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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 2429/89

New Delhi this the 2nd day of May, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Mrs S. Bains,
Matron Grade-II,
R/o T-24, Railway Colony,
Naya Bazar,
Delhi-110006. ...Petitioner.

By Advocate Shri R.K. Relan.

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Chief Hospital Supdt.,
Northrn Railway,
Central Hospital,
New Delhi. ..Respondents.

By Advocate Shri K.K. Patel.

ORDER(ORAL)

Shri Justice V.S. Malimath.

The petitioner, Mrs. S. Bains, was Matron. She was in the scale of Rs.700-900 and was given increment w.e.f. 1.1.1985 at Rs.795/- and at Rs.830/- w.e.f. 1.1.1986. Her pay was revised w.e.f. 1.1.1986 on that basis and fixed at Rs.2450/-. The petitioner was receiving the benefit of increments which she had earned from time to time and the fixation of pay, as aforesaid. The respondents issued a notice dated 14.4.1987 which the petitioner says that it was received by her on 22.12.1988 proposing to reduce her pay before 1.1.1986 and after 1.1.1986 by denying her certain increments on the ground that there was no leave to her credit and she having gone on leave, the periods spent without leave cannot count for grant of increments. The petitioner showed cause and submitted that she was granted extra-ordinary

leave on medical grounds for the relevant periods and, therefore, it is unjust and unfair after lapse of such a long period to deny her the benefit of increments which were legitimately granted in her favour. The respondents ultimately passed a final order as per Annexure A-2 dated 1.3.1990 which is impugned in these proceedings. It is stated that between 9.9.1984 and 17.11.1984, the petitioner was on leave without pay for 42 days and that, therefore, her date of increment stood postponed. They have stated that she became entitled to the pay of Rs.795/- w.e.f. 1.2.1985 and not w.e.f. 1.1.1985 as earlier assumed. This resulted in postponement of her next increment w.e.f. 1.2.1986 at Rs.830/-. It is further stated that the petitioner was on leave without pay for 79 days in 1986, 25 days in 1987 and 33 days in 1988. All these periods were treated as leave without pay. It is asserted that they contributed to postponement of increments. It is on that basis that the revised pay was fixed and the petitioner was called upon to recover the excess amounts paid to her. The petitioner having retired during the pendency of these proceedings on 31.3.1990, it is her case that she has thus been granted reduced pension and reduced amount of commutation and that too belatedly. She has further asserted that DCRG has not been paid.

2. The principal case of the petitioner is that for the relevant periods specified in the impugned order, she had applied for leave on the ground of personal sickness supported by appropriate medical certificates and that leave was granted by the competent authority on medical grounds. She does not

deny that the grant of leave was without pay obviously because there was no leave to her credit which would be granted with full or partial pay. Her case, however, is that as leave was granted to her though without pay as extra-ordinary leave on medical grounds, the increments that fell due on the relevant dates did not get postponed. Her further case is that the respondents are not justified in taking such action after such a long lapse of time. We are, therefore, essentially required to examine as to whether the petitioner is right in her contention that the periods specified in Annexure A-2 are covered by extra-ordinary leave in her favour on medical grounds. She invokes Rule 2022 (b) (ii) of the Indian Railway Establishment Code (Vol.II) (hereinafter referred to as 'Code') which says:

> "All leave except extra-ordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a railway servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave on deputation out of India..."

This rule makes it clear that though extra-ordinary leave shall not count for increments in the time scale applicable for that post, the position is otherwise if extra-ordinary leave is taken on medical certificate, meaning thereby that in such situation, the period of extra-ordinary leave taken on medical certificate shall count for increments in the time scale applicable to the post. The language of the

notice, the language of the impugned order, Annexure A-2 and the manner in which the counter reply has been drafted in this case, give us an impression that the concerned authorities have proceeded on the basis that if period is covered by leave without pay, such period would not count for the purpose of increments. Rule 2022(b)(ii) of the Code which we have extracted above clearly shows that though the periods of extra-ordinary leave granted do not count for pay, it would count for the purpose of increments and other service benefits. The petitioner has, in paragraph 4.7 of the amended application, specifically stated each period of her absence from duty with reasons for grant of leave. So far as leave granted for the different periods in the year 1984 are concerned, she has stated that she had applied for leave on medical ground on her sickness supported by the medical certificate and the same was duly sanctioned. In respect of other periods, she has given relevant information in support of her claim that leave was granted under similar circumstances. When we look at the impugned order, Annexure A-2, it does not in any manner assist us in finding out as to whether the leave granted without pay was covered by Rule 2022(b)(ii) of the Code which qualifies for grant of increments etc. In the reply to the amended Original Application, there is a vague and general statement that the petitioner remained unauthorised absent from duty and period after her resumption was treated as leave without

pay as it is the discretion of the competent authority to allow extra-ordinary leave sanction or not. The averment in the reply to the amended application also does not improve the case of the respondents. There is no denial of the petitioner's positive assertion furnishing the reasons in support of grant of leave and the sanctioning of the leave accepting the grounds stated by her. It is nowhere stated that the petitioner did not apply for leave on medical grounds nor is it stated that her application was supported by medical certificate. If there was any truth in the case of the respondents, they would have placed such records before us to bely the case of the petitioner. As already stated, the respondents proceeded on the basis that if the particular period of absence is treated as leave without pay by the competent authority in its discretion, the same cannot count for increments etc. We have already pointed out that Rule 2022 (b)(ii) of the Code in specific terms contains exceptions to the general rule that extra-ordinary leave without pay will not count for increments etc. The petitioner has pleaded that her case is within the exceptions prescribed by Rule 2022(b)(ii) of the Code. She has made assertions of fact in support of her claim that she can invoke the provisions of Rule 2022(b)(ii) in support of her case that the relevant periods would count for grant of increments. The respondents have not specifically denied these assertions and they not having placed any materials in support of their case, there is no good reason why should we not accept the sworn statement of the petitioner for all the periods as prayed for and as stated

in paragraph 4.7 of the application. If the facts pleaded have to be accepted as proved because of non-traverse, it has to be held that postponement of the increments as sought to be done by the respondents is clearly illegal and unjustified. We fail to see why there is such an inordinate delay in initiating action in this behalf. The petitioner was treated as being qualified to earn increments from time to time and was given benefit. It is several years thereafter that the respondents chose to take action on the ground that they have wrongly given her increments on the relevant dates. On the facts and circumstances, we are inclined to take the view that the respondents did not act fairly in initiating action at such a belated stage.

3. For the reasons stated above, this application is allowed and the following directions are issued:

(1) The impugned order, Annexure A-2, is hereby quashed.

(2) The amounts recovered on the basis of the impugned order shall be refunded to the petitioner.

(3) The petitioner shall be given the benefit of increments to which she became entitled to from time to time in the light of our quashing Annexure A-2 and the arrears flowing from such directions.

(4) The pension and all further retirement benefits to which the petitioner is entitled to including the commutation amount shall be recomputed and ~~xxxxxxx~~ refixed and the difference

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of amounts to which she becomes entitled to on that basis shall be paid to her.

(5) The petitioner shall be paid the DCRG amount also on the basis that the impugned order, Annexure A-2, is illegal and invalid.

(6) All these directions shall be carried out and the amounts due to the petitioner paid within a period of three months from the date of receipt of a copy of this order, failing which the said amounts shall be paid with interest @ 12% from this date till the date of payment. No costs.

(P.T. Thiruvengadam)
Member(A)

(V.S. Malimath)
Chairman

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