

CENTRAL ADMINISTRATIVE TRIBUNA
CUTTACK BENCH, CUTTACK

O.A.No.260/450/2018

Date of Reserve:15.11.2019
Date of Order: 29.11.2019

CORAM:
HON'BLR MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sabita Rani Mohanty, aged about 64 years, D/o. Late Nanda Kishore Mohanty, resident of HIG-17, Phase-VII, Shaileshree Vihar, Bhubaneswar-21, retired Sr.Peon under SSE(C&W), ECoR, Puri.

...Applicant
By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury
S.K.Mohanty
Smt.J.Pradhan

-VERSUS-

Union of India represented through :

1. The General Manager, E.Co.Rly, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.
2. Principal Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubabeswar, Dist-Khurda-751 017.
3. Divisional Railway Manager, east Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda-752 050.
4. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda-752 050.
5. Senior Divisional Financial Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda-752 050.

...Respondents
By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired Railway employees. She has approached this Tribunal seeking for the following reliefs:

- i) To quash the letter dtd. 15.02.2018 under Annexure-A/4 to the Original Application.
- ii) And to direct the RespondentNo.3 to regularize the period from 12.10.2011 to 31.01.2013 by way of grant of leave/extraordinary leave.

iii) And to direct the Respondents to grant minimum pension and release the arrear from February, 2013.

iv) And direct the Respondents to release DCRG, Leave Salary and Commuted value of Pension with 12% interest for the delayed period.

2. Facts of the matter as revealed from the O.A. are that initially, the applicant had been engaged as Announcer in the year 1977 on account of Navakalebar Festival, being posted at Puri under the Respondent-Railways. She was regularly appointed in the year 1980. Due to Psychiatric problem, the applicant was under treatment for the period from 26.6.1984 to 31.03.1989, 24.04.1997 to 19.1.2005. On being subjected to medical test, she was found unfit in B-1, which led to providing her alternative appointment as Jr. Peon in the year 2005.

3. However, while working as Sr.Peon under SSE(C&W), ECoR, Puri, she suffered from illness and underwent treatment at different hospitals. Because of her unauthorized absence from duty from 12.10.2011 to 17.03.2012, the applicant removed from service with vide order dated 09.02.2013 passed by the Disciplinary Authority on account of a disciplinary proceedings initiated against her. On the appeal preferred, the Appellate Authority vide order dated 22.09.2016 (R/2) modified the punishment of removal from Railway Services to that of compulsory retirement with all pensionary gratuity benefits as admissible under the extant rules.

4. Grievance of the applicant is that since the respondents did not release the retiral benefits, she submitted an application dated 5.2.2028 in the Grievance Cell of Respondent No.1, which has been rejected vide letter dated 15.02.2018 (A/4). Hence, this application with the aforesaid prayer.

5. It is the case of the applicant that in the letter of rejection dated 15.02.2018, the Respondent No.4 has admitted that the out of total qualifying service of 24 years 2 months rendered by the applicant, the unauthorized period of absence being 13 years 9 months, the subsisting period of qualifying service works out to more than 10 years five months as against the minimum qualifying service of 09 years 09 months as required for grant of minimum, under Rule-69 of Railway Servants Pension Rule. The applicant has stated that she had at her credit LAP for 140 and LHAP for 92 days at the time when the Respondents took the decision of compulsory retirement. The applicant has pointed out that the period from 12.10.2011 to 31.01.2013 is less than two years and could have been regularized by granting Leave/Extraordinary Leave by the competent authority, i.e., Respondent No.3, but no such decision was taken and the said period was treated as unauthorized absence only to deny the applicant of getting minimum pension.

6. Opposing the prayer of the applicant, the respondent-railways have filed a detailed counter. They have pointed out that during the period of service from 27.10.1980 to 01.02.2013, the applicant remained unauthorized absence from duty for the period from 26.6.1984 to 31.3.1989 (4 years 9 months 5 days), 24.4.1997 to 19.01.2005 (7 years 8 months 25 days) and 12.10.2011 to 31.01.2013 (01 year 03 months 19 days, which work out to 13 years 09 months. According to them, out of total period of 24 years 02 months' service rendered by the applicant, she had remained unauthorized absent for 13 years 09 months. Respondents have pointed out that regularization of unauthorized absent period either less or more than 05 years, as the case may be, has not been agreed to by the Competent Authority, i.e., DRM/Khurda Road on the ground that the applicant is a habitual nature of

long absentee. According to them, since the unauthorized absent period has not been regularized, the past services rendered by the applicant prior to unauthorized absent period, i.e., 24.4.1997 to 19.01.2005 are to be forfeited and cannot be taken into account for pensionary benefits as per RBE No.79/2011, which states that absence from duty without leave will constitute an interruption of service for the purpose of pension unless the same is regularized by grant of leave. However, it has been submitted that the Railway Administration has released the settlement duties having regarding to the qualifying service of the applicant, viz., Provident Fund, CGEGIS, Leave Salary and Gratuity, apart from Res.1,11,501/- being paid towards service gratuity in lieu of pension. It has been submitted that the applicant has not provided a shred of paper to show that she had undergone treatment at various hospitals.

7. Applicant has filed a rejoinder to the counter in which it has been submitted that RBE No.79/2011 being of dated 3.6.2011, cannot have retrospective effect and is not applicable to the case of the applicant. If at all any decision has been taken by the DRM not to regularize the leave of the applicant within the scope and meaning of RBE No.79/2011, it is based on mere conjecture and surmises, in view of the fact that no such order has been produced by the respondents in their counter-reply to substantiate their standpoint.

8. Heard the learned counsel for the parties and perused the records. Admittedly, there is no decision taken by the Competent Authority whether to regularize or otherwise of the unauthorized leave period of the applicant. Clause – 7 of CCS(Leave)Rules, 1972 reads as follows:

“7. It may be noted that regularization of unauthorized absence for pension purpose is to be considered under the CCS(Pension) Rules. Only in cases where the disciplinary

authority is satisfied that the grounds adduced for unauthorized absence are justified, the leave of the kind applied for and due and admissible may be granted to him under the CCS(Leave) Rules".

9. In this context, it is profitable to quote hereunder the relevant part of the orders of the Appellate Authority.

"Miss Sabita Rani Mohanty submitted her appeal on 01.06.2016, i.e, after the stipulated period of 45 days.

However, she has submitted medical certificate in support of her illness for the period from 4.11.12 to 29.11.15 and from 01.01.16 to 20.05.16. Miss Sabita Rani Mohanty in her appeal petition implores that on account of her sick condition, she was unable to file for appeal within this stipulated period of 45 days after imposition of penalty. On going through the entire case file as well as the mercy petition of the CO, I have made the following observations:

"That the CO, Miss Sabita Rani Mohanty was indeed suffering from mental disorders and other neurological problems as brought out by various medical certificates produced by her. Further, on enquiry from various C&W supervisor as well as her acquaintances, it is established that the party was undergoing treatment and was under serious mental and physical distress. Moreover, the party failed to submit her appeal petition on time owing to these illness. Miss Mohanty is presently in destitute condition with no one to take care of her, since she is a spinster woman. Considering her mercy petition on humanitarian grounds, I as appellate authority, modify the imposed punishment as under.

"Compulsory retirement withal pensionary and gratuity benefits as admissible".

10. The above observations of the Appellate Authority run counter to what has been averred in the counter-reply, viz., the applicant has not furnished a shred of paper in support of her illness and that the applicant was a habitual nature of long absentee. As would be evident from the observations made by the Appellate Authority, it was because of the circumstances being beyond her control, the applicant remained on leave whether authorized or unauthorized. It is not a case where the applicant on her sweet-will in order

to shirk her duties and responsibilities, had remained unauthorized absent, particularly, when she was admittedly, facing neurological problem and undergoing treatment at various hospitals. Viewed from this angle, the findings of the Divisional Personnel Officer for Divisional Railway Manager(P)/KUR in Para-6 of the communication dated 15.02.2018 (A/4) that "since the unauthorized absent period have not been agreed for regularization, the past services rendered by the applicant prior to unauthorized absent period i.e., prior to 24.4.1997 to 19.01.2005, are to be forfeited and cannot be taken into account for pensionary benefits", is an outcome of unreasonableness and arbitrariness, particularly, when no such decision sees the light of the day. However, be it if noted that as per the provisions of Clause – 7 of CCS(Leave)Rules, 1972, as quoted above, regularization of unauthorized absence for the purpose of pension ought to have been considered by the Disciplinary Authority. In the instant case, since the impugned decision has been taken by the Divisional Personnel Officer for Divisional Railway Manager (P)/KUR vide A/4, in the fitness of things, it would not be proper to relegate the matter for decision to be taken by the Disciplinary Authority, since an authority higher to the Disciplinary Authority has already turned down the request of the applicant. In view of this, this Tribunal directs the Divisional Railway Manager, East Coast Railway (Respondent No.3) to consider regularization of the period of unauthorized absence in question by granting leave of the kind which is due and admissible to the applicant and pass an appropriate orders within a period of sixty days from the date of receipt of this order. In the circumstances, if the applicant is found to be entitled to pension and other retiral dues, the same shall be drawn and disbursed in her favour within a further period of 45 days from the date

of passing of the orders by Respondent No.3. Incidentally, it is to be noted that the applicant has alleged that she has not received the gratuity amount of Rs.55,751/- which be looked into and released forthwith, if not released. Ordered accordingly.

11. With the above observation and direction, this O.A. is disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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