

In the light of the above legal position, I am of the considered view that the applicant is entitled to get the revised pension reckoning his entire service tenure of 5 years. Accordingly the Original Application is allowed, Annexure A3 order is

set aside, Annexure A2 order to the extent it fixed the applicant's additional pension at Rs. 484/- per month instead of Rs. 604A p.m. is set aside and declaring that the applicant is entitled to have his additional pension for his service as a Member of the Railway Claims Tribunal fixed at Rs. 604/- per mensem taking into account his 5 years tenure in the Tribunal. I direct the respondents to refix the additional pension of the applicant for his service as a Member of the Railway Claims Tribunal at Rs. 604/- per month with effect from the date of his retirement and to pay him the arrears resulting therefrom with interest at the rate of 12% per annum from the due date till the date of payment. The above directions shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs.

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