

In the Central Administrative Tribunal
Principal Bench, New Delhi

REGN.No.OA 105/87

Date of decision: 18-6-90

Shri Subhash Chandra Applicant

Vs.

Union of India & anr. Respondents

For the Applicant Shri K.L.Bhatia, Counsel.

For the Respondents Shri P.P. S.Ahluwalia,
Counsel.

CORAM: Hon'ble Mr. P.K.Kartha, Vice Chairman(Judl.)
Hon'ble Mr. D.K.Chakravorty, Member(Administrative)

1. Whether Reporters of local papers may be allowed
to see the judgement? *yes.*

2. To be referred to the Reporter or not? *yes.*

(Judgement of the Bench delivered by Hon'ble
Mr. D.K.Chakravorty, Administrative Member)

The question whether the pension payable to a retired Central Government servant can be withheld on the ground that he does not furnish a non-employment certificate to the Bank from which he has elected to draw his pension, has been raised in this application filed under Section 19 of the Administrative Tribunals Act, 1985. The negative approach adopted by the Bank, the casualness with which the Department concerned dealt with the representation made by the applicant, the absence of any rationale spelt out in the scheme of things, all have contributed to the filing of this application by the applicant who is fighting for a principle. The applicant voluntarily retired from the Central Information Service in September, 1980 after attaining the age of 51 years and, thereafter, has been practising as an Advocate. In August, 1981, a Pension Payment Order was issued to him and he used to draw his pension from the Punjab National Bank, Green Park, New Delhi, until May, 1986. He had been giving non-employment certificates in the past. The Punjab National Bank stopped crediting his pension in his Savings Bank account since May, 1986 on the plea that

he did not furnish non-employment certificate thereafter as required by them.

2. The applicant contends that the Bank has no legal right to insist on production of non-employment certificates periodically as a condition for release of pension to him. According to him, the right to work is one of the Fundamental Rights and insisting on the production of such a certificate amounts to imposition of unreasonable and arbitrary restriction on his Fundamental Rights.

3. The applicant had submitted representations to the Secretary, Ministry of Pensions, Personnel & Public Grievances on 9.9.1986 and the Minister for Public Grievances & Pension on 13-10-1986 in this regard. According to the reply dated 20.11.1986 received by him from the Department of Pension and Pensioners' Welfare, a pensioner is required to furnish a non-employment certificate or an employment/re-employment certificate in a department/office/company corporation, autonomous body or registered society of Central or State Government or Union Territory in the months of May and November each year in the prescribed form. They have relied upon para.16.2 of the Scheme for Payment of Pensions to Central Government Civil Pensioners by Public Sector Banks, prepared by the Ministry of Finance (Department of Expenditure) which was brought into force w.e.f. 1st November, 1977. In view of the aforesaid provisions of the Scheme, they informed him that the action of the Punjab National Bank in insisting on non-employment certificate from him was perfectly legal and correct. The Bank authorities have expressed their helplessness in view of the provisions of the Scheme which they are bound to follow, until it is revised, modified or cancelled.

4. The Union of India through the Secretary, Ministry

of Pensions, Personnel & Public Grievances (Department of Pension & Pensioners' Welfare) is the first respondent. The Manager, Punjab National Bank, Green Park Branch, New Delhi, is the second respondent. Despite service of notice on respondent No.1, they did not enter appearance nor have they filed any counter-affidavit. We did not, therefore, have the benefit of appreciating the stand of the Ministry of Pensions, Personnel and Public Grievances on the issues raised by the applicant. Respondent No.2, though not amenable to our jurisdiction, has filed counter-affidavit in which they have contended that the action taken by them was as per the instructions contained in the Scheme prepared by the Ministry of Finance which they were bound to follow. There is no indication that the counter-affidavit ~~was~~ prepared by them after consulting the Ministry of Finance.

5. We have heard the applicant in person as also his learned counsel and the learned counsel for respondent No.2. At the outset it may be stated that the "right to work" is not yet one of the Fundamental Rights enumerated in Part III of the Constitution of India. Every Indian citizen, however, has the right to practise any profession or to carry on any occupation, trade or business, by virtue of Article 19(g) of the Constitution. The State, may, however, make any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said clause (vide Article 19(5) of the Constitution). In our opinion, the requirement of production of non-employment certificate for receiving pension is unrelated to the Fundamental Rights guaranteed under Article 19 of the Constitution.

6. Advocates are members of the legal profession. Professionals are self-employed persons and are not

in employment of the Government or any one else.

7. There are some provisions in the Central Civil Services(Pension) Rules, 1972 restricting the right of a retired Group 'A' officer in regard to commercial employment after retirement and to practising in some cases (vide Rules 10 and 11). These restrictions apply only for a period of two years from the date of retirement. Thereafter, a pensioner is free to follow any profession or avocation. Re-employment of a pensioner in a department, office, company, Corporation, autonomous body or registered society of Central or State Government or Union Territory or a local Fund is resorted to only sparingly and in exceptional cases. The applicant in the instant case had been producing before the Bank nominated by him for the purpose of receiving pension, the necessary non-employment certificates not only for the first two years after his retirement but also in the subsequent years, upto 1986. He informed the Punjab National Bank that he is practising as an Advocate. The question arises whether a pensioner can be asked to produce non-employment certificate periodically year after year until his death failing which the pension disbursing authority could withhold his entire pension and the relief thereon.

8. The Central Government has simplified the procedure for payment of pension to its pensioners since 1976. According to the new procedure, a pensioner may designate a Public Sector Bank for the purpose of drawing his pension. These are beneficial and salutary steps taken by the Government with a view to avoiding red tapism and delay which had characterised the system before the new procedures were evolved in 1976.

9. Paras 16.2 and 16.3. of the Scheme mentioned above (as amended upto 9-1-1989) which deal with non-employment/

re-employment certificate, read as follows:-

"16.2 Non-employment/Re-employment Certificate.

The pensioner would be required to furnish a non-employment or an employment/re-employment certificate in a Department/Office, Company, Corporation, autonomous body or registered Society of Central or State Government or Union Territory or a local Fund, yearly i.e., in the month of November each year in the form prescribed in Annexure VI-II(i). In the case of a pensioner who declares about his employment/re-employment with emoluments which include DA, A.D.A, etc., provisions of para 18.5 should be enforced.

16.3. Retired Central Government Group 'A' officers are required to furnish a declaration in May and November, each year, in the forms prescribed in Annexure VI(II)(ii)&(iii) about acceptance/non-acceptance of commercial employment within two years from the date of their retirement and also about acceptance/non-acceptance of employment under any Government outside India /an International Organisation of which Government of India is not a member.

If commercial employment has been accepted with two years from the date of retirement without obtaining Government's approval, or any of the conditions attached thereto by the Government while according approval has been violated at any time within two years from the date of retirement, or if employment under any Government outside India or under an International Organisation of which Government of India is not a member has been accepted, the paying branch, on the basis of the declaration furnished by the pensioner, will seek orders of the Government through the Treasury Officer before making further pension payments."

10. Para 18.5 of the Scheme which provides for suspension of payment of relief in the case of pensioners who are re-employed, is reproduced below:

" In the case of pensioners who were/are employed in a Deptt./Office, Company,

contd..

Corporation, autonomous body or registered society of Central or State Government or Union territory or a Local Fund before 26-3-1984, payment of relief will remain suspended with effect from the above date during the period of re-employment. In case of those re-employed on or after the said date, the payment of relief will be suspended from the date of re-employment."

111 As far as we are aware, this is the first occasion in which a Central Government pensioner is challenging the validity of the Scheme in so far as it applies to production of non-employment certificate. Our initial thinking was that this being an individual case, the applicant might be directed to send a representation to the Ministry of Finance but on further reflection, we are of the view that remitting the case to the Ministry of Finance, may not meet the ends of justice and fairplay to a pensioner whose entire pension has been withheld by the Bank on the ground that he has refused to produce non-employment certificates periodically for four years. All these years, the money lawfully belonging to the applicant, the amount of which is not insignificant was for an individual pensioner, with Govt. for their use.

12. To our mind, there is nothing intrinsically bad in the purpose underlying the provisions of paras 16.2. and 18.5 of the Scheme referred to above. These provisions are^{apparently} intended to ensure that the pensioner does not get relief on pension /DA on salary or reemployment from more than one source simultaneously. The rationale of insisting on production of such non-employment certificates from all retired pensioners for an indefinite period from the date of retirement till one is taken to the grave is however not clear. The government is right in its policy that

a pensioner who gets re-employed should not draw full relief on pension during the period of re-employment. There are other methods of monitoring it and safeguarding against such an abuse. According to the instructions issued by the Department of Personnel and Administrative Reforms from time to time, re-employment has to be resorted to in very rare and exceptional cases (vide Chapter 34 of Swamy's Complete Manual on Establishment & Administration for Central Government Offices, 2nd Edition, pages 350 to 361). As early as in 1966, the Ministry of Finance had issued administrative instructions as under:-

"3. The fact of re-employment of a retired Government servant together with the terms of re-employment should invariably and promptly be reported by the organisation concerned to the Accountant General in whose auditorial jurisdiction the Government was employed - immediately before retirement.

The Ministry of Commerce, etc., are requested to ensure that the instructions in para.3 above are observed by all Government undertakings, Companies and Corporations under their administrative control, which re-employing retired Govt. employees."

13. In view of the aforesaid instructions issued by the Central Government, it would appear that insisting on production of non-employment certificate for an indefinite period of years as stipulated in para.16.2. of the Scheme mentioned above, may result in unnecessary hardship to the pensioners, particularly those who have crossed the upper age-limit of 65 years beyond which the scope for re-employment is even made rare. In any event, the mere non-production of such a certificate should not lead to the extreme step of withholding of the entire pension due to a pensioner who does not produce such a certificate. At the most, the Bank could only withhold payment of the relief on pension till he produces the non-employment certificate or gives information to them that he is not re-employed. The Punjab National Bank could have done so but they have played safe and taken shelter under para 16.2.

of the Scheme.

14. In the instant case, the applicant stated that even his pension has not been revised following the revision of pension after the Fourth Pay Commission's recommendations had been accepted by the Government. The Bank from which he is drawing his pension is insisting on the production of the non-employment certificate. What prevented them from disbursing to him the amount of pension proper without pensioners' relief or revising his pension after the Fourth Pay Commission's recommendations were accepted by the Government, are questions on which no explanation is available in the reply filed by them.

15. In Deokinandan Prasad Vs. State of Bihar, 1971(2) S.C.C. 330, a Constitution Bench of the Supreme Court has ruled that pension is a right and payment of it does not depend upon the discretion of the Government, but is governed by the Rules and a Government servant coming within those rules, is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to the service and other allied matters that it may be necessary for the authority to pass an order to that effect, but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab Vs. Iqbal Singh, 1976 (2) - S.C.C 1 and another and D.S. Nakara Vs. Union of India, 1983 S.C.C. (L&S) 145.

16. In State of Kerala Vs. Padmanabhan Nair, 1985 S.C.C. (L&S 278, the Supreme Court deprecated the delay in the prompt payment of retirement dues to which a pensioner is entitled.

17. In this context, the following observations made by Krishna Iyer, J. in Royal Talkies Vs. E.S.I. Corpn., 1978 S.C.C. (L&S) 497 at 499 are worth pondering over:

" To decide the meaning of a welfare measure a feeling for the soul of the measure is a surer guide than meticulous dissection with lexical tools alone."

18. In a similar vein, R.S. Pathak J., as he then was, has observed in Uma Shankar Sharma Vs. Union of India & Others, 1980 S.C.C. (L&S) 348 at 350 as follows:

"The terms and conditions of service are intended to be construed reasonably and too technical a view can defeat the essential spirit and intent embodied in them."

19. What is the soul of the Scheme on the basis of which pension is being disbursed by the Banks? It is to facilitate and not to frustrate prompt and regular payment of pension on the first of every month. While doing so, the Bank should ensure that the pensioner is not receiving double benefit by way of relief on pension, one, from the Bank, and the other, from an employer under whom he may be employed. In case, the pensioner does not produce non-employment certificate, that by itself would not justify withholding of the entire pension, as was done by the Punjab National Bank in the instant case. As this Tribunal has no jurisdiction to issue any binding directions, to the Bank, no directions can be issued to them by us.

20. A vast majority of the pensioners simply and blindly comply with the stipulation of furnishing non-employment certificate periodically without bothering about the rationale of the Scheme. As this is only a solitary instance in which the petitioner has raised a point of principle we do not think that it would be appropriate to consider the legality and reasonableness of para 16-2 of the Scheme. Nevertheless, we would observe that para 16 of the Scheme and Annexure VI thereto prescribes the various certificates required to be furnished

by the pensioners. Para 16-2 does not explicitly lay down the action to be taken if the non-employment certificate is not furnished but it clearly spells out that in the case of a pensioner who declares about his employment/re-employment with emoluments which include DA, ADA etc. ~~and~~ provision of para 18-5 of the Scheme viz., suspension of the payment of relief during the period of reemployment, shall be enforced. It would, therefore, follow that non-compliance with the stipulations in the said para should not ordinarily lead to withholding of the pension altogether until the pensioner produces the non-employment certificate. That would amount to the imposition of a penalty and hence illegal and contrary to the very concept of pension as a valuable right vested in the pensioner.

21. We would, therefore, direct the respondent No.1 (Ministry of Pensions, Personnel & Public Grievances) to have a fresh look into the scheme prepared by the Ministry of Finance and request the Ministry of Finance to issue suitable instructions to the Banks in this regard. They may like to address themselves to the need for insisting on furnishing of non-employment certificate every year till death by each and every pensioner, when it is known that only a microscopic minority of them get reemployment in the government ^{sector} and, that too, very rarely, beyond the age of 60 years. Having regard to the magnitude of the ever increasing number of pensioners and the rarity of re-employment, the requirement of non-employment certificate could perhaps be done away with or restricted only upto a specified age limit of say 60 or 65 years. The requirement of furnishing employment/reemployment certificate can be enforced rigorously by prescribing that any

non-declaration by a re-employed pensioner would result in peremptory recovery of overdrawn amounts from the pension ^{already} disbursed and ^{through} scrupulous observance of the Government of India instructions referred to in para.12 above.

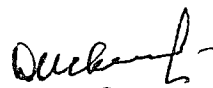
22. The applicant before us sought voluntary retirement at the age of 51 as he no longer wanted to work with the Government. He has been practising as an advocate in his days of retirement. This is not covered by para 16-2 of the Scheme.

23. In the conspectus of the facts and circumstances of the instant case, we direct that the Union of India in the Ministry of Finance (Department of Expenditure) who have issued the Scheme for payment of pension to Central Government Civil Pensioners by public sector Banks, to instruct the Punjab National Bank, Green Park Branch, New Delhi, to release to the applicant the full amount of pension together with interest at the rate of 12 per cent from May, 1986 till date and continue to pay him pension regularly on the first of every month without insisting for production of a non-employment certificate from him. Relief on pension should also be released to him after he has informed the Branch in writing that he is only in self-employment as an advocate all along. The Union of India (Ministry of Finance, Department of Expenditure) shall comply with the above directions within a period of one month from the date of communication of this order.

24. We make it clear that this judgement will not constitute a precedent. The Department of Expenditure and the Department of Pensions and Pensioners' Welfare ^{review and} however, may like to revise the scheme in the light of the observations contained herein.

25-! There will be no order as to costs.

26. Let a copy of this order be separately sent to the Secretary, Ministry of Finance (Department of Expenditure), who has not been formally impleaded as a respondent in this case, for information and issuing necessary instructions in the light of the aforesaid observations.


(D.K. CHAKRAVORTY)
MEMBER
8/6/80


(P.K. KARTHA)
VICE CHAIRMAN
8/6/80