

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 57/2010

This the 20th day of December, 2013

Hon'ble Sri Navneet Kumar, Member (J)

Ritu Bajpai aged about 39 years daughter of Sri K.K.Bajpai, resident of D/120-A, Avas Vikas Colony, Rajajipuram, Lucknow.

Applicant

By Advocate: Sri Dharmendra Awasthi

Versus

1. Union of India through the Director General (Personal) of Directorate General, NCC, Ministry of Defence, West Block No.111, R.K. Puram, New Delhi.
2. Deputy Director General, NCC, Ministry of Defence, West Block No.111, R.K. Puram, New Delhi.
3. Joint Director (Personal) of Directorate General NCC, Ministry of Defence, West Block No.111, R.K. Puram, New Delhi.
4. Commanding Officer (Col.), 28, U.P. Girls Bn. NCC, BHU, Varanasi(U.P.).
5. Additional Director (Personal), NCC, Directorate, Ashok Marg, Lucknow.
6. PCDA (CC), Lucknow.

Respondents

By Advocate: Sri R. Mishra

(Reserved on 6.12.2013)

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Applicant is filed under Section 19 of the AT Act with the following reliefs:-

- a) quash the impugned orders dated 22.5.2009 and 4.6.2007 passed by the opposite parties No.3 and 3, which are contained as Annexure Nos. 1 and 2 respectively to this original application.
- b) direct the opposite parties to release the gratuity in favour of the applicant along with 18% interest.
- c) pass any other suitable order or direction which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case in favour of the applicant.
- d) allow the present O.A. of the applicant with costs.

2. The brief facts of the case are that the applicant was appointed on 19.9.1996 on the post of Sergeant Major Instructors (Group 'C' non-ministerial) in NCC organization. In pursuance of the said appointment, the applicant joined on the post on 18.10.1996. Subsequently, in the year 2001, she was transferred from Mumbai to Varanasi and while working as NCC/GCI/914-111, the applicant submitted her resignation on 1.1.2005 and she has not received any communication and finally vide order dated 15.6.2005, it was informed that she has been pre-matured retired w.e.f. 15.6.2005 which was subsequently corrected vide letter dated 19.12.2005.. By means of the present O.A., the applicant is claiming for quashing of the order dated 22.5.2009 as well as 4.6.2007, whereby she has been denied the benefit of gratuity and she is only entitled to AFPP, Encashment of leave and CGEGIS which has already been paid to the applicant. Learned counsel for the applicant has relied upon the provisions of CCS (CCA) Rules, regarding admissibility of retirement gratuity to all employees who retire after completion of 5 years of qualifying service.

3. The learned counsel for the respondents filed their reply and through reply, it was pointed out by the respondents that since the applicant has submitted her resignation on her own and as such, the respondents passed an order on 22.5.2009, in pursuance of the direction of the Tribunal passed in O.A.No. 68 of 2009 and pointed out that in terms of Rule 26(1) of CCS (Pension) Rules, 1972, resignation from a service or a post will amount to forfeiture of past service and the Govt. servant will not be entitled for any pension, gratuity or terminal benefits. Apart from this, the learned counsel for the respondents has also pointed out that the resignation submitted by the applicant was also accepted vide letter dated 4.5. 2005. It is wrongly mentioned as pre-mature retirement, which was subsequently corrected vide letter dated 19th December, 2005 as "**Resignation from Service**". The learned counsel for

the respondents has also filed the copy of letter dated 19th December, 2005 along with their C.A. Apart from this, it is also argued by the learned counsel for the respondents that there is no illegality in the order passed by the respondents. As such, the present O.A. is liable to be dismissed.

4. Learned counsel appearing on behalf of the applicant filed their Rejoinder Reply and through Rejoinder reply, mostly the averments made in the O.A. are reiterated and again emphasized the entitlement of gratuity as provided in Swamy's Pension Compilation .

5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the applicant was appointed in the respondents organization in the year 1996 and has submitted her resignation on 1.1.2005 which was subsequently wrongly accepted on 15.6.2005, wherein it has been wrongly stated that she is premature retired and this mistake was corrected by the respondents through their letter dated 19th December, 2005, wherein it was categorically pointed out that the pre-mature retirement is read as resigned from service by the individual on own request w.e.f. 15th June, 2005. Earlier , the O.A. which was preferred by the applicant was disposed of and the respondents taken a decision on the applicant's representation in terms of directions of the Tribunal and passed the order on 22.5.2009, wherein it is categorically pointed out by the respondents that since the applicant has submitted her resignation after completion of 8 years of service, which was subsequently accepted by the respondents, and as per rule 26(1) of CCS (Pension) Rules, 1972, resignation from service or a post, the officer is not entitled for any pension , gratuity or terminal benefits. The bare reading of Rule 26(1) of CCS (Pension) Rules, reads as under:-

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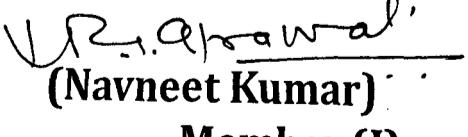
“26(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.”

7. Not only this , the provision in regard to service gratuity is also very clear and the same provisions reads as under:-

“1. Service Gratuity- No pension is admissible to a permanent employee who retires before completion of 10 years qualifying service. Instead, a lump sum payment known as Service Gratuity at the rate of half month’s emoluments for every completed six monthly period of qualifying service is admitted.”

8. The bare reading of these two provisions are absolutely clear. Rule 26(1) provides for forfeiture of service on resignation and provision regarding service gratuity and pension provides that if a person not completed 10 years of service, is not entitled for pension but he is entitled for service gratuity at the rate of half month’s emolument for every completed six monthly period of qualifying service is admitted.

9. In the instant case, since the applicant has submitted his resignation on her own which was subsequently accepted on 15.6.2005 as such, as per provision of Rule 26(1) of CCS (Pension) Rules, will apply and the applicant is not entitled for any gratuity. However, as admitted by the respondents through their letter dated 4th June, 2007 , the AFPP, Encashment of leave and CGEGIS which has already been paid to the applicant , as such I am not inclined to interfere with the present O.A. Therefore, the O.A.is dismissed. NO order as to costs.


(Navneet Kumar)
Member (J)