

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 24/88

T.A. No.

198

DATE OF DECISION 16-2-1990

Shri Narahari Sadashiv Joshi Petitioner

Applicant in person. Advocate for the Petitioner(s)

Versus

Secretary to the Govt. of India Respondent
Deptt. of Atomic Energy, Anushakti Bhavan,
Chatrapati Shivaji Marg, Bombay-400 039 Advocate for the Respondent(s)
Shri V.S. Masurkar

CORAM

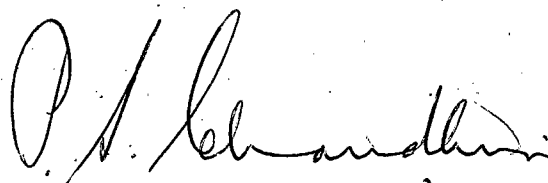
The Hon'ble Mr. G.Sreedharan Nair, Vice-Chairman

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

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

Yes

No


 (P.S. CHAUDHURI)
 Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH.

10

O.A.No.24/88

Shri Narahari Sadashiv Joshi
C/o Raymond Woollen Mills
Mirya Road,
Sadgaon,
Ratnagiri- 415612

.. Applicant

V/s

Secretary to the
Govt. of India,
Deptt. of Atomic Energy,
Anushakti Bhavan,
Chatrapati Shivaji Marg,
Bombay-400-039

.. Respondent

Appearances:

Applicant in person.

Shri V.S.Masurkar
Advocate for the
respondent.

Coram: Hon'ble Shri G.Sreedharan Nair,
Vice-Chairman.

Hon'ble Shri P.S.Chaudhuri,
Member(A)

Date of hearing 13-2-1990

Date of Judgement: 16-2-1990

ORAL JUDGEMENT

(Per Shri P.S.Chaudhuri, Member(A))

This application was filed on 30-12-1987 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant challenges the President's order No. 2/6(8)/74-PP dated 3-1-1986 by which the whole of the pension payable to him for the period from 1-1-1985 to 31-12-1986 (i.e. 2 years) has been withheld.

2. The facts. When the applicant was working as Scientific Officer, Grade SC, a Group 'A' post, at Tarapur Atomic Power Station of the Department of Atomic Energy and had completed 20 years of qualifying service, he gave notice of his voluntary retirement. By order dated 10-12-1984

2-

this was accepted and he was relieved of his duties on 1-1-1985 F.N. By a letter dated 18-2-1985 the applicant sought permission to accept commercial employment with M/s Dodsai (P) Ltd. and stated that he had joined this employment w.e.f. 1.2.1985 and will be posted as Site Engineer for a Lube Oil Plant at Iraq. In reply, by a letter dated 23-2-1985 the applicant was directed to clarify whether his employment would be at Iraq or at Bombay. By his letter dated 27-2-1985, which was received by the respondents on 28-2-1985, the applicant clarified that he would have to proceed to Iraq for the project and requested that his application be processed accordingly. By a letter dated 23-5-1985, ^{sent} ~~and~~ by post, the applicant who had left India by that time was informed that his request had been refused. By order dated 11-9-1985 the applicant was asked to show cause against the Government's proposal to declare that he would not be entitled to the whole of the pension payable to him for a period of 2 years. The applicant replied to this ~~z~~ notice on 25-9-1985 stating that he was not aware of the formalities and expressing his apology. By the impugned order dated 3-1-1986 the President declared that the whole of the pension payable to the applicant for the period from 1-1-1985 to 31-12-1986 shall be withheld. Being aggrieved, the applicant submitted an appeal dated 19-6-1987 to the President. This was rejected by a letter dated 18-8-1987. The applicant then filed this application ^{on} 30-12-1987.

3. The respondents have opposed the application by filing their written statement. We have heard the applicant in person and Mr. V.S. Masurkar, learned advocate for the respondents. Mr. Masurkar also showed us the record.

4. It is appropriate at this stage to quote rule 10 of the Central Civil Services (Pension) Rules, 1972. This rule deals with "Commercial employment after retirement" and reads as under:-

(12)

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 Government servant who was permitted by the Government to take up a particular form of Commercial employment during his leave preparatoy 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 the 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) Does not concern us
- (4) Where within a period of sixty 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 sixty days shall be counted from the date on which the defects have been removed and/or complete information has been furnished by the applicant.)

- (5) Where the Government grants the permission applied for subject to any conditions or refuses such permission, the applicant may, within thirty days of the receipt of the order of the Government to that effect, make a representation against any such condition or refusal and the Government may make such orders thereon as it deems fit:

Provided that no order other than an order cancelling such condition or granting such permission without any conditions shall be made under this sub-rule without giving the pensioner making the representation an opportunity to show cause against the order proposed to be made.

- (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

[Handwritten signature]

[Handwritten signature]

of the Government of 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.

(7) & (8) Do not concern us."

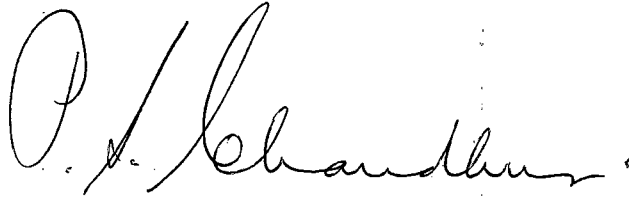
5. The first point urged by the applicant was that as the impugned order said that his pension from 1-1-1985 to 31-12-1986 shall be withheld, it had merely been held back for a limited period and he was entitled to receive it once this period was over. We do not see any force in this submission because the plain dictionary meaning of 'withheld' covers not only holding back but also refusal to grant. It is true that whereas the show cause notice uses the language of rule 10 (supra), the impugned order does not. We are, however, quite clear in our minds that this does not invalidate it in any way.

6. The next point urged by the applicant was that the Government had sought a clarification from him regarding his commercial employment and although he had furnished this information on 27-2-1985 the Government had not communicated any decision to him within 60 days thereafter. It was his contention that, therefore, in terms of sub-rule (4) of

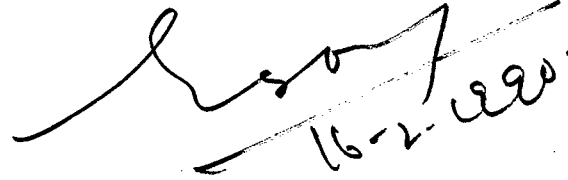
rule 10 quoted above, the Government must be deemed to have granted the permission applied for. It was his further contention that once the permission was granted it was arbitrary and unfair for the President to withhold his pension for 2 years. The respondents attempted to counter this by submitting that the applicant had accepted commercial employment on 1-2-1985, i.e. even before he first applied for permission to do so on 18-2-1985, let alone waiting for at least 60 days thereafter. They also submitted that his request for commercial employment was refused by letter dated 23-5-1985. But we do not see how this helps the respondents. There is no doubt that the clarification asked for by the Government was furnished by the applicant on 27-2-1985. They should have acted on it within 60 days. i.e. on or before 28-4-1985. They did not, and so according to the Rules were deemed to have given the ^{permission}~~pension~~ asked for w.e.f. 29-4-1985. Their action on 23-5-1985 was too late to refuse this permission. The respondents tried to get out of this predicament by submitting that the applicant had not exercised his right of appeal under sub-rule (5) of rule 10 of the Pension Rules against the order dated 23-5-1985. We can not go along with this line of reasoning when the order dated 23-5-1985 was issued after the period of sixty days was over.

7. In this view of the matter, we can not help but hold that the applicant was deemed to have been granted permission to accept commercial employment 60 days after 27-2-1985 i.e. w.e.f. 29-4-1985. It follows that his pension can not be withheld from that date. We do not, however, see any reason to pay any interest on any consequential amounts due to the applicant.

8. In result, the application succeeds partly.
The impugned order dated 3-1-1986 is quashed and set aside for the period from 29-4-1985 to 31-12-1986 (both days inclusive). The payment due to the applicant shall made within a period of two months from the receipt of a copy of this order. In the circumstances of the case, there will be no order as to costs.



(P.S. Chaudhuri)
Member(A)


16-2-1990

(G. Sreedharan Nair)
Vice-Chairman

Judgement dt. 16.2.90
Served on Applicant & Resp.
on dt. Nil
12/4/90

Received personal file
of Sh N. S. Toshi, SO/SC
on 11.6.1990.

File No. DAPS/2/1044/74

3/16.90
K. S. Patil
Upper Division Clerk
Tarapur Atomic Power
Station