

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 15.11.2018

+ **W.P.(C) 3092/2003**
UOI & ORS.

..... Petitioners

Through : Sh. R.V. Sinha with Sh. A.S. Singh and
Sh. Amit Sinha, Advocates.

versus

CENTAL ADMINISTRATIVE TRIBUNAL Respondent

Through : Sh. Sanjeev Saraswat with Ms.
Tejaswini Chandrashekhar, Advocate, for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Aggrieved by the action of the petitioner [hereafter referred to as “the Union”] in directing the withholding of his pension, the second respondent approached the Central Administrative Tribunal (CAT) in an application, contending that his previous 29 years’ employment which culminated in the voluntary retirement being sanctioned with effect from 19.04.1999 entitled him to draw pension.

2. The salient facts are that the second respondent [hereafter “the applicant”] had joined the Union Department of Telecommunications in 1970 where he continued and rose to the position of General Manager. On 19.04,1999, he was permitted to voluntarily retire which he did from that date. The next month, i.e. on 19.05.1999, he sought permission to take

commercial employment with M/s. Bharti Cellular Ltd. The Union sought certain explanation from him through its letter of 02.06.1999 which he provided by reply dated 22.06.1999. The applicant claimed before the CAT that upon not receiving any reply/response, “*the deemed approval in terms of Rule 10(4) of the CCS (Pension) Rules, 1972*” [hereafter referred to as “the CCS Rules”] operated and that the permission originally sought on 19.05.1999 to which clarification furnished on 22.06.1999 enabled him to continue in the commercial employment which he had obtained in the meanwhile and – for which he reported for duties on 01.07.1999.

3. The Union resisted the proceedings, contending firstly that it never consented to the commercial employment application and that in fact on 09.09.1999, it had issued a Show Cause Notice (SCN) upon becoming aware that the applicant had joined commercial employment on 01.07.1999. It further submitted that by virtue of Rule 10(6), it was no longer required to seek any further extension but rather upon being informed about the applicant’s joining employment it was entitled to take up proceedings and recover the pension which had been released/granted in the meanwhile.

4. The CAT, by the impugned order, granted relief to the applicant, after noticing the relevant provisions, i.e. Rules 10(4) and 10(6). The CAT reasoned as follows:

*“13. If one has regard to Rule 10(4) *ibid* if the Government servant, after retirement, makes an application for commercial employment, and the Government does not refuse to grant the permission applied for or does not communicate the refusal to applicant, the Government shall be deemed to have granted the permission applied for. However, this is subject to proviso that in case the information is found defective the period of 90 days was commenced from the date of the defects have been removed.*”

Rule 10(6) ibid, provides a provision which entitles the Government to withdraw pension for a period of commercial employment, provided a show cause notice issued.

14. In the light of this provision, applicant had made request to the respondents to take up commercial employment on 19.05.1999 which was sought to be processed with DOT by letter dated 2.6.1999. In this communication of 2.6.1999, respondents have, with reference to the application dated 19.5.1999, directed applicant to furnish the requisite information and it was stipulated that the limit of 90 days as prescribed under Rule 19(4) would commenced from the date of receipt of such information. Applicant furnished to the respondents all the requisite information on 22.6.1999 and from that date the period of 90 days had commenced on 22.9.1999. In absence of any communication of refusing the permission to applicant or any order passed to refuse such permission, the presumption has been drawn in favour of applicant for deemed grant of permission. In so far as the proviso to Rule 10(4) is concerned, there is nothing on record to establish that any order has passed by respondents after 22.6.1999 to indicate that the information furnished by applicant in any manner was defective or insufficient for which further clarification was sought from him which could have leased a life of 90 days for deemed permission from the date of submission of requisite clarification by applicant. The resort of respondents to show cause notice dated 9.9.1999 cannot be read as an order passed. Further in proviso to Rule 10(4) ibid, rather it is a memorandum issued under Rule 10(6) of Rules which is on subsequent to deemed grant of permission. The attempt of respondents that they have sought clarification from M/s. BCL in July, 2000 can be of no avail as there is nothing on record to establish that information furnished by applicant on 22.6.1999 was in any manner defective or insufficient, as such as per Rule 10(4) and as respondents have neither refused the permission nor communicated the same upto 22.9.1999, the same is deemed to have been granted on 22.9.1999, i.e. expiry of 90 days from the date the requisite information was furnished by applicant on

22.6.1999. As such it cannot be held that applicant has sought commercial employment within two years of his retirement without any permission. Accordingly, orders passed on 20.9.2000, under Rule 10(6) of Rules ibid, cannot be sustained.”

5. It is highlighted on behalf of the UOI that the CAT overlooked the salient fact that a SCN was in fact served upon the applicant and that proof of this was available on the record in the form of postal certificate. It was highlighted furthermore that the CAT ignored the correct position in law that upon being informed that the applicant had obtained commercial employment on 01.07.1999, the Central Government was no longer bound to seek any further clarification but straightaway proceeding with the SCN which it did on 09.09.1999.

6. Learned counsel for the applicant, on the other hand, has resisted the UOI's petition, contending that firstly the applicant had obtained commercial employment and had worked only for a period of one year with M/s. Bharti Cellular Ltd. It was urged besides that the applicant at no stage was served with the SCN and that upon the expiry of period of 3 months from 22.06.1999, the deemed approval provision by virtue of Rule 10(4) operated *proprio vigore*. Learned counsel also relied upon the judgment of the Supreme Court in *State of Haryana & Ors. v. S.K. Singhal* AIR 1999 SC 1829 and *Dinesh Chandra Sangma v. State of Assam and Ors.* 1978 ILLJ 17 SC.

Analysis and Conclusions:

7. The relevant rules dealing with the issues are extracted below:

“Rule 10(4):

(4) Where within a period of [ninety 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 [ninety days] shall be counted from the date on which the defects have been removed and/or complete information has been furnished by the applicant.

Rule 10(6):

(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 of the Government or 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;
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(ii)	<i>the nature of, and the emoluments from the commercial employment taken up by the pensioner concerned; and</i>
(iii)	<i>any other relevant factor.</i>

8. The factual discussion would show that the applicant was permitted to retire voluntarily in terms of his request with effect from 19.04.1999. He sought for permission to seek commercial employment in terms of Rule 10(6) on 19.05.1999. In terms of Rule 10(4), if no decision were communicated by the Central Government, on the expiry of 90 days from the date of receipt of application, permission can be deemed to have been granted. An exception, however, is that if the application does not provide sufficient information, the period spent in obtaining the information is excluded. Rule 10(6) spells out the consequence that would visit the petitioner for not securing prior permission before obtaining commercial employment. The second proviso – to Rule 10(6) spells out further conditions before an adverse order can be made.

9. In the present case, the request of the applicant (on 19.05.1999) did not contain certain particulars which the Central Government deemed crucial. It, therefore, wrote to the applicant on 02.06.1999. The particulars included a copy of the appointment letter, of the private employer. The response to this was given on 22.06.1999 by the latter which enclosed a copy of M/s. Airtel Limited's appointment letter dated 01.06.1999 which stated that the appointment was to be effective immediately. In the light of this

letter, on 09.09.1999, the Central Government proposed to proceed against the applicant and denied pension. The applicant successfully contended before the Tribunal that this proposal was barred by time.

10. According to the petitioner/applicant, the reply of 22.06.1999 was received by it on 02.07.1999. There is evidence on the record to show that the previous day, i.e. on 01.07.1999, the applicant had jointed the employment and services of M/s. Airtel Limited. Furthermore, the Union has brought on record the application for release of pension and the declaration given by the applicant, to his bank in terms of the rules. That declaration is ambiguous; at one stage, the applicant stated that he had not accepted any commercial employment. However, quite contrary to it, he also stated that it stated that he had not accepted any commercial employment in India. Under the same entry, a self-declaration of having accepted commercial employment after obtaining previous sanction of the Central Government was also given.

11. From the above factual analysis and the conclusions recorded by the CAT, this Court is of the opinion that the Tribunal clearly erred in holding that the 90 day period aided the applicant and that deemed approval was given in terms of Rule 10(4). Once the petitioner's application for seeking commercial employment was given and information elicited on 02.06.1999 – to which in fact he responded on 22.06.1999, a communication which appears to have been received by the Central Government on 02.07.1999, he could not have proceeded on the assumption that there was a deemed approval. What is a matter of record is that on 01.07.1999 he proceeded to join the duties of M/s. Airtel Limited. No doubt, the Show Cause Notice was issued later and there is some controversy whether it was received within

time, however, this Court is of the opinion that given the length of time, it would not be appropriate to withhold the entire relief, i.e. the payment of pension for the period that the petitioner had employment. The deemed approval given by the CAT is set aside to the extent that the applicant is held entitled to pension for the period prior to 01.10.1999. Consequently, the Union of India is directed to refund the applicant's pension withheld for the period from 01.10.1999 onwards.

12. The writ petition is partly allowed in the above terms.

Order *dasti*.

NOVEMBER 15, 2018

**S. RAVINDRA BHAT
(JUDGE)**

**PRATEEK JALAN
(JUDGE)**

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