

Union Of India vs K.B. Khare And Ors on 12 September, 1994

Equivalent citations: AIR 1995 SUPREME COURT 771, 1994 (4) SCC 437, 1995 AIR SCW 386, 1995 AIR SCW 541, 1995 LAB. I. C. 1063, (1994) 2 CURCC 504, (1994) 27 ATC 603, (1994) 2 LAB LN 752, (1994) 2 SCJ 543, (1994) 3 SCR 917 (SC), 1994 UJ(SC) 2 331, (1994) 5 SERVLR 538, (1995) 1 SERVLJ 216, (1994) 4 SERVLR 18, 1994 (6) JT 124, (1994) 3 SCT 806, 1995 SCC (L&S) 105, 1994 SCC (L&S) 906

Bench: S. Mohan, M.K. Mukherjee

CASE NO.:

Appeal (civil) 2137 of 1994

PETITIONER:

UNION OF INDIA

RESPONDENT:

K.B. KHARE AND ORS.

DATE OF JUDGMENT: 12/09/1994

BENCH:

S. MOHAN & M.K. MUKHERJEE

JUDGMENT:

JUDGMENT 1994 SUPPL. (3) SCR 393 The Judgment of the Court was delivered by MOHAN, J. Respondent No. 1 was a confirmed Senior District Judge in the M.P. Judicial Service. He was appointed as a member of the Central Administrative Tribunal (C.A.T, in short) at Jabalpur on 25.6.1986. He assumed office on 30.6.1984 He sought voluntary retirement from service in the State which was a requisite under Rule 5 of the Central Administrative Tribunal (Salaries Allowances and Conditions of Service of Chairman, Vice- Chairman and Members) Rules, 1985 (hereinafter referred to as 'the Rules'), Respondent No. 1 retired as a Member of the Central Administrative Tribunal on 17.2.1991. His pension for the Judicial service in the State, was fixed at Rs. 1967 and Rs. 292 as a Member of the Central Administrative Tribunal at Jabalpur. After commutation, the pension came to Rs. 1470 p.m. for M.P. Judicial Service and Rs. 292 for services in Central Administrative Tribunal, total into Rs. 1761 per month.

While respondent 1 was Member in the C.A.T., he sought an option to refund his earlier pensionary benefits of M.P. Judicial service to Union of India to get a single consolidated pension by clubbing both the services instead of two pensions, one as a senior District Judge of M.P. Judicial Service and as Member of C.A.T. In the alternate, he wanted that his service of four year and eight months in the C.A.T. be added to his qualifying service for fixation of pension under Rule 8-A of All India Service (Death-cum- retirement Benefit) Rules, 1958 (hereinafter referred to as 'DCRB Rules'). His case was

that such an extension was permissible under Rule 16 of DCRB Rules. To this effect, he sent detailed representation on 13.6.79 and again another representation on 19.1.1988. He was informed by communication dated 19.11.1989 that his request was under consideration. On 3.2.1992 a reply was sent that his request could not be acceded to as the same is not covered by the provisions of the Rules. He filed Miscellaneous Petition No. 3137/90 before the Madhya Pradesh High Court to quash the order and the mandamus to direct the State and the Registrar of High Court to revise his pension appropriately and re-fix the pension based on the revised higher selection grade of Rs. 2500-2750 w.e.f. 11.5.1986. The appellant opposed the claim on the plea that Rule 8 of the Rules was exhausted. It was not permissible to take recourse to DCRB Rules of 1950 and by resorting to Rule 16 of the Rules.

The High Court framed a question for determination as under :

"Whether the petitioner can legitimately in law claim any right of option to combine the two services to get one consolidated pension as a Member of the C.A.T. or in the alternative to add to his qualifying service upto 62 years as a Member of the M.P. Judicial Service."

The Division Bench of the High Court by a impugned judgment dated 1.11.1993 held that having regard to Rule 16 of the Rules, two services could be clubbed for the purpose of pension. In construing the pension provision, as far as possible, the interpretation benevolent to the pensioners should be adopted unless a contrary intention has been clearly expressed in any part of the provisions. The High Court took the view that had the respondent continued in the State Judicial Service, he would have drawn a higher pension than what he was presently drawing. In as much as the first respondent was a person re-employed on a post in connection with the affairs of the Union Government after retirement on pension from the services of the State Government and was therefore entitled to get one consolidated pension by joining the two services on the basis of the CCS (fixation of pay of re-employed pensioners) Order, 1986. In this view, it allowed the writ petition. Accordingly, a direction was issued that the pensionary benefits earned by the respondent as a Member of the State Judicial Service be allowed to be refunded or adjusted in the pension found due to him on re-fixation of his pension after acceptance of the option exercised by him. It is under these circumstances that the Union of India in order to have an authoritative ruling on the interpretation of the Rules in question, has come up by way of civil appeal.

LA. 4 of 1994, an application for intervention has been filed by K.P. Acharya, retired as Vice Chairman of Central Administrative Tribunal, Bhubneshwar.

Mr. Altaf Ahmed, Additional Solicitor General draws our attention to the statutory provision of Administrative Tribunal Act, 1985 (hereinafter referred to as 'the Act'). Section 4 talks of establishment of Administrative Tribunals. Section 5 deals with the composition of Tribunals and Benches thereof. Section 6 lays down qualification for appointment of Chairman, Vice-Chairman or other Members. Under this Section, a clear cut distinction is made between Chairman and Vice-Chairman on one hand and the Members on the other hand. Again Section 8 prescribes the term of office for Chairman, Vice-Chairman as 65 years and in case of Members as 62 years. The

rule making power is conferred under Section 35 of the Act. In exercise of Section 35(2) (c) of the Act, Central Administrative Tribunal (Salaries and allowances and conditions of Service of Chairman, Vice-: Chairman and Members) Rules 1985 have been made. Rule 8 of the said Rules specifically deals with pension. The qualifying service for pension is two years. Pension is to be calculated at the rate of Rs. 700 per annum for every completed year of service; the maximum is not to exceed Rs. 3500 per annum. This Rule is exhaustive in nature and completely governs the issue relating to pension.

Rules 16 is the residuary provision. That will apply if there is no expression provision available in the Rules. In this conspectus of the statutory provisions, no other rule would apply. The High Court went wrong in relying on Rule 5(2) of DCRB Rules read with fundamental Rule 26 to come to a conclusion that the retirement should be deemed to be on formal or invalid pension. While arriving at this conclusion, it has not given due effect to Rule 5 of the Rules. That rule specifically requires that only on retirement, a person should be appointed as Member of the Tribunal. In relying on the statutory provision on Rule 16 of the Rules, the option to club the services for one consolidated pension is not to be found in Rule 8 of the Rules. Therefore, residuary Rule 16 will come into play. Equally, the finding that if the Rules are silent as far as clubbing of both the services, the residuary provision will fill the gap supplementing the CAT Rules, is not supportable in law. In this view, the application of Rule 8(5) of DCRB Rules to a Member of the Central Administrative Tribunal who is governed by specific rules is incorrect. Equally, the application of CCS (fixation of pay of re-employed pensioners) Order, 1986 is also inapplicable. There is no question of re-employment of a petitioner who retired on invalid pension from State service. On the contrary, the retirement was because of statutory requirement of Rule 5 of the Rules. The High Court erred in its conclusion that a case of discrimination has arisen in this case. In the matter of grant of option to avail better pensionary benefits. In fine, it is submitted that where Rule 8 of the Rules makes clear provision as to the payment of pension, there is no possibility of resorting to Rule 16 of DCRB Rules or CCS. (Fixation of pay of re-employed pensioners) Order, 1986. Thus, it is prayed that the judgment of High Court be set-aside.

The respondent No, 1 who argues in person submits and has also filed the written statement that Rule 8 of the Rules is for calculation of pension only. It is not exhaustive. It does not have provisions for family pension, it does not contain provision for commutation of pension. It does not contain any provision for invalid pension. That is why Rule 16 of the Rules has been framed. Moreover, this Rule 8 is ultravires, as it dis-criminates between pensioner retired on invalid pension who joined CAT and those who joined other department and so violates Article 14 of the Constitution.

The District Judge in Madhya Pradesh are governed by DCRB Rules. Where, therefore the respondent retired from that post in State Judicial Service, Rule 5(2) of the DCRB Rules would apply. By application of that Rule, he must be deemed to have been retired on formal or invalid pension. Since the option relating to clubbing of both services is not provided under Rub 8 of DCRB Rules, Rule 16 of the Rules would squarely apply. Therefore, the application of DCRB Rules or again the Central Civil Services Pension Rules will apply. Rightly, the High Court relied on C.C.S. (Fixation of pay of re-employed pensioners) Order, 1986. In any event, if the respondent No. 1 had continued in the State Judicial service, he would have drawn a higher pension, The Rules relating to pension as

held in D.S. Nakara v. Union of India, [1980] SC 130 have to be construed liberally and rightly, the High Court has done so.

In this case, the first respondent after voluntarily retiring from service as Senior District Judge from M.P. Judicial Service was appointed as a Member of C.A.T. Jabalpur. This voluntary retirement is a very requisite under Rule 5 of the Rules. The short question, therefore, is whether he would be entitled to claim any right of option to combine the two services namely (i) the State Judicial Service, (ii) service as a Member of the Tribunal. In order to get a consolidated pension as a Member of C.A.T. Or in the alternate whether he could add to his qualifying service up to 62 years as a Member of the M.P. Judicial Service. In order to emphasis this question, we have to refer to the relevant statutory provisions.

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 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 Vice-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 other terms and conditions of service of the Chairman, Vice-Chairman or other member shall be varied to his disadvantage after his appointment.

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.

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 -

(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 to leave salary, if any, in accordance with the rules applicable to him prior to his retirement, 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 and orders of the time being applicable to a Secretary to the Government of India belonging to the Indian Administrative Service."

A careful reading of the above provisions clearly establishes that they do not envisage Unking 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 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 ;

"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 some 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."

Therefore, the service is of judicial nature.

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.

Merely because while the first respondent was a Member of the State Judicial Service was governed by DCRB Rules of 1958. That cannot be pressed into service in view of the specific Rule 8 of the Rules. Consequently, the provisions relating to pensioners retired on invalid pension is not applicable. The Rules being unambiguous cannot be construed to confer better pensionary benefits. It is no argument to hold that had the first respondent continued in the State Judicial Service, he would have got a higher pension. There is no escape from Rule 8 of the Rules with regard to the grant of pension of Chairman, Vice-Chairman or the Members of the Tribunal. That being so, the question of liberally construing pension rules does not arise. On the same reasoning, the principle laid down in D.S. Nakara's (supra) is not applicable.

In view of the conclusion that the first respondent is not a person re-employed on a post in connection with the affairs of Union Government, we see no scope whatever for applying Central Civil Service (Fixation of pay of re-employed pensioners) Order, 1986.

In view of the foregoing discussion, the judgment of the High Court is liable to be set-aside and it is accordingly set-aside. While setting aside the judgment, we are aware of an impact on the first respondent, the pensioner. The question of law having been settled, we would only state that if any excess pension has been paid to the first respondent, than what he is legitimately entitled to, that may not be recovered. However, this does not mean that if the payment of higher pension has not so far been made, the appellant is required to pay the same. Thus, the civil appeal is allowed. However, there shall be no order as to costs. In view of the above judgment I.A. 4/94 is dismissed.