

Central Administrative Tribunal
Principal Bench

O.A.No.729/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 21st day of February, 2003

P. Hari Har Kumar
s/o Sh. Parshuram Iyer
r/o 228, SFS, DDA
Gulmohar Enclave
Yusuf Sarai
New Delhi - 110 049. Applicant

(By Advocate: Sh. Sanjeev Saraswat)

Vs..

1. Union of India through
Department of Telecommunications
Sanchar Bhawan
20, Ashoka Road
New Delhi - 110 001.
2. Bharat Sanchar Nigam Limited
DTO Building
Prasad Nagar
New Delhi.
3. Mahanagar Telephone Nigam Limited
through General Manager
Jeevan Bharti Building
124, Connaught Place
New Delhi. Respondents

(By Advocate: Sh. Mohar Singh for Respondents No.1 and 2, Sh. Shankar Anand for Respondent No.3)

O R D E R (Order)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 20.9.2000 and has sought the following reliefs:

- (a) issue appropriate order or direction quashing the order dated 20.9.2000 whereby the pension was ordered to be withdrawn with retrospective effect for the period 1.7.1999 to 24.5.2000;
- (b) issue appropriate order or direction directing the Respondents to refund the amount of pension wrongly withdrawn pursuant to order dated 20.9.2000;

(c) issue appropriate order or direction whereby a direction be given to the Respondents to forthwith settle the retirement benefits of the Applicant by release of unpaid pension benefits and CGHS (insurance) dues which have been long outstanding:

(d) award costs of the present application to the Applicant and

(e) pass such other and further orders as this Hon'ble Tribunal may deem just and expedient in the facts and circumstances of the case."

2. Applicant was employed as Assistant Divisional Engineer after following the UPSC Engineering Services Examination of the year 1970 and joined in the Department of Telecommunication. Thereafter he had opted for voluntary retirement on 2.2.1999 which was accepted vide letter dated 23.3.1999.

3. After voluntary retirement, applicant found an offer of employment in M/s Bharti Cellular Limited (hereinafter called as "M/s BCL"), and in terms of Rule 10 of the CCS (Pension) Rules, 1972 no employment for commercial purposes can be sought before two years of retirement without prior permission of respondents, on 19.5.1999. During the pendency of permission, vide letter dated 27.5.1999, applicant was communicated for settlement of pensionary benefits. By letter dated 2.6.1999, applicant was asked to furnish information to process his case for permission for commercial employment and the 90 days time limit as contained in Rule 10 of the Rules ibid was to be reckoned from the date of receipt of the information. The necessary information was furnished through letter dated

22.6.1999 by applicant and as the three months had expired on 22.9.1999, the permission is deemed to have been accorded.

4. In June, 1999, applicant received queries regarding his working, during the period 26.12.1975 to 29.2.1976 for the purpose of service verification which was responded to, and as nothing had happened for release of retiral benefits, a no demand certificate was issued and was released partial pension in September, 1999, however, CGHS, Insurance and the full pension was not released. It is stated that some payments were released on 3.12.1999 for which drew drawn statement was not furnished.

5. Applicant worked in M/s Bharti Cellular Limited from 1.7.1999 to 24.5.2000 rather a show cause notice was served upon applicant, under Rule 10(6) of Pension Rules ibid, and further inquiries have been made from M/s Bharti Cellular Limited, and accordingly by an order dated 6.11.2000 whole of the pension for the period 1.7.1999 to 24.5.2000 has been forfeited with recoveries for violation of Rule 10 of the Rules ibid for concealing the fact of commercial employment. Further representations made have not been responded to, giving rise to the present OA.

6. Shri Sanjeev Sarawat, learned counsel for applicant contended that impugned order is not legally sustainable, which is in violation of Rule 10(4) of the Pension Rules ibid, as applicant did seek permission for taking commercial employment after his voluntary retirement in terms of Rule 10 of the Pension Rules.

By a letter dated 2.6.1999 once the information has been sought from applicant and the same has been tendered by applicant on 22.6.1999, as per respondents' letter and as per the Rule 10(4) of the Rules, period of 90 days commenced from 22.6.1999 and as no order has been issued to refuse the permission or seeking further clarification, the permission is deemed to be granted on 22.9.1999 which does not entail forfeiture of pension for the period he was engaged in commercial employment in M/s BCL. Moreover, it is contended that communication dated 9.9.1999, as referred to by respondents, is not in furtherance of proviso Rule 10 ibid but an action of independent and subsequent, under Rule 10(6) of Rules. In this view of matter, it is stated that withdrawal of pension with retrospective effect under Rule 10(6) is not sustainable, and moreover, no opportunity to be heard has been afforded to applicant before the pension has been forfeited.

7. In so far as other reliefs are concerned, it is stated that CGHS and Insurance have not been released and full pension, as ordered on 3.12.2000, has not been explained by a due and drawn statement.

8. On the other hand, respondents' counsel strongly rebutted the contentions and stated that applicant had been issued a show cause notice which was delivered to him on 13.9.1999. Despite, no reply has been filed as such orders under Rule 10(6) was passed on 20.9.2000. As applicant has accepted employment with M/s BCL without proper permission from the Government, which is in violation of Rule 10 of the Rules ibid, and had made false statement to Bank as he

declared that he had never concealed the fact of commercial employment, rightly his pensionary benefits have been recovered by respondents.

9. Moreover, it is further stated that in pursuance of the letter issued by respondents on 2.6.1999, and on furnishing of information by applicant on 22.6.1999 as the details were not completed, further communications have been made from M/s BCL and on response by a letter dated 4.8.2000 the impugned orders have been passed.

10. Learned counsel for respondents further stated that applicant had received from M/s BCL after working from 1.7.1999 to 24.5.2000. It is further stated that show cause notice issued on 9.9.1999 is in accordance with proviso 2 to Rule 10(4) of Rules and as the information furnished was defective and in sufficient period of 90 days was still not completed, before which the pension has been ordered to be recovered. As applicant has failed to seek permission to seek commercial employment within two years from the date of his voluntary retirement, action of respondents is in accordance with law.

11. I have carefully considered the rival contentions of the parties and perused the material on record.

12. As per Rule 10 of the CCS (Pension) Rules, 1972 a retired Government servant holding Group "A" posts, if wishes to accept any commercial employment before the expiry of two years from the date of

retirement, it is incumbent for him to seek previous sanction of the Government. Rules 10(4) and 10(6) of CCS (Pension) Rules, 1972 are reproduced as under:

Rule 10(4):

"Where within a period of [ninety days] of the date of receipt of an application under sub-rule (3), the Government does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the Government shall be deemed to have granted the permission applied for:

Provided that in any case where defective or insufficient information is furnished by the applicant and it becomes necessary for Government to seek further clarifications and/or information from him, the period of [ninety days] shall be counted from the date on which the defects have been removed and/or complete information has been furnished by the applicant."

Rule 10(6):

"If any pensioner takes up any commercial employment at any time before the expiry of two years from the date of his retirement without the prior permission of the Government or commits a breach of any condition subject to which permission to take up any commercial employment has been granted to him under this rule, it shall be competent for the Government to declare by order in writing and for reasons to be recorded therein that he shall not be entitled to the whole or such part of the pension and for such periods as may be specified in the order:

Provided that no such order shall be made without giving the pensioner concerned an opportunity of showing cause against such declaration:

Provided further that in making any order under this sub-rule, the Government shall have regard to the following factors, namely:--

(i) the financial circumstances of the pensioner concerned:-

(ii) the nature of, and the emoluments from the commercial employment taken up by the pensioner concerned; and

(iii) any other relevant factor."

13. If one has regard to Rule 10(4) ibid if the Government servant, after retirement, makes an application for commercial employment, and the Government does not refuse to grant the permission applied for or does not communicate the refusal to applicant, the Government shall be deemed to have granted the permission applied for. However, this is subject to proviso that in case the information is found defective the period of 90 days was commenced from the date of the defects have been removed. Rule 10(6) ibid, provides a provision which entitles the Government to withdraw pension for a period of commercial employment, provided a show cause notice issued.

14. In the light of this provision, applicant had made request to the respondents to take up commercial employment on 19.5.1999 which was sought to be processed with DoT by letter dated 2.6.1999. In this communication of 2.6.1999, respondents have, with reference to the application dated 19.5.1999, directed applicant to furnish the requisite information and it was stipulated that the limit of 90 days as prescribed under Rule 19(4) would commence from the date of receipt of such information. Applicant furnished to the respondents all the requisite information on 22.6.1999 and from that date the period of 90 days had commenced on 22.9.1999. In absence of any

communication of refusing the permission to applicant or any order passed to refuse such permission, the presumption has been drawn in favour of applicant for deemed grant of permission. In so far as the proviso to Rule 10(4) is concerned, there is nothing on record to establish that any order has passed by respondents after 22.6.1999 to indicate that the information furnished by applicant in any manner was defective or insufficient for which further clarification was sought from him which could have leased a life of 90 days for deemed permission from the date of submission of requisite clarification by applicant. The resort of respondents to show cause notice dated 9.9.1999 cannot be read as an order passed. Further in proviso to Rule 10(4) ibid, rather it is a memorandum issued under Rule 10(6) of Rules which is on subsequent to deemed grant of permission. The attempt of respondents that they have sought clarification from M/s BCL in July, 2000 can be of no avail as there is nothing on record to establish that information furnished by applicant on 22.6.1999 was in any manner defective or insufficient, as such as per Rule 10(4) and as respondents have neither refused the permission nor communicated the same upto 22.9.1999, the same is deemed to have been granted on 22.9.1999, i.e., expiry of 90 days from the date the requisite information was furnished by applicant on 22.6.1999. As such it cannot be held that applicant has sought commercial employment within two years of his retirement without any permission. Accordingly orders passed on 20.9.2000, under Rule 10(6) of Rules ibid, cannot be sustained.

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15. For the foregoing reasons, OA succeeds and is allowed. Impugned order is quashed and set aside. Respondents are directed to refund the amount of pension wrongly withdrawn to applicant and also settle the retiral benefits of applicant by release of unpaid pensionary benefits of CGHS and Insurance within a period of 2 months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

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