

**Central Administrative Tribunal
Principal Bench**

RA No.36/2019 and
MA No.394/2019
In
OA No. 1039/2016

New Delhi this the 13th day of February, 2019.

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

Shri Kewal Kumar,
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

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

ORDER (By Circulation)

The applicant 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. As directed in clause 15 (6) and 26 (1) in this Notification, the rules for

the employees of ICWA were framed in due course and were issued vide Gazette Notification dated 16.09.2014.

2. The applicant herein had retired w.e.f. 30.04.2010, i.e., after the initial Gazette Notification was issued on 03.09.2001 but before the Rules could be made and notified on 16.09.2014. The applicant vide OA No.1039/2016, approached the Tribunal seeking directions to the respondents, for payment of leave encashment at the time of his retirement.

This OA was dismissed, being devoid of merit, vide orders dated 15.10.2018. The applicant had filed the instant RA for a review of this decision.

3. There has been delay in filing of this RA, for which MA No.394/2019 has also been preferred wherein reasons have been brought out for the delay. Having gone through the reasons and the same being acceptable, delay is condoned. MA No.394/2019 is allowed.

4. The applicant pleads that there were five similar OAs filed in the Tribunal, out of these, OA Nos.1037, 1039 and 1040 all of 2016 were decided by the Bench considering this RA and all were dismissed. Another OA No.1041/2016 was also dismissed by another Coordinate Bench vide order dated 25.10.2018. However,

one another OA No.1038/2016 was allowed by a third Coordinate Bench vide order dated 12.12.2018.

5. The applicant pleads that the provisions vide clauses 5 (1)(e), 15 (6) and 26 (1), under Notification dated 03.09.2001 and clauses 23 and 28 (2) under Notification dated 16.09.2014 have not been read together and thus not correctly appreciated while dismissing the instant OA. These clauses read as under :-

“Notification dated 03.09.2001

Clause 5 (1) (e)

(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.”

Clause 15 (6)

“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.”

Clause 26(1)

“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.

Notification dated 16.09.2014

Clause-23

“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.”

Clause 28 (2)

“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.”

6. The applicant pleads that the provisions of Notification dated 03.09.2001 and 16.09.2014 have not been appreciated in the correct perspective and the provisions of clause 5 (1) (e) and 26 (1) thereof are to be read together.

7. The matter has been carefully reviewed. The applicant has pleaded that clause 28 (2) of the Notification dated 16.09.2014 cannot divest the applicant of his right to leave encashment at the time of retirement. This plea is not acceptable for the reason that the clause 26 (1) of original Notification dated 03.09.2001, reproduced above, indicated that rules will be framed and clause 5 (1) (e) indicated the erstwhile employees shall be governed by their earlier conditions of service. The subsequent Notification dated 16.09.2014 had a specific provision vide clause 28 (2), reproduced above, that the former employees of the Council who had retired or resigned prior to the publication of these Regulations, (i.e., on 16.09.2014), shall not be entitled to any post retirement benefits under these Regulations.

When such is the provision by way of express denial of leave encashment, the pleadings of the applicant are not acceptable as he retired on 31.03.2012, i.e., prior to rules being published on 16.09.2014.

The applicant has not brought out anywhere, neither while pleading OA nor at RA stage, the Rules and Regulations which permitted leave encashment to staff of ICWA prior to publication of initial notification dated 03.09.2001. Had this provision been applicable prior to 03.09.2001, the applicant was expected to bring it out at OA stage. Even though OA was dismissed, yet existence of such a provision has not been brought out even at RA stage. Since such a pleading has not been made out at any stage, it follows that leave encashment was not admissible prior to 03.09.2001. Had the case been otherwise, rule 5 (1)(e) of Notification dated 03.09.2001, would have come into force.

8. In view of the foregoing, leave encashment is not admissible to the applicant. RA is not maintainable as no new point has been brought out. The RA is dismissed being devoid of merit. No costs.

(Pradeep Kumar)
Member (A)

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