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**V. CHITAMBARESH & ASHOK MENON, JJ.**

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**W.A.No.1433 of 2018**

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**Dated this the 18<sup>th</sup> day of June, 2019**

**Judgment**

**Chitambareash, J.**

1.The respondent who had served as a Judicial Member of the Central Administrative Tribunal(CAT) during the period from 10.7.1989 to 9.7.1994 claims retiral benefits as applicable to the Judges of the High Court. The benefits were governed by the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1985(Rules). Rule 8 of the Rules quantifies the pension as follows:

**“8. Pension.–** (1) Every person appointed to the Tribunal as the Chairman, a Vice-Chairman or a Member shall be entitled to pension provided that no such pension shall be payable,

(i) if he has put in less than two years of service; or

(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 forty thousand eight hundred and thirty six per annum for each completed year of service:

Provided that the aggregate amount of pension payable under this rule together with 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 not in dispute that the respondent has been drawing pensionary benefits accordingly as revised from time to time by the Union of India in addition to his lucrative practice as a Senior Advocate of the High Court of Kerala.

2.It was by amendment of the Administrative Tribunals Act (Act) by the Administrative Tribunals (Amendment) Act, 2006 that Section 8 thereof amended as regards the terms and conditions of service of Chairman. Section 8 of the Act as amended reads thus:

**“8. Term of office.**–(1) The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairman shall hold office as such after he has attained the age of sixty-eight years.

(2) A Member shall hold office as such for a term of five years from the date on which he enters upon his office extendable by one more term of five years:

Provided that no Member shall hold office as such after he has attained the age of sixty-five years.

(3) The conditions of service of Chairman

and Members shall be the same as applicable to Judges of the High Court.” (emphasis supplied)

The short question is as to whether the respondent is entitled to the benefit of Section 8(3) of the Act as amended with effect from 19.2.2007 when his tenure of office as Member of the CAT ended on 9.7.1994.

3.The learned single Judge has by the judgment impugned set aside Ext.P6 order of the Government of India rejecting the request of the respondent for pensionary benefits as applicable to the Judges of the High Court. The learned single Judge has further declared that the respondent would be entitled to add ten years practice as an Advocate as qualifying service for pension. The learned single Judge in so doing has drawn inspiration from the decision in **Ramakrishnam Raju P. v. Union of India and others** [AIR 2014 SC 1619] pertaining to Judges. The Union of India, Pay

and Accounts Officer and the Deputy Registrar of the CAT are in appeal before us assailing the judgment aforesaid as laying down a bad precedent in law.

4.We heard Mr P.Vijayakumar, Assistant Solicitor General of India as well as Mr S.Muhammed Haneef, Advocate for the respondent at length.

5.Section 10A of the Act also inserted by the Administrative Tribunals (Amendment) Act, 2006 saves the terms and conditions of service of the respondent and is a complete answer to the question posed. Section 10A of the Act as amended reads thus:

**“10A. Saving terms and conditions of service of Vice-Chairman.– The Chairman, Vice-Chairman and Member of a Tribunal appointed before the commencement of the Administrative Tribunals**

(Amendment) Act, 2006 shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force:

Provided that, however, such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Amendment) Act, 2006, may on completion of their term or attainment of the age of sixty-five or sixty-two years, as the case may be, whichever is earlier may, if eligible in terms of section 8 as amended by the Administrative Tribunals (Amendment) Act, 2006 be considered for a fresh appointment in accordance with the selection procedure laid down for such appointments subject to the condition that the total term in office of the Chairman shall not exceed five years and that of the Members, ten years.” (emphasis supplied)

Thus a Member appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 shall

continue to be governed by the provisions of the Act and the Rules made thereunder as unamended. That it is so as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force is explicit from Section 10A of the Act itself repelling any retrospective operation.

6.The intention of the Legislature not to give any retrospective effect to the Administrative Tribunals (Amendment) Act, 2006 is manifest from the statute itself which cannot be whittled down by a constitutional court. We notice that the respondent has not challenged Section 10A of the Act as amended and his endeavour is to obtain the benefit of the dictum in **Ramakrishnam Raju**. The challenge even if made would be futile as the amendment to the Act by the Administrative Tribunals (Amendment) Act, 2006 has already been upheld by the Supreme Court. A reference to **A.K.Behera v. Union of India** [(2010) 11 SCC 322] and

**Shankar Raju v. Union of India** [(2011) 2 SCC 132] is apposite to the context. It axiomatically follows that the respondent is disentitled to call in aid Section 8(3) of the Act as regards his conditions of service so long as Section 10A of the Act is in full force. **Ramakrishnam Raju's case** dealt with the question of inequality of the pensionary benefits received by the Judges invited from the Bar and those drawn from the Subordinate Judiciary. The grievance was that the Judges drawn from the Subordinate Judiciary get higher emoluments than those invited from the Bar despite a shorter stint of service in the High Court. This anomaly was ironed out by directing that ten years practice as an Advocate be added as qualifying service for Judges elevated from the Bar. The same is to be reckoned from 1.4.2004 – the date on which Section 13A was inserted by the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005.



7.The dictum in **Ramakrishnam Raju's case** is applicable only to the Judges of the High Court and the Supreme Court and does not at all deal with the conditions of service of the Chairman and Members of the CAT. The respondent would be entitled to the benefit of the said judgment had he been appointed after the commencement of the Administrative Tribunals (Amendment) Act, 2006. The tenure of service of the respondent as a Judicial Member of CAT ended on 9.7.1994 and the benefit of **Ramakrishnam Raju's case** cannot be extended to him. It appears that the judgment impugned herein was relied on before the Division Bench of the High Court of Delhi in L.P.A.No.286/2019 wherein it was cautiously observed as follows:

“The other scenario viz., concerning those like Shri N.Dharmadan who ceased to be Members (Judicial) prior to 19<sup>th</sup> February, 2007 need not

be examined here. That question will be answered in the proceedings concerning Shri Dharmadan which are pending. As far as the respondent here is concerned, since he was serving as Member (Judicial) on 19<sup>th</sup> February, 2007, even adopting the more conservative approach, he will be entitled to have ten years of practice at the Bar for purposes of qualifying service for pension.”

That makes the essential distinction inasmuch as the respondent was not in service as on the commencement of the Administrative Tribunals (Amendment) Act, 2006 quite unlike the respondent in L.P.A.No.286/2019.

8.The learned single Judge has declared that the respondent 'would be entitled to get 10 years of his Bar practice along with his service as Judicial Member for the purpose of pension with effect from 1.4.2004'. The learned single Judge has directed the appellants to revise the pension due to the

respondent accordingly within a period of four months *inter alia* observing as follows:

“In the case of applicability of the judgment in **Ramakrishnam Raju's case** when all the High Court Judges are eligible to get their pension fixed from 1.4.2004, it cannot be said that that benefit cannot be extended in the case of the petitioner just because he happened to be appointed before 19.2.2007. The cut off date fixed for the purpose of the extension of the benefit of the judgment is therefore unreasonable and arbitrary.”

Can this Court under Article 226 of the Constitution of India declare that the cut off date specified by the Supreme Court in **Ramakrishnam Raju's case** is unreasonable and arbitrary as has been done? Can this Court extend the benefit of the judgment in **Ramakrishnam Raju's case** to others when the same is confined to the Judges of the High Court and

Supreme Court only? The answer can only be in the negative more so since the post of Members of the CAT is only statutory and not constitutional as in the case of Judges of the High Court and Supreme Court. That Administrative Tribunals are constituted under Article 323-A of the Constitution of India is no ground to treat the respondent as a constitutional appointee. The conditions of service applicable to Judges of the High Court have been extended to the Chairman and Members of the CAT only by virtue of Section 8(3) of the Act. We have already held that the amended provisions of Section 8(3) of the Act do not apply to the respondent on account of the statutory embargo in Section 10A of the Act. The respondent did not hold the rank of a High Court Judge to be extended the benefits even if the lauded principle of 'One Rank One Pension' is to be applied as contended. The Chairman and Members of the CAT do not occupy the exalted position of a Judge of the

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High Court merely because they are given the same benefits with effect from 19.2.2007. We reverse the impugned judgment in the case titled **Dharmadan N. v. Union of India and others** [2018 (2) KLT 497] as one beyond jurisdiction and dismiss the writ petition filed for reliefs.

The writ appeal is allowed. No costs.

Sd/-  
**V. CHITAMBARESH, JUDGE**

Sd/-  
**ASHOK MENON, JUDGE**

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