

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 19 OCT 1994

APPLICATION NO: 1280 of 1994.

APPLICANTS:- Sri. K. N. Narahari, Mysore.
V/S.

RESPONDENTS:- The Chief Commissioner of Income Tax,
Karnataka and Goa, Bangalore & Others.

To

1. Dr. M. S. Nagaraja,
Advocate No. 11, 2nd floor,
1st Cross, Gandhi Nagar,
Srijaatha Complex,
BANGALORE-560009.
2. Sri. M. S. Padmarajiah,
Sr. Central Govt. Sing. Counsel,
High Court Bldg, BANGALORE-1.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.
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Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER/~~ passed by this Tribunal in the above
mentioned application(s) on 04.10.94.

o/c issued on 19/10/94
Gan

for DEPUTY REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 1280/ 1994

TUESDAY, THE 4TH DAY OF OCTOBER, 1994

SHRI V. RAMAKRISHNAN

...

MEMBER (A)

SHRI A.N. VUJJANARADHYA

...

MEMBER (J)

Between

Shri K.N. Narahari,
Aged 59 years,
S/o Shri Venkat Rao,
1288/1, Upstairs,
4th Cross, K.N. Puram,
Mysore - 570 004.

...

Applicant

(By Advocate Dr. M.S. Nagaraja)

And

1. The Chief Commissioner of Income Tax,
Karnataka and Goa,
Central Revenue Building,
Bangalore - 560 001.

2. Central Board of Direct Taxes,
Represented by its Chairman,
Central Board of Direct Taxes,
Government of India,
New Delhi.

3. Union of India,
represented by
Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi - 110 001.

...

Respondents

(By Advocate Shri M.S. Padmarajaiah, Senior
Standing Counsel for Central Govt.)

ORDER

Shri V. Ramakrishnan, Member (A)

The applicant in this case who has retired from the Indian Revenue Service as Assistant Commissioner of Incometax with effect from 31.8.93 is aggrieved by the order of the department dated 20.1.94 as at Annexure A-3 imposing certain conditions while considering his request to accept commercial employment after retirement.

2. The Tribunal by its order dated 5.9.94 had stayed the operation of the impugned order dated 20.1.94 as at Annexure A-3.

3. We have heard Dr. M.S. Nagaraja for the applicant and Shri M.S. Padmarajaiah, the learned Senior Standing Counsel.

4. Dr. Nagaraja submits that Rule 11 of CCS (Pension) Rules which dealt with the question regarding acceptance of commercial employment in respect of officers of Indian Revenue Service Group 'A' had been struck down by the Tribunal in the case of Shri R. Kapur vs. Union of India and others disposed of by the Principal Bench of this Tribunal on 31.12.86 reported in (1987) 2 ATC 771 on the ground that Rule 11 was unconstitutional. Dr. Nagaraja further argues that in the case of Shri Kapur, conditions identical to those as specified in Annexure A-3 were imposed and the Tribunal had held them to be unreasonable. Dr. Nagaraja prays that we should also set aside the conditions. Shri Padmarajaiah on the other hand submits that conditions as at Annexure A-3 were imposed by the department in terms of Rule 10 of CCS (Pension) Rules and not in terms of Rule 11 which had been struck down. This position has been brought out in the reply statement filed by the respondents. Shri M.S. Padmarajaiah also refers to Rule 10 (5) of CCS (Pension) Rules which provides for submission of a representation where the retired official is aggrieved by any condition imposed by the government while granting permission for accepting commercial employment. Shri Padmarajaiah states that this was not done by the applicant. As it is a statutory provision, it was obligatory on his part to avail himself of this statutory remedy before approaching this Tribunal. Shri Padmarajaiah states further that in an identical case of K. Venugopal Raju in OA 793/94, disposed off on 3.10.94 this Tribunal had taken the view that the applicant therein had to submit a representation in terms of Rule 10 (5) before the appropriate authority.

67

5. Dr. Nagaraja submits that the applicant was not aware that the conditions were imposed in terms of Rule 10 but he was under the impression that the conditions were imposed under Rule 11 as the letter at Annexure A-3 did not cite any particular rule. He also draws our attention to the case of M.V. Javali vs. Union of India and others in OA 668/91 where identical conditions imposed were set aside by the Tribunal. He contends that the judgement in Kapur's case makes it clear that the conditions were unreasonable and that there was no reason as to why Group 'A' officers should be barred from handling specific matters before the independent judicial bodies over which these officers never exercised any authority and could never be expected to exercise any influence. The learned Counsel states that the position has been clearly stated in paragraph 46 of the Judgement in Kapur's case and in particular refer to the following observations in that para:

"If a lawyer, whether he is a pensioner or a non-pensioner, attempts to influence the administration or the authorities, Tribunals or courts before whom he practises, he would be guilty of misconduct and would be punishable accordingly. A fair practice of law cannot in any way affect the purity of administration. Equally the administrative secrets which the officer may have come to know while in service could be of little help to an assessee. It is difficult to conceive how the purity of administration can be ensured by merely preventing the pensioner from practising law which he could not otherwise sully. And if he can do so otherwise also, of what use is Rule 11."

In the light of this position, Dr. Nagaraja argues that it is clear that imposition of the present set of conditions whether under Rule 11 or Rule 10 would be unreasonable and will have to be set aside.

6. Whatever may be merits of the contention of Dr. Nagaraja, the position as it exists today is that Rule 10 which empowers the Government to impose conditions before giving permission to take up commercial employment ^{State} holds the field. This rule has not been challenged by the applicant. It is also not in dispute that the applicant had not

submitted any representation to the government after getting the letter dated 20.1.94 as at Annexure A-3 imposing certain conditions. In view of the provisions of Rule 10 (5) of the CCS (Pension) Rules read with Section 20 of the Administrative Tribunal Act, it is obligatory on the part of the applicant to exhaust the remedy of representation to the Department before approaching this Tribunal.

7. In view of the position as brought out ^{above} and following the decision of this Tribunal in OA 793/94 we direct that if the applicant submits a representation in terms of Rule 10(5) within one month from the date of receipt of a copy of this order, the same should be disposed of by the competent authority within three months from the date of receipt of such representation and pending final decision by the competent authority, the order of stay against the operation of Annexure A-3 will continue.

8. With the above observations the application is finally disposed of with no order as to costs.

Sd/-
(A.N. Vujjanaradhya)
Member (3)



Sd/-
(V. Ramakrishnan)
Member (A)

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Section 19/1/94
Central Administrative Tribunal
Bangalore Bench
Bangalore

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE THIRTEENTH DAY OF MARCH, 1992

Present : Hon'ble Shri P.S. Habeeb Mohamed ... Member (A)
Hon'ble Shri Syed Fazlulla Razvi ... Member (J)

APPLICATION NO.668/91

M.V. Javali,
Aged 53 years,
S/o V.K. Javali,
No.1444, 'Ravikiran',
136h Main, W.C.R.
II Stage, Basaveswaranagar,
Bangalore-560 086.

... Applicant

(Dr. M.S. Nagaraja ... Advocate)

v.

1. The Central Board of Direct Taxes,
represented by its Secretary,
North Block, Central Secretariat,
New Delhi-1.
2. Chief Commissioner of Income-tax,
Karnataka & Goa,
Bangalore.
3. The Union of India by the
Secretary to Govt. of India,
Ministry of Finance,
Department of Revenue,
New Delhi-1.

... Respondents

(Shri M.Vasudeva Rao ... Advocate)

This application having come up for orders before
this Tribunal today, Hon'ble Shri Syed Fazlulla Razvi,
Member (J), Made the following:

O R D E R



1. The applicant who was working as Assistant Commissioner of Income Tax and who retired from service with effect from 1.8.1991 on voluntary retirement has questioned the legality of the conditions imposed in the letter dated 1.10.1991 on his right to practice as an Advocate, copy of which letter is at Annexure A-4 appended to this application. The reliefs, sought for by the applicant are these:-

- i. to declare that Rule 11, of CCS (Pension) Rules 1972 as unconstitutional and void, being violative of Article 14, 16 and 19(1) (g) of the Constitution of India;
- ii. to declare that the conditions imposed in letter dated 1.10.1991 on the right to practice are illegal and therefore non-est.
- iii. To declare that the applicant is entitled to practise the profession of Law without the restrictions imposed in the Government of India letter dated 1.10.1991 and Rule 11, of CCS (Pension) Rules 1972 but subject only to the provisions of Advocates Act 1961 and the Bar-Council of India Rules.
- iv. To award the cost of this application, and
- v. To grant such other relief(s)/remedies as this Hon'ble Tribunal deems fit and expedient in the circumstances of the case 'in the interest of justice and equity'.

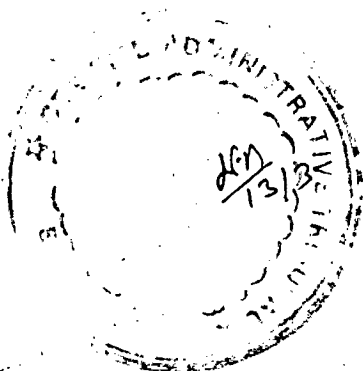
2. Bereft of immaterial particulars, the case of the applicant, briefly put, is thus:

The applicant had enrolled himself as an Advocate in the year 1964 and later he joined service as Income Tax Officer in 1969 and after serving for about 22 years took voluntary retirement with effect from 1.8.1991. After retirement he sought for permission from the

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department to practice as an Advocate in view of his academic and professional qualification as per Annexure A-1 dated 2.8.1991. This application of the applicant was forwarded by the Government of India to the Chief Commissioner of Income Tax, Bangalore, for comments as per letter as Annexure A-2 dated 8.8.1991 and thereafter the applicant furnished the details as per his letter dated 21.8.1991 as per Annexure A-3. Thereafter the Government of India, after internal correspondence communicated by way of the impugned letter dated 1.10.1991 the permission of the Government to set up Chamber practice subject to certain conditions. The material portion, relevant for consideration, in the said letter states thus and imposes the following restrictions:

- "i) The retired officer shall not accept any consultancy from nor deal in any other manner with the Ministries/Departments in which he was employed or any organisation with which he had official contact while in service, under the Government.
- ii) The retired officer shall not take up consultancy work on behalf of or with any company/firm/individual in respect of any contract or proposed contract with the Ministries/Departments in which he was employed or any undertaking or body under the contract of the said Ministries/Departments in which he was employed.
- iii) The retired officer shall not appear before the ITAT anywhere in the country or any other authority or body dealing with matter related to Income-tax.
- iv) That the conditions imposed in granting permission shall remain operative for a period of two years from the date of retirement."



Questioning the correctness and legality of the restrictions imposed by the impugned letter affecting his right to practice as an Advocate, the applicant has filed this application.

3. The respondents in their reply have attempted to sustain the legality of the restrictions imposed by way of the impugned letter mainly on the basis of the provisions of Rule 11 of the CCS(Pension) Rules, 1972.

4. We have heard the learned counsel for the parties. By consent of the parties and since the pleadings are complete, this application is being disposed of at the stage of admission itself.

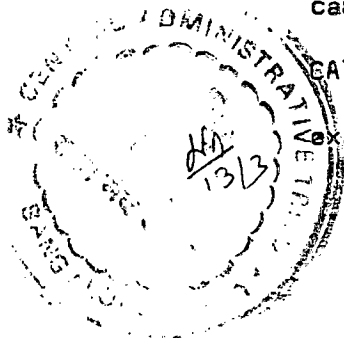
5. As could be seen from the averments made in the application and the argument urged in support thereof, the main thrust of the applicant's contention is on the same lines as urged for the applicant in the case of R. KAPOOR V. UNION OF INDIA reported in ATR 1987(2) ATC 771. The applicant mainly relies on this case (referred to as KAPOOR's case for short) in support of his claim. The respondents in an attempt to justify the correctness of the impugned order mainly rely on the provisions of rule 11 of the pension rules and contend that by virtue of the provisions of the said rule 11, the imposition of the several conditions incorporated

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in the impugned order restricting the right of the applicant to practice are warranted.

6. It is not controverted that the grievance ventilated by the applicant herein is the same as put forwarded by the applicant in KAPOOR's case and the present case is similar to the case of the applicant in KAPOOR's case. In KAPOOR's case also the applicant therein had challenged the vires of rule 11 of the pension rules and the conditions imposed affecting and restricting the right of the applicant KAPOOR to practice the profession of law as an Advocate. Shri Rao for the respondents while not disputing that the case of the applicant herein is on the same footing as that of the applicant in KAPOOR's case, only submitted that the Government has not accepted the ruling rendered in KAPOOR's case and have filed a SLP before the Hon'ble Supreme Court, which is still pending for admission.

6. In KAPOOR's case the vires of rule 11 of the Pension Rules and the legality of the imposition of certain conditions affecting the right of the applicant therein for practising the profession of law as an Advocate, subsequent to his retirement from service came to be considered. The Principal Bench of the CAT, presided over by the then Hon'ble Chairman examined in depth the issue involved and held that



the prohibition of restrictions imposed by Rule 11 are too sweeping and too wide to be reasonable and that rule 11 makes an invidious classification among pensioners in the matter of their right to practice the profession of law on the ground that they had retired from the Department of Revenue and that the classification is arbitrary and unsustainable and does not bear any nexus to the object sought to be achieved and is, therefore, held to be violative of Articles 14 and 16 of the Constitution. It was further pointed out in this case that the right to practice profession of law like right to carry on any other profession, trade or business is a fundamental right guaranteed under Article 19(1)(g) of the Constitution and that the restrictions imposed by Rule 11 are neither reasonable nor do they subserve public interest. The Principal Bench further in KAPOOR's case held that Rule 11, therefore, is void under Article 13 of the Constitution and is accordingly struck down. We are in respectful agreement with the views expressed in KAPOOR's case and following that view we have to hold that the restrictions imposed by the respondents by way of the impugned letter are clear infringement affecting the right of the applicant to practice as an Advocate after his retirement from Government service and the respondents cannot seek to impose such restrictions on the basis of rule 11 of the Pension Rules which is found to be

arbitrary and has been struck down in KAPOOR's case as a clear infringement affecting the fundamental right of the person ~~xx~~ placed like the applicant to practise the profession of law as an Advocate. It is not the case of the respondents that the Hon'ble Supreme Court has stayed the operation of the judgment in KAPOOR's case and it was only stated that aggrieved by the judgment in KAPOOR's case the Government have filed a SLP before the Hon'ble Supreme Court and that SLP is pending at the stage of admission. The judgment in KAPOOR's case was rendered by the Principal Bench of the CAT on 31.12.1986.

7. In the light of the above we hold that this application has to be allowed and it has to be declared that the restrictions imposed, affecting the right of the applicant to practice the profession of law as an Advocate, by way of the impugned letter on the basis of the provisions of Rule 11 of the CCS (Pension) Rules, 1972, which rule is struck down as unconstitutional, are illegal and that the applicant is entitled to practice as an Advocate without such restriction imposed by the impugned letter, but subject to the provisions of other laws and rules.



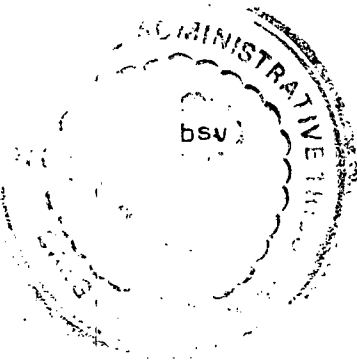
8. We accordingly allow this application and declare that the restrictions imposed by the respondents by way of the impugned letter dated 1.10.1991 (Annexure A-4) affecting or restricting the right of the applicant to practice the profession of law as an Advocate on the basis of the provisions of rule 11 of the CCS(Pension) Rules 1972 are illegal and further declare that the applicant is entitled to practice as an Advocate without such restrictions imposed by the impugned order, but subject to the provisions of other laws and rules. No costs.

Sd-

MEMBER (A)

Sd-

MEMBER (J)



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N. K. S.

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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL. SECRETARY
LUDHIANA