

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

6

O.A. No. 2210/89
T.A. No.

199

DATE OF DECISION 14.9.1990.

Shri R.C. Talwar

~~Petitioner~~ Applicant

Shri Rajiv Talwar

Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India through the

Respondent

Dir. Genl. of Works, CPWD,

New Delhi.

Smt. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */M*
4. Whether it needs to be circulated to other Benches of the Tribunal? */M*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who worked as an Executive Engineer (Electrical) in the Office of the respondents, retired from service on 31.1.1989 on attaining the age of superannuation. Immediately thereafter, he applied to the respondents for granting him permission for enlistment as a Contractor in C.P.W.D. by his letter dated 9.2.1989. On 5.4.1989, the respondents informed him that his request cannot be acceded to. They did not, however, give the reasons for the decision.

2. On 20.4.1989, he requested the respondents to reconsider his application and give an opportunity to explain his case in person. On 14.6.1989, the respondents

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informed him that his request was not acceptable in view of the extant rules/instructions.

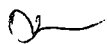
3. Thereafter, the applicant served a Lawyer's notice dated 22.6.1989 on the respondents. On 11.7.89, the respondents wrote to the applicant stating that his request was rejected by the competent authority for the following reasons:-

- "i) the nature of employment to be taken up by you is likely to bring you into conflict with the Govt.,
- ii) Your duties in the commercial employment will involve liaison or contact work with Govt. Departments."

4. The applicant again addressed his request to the President of India on 25.7.1989 which was also rejected by the respondents on 22.8.1989.

5. The respondents have stated in their counter-affidavit that the rejection of the request made by the applicant was not arbitrary, that according to the spirit of Rule 10 of the C.C.S. (Pension) Rules, 1972, no retired Group 'A' Officer should be allowed to exercise his influence/erstwhile official position in securing any pecuniary advantage for himself, and that no Group 'A' Engineer of C.P.W.D. has been granted such a permission in the past.

6. We have carefully gone through the records of the case and have considered the rival contentions. The applicant has not challenged the validity of Rule 10 of the C.C.S. (Pension) Rules, 1972 which deals with the question of commercial employment after retirement.



Rule 10 provides, inter alia, as follows:-

"10. Commercial Employment after retirement:

(1). If a pensioner who, immediately before his retirement was a member of Central Service Group 'A' wishes to accept any commercial employment before the expiry of two years from the date of his retirement, he shall obtain the previous sanction of the Government to such acceptance (by submitting an application in Form 25.).

Provided that a Government servant who was permitted by the Government to take up a particular form of commercial employment during his leave preparatory to retirement or during refused leave shall not be required to obtain subsequent permission for his continuance in such employment after retirement.

(2) Subject to the provisions of sub-rule (3), the Government may, by order in writing, (on an application made under sub-rule (1)) by a pensioner, grant, subject to such conditions, if any, as it may deem necessary, permission, or refuse, for reasons to be recorded in the order, permission to such pensioner to take up the commercial employment specified in the application.

(3). In granting or refusing permission under sub-rule (2) to a pensioner for taking up any commercial employment, the Government shall have regard to the following factors, namely:

- (a) the nature of the employment proposed to be taken up and the antecedents of the employer;
- (b) whether his duties in the employment which he proposes to take up might be such as to bring him into conflict with Government;
- (c) Whether the pensioner while in service had any such dealing with the employer under whom he proposes to seek employment as it might afford a reasonable basis for the suspicion that such pensioner had shown favours to such employer;
- (d) whether the duties of the commercial employment proposed involve liaison or contact work with Government departments;
- (e) whether his commercial duties will be such that his previous official position, knowledge or experience under Government could be used to give the proposed employer an unfair advantage;

(f) the emoluments offered by the proposed employer; and

(g) any other relevant factor.

(4). Where within a period of sixty days of the date of receipt of an application under sub-rule (3), the Govt. 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."

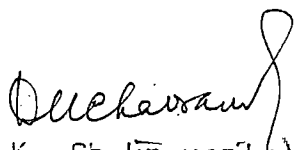
7. In the event of refusal of permission, it is incumbent on the competent authority to record the reasons in the order of rejection. This is clear from the language used in Sub-rule (2) of Rule 10. The rationale for such a provision is that the aggrieved person can make an effective representation against the order of rejection to the higher authority or move the appropriate forum seeking redress against the order of rejection. The reasons for rejection were not given in the order of rejection communicated to the applicant on 5.4.1989. The reasons were not given within 60 days of request made by the applicant seeking the requisite permission. It was given only on 11th July, 1989. In the circumstances, we are of the opinion that the Govt. must be deemed to have granted the permission in view of the provisions of Sub-rule(4) of Rule 10.

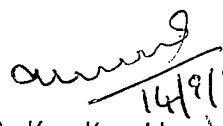
8. There is also another aspect of the matter. Rule 10 does not put a total embargo on accepting commercial employment before the expiry of two years from the date of retirement. That would be clearly impermissible in law. Sub-rule (3) of Rule 10 stipulates that the Govt. should have regard to the relevant factors in granting permission to a pensioner for taking up any commercial employment. The reasons given by the competent authority

in its letter dated 11th July, 1989 merely reproduce factors (b) and (d) enumerated in Sub-rule (3) of Rule 10. In our opinion, the mere reproduction of the factors enumerated in the Rule without giving the specific reasons, also indicates non-application of mind.

9. In the facts and circumstances of the case, we hold that the applicant is entitled to the reliefs prayed for in the application. The applicant must be deemed to have been granted permission applied for by him in his letter dated 9.2.1989 after the expiry of 60 days from the date of the receipt of his request.

There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member
14/9/1990


(P.K. Kartha)
Vice-Chairman (Judl.)
14/9/90