

**Central Administrative Tribunal
Principal Bench**

OA No. 1566/2017

Order reserved on : 17.10.2019
Order pronounced on: 05.11.2019

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

Sh. J.M.Sahay aged about 62 years,
S/o late Sh. I.D.Sahay,
R/o 3193, Sector C-3,
DDA Flats, Vasant Kunj,
New Delhi.

... Applicant

(By Advocate: Sh. S.K.Gupta)

VERSUS

Union of India through

1. Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

... Respondents

(By Advocate: Sh. M.S.Reen)

ORDER

The applicant is a Group-A officer and retired as
Principal Chief Commissioner of Income Tax (Pr. CCIT) on

31.05.2015. Seeking post retirement engagement, he applied to M/s. Jindal Poly Film Limited for the post of Senior Advisor, Income Tax after retirement. M/s. Jindal accepted the same and advised him on 23.11.2015 as under:

“With reference to your application and subsequent interviews with us, we are pleased to offer you the position of “Sr. Advisor (Income Tax)”. You will be based at Delhi (Corporate).

In connection with your joining, please note the following:-

1. You are expected to join us as early as possible, but note later than 23.11.2015.
2. Your salary and service condition will be as per the discussion we had with you.
3. Appointment letter will be issued to you on your joining.
4. Please bring the following documents at the time of your joining:
 - a) Testimonials of academic and professional qualifications.
 - b) Secondary certificate/Passport/ any supporting document as age proof.
 - c) Adhaar Card, Voter ID (for address Proof).
 - d) Copy of Pan Card.
 - e) 2 recent passport size photographs.
 - f) Proof of the last drawn Salary.
 - g) Service Certificates/Relieving Letter of previous organization.
5. Kindly acknowledge the above offer and send your acceptance together with acceptance of your resignation letter from your present company within 7 Days from the receipt of the offer date or else the offer letter stands null & void.

We welcome you to Jindal Group and look forward for a mutually rewarding association.”

2. Under the provision of Rule 10(2) of CCS Pension Rules, permission of competent authority was required as the

applicant was seeking employment before the expiry of one year from the date of retirement. At that time, applicant was staying at Nasik, he made a representation dated 06.11.2015 and addressed the same to Chairperson, CBDT to grant this approval. This request letter dated 06.11.2015 reads as follows:

“I have retired as Pr. CCIT, Ahmedabad on 31/05/2015.

2. I have since then received letter of intent for employment dated 05/11/2015 from Jindal Poly Films Ltd, New Delhi for the position of “Sr. Advisor (Income Tax)” carrying gross monthly emoluments of Rs.3,00,000/- (3 Lacs). Copy of e-mail received from the company is enclosed.

3. I wish to clarify that I never had any official dealing with the company or for that matter the entire group, during my career. Further, I had applied for the post online (iimjob.com/naukri.com) and the H.R.facilator for the job was Udaya Solutions Pvt Ltd. Bhuvaneshwar.

4. The employer expects me to join them as early as possible, but not later than 23/11/2015. In the circumstances necessary permission under Rule 10(2) may be accorded at your earliest convenience.

5. Form 25, duly filled in, is enclosed herewith for your kind perusal.”

3. He also enclosed therein the requisite information as per

Form-25. Form-25 also has an item as under:

	Item	Reply of Applicant
7	(c) Whether the officer had during the last three years of his official career, any dealings with the firm or company or cooperative society, etc.	No

4. Applicant pleads that he did not receive any reply to this request and he left Nasik on 20.11.2015. He reached Delhi and joined M/s. Jindal on 23.11.2015 and thereafter checked from the office of Chairperson, CBDT in the evening of 23.11.2015 regarding the fate of his request on 06.11.2015. At that stage, he came to know that the office of Chairperson has sent him a letter dated 19.11.2015 by Speed Post to apply through proper channel. This letter reads as follows:

“I am directed to refer to your letter dated 6th November, 2015 on the above mentioned subject and to request you to forward your application through concerned Pr. CCIT along-with comments of Pr. CCIT as required in the Check List for further examination of the case.”

5. In compliance, he applied through the office of Pr. CCIT, Ahmedabad on 26.11.2015 and requested for ex post facto approval. For processing such request, Pr. CCIT is also required to give his comments on a check list on Items 2(a) to 2(f). For ready reference, the applicant gave the comments also for these items. His reply to Item 2(c) to 2(f) reads as follows:

“2(c) No. The Pensioner had no official dealing with the employer or the group during his entire service career.

2(d) No liaison work involved. However, the pensioner, subject to Government approval, may appear before any income tax authority during the course of hearing of income tax case/cases of the employer company / group.

2 (e) No.

- 2 (f) The pensioner has joined his new assignment on 23.11.2015, the last date of joining proposed by the employers to save the deadline. This is, however, subject to necessary ex-post facto approval by the government.”

6. Applicant pleads that in response to this, he was advised on 04.08.2016 that taking up commercial employment with private entities before expiry of one year from date of retirement, is in violation of sub-Rule 6 of Rule 10 of CCS Pension Rules as amended by Notification GSR 723 (E) dated 23.11.2006 and he was advised to submit his written reply within 15 days of receipt of this communication as to why the whole or part of the pension received by him from the date of joining the said private company should not be recovered.

The applicant continued to work with M/s. Jindal upto 31.12.2016.

Meanwhile, he submitted his reply to the show cause notice dated 04.08.2016 on 29.08.2016. This was considered by the respondents and he was advised on 01.03.2017 that 50% of the pension for the period 23.11.2015 to 31.05.2016, is ordered to be recovered. Relevant part of this order reads as follows:

“..... WHEREAS upon considering the reply submitted by Shri Jyotindra Mohan Sahay, vide letter dated 29.08.2016, the Competent Authority decides that Shri Jyotindra Mohan Sahay took up the commercial employment and joined M/s Jindal Poly Films Ltd., New Delhi on 23.11.2015 before the expiry of one year from the date of

his retirement without the prior permission of the Government. By doing so, he violated the provisions of Rule 10 of Central Civil Services (Pension) Rules, 1972, making him not entitled to the whole or such part of the pension and for such periods as may be decided by the Government, under Rule 10(6) of the Central Civil Services (Pension) Rules, 1972.

NOW, THEREFORE, the Competent Authority hereby orders a cut of 50% (Fifty percent) of the pension on Shri Jyotindra Mohan Sahay for the period from 23.11.2015 to 31.05.2016 under Rule 10(6) of the Central Civil Services (Pension) rules, 1972 and directs to recover the overpayment of pension paid to Shri Jyotindra Mohan Sahay for the period from 23.11.2015 to 31.05.2016 accordingly.”

7. The applicant is aggrieved on this imposition of cut in pension and instant OA has been filed. He has sought relief in the form of quashing the letter dated 01.03.2017 and for the refund of the amount already recovered. He also sought stay against recovery which was granted on 23.05.2017.

8. Applicant pleads that as per proviso (ii) of Rule 10(6) of CCS Pension Rules, the respondents were required to consider all the factors, namely, financial circumstances of the pensioner, nature and the emoluments from such commercial employment taken by the pensioner and any other relevant factor. Applicant pleads that these factors have not been considered by the respondents. The order dated 01.03.2017 also does not make any reference to his representation dated 26.11.2015 which was sent through Pr. CCIT, Ahmedabad.

9. The applicant also pleaded that when his request was already approved by the Hon'ble Finance Minister, there was no need to send the case to DOP&T and accordingly, the show cause notice dated 04.08.2016 issued as per advice of DOP&T is not maintainable.

10. Per contra, the respondents opposed the OA. It was pleaded that OA is not maintainable. Attention was drawn to Rule 10 (1) of CCS Pension Rules which reads as follows:

“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 one year 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 a Government servant who was permitted by the Government to take up a particular form of commercial employment during his leave preparatory to retirement or during refused leave shall not be required to obtain subsequent permission for his continuance in such employment after retirement.”

11. It was pleaded that once applicant's request dated 06.11.2015 was received, he was advised on 19.11.2015 which was sent by speed post on 20.11.2015 to the same address at Nasik from where his request was received. This speed post did not return undelivered.

12. Processing of any such permissions need inter-governmental consultations for approval by competent

authority and accordingly, once the matter was approved by Hon'ble Finance Minister, the same was sent to DOP&T for further processing. This cannot be faulted.

13. Since the applicant had joined private organisation for commercial employment without prior approval as per Rule 10(1) of CCS Pension Rules, Rule 10(6) of these rules gets attracted and it is an admitted case and competent authority has imposed a cut in pension vide order dated 01.03.2017. This cannot be faulted.

14. The respondents also preferred MA No.4087/2017 seeking to vacate the interim stay granted on 23.05.2017. It was pleaded that OA is without merit and needs to be dismissed.

15. Matter has been heard at length. Sh. S.K.Gupta, learned counsel represented the applicant and Sh. M.S.Reen, learned counsel represented the respondents.

16. Facts of this case are not in doubt. It is admitted that the applicant made an application seeking commercial employment before expiry of one year of his retirement on 31.05.2015 and he joined the said commercial employment on 23.11.2015. For seeking such commercial employment, the applicant had also discussions as well as appeared in the

interview, following which appointment letter was issued on 05.11.2015 with directions to join on 23.11.2015.

17. Applicant is a Senior Group-A Officer who retired from the post of Pr. CCIT. Rule 10(1) of CCS Pension Rules prohibits commercial employment before expiry of one year from the date of superannuation without approval by competent authority. However, the applicant not only applied for commercial employment during this period but joined also without requisite permission from the competent authority. He was well aware of rules on the subject (para 2 & 3 supra). Despite this, he disregarded the same. This is not acceptable.

18. After receiving the letter dated 05.11.2015, he reached Delhi and joined M/s. Jindal on 23.11.2015 and only thereafter checked from the office of Chairperson, CBDT about the result of his request already made on 06.11.2015. The pleadings by the applicant that he did not receive letter dated 19.11.2015, sent by the office of Chairperson, is not acceptable. This letter was sent to the same address at Nasik from where his request dated 06.11.2015 was received. It was sent by speed post which was not returned back undelivered.

In any case, the applicant was well aware that he had made a request on 06.11.2015 which was yet to be replied

and as such he could have checked the status from the office of Chairperson, CBDT before joining M/s. Jindal on 23.11.2015. However, in the event, he did not do so and joined M/s. Jindal first, despite being fully aware that joining for employment before expiry of one year from the date of superannuation, needs approval which was not existing in his case. It is noted that he checked the status of his application on 23.11.2015 itself but after joining M/s. Jindal. This disregard to extent rules from an officer of his stature is not acceptable.

19. His subsequent representation dated 26.11.2015 was processed. Such issues need inter-governmental consultations before matter is put up to competent authority for approval and accordingly, making a reference to DOP&T is a necessary part of it and this cannot be faulted.

20. The factum of his joining the commercial employment before expiry of one year of retirement is admitted. Under such circumstances, contemplated action by the respondents under Rule 10(6) cannot be faulted for which he was issued a show cause notice on 04.08.2016 and to which he replied also on 29.08.2016.

It was only thereafter that the cut in pension was ordered on 01.03.2017. Merely because the letter dated

01.03.2017 does not make a reference of his representation dated 26.11.2015, does not change the fact that it was this representation which was processed as well as the gravity of the entire episode.

Moreover, the pleas by applicant that relevant factors were not considered, before ordering cut in pension, are not acceptable. Reason is that this order dated 01.03.2017 makes it clear that action is under Rule 10 which specifies such consideration and it is an admitted case of disregard to extant rules. Hence plea that relevant factors were not considered, is not acceptable.

21. In view of the foregoing, the pleas of the applicant are not finding acceptability. The OA is without merit and the same is accordingly dismissed.

22. MA No.4087/2017 filed by the respondents is allowed and stay order also stands vacated.

No costs.

(Pradeep Kumar)
Member (A)

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