

10-7-98

Hon'ble Mr. S. Dyal, J.M.

Hon'ble Mr. S.L. Jain, A.M.

Sri Pankaj Naqvi, counsel for the applicant has sought adjournment on the ground of illness. Sri Amit Sthalekar, counsel for the respondents. List on 03-9-98.

*J.Y. J.*  
Member (J)

*A*  
Member (A)

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# ANNEXURE- 2

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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

O A No 495 of 1987

Shri P N Chaurasia ... Applicant

Versus

Union of India & others ... Respondents

Hon'ble Mr K Obayya - A M

Hon'ble Mr A K Sinha - C M

(By Hon'ble Mr K Obayya - A M)

The applicant, who was compulsorily retired from the service while working as Senior Inspector Barstilly in the Central Excise Department by order dated 04/03/75, has approached the Tribunal seeking number of reliefs regarding retirement benefits.

2- His main prayer is for inclusion of the period of 4 years 3 months and 13 days towards qualifying service and to calculate his pension and gratuity entitlement on the basis of qualifying services of 30 years and 15 days by taking average emoluments at Rs.700/- constituting basic pay. The learned counsel for the applicant Shri Pankaj Naqvi, at the outset stated that he is pressing the relief regarding pension and gratuity.

2- The applicant who entered service of the Central Excise Department in 1945 as Inspector, was

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promoted as Senior Grade Inspector in due course. He was posted at Allahabad and later on at Bareilly, while working at Bareilly, vide order dated 30.11.1974, he was compulsorily retired w.e.f 04.03.75. He challenged this order in the High Court, but without success.

3- While in service, the applicant was on long leave from 02.09.69 to 30.08.74, on medical grounds, he has applied for extension of leave beyond 30.08.74, but that was rejected. According to the applicant, while he was proceeding to Allahabad on 19.08.74 to join duty, he lost an attache containing medical certificate and other papers in the train; immediately he lodged a complaint with the police and informed the department about the mishap. It was because of this reason, he could not produce medical certificate and other papers in support of his leave claim. The leave, however, was later regularised as extraordinary leave.

4- The applicant's pension was fixed at Rs.224/- provisionally. The amount was reduced to Rs.191/- w.e.f 05.09.75 by order dated 04.02.78. It is contended by the applicant that the leave period has not been included towards qualifying service and because of this his pension has been reduced. His representations in this regard to the department proved to be futile, and that is how he has come-up before us. The applicant assails the

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as arbitrary  
action of the respondent/and should be set aside on that  
ground.

5- Respondents have opposed the case and in their reply  
it is pointed out that the applicant was not on medical  
leave as no medical certificate was produced before them.

However, the leave was regularised. So far as inclusion of  
period towards qualifying services for pension, it is stated  
that as leave was not granted on medical certificate but  
it was extraordinary leave, the applicant was not entitled  
for this period to be counted/qualifying service as laid  
down under rule-21 of C C S(Pension)Rules 1972. There  
was some amendment to the rule in 1973, but that will not  
apply to the case of the applicant since his leave commenced  
from 02 09 69.

6- The counsels of the parties were heard. Reliance  
was placed by both sides on rule-21 of the C C S(Pension)  
Rules 1972. The rule reads as follows:

21-Counting of Period spent on leave

All leave during service for which leave  
salary is payable (and all extraordinary leave  
granted on medical certificate) shall count  
as qualifying service:

Provided that in the case of extra-  
ordinary leave (other than extraordinary  
leave granted on medical certificate) the  
appointing authority may, at the time of

*Par*

granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government Servant-

(i) Omitted.

(ii) due to his inability to join or rejoin duty on account of civil commotions or

(iii) for prosecuting higher scientific and technical studies.

Shri Pankaj Mehta the learned counsel for the applicant referred to instructions issued under this rule; and in particular pointed out that entries in the service record are required to be made about leave treated as non-qualifying service. The relevant para of the letter dated 25 02 1976, O M No F II(3)E-V(A 76) issued by Government of India, Ministry of Finance, is as under:

"Entries regarding service being qualifying or otherwise are required to be made simultaneously with the event.....

Specific entries in the service records regarding non-qualifying period will be taken note of and such period excluded from the service. All

spells of extraordinary leave not covered by such .....

specific entries will be deemed to be qualifying .....

service."

The learned counsel for the respondents stuck to the stand as the leave was extraordinary leave, it did not qualify as service for purposes of pension. The learned

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counsel also pointed out that the amendment to rule-21 was made in 1973, and this will not apply to the case of the applicant. This contention in our view has no force, since the applicant's retirement was in 1975, and his leave was upto 30 08 74 which was sanctioned later and at the time of sanction the amendment was already there.

7- The instructions cited above, are clear on the point. There is no entry in the service record of the applicant that the period of leaves is treated as non-qualifying service. In the absence of such entry in the record, the period of extraordinary leave is deemed to be qualifying service as indicated in the instructions referred to above.

8- The application is liable to succeed. We allow the application and direct the respondents to include the period covered by extra ordinary leave of the applicant from 02 09 69 to 30 08 74 or to a later date if further leave was sanctioned, as qualifying service for purposes of pension and other retiral benefits. Respondents are further directed to revise the pension and gratuity entitlement of the applicant, on the basis of total qualifying service, which may run into more than 30 years, after including extra ordinary leave period and pay the difference of amount to the applicant, within a period of 3 months from the date of receipt of a copy of this

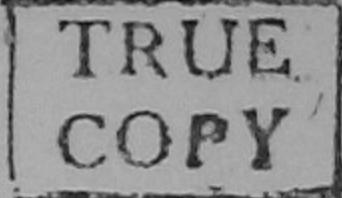
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judgment. The respondent will also pay 10% interest on the arrest amounts payable to the applicant till the date of payment and pay the amount within the time stipulated above.

9- The application is allowed as above. Parties to bear their costs.

sd/-  
MEMBER-J

DATED: 18th May, 1993



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18/5/93  
(SHARAD KUMAR)  
SECTION OFFICER  
Central Administrative Tribunal  
Allahabad.

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