

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 1039/2016

New Delhi this the 15th October, 2018

Hon'ble Sh. Pradeep Kumar, Member (A)

Shri Kewal Kumar, Age 65 yrs.
s/o Late Shri Ishwar Das,
r/o 15/388, DDA Flats,
Madangir, New Delhi-110062,
Retired from Indian Council of World Affairs,
Sapru House, Barakhamba Road,
New Delhi-110001. .. Applicant

(By Advocate : Sh. Om Prakash Bhatia)

Versus

1. Union of India,
Through Secretary,
Ministry of External Affairs,
Govt. of India,
New Delhi.
2. Director General,
Indian Council of World Affairs,
Sapru House, Barakhamba Road,
New Delhi -110001. Respondents

(By Advocate : Sh. Vijendra Singh)

ORDER (ORAL)

The applicant mentioned that he was serving in Indian Council of World Affairs (ICWA). This was a society and vide Gazette Notification dated 03/09/2001, the Parliament's approval to declare the ICWA to be an institution of national importance and to provide for its

incorporation and matters connected therewith, was issued. Clause 5

(1) of this Notification has a provision reads as under :-

“(e) every employee holding any office under the exiting Council immediately before that day, shall, on that day, hold his office or service under the Council with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Council is duly terminated or until his remuneration and other conditions of service are duly altered by the Council.”

Thereafter, the relevant rules for the employees of ICWA, were framed and issued in another Gazette Notification dated 16th September, 2014. Clause 23 of this Notification is reproduced below :-

“23. Leave encashment – An employee of the Council shall be entitled to encashment of earned leave as admissible to the Central Government employees under the Central Civil Services (Leave) Rules, 1972.”

2.0. The applicant pleaded that he is entitled for leave encashment on retirement. However, the same has been refused by ICWA vide order dated 15.10.2015. Accordingly, he has sought the following reliefs in this OA:-

“i) To direct the respondents to make the payment of earned leave encashment amounting to Rs. 1,46,260/- (Rs. One Lac forty six thousand two hundred and sixty only) to the applicant;

ii) To pass such other or further order/orders which this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case.”

3.0. The respondents mentioned that the applicant had retired from service on 30.04.2010 i.e. after the initial Gazette Notification was

issued on 03.09.2001 but before the rules could be made on 16.09.2014. Further, the Clause 15 (6) of the said initial Notification dated 3.9.2001 had a provision that rules shall be framed. This Clause 15 (6) reads as under :-

“6. Subject to such rules as may be made in this behalf, the Director-General and other officers and employees of the Council shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, gratuity, provident fund and other matters, as may be prescribed by regulations made in this behalf.”

Further, clause 26(1), 26(2) and 26 (2) (f) of this notification also provides as under:-

“26. (1) The Council may make regulations consistent with the provisions of this Act and the rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

xxx xxx xxx

(f) the conditions of service of the Director-General and other officers and employees of the Council under sub-section (6) of section 15;

4.0. The respondents pleaded that the relevant rules as were required under the original notification Dt. 3.9.01 were framed and notified subsequently on 16.09.2014. Clause 28 (2) of these rules reads as under :-

“A former employee of the Council who has retired or resigned prior to the publication of these regulations shall not be entitled to any post retirement benefits under these regulations.”

It was accordingly pleaded that those employees who had retired before these rules were notified, could not be covered under these rules and hence leave encashment is not admissible to applicants.

5.0. The respondents also pleaded that even though applicants have claimed leave encashment which is not permitted under those rules dated 16.09.2014, still the applicants have not challenged these rules. In view of this, instant OA is not maintainable and needs to be dismissed.

6.0. Matter has been heard at length. The rules governing service conditions of the employees of ICWA, had come into force with effect from 16.09.2014 and they specifically provide that those employees of the ICWA who had retired prior to promulgation of these rules, shall not be entitled to any post retirement benefits under these rules. Hence, the applicants cannot be entitled for such benefits under these rules. Therefore, the claim of the applicant for leave encashment does not sustain. The OA is dismissed as being devoid of merits. No costs.

(Pradeep Kumar)
Member (A)

