Cooling-off Period for Retired Bureaucrats

Why in news?

Archana Goyal Gulati, a retired bureaucrat has joined Google after completing the one-year cooling period post voluntary retirement.

What is the case about?

- Archana Goyal Gulati was a1989-batch official of the Indian Posts and Telecommunication Accounts and Finance Service (Indian P&TAFS).
- She had served in NITI Aayog as Joint Secretary/Adviser (ICTs and Infrastructure), the Department of Telecommunications and the Competition Commission of India (CCI).
- At present, has joined Google as Chief of Public Policy after taking voluntary retirement from the civil service.
- She had also completed the one-year cooling period that is necessary before taking up the post-retirement job.
- **The issue**- Gulati was posted in the CCI when it ordered a probe into Alphabet Inc, Google's parent company, over allegations of abuse of dominance in news aggregation and forcing unfair terms on digital news publishers.
- In a separate case, the CCI has published initial findings of a case against Google, where it termed the Android owner's billing system for app developers unfair and discriminatory.

To know about earlier cases regarding cooling period, click here

What is a cooling off period?

- Bureaucrats serve a cooling off period after they retire and before they can join a private firm.
- As per rules for the all-India services, officials undergo a "cooling-off period" for a year.
- The period was reduced from the earlier 2 years in 2015.
- This applies to officers of Group "A" Central Civil Services/Posts and All India Services.
- Post-retirement commercial employment for
    - the three All India Services (IAS, Indian Police Service, and Indian Forest Service) is covered under the AIS Death-cum-Benefits Rules
    - the Central Civil Services is covered under the CCS (Pension) Rules
- Government permission is to be sought for post-retirement commercial employment if the job is taken up within 1 year of leaving office.
- Non-compliance with these rules can lead to the government declaring that the employee shall not be entitled to the whole or such part of the pension and for such period as may be specified.
- Since, senior bureaucrats occupy key policymaking positions in the government, the cooling-off period is a way to reduce any possible conflict of interest.
- At the same time, it ensures their right to take up an employment of choice in the future.

What does “post-retirement commercial employment” include?

- The expression “post-retirement commercial employment” include
    - Employment in any capacity including that of an agent, under a company, co-operative society, firm or individual engaged in trading or business
    - Setting up practice, either independently or as a partner of a firm, as adviser or consultant in certain matters specified under the rules, including matters that are relatable to the pensioner’s official knowledge or experience
- This does not include employment under a body corporate, wholly or substantially owned or controlled by the Central Government or a State Government.

When does a government allow or turn down such requests from pensioners?

- The CCS (Pension) Rules specify several factors for the government to consider while granting or refusing permission which include
    - **No-objection**- Whether a no-objection for the proposed employment has been obtained from the cadre controlling authority and from the office where the officer retired
    - **Strategic information**- Whether the officer has been privy to sensitive or strategic information in the last three years of service that is directly related to the work of the organisation he proposes to join
    - **Conflict of interest**- Whether there is conflict of interest between the policies of the office he has held in the last three years and the interests/work of this organisation
    - **National security**- Whether this organisation has been in conflict with or prejudicial to India’s foreign relations, national security and domestic harmony
    - **Intelligence gathering-** Whether the organisation he proposes to join is undertaking any activity for intelligence gathering
- Conflict of interest does not include normal economic competition with the government or its undertakings.

What about government servants joining politics after retirement?

- While in service, the Conduct Rules bar government servants from being associated with any political party or organisation, and from taking part in or assisting any political activity.
- However, there is no rule to stop government servant from joining politics after retirement.
- In 2013, the Election Commission had written to the Department of Personnel and Training (DoPT) and Ministry of Law, suggesting a cooling-off period for bureaucrats joining politics after retirement, but it was rejected.
- The Ministry of Law advised that any such a restriction may not stand the test of valid classification under Article 14 of the Constitution
- The DoPT told the EC that its suggestions may not be appropriate and feasible.

What is the Supreme Court’s view on cooling period?

- A writ petition was filed in SC seeking a direction to the legislature to frame a law imposing a cooling-off period for retired bureaucrats with political ambitions.

- The Bench said that civil servants would be liable for stringent action in case of any such breach in ethical standards under the All India Services (Conduct) Rules of 1968.
- However, the Bench stated that the court cannot make a law, introducing a cooling-off period for civil servants.
- The question whether to make such a law or not was best left to the legislature.

References

1. https://indianexpress.com/article/explained/retired-bureaucrats-cooling-off-period-new-job-explained-7904870/
2. https://www.thehindu.com/news/national/lawmakers-should-decide-if-cooling-off-period-is-needed-for-ex-bureaucrats-who-want-to-join-politics-supreme-court/article65378983.ece

