

**A.F.R**

**Neutral Citation No. - 2023:AHC-LKO:46761-DB**

**Court No. - 1**

**Case :-** WRIT - A No. - 18675 of 2020

**Petitioner :-** Dinesh Chandra Verma

**Respondent :-** State Of U.P. Through Prin.Secy. Law And Justice  
And Ors.

**Counsel for Petitioner :-** Shireesh Kumar

**Counsel for Respondent :-** C.S.C.,A.S.G.,Gaurav Mehrotra

**Hon'ble Devendra Kumar Upadhyaya,J.**

**Hon'ble Om Prakash Shukla,J.**

1. Heard Sri Shireesh Kumar, learned counsel for petitioner, Sri Shailendra Kumar Singh, learned Chief Standing Counsel and Sri Prakhar Mishra for the State-respondents, Sri Gaurav Mehrotra, learned counsel representing the High Court of Judicature at Allahabad and Sri Dev Rishi Kumar, learned counsel for Union of India.

2. Jurisdiction of this Court under Article 226 of the Constitution of India has been invoked by the petitioner, who is a retired Vice Chairman of Central Administrative Tribunal, a statutory tribunal created under the Administrative Tribunal Act, 1985, to challenge the order dated 26.12.2019, passed by the State Government whereby his representation claiming the benefit of Domestic Help Allowance has been rejected. A further prayer has been made by the petitioner that a direction be issued to the respondents to pay the said allowance in accordance with the provisions contained in the Government Order dated 20.04.1999 with effect from 01.03.2008 along with periodical revisions and arrears with interest at the rate of 12%.

3. The impugned order dated 26.12.2019 rejecting the representation of the petitioner in respect of his claim was passed in compliance of the order dated 03.07.2019 passed by a coordinate Bench of this Court in Writ Petition No.29103 (S/B) of 2017 as corrected vide order dated 31.07.2019.

4. By the said order the coordinate Bench of this Court while setting aside the order dated 09.08.2017 directed the State Government in the Department of Law and Justice to reconsider and decide the claim of the petitioner in the light of Government Order dated 05.04.2007, Office Memorandum dated 21.02.2003 as well as Rule 15-A of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 (hereinafter referred to as 'Rules, 1985').

5. The petitioner has been a Member of district judiciary in the State of U.P. and while working on the post of District Judge, he took voluntary retirement and on selection joined as a Member of Central Administrative Tribunal. He, subsequently, was appointed as Vice-Chairman of the said Tribunal and retired on 22.05.2005 from the post of Vice-Chairman. Initially, after his retirement, he was paid the Domestic Help Allowance till 31.12.2007, however, for subsequent quarters he was not paid this allowance and accordingly agitated his matter with the authorities. He also invoked the jurisdiction of this Court and instituted writ petition, namely, Writ Petition No. 29103 (S/B) of 2017, which as observed above, was decided with a direction to the State Government in the Department of Law and Justice to reconsider his claim. The said claim has, however, been denied to him by the State Government by passing the order dated 26.12.2019 which is under challenge before us in this writ petition.

6. Rules, 1985 have been framed in exercise of the powers conferred by Section 35 (2) (c) of the Administrative Tribunal Act, 1985 by the Central Government and as such these Rules have binding force being statutory in nature. The said Rules have been framed by the Central Government for regulating the salaries and allowances and conditions of service of the Chairman, Vice-Chairman and Members of the Central Administrative Tribunal. According to Rule 15-A, the conditions of service and other perquisites available to the Chairman and Vice-Chairman of the Central Administrative Tribunal shall be the same as admissible to a serving Judge of a High Court as contained in the High Court Judges (Conditions of Service) Act, 1954 (hereinafter referred to as 'Act, 1954') and High Court Judges (Travelling Allowances) Rules, 1956 (hereinafter referred to as 'Rules, 1956'). Rule 15-A of Rules 1985 is extracted herein below:-

***“15-A. Notwithstanding anything contained in Rule 4 to 15 of the said rules, the conditions of service and other perquisites available to the Chairman and Vice-Chairman of the Central Administrative Tribunal shall be the same as admissible to a serving Judge of a High Court as contained in the High Court Judges (Conditions of Service) Act, 1954 and High Court Judges (Travelling Allowances) Rules, 1956 ”***

7. A bare perusal of afore-quoted Rule 15-A of the Rules 1985 makes it abundantly clear that conditions of service and other perquisites to Chairman and Vice-Chairman of Tribunal is to be the same as are admissible to Judges of High Courts in terms of the provisions contained in Act, 1954.

8. The Parliament for the purpose of regulating certain conditions of service of Judges of High Courts has enacted Act, 1954. Section 2 of the said Act contains definition clause and according to

section 2 (gg), 'pension' has been defined to mean pension of any kind whatsoever payable to or in respect of a Judge and includes any gratuity or other sum or sums so payable by way of death or retirement benefits. Section 2 (gg) of Act 1954 is extracted herein below:-

***“2(gg) ‘pension’ means a pension of any kind whatsoever payable to or in respect of a Judge, and includes any gratuity or other sum or sums so payable by way of death or retirement benefits.”***

9. Thus, it is clear from a perusal of the definition of the expression 'pension' as occurring in Section 2(gg) of Act 1954 that pension does not mean the pension of any kind alone payable in respect of a Judge but it also includes gratuity or other sum or sums payable by way of death or retirement benefits. Thus, if any sum is payable to a Judge of High Court by way of retirement benefits, such sum will also be included in the definition of the expression 'pension'.

10. It is not denied at the bar that a High Court Judge after retirement is entitled to the Domestic Help Allowance. As per mandate of Rule 15-A of Rules 1985, the Chairman and Vice-Chairman of the Central Administrative Tribunal are also entitled to perquisites available to a High Court Judge as contained in Act, 1954.

11. Since the definition of the expression 'pension' as occurring in Section 2(gg) of Act, 1954 includes any sum payable by way of retirement benefits as well, in our opinion, we have no doubt that in case any retirement benefit is available to a retired High Court Judge, the same shall also be available to the Chairman and Vice-Chairman of the Central Administrative Tribunal.

12. As already observed above, Rule 15-A is statutory in nature and, thus, the said Rule binds all concerned.

13. It is also to be noticed that in Rule 15-A of Rules 1985, the word to be taken note of is “shall” which occurs therein and accordingly it is mandatory. Thus, mandate of Rules 1985 is that the conditions of service and other perquisites as available to a Judge of High Court shall be made available to the Chairman and Vice-Chairman of the Central Administrative Tribunal as well. The very mandatory nature of the language occurring in Rule 15-A makes it obligatory on the part of respondents to make available all the perquisites which, in our opinion, shall include the Domestic Help Allowance as well. The benefit of Domestic Help Allowance is, in fact, a retirement benefit and hence it will be included in the expression ‘pension’ as occurring in Section 2(gg) of Act 1954.

14. Apart from the aforesaid discussion, we may also notice certain other facts which strengthen the case of the petitioner.

15. Hon’ble High Court of Judicature at Allahabad vide its letter dated 07.08.2014 as is available in annexure no.11 to the writ petition, has already made a recommendation to grant the claim of the petitioner to the State Government.

16. We may also refer to a judgment of Hon’ble High Court of Delhi in the case of **Mr Devendra Kumar Agarwal vs. Union of India, reported in 102 (2003) DLT 461**. Certain claims were made by the petitioner in the said case, who also had retired as Vice-Chairman of the Central Administrative Tribunal. Hon’ble High Court of Delhi by means of judgment rendered in the said case on 07.11.2002 held that grant of pension in terms of Rule 15-A of Rules 1985 and service conditions have to be applied to the petitioner of the said case and his pension is to be determined in accordance with the Part- III of First Schedule to Act 1954.

**17.** In compliance of the said judgment of Hon'ble High Court of Delhi, a letter was issued by the Government of India in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training on 21.02.2003 for implementation of the said judgment dated 07.11.2002. The State Government thereafter vide its office order dated 12.11.2009 has provided the benefit of pension in compliance of judgment of Hon'ble High Court of Delhi and has also provided the benefit of Domestic Help Allowance to said Sri D.K.Agarwal.

**18.** It is also to be noticed that Sri D.K.Agarwal prior to appointed as Chairman, had also served the district judiciary in the State of U.P. and he had retired as District Judge.

**19.** The case of the petitioner herein, thus, stands on the similar footing with that of Sri D.K.Agarwal and accordingly we do not see any reason, whatsoever, as to why the benefits which have been made available to Sri D.K.Agarwal can be denied to the petitioner in this case.

**20.** As noticed above, the Government of India in its letter dated 21.02.2003 which was issued for ensuring compliance of the judgment of Hon'ble High Court of Delhi, dated 07.11.2002 in the matter of Sri D.K.Agarwal, has requested that pensionary benefits in respect of said Vice-Chairmen of the Central Administrative Tribunal, who prior to his appointment in the Tribunal have held any pensionable post under the Union of India or the State, be revised in the manner provided in Act 1954.

**21.** For all the aforesaid reasons, we are of the considered opinion that the petitioner is also entitled to Domestic Help Allowance.

**22.** Coming to the reasons indicated in the order dated 26.12.2019, passed by the State Government whereby the benefit being claimed by the petitioner has been denied, we may notice that the State Government has stated in the said order that in respect of pension the clear provision is not available in Rules 1956, namely, High Court Judges (Travelling Allowances) Rules, 1956.

**23.** The reason given in the impugned order further is that since the said Rules 1956 do not make any provision for pensionary benefits/domestic help allowance, as such the petitioner is not entitled to his claim. Another reason assigned by the State Government while passing the impugned order is that on the basis of parity any pensioner can lay any claim only under statutory rules and not otherwise. The aforesaid reasons indicated by the State Government while passing the impugned order dated 26.12.2019 are absolutely untenable and fallacious for the reason that the statutory provision where the petitioner can trace his claim for payment of domestic help allowance is available in Rule 15-A of Rules 1985 which clearly mandates that conditions of service and other perquisites shall be made available to the Chairman and Vice-Chairman of the Central Administrative Tribunal as are admissible to a Judge of a High Court in terms of the provisions contained in Act, 1954. We have already noticed the definition of the expression 'pension' as occurring in Section 2(gg) of Act, 1954 which includes not only pecuniary pension but also other retirement benefits. Accordingly, if any retirement benefits such as benefit of Domestic Help Allowance has been made available to a retired High Court Judge in terms of the provisions contained in Act, 1954, the same shall be made available to a retired Chairman and Vice-Chairman of the Central Administrative Tribunal as well.

24. For the discussion made and reasons given above, we are unable to find ourselves in agreement with the reasons assigned by the State Government while rejecting the claim of the petitioner by means of the order dated 26.12.2019.

25. Resultantly, the writ petition is **allowed** and the impugned order dated 26.12.2019, passed by the State Government, as is contained in annexure no.15 to the writ petition, is hereby quashed. A direction is issued to the concerned respondent to make available the benefit of Domestic Help Allowance to the petitioner with effect from 01.03.2008 along with periodical revision, if any, within a month from today. He shall also be paid arrears of the said allowance within next two months. However, in the facts and circumstances of the case, he shall not be entitled to payment of interest.

26. This order shall be communicated by learned Chief Standing Counsel to all concerned forthwith.

27. There shall be no order as to costs.

**Order Date :- 18.7.2023**

Renu/-