

(B)

**CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH**

**Original Application No. 907 of 2000.**

New Delhi, this the 17th day of September, 2001

**HON'BLE MR. V. K. MAJOTRA, MEMBER(ADMN)  
HON'BLE MR. KULDIP SINGH, MEMBER(JUDL)**

Shri A.C. Sen,  
P.O. Box No. 896,  
Post Code 113,  
Muscat,  
SULTANATE OF OMAN

(By Advocate: None)

**-APPLICANT**

Versus

1. Union of India, through  
The Secretary,  
Department of Personnel & Training,  
Ministry of Personnel, Public Grievances and Pensions,  
North Block,  
New Delhi-11001.

(By Advocate: Shri N.S. Mehta)

**-RESPONDENTS**

**O R D E R (ORAL)**

**By Hon'ble Mr. V. K. Majotra, Member(A)**

Whereas none has appeared on behalf of the applicant and none was present even on last occasion, i.e., 24.8.2001, we have proceeded to dispose of this OA in terms of Rule 15 of the Central Administrative Tribunals(procedure) Rules, 1987. We have considered the pleadings on both sides, heard Shri N.S. Mehta, learned counsel of the respondents and considered the material on record.

2. The applicant has challenged the order dated 11.5.99(Annexure A-1) holding him guilty of grave misconduct and imposing on him a penalty of permanent withholding of his pension, under Rule 26(2) of the All India Services (Death-cum-Retirement Benefit) Rules, 1958 (hereinafter referred to as "the Rules"). The applicant was an IAS Officer of 1962 Batch. He rose to the

W

position of Secretary to the Government of India in 1993. He retired on 31.12.96. The applicant applied for grant of permission of the Central Government through Government of Punjab to seek commercial employment as Adviser to Oman Government with a salary of 1600 Riyals per month. This application was received by Government of India on 29th October, 1997. The applicant has averred that he did not receive any communication of Government of India rejecting his request for permission to accept employment with Government of Oman. He had drawn our attention to the Government of India to Rule 10(4) of the CCS (Pension) Rules which provides a time limit of 90 days for informing the retiree about refusal to grant permission for taking commercial employment failing which permission is deemed to have been granted. He stated that similar provisions had to exist in the Rules relating to All India Services officers as well. The applicant has alleged that impugned orders have been passed in violation of principles of natural justice, as opportunity of hearing was not granted to him. He further stated that whereas he had accepted the commercial employment on 19.11.97, the letter refusing the applicant permission to do so was issued only on 19.1.98. The applicant has sought quashing and setting aside of the impugned order dated 11.5.99 and direction to the respondents to disburse to the applicant his entire pension that stands withheld, with interest thereon.



3. In their counter, respondent have stated that provisions of Rule 26 of 1958 Rules are applicable to the applicant being an IAS Officer. According to the respondents, the said Rule does not provide a time limit for disposal of requests for permission for commercial employment abroad. They have further maintained that CCS(Pension) Rules, 1972 do not apply to the Members of All India Services. The applicant had joined the commercial employment in Oman on 19.11.97, i.e. within a period of one month only of receipt of application for permission.

4. Rule 26 of 1958 Rules relates to acceptance of employment after retirement by the Members of All India Services, which reads as follows:-

26. Acceptance of employment after retirement.

(1) A pensioner shall not accept any commercial employment before the expiry of two years from the date of his retirement, except with the previous sanction of the Central Government. If a pensioner accepts a commercial employment without such sanction, it shall be competent for the Central Government to declare by an order in writing that he shall not be entitled to the whole or such part of the pension and for such period 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 a pensioner who has been permitted by the Central Government to take up a particular commercial employment during leave preparatory to retirement shall not be required to obtain subsequent permission for his continuance in such employment after retirement.

Explanations:

(1) Commercial Employment means:



(4)

- (i) an employment, whether paid or honorary, in any capacity including that of an agent under a company, firm, co-operative society, body or individual engaged in trading, commercial, industrial, financial or professional business, and includes a directorship of such company or partnership of such firm but does not include employment under a body corporate, wholly or substantially owned or controlled by Government;
- (ii) setting up practice, either independently or as a partner of a firm, as adviser or consultant in matters in respect of which a pensioner has-
  - (a) no professional qualifications and the matters in respect of which the practice is proposed to be set up or proposed to be set up or carried on are relatable to his official knowledge or experience; or;
  - (b) professional qualifications, but the matters in respect of which such practice is to be set up are such as are likely to give his clients an unfair advantage by reason of his previous official position; or
  - (c) to undertake work involving liaison or contact with the offices or officers of the Government.

NOTE: For the purpose of this Explanation, employment under a co-operative society, includes the holding of any office, whether elective or otherwise, such as that of President, Chairman, Manager, Secretary, Treasurer and the like, by whatever name called in such society.

2. For the purpose of this sub-rule the expression "the date of retirement in relation to a pensioner re-employed after retirement, without any break either in a Class I post under the Central Government, or in an equivalent post under a State Government, shall mean the date on which such pensioner finally ceases to be so re-employed in Government service.

26(2) A pensioner shall not accept any employment under a Government outside India, (or under an international organisation of which the Government of India is not a member) except with the previous sanction of the Central Government. No pension shall be

W

17

payable to a pensioner who accepts such an employment without such sanction in respect of any period for which he is so employed or for such longer period as the Central Government may determine:

Provided that a pensioner who has been permitted by the Central Government to take up a particular employment under a Government outside India during his leave preparatory to retirement shall not be required to obtain subsequent permission for continuance in such employment.

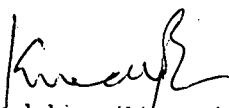
NOTE:- "Employment" under a "Government outside India" shall include employment under a local authority or corporation or any other institution or organisation which functions under the supervision or control of a Government outside India.

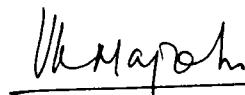
5. It is clear that whereas CCS(Pension) Rules, 1972 are not applicable to Members of All India Services(AIS). Rule 26 of 1958 Rules is certainly applicable to a pensioner, who had been a member of IAS, seeking permission to accept commercial employment after retirement. Particularly Rule 26(2) ibid is applicable to the present case because the applicant belongs to IAS and was seeking permission to accept employment under a Government outside India. We find that there is no time limit prescribed under the aforesaid Rules for granting or refusing permission to accept commercial employment with a Government outside India (or under an international organisation of which the Government of India is not a member). The application of the applicant seeking permission for the aforesaid employment was made on 3.10.97 and received by the Government of India on 29.10.97. From the records, it is apparent that the applicant had joined on the said post on 19.11.97 (Annexure A-5) i.e. within less than a month of receipt of his application by the Government of India. The Government of India did not accord any permission to the

W

applicant for post retirement commercial employment with a foreign government. He was served a Show Cause Notice vide Department letter of 15th June, 1998. He submitted his reply to the Show Cause Notice vide letter 27.7.98; 6.12.98 and 26.1.98(Annexures A-7, A-8 & A-10). His main contention was that the permission sought for was not refused within a period of 90 days as provided for in Rules 10(4) of CCS (Pension) Rules. It has already been stated above that CCS(Pension) Rules are not applicable to Members of All India Services; the relevant provisions are those of Rule 26 of 1958 Rules, which do not prescribe any time limit for grant or refusal of permission for undertaking commercial employment with a Government outside India.

6. In the facts and circumstances of the case, we find that whereas the respondents have complied with the prescribed procedure and provisions of the relevant Rules in refusing permission to the applicant for his post retirement commercial employment with a foreign Government, the applicant has failed to establish the allegations made in the OA. Thus we do not find any infirmity with the impugned order (Annexure A-1), accordingly OA is dismissed without costs.

  
(Kuldip Singh)  
Member(J)

  
(V.K. Majotra)  
Member(A)

17.9.2001