

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.369/95

Date of order: 16/8/2002

Smt. Malti Madhukar Kale, S/o Shri Madhukar Govind Kale, P/o J.N. Marshal, Mala Road, Kota.

...Applicant.

Vs.

1. Union of India through Chairman, Central Excise & Customs, New Delhi.
2. The Commissioner, Central Excise & Customs, Jaipur.
3. Pay & Accounts Officer, Central Excise & Customs, Jaipur.

...Respondents.

Mr. V.P. Mishra - Counsel for applicant

Mr. K.N. Shrimal - Counsel for respondents.

CORAM:

Hon'ble Mr. S.P. Agarwal, Judicial Member

Hon'ble Mr. N.P. Nawani, Administrative Member.

PER HON'BLE MR. S.P. AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes the following prayers:

- (i) that the impugned action of the respondents treating the period of absence as interruption/break in service resulting in forfeiture of past services of the applicant may be declared as illegal, void and ineffective.
- (ii) that the respondents may be directed to treat the entire service of the applicant as continuous and qualifying service for the purpose of pension and other retiral benefits.
- (iii) that based on qualifying service, the respondents may be directed to determine the pension, DCRG and commuted value of pension, etc, and pay the arrears to the applicant as a result of revision of pension, DCRG, etc, with interest.

2. In brief facts of the case as stated by the applicant are that few days before her retirement on 31.3.90, the applicant has come to know

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that finalisation of her pension is heldup due to nonregularising unauthorised absence from 11.12.62 to 21.5.65. The applicant submitted an application on 22.3.90 for condonation of the period of unauthorised absence. Thereafter she came to know from FPO (Annex.A2) that her past services are forfeited as a result of unauthorised absence. It is stated that the applicant was not served with any show cause notice as per the provisions given in FR 17-A. It is stated that pension papers were prepared treating the applicant continuous in service but because of the impugned action of the respondents, pension and other retiral benefits were reduced which action is *ex facie* illegal, unfair, unjust and unreasonable and also in violation of the principles of natural justice. It is stated that the period of absence not covered by leave ought to have been treated as *dies-non* as per Govt. of India decision dated 12.9.1958 and should have been condoned *suo motu* for the purpose of pension. Therefore, the order dated 18/10.5.95 was issued mechanically without application of mind. It is also stated that in the disciplinary proceedings the applicant was let off only with warning, therefore, the period of unauthorised absence should have been condoned under Rule 27(2) of the Pension Rules, 1972. In view of the above, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that provisional pension order was served upon the applicant on 30.3.90 whereas the applicant filed the O.A in August 1995, therefore, the same is barred by limitation. It is also stated that the original name of the applicant was Miss Tara Mahadev Thamro which was lateron changed as Malti Madhukar Kale and she remained wilfully absent from 11.12.62 to 21.5.65. It is further stated that before deciding her pension case, condonation of her unauthorised absence was considered but her case was not found fit and she was informed accordingly in response to her representation dated 9.5.95, vide letter dated 19.5.95 and the decision of the competent authority regarding interruption and forfeiture of service was mentioned in the FPO and pensionary benefits were given to her on the



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basis of the qualifying service (24 years 9 months and 22 days), forfeiting her past service from 10.2.1955 to 10.12.62. Therefore, the applicant has no case for interference by this Tribunal and this O.A is devoid of any merit is liable to be dismissed.

4. Rejoinder was also filed reiterating the facts stated in the O.A which is on record.

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

6. Pension is a recurring cause of action, therefore, limitation does not come in the way of the claim of the applicant.

7. By the impugned action of the respondents, the applicant has been deprived of pension and pensionary benefits for a period of more than 10 years of her service. The disciplinary authority after enquiry, imposed the punishment of warning only upon the applicant and such punishment was imposed upon the applicant by taking a lenient view looking to the gravity of the charge and circumstances as explained by the applicant. Rule 27(2) of the Pension Rules, 1972 reads as follows:

"Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute retrospectively the period of absence without leave as extraordinary leave."

8. In D.G(PST)'s letter No.14/12/82/-Vig.-III, dated 23.4.82, the intention of Govt of India to help the retired employees has been further enshrined in the following words:

"The question of condonation of break in service for the purpose of pension rules may be considered *suo motu* without waiting for a representation from the affected officials and orders issued so that the retired employees are not put to financial hardship. It is requested that these instructions may be brought to the notice of all the appointing authorities for their information and guidance."

9. On the perusal of the concerning record produced by the respondents, it appears that relevant papers were not traceable and

Deputy Collector (P&V) was of the view that under Rule 27 of Pension Rules, 1972, absence should be condoned to facilitate in finalising the pension case and provisions of Rule 28 of the Pension Rules are not applicable in this case. But ultimately, the competent authority did not like to condone the period of absence but he has not mentioned the detailed reasons for not condoning the period of unauthorised absence of the applicant and the competent authority also did not appreciate the facts and circumstances of the case while considering the period of unauthorised absence for the purpose of pension.

10. We have considered the provisions given in Rule 27(2) of the Pension Rules, 1972 and also perused the relevant circular issued for this purpose and we are of the considered view that the respondents should have considered the condonation of unauthorised absence by taking into consideration the factual aspect of the applicant's case and the decision of taking a lenient view while imposing punishment upon the applicant.

11. It also appears that no opportunity of hearing was given to the applicant before issuance of the order under FR 17-A. It is a settled position of law that any order which entails civil consequences, opportunity to show cause/hearing must be given by concerning department so that the delinquent can put up his grievance before the concerned authority and he may be heard before passing any order. But admittedly, in this case, the applicant was not given any opportunity to show cause before the forfeiture of the service for the purpose of pension, depriving her the pension/pensionary benefits for the period of more than 10 years.

12. On the basis of the foregoing, we are of the considered opinion that the applicant is entitled to the relief sought for.

13. We, therefore, allow the O.A and direct the respondents to determine the pension/pensionary benefits payable to the applicant after condoning the period of unauthorised absence from 11.12.62 to 21.5.65 and not to forfeit any service rendered by the applicant for the

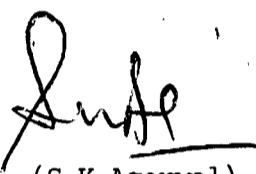


purpose of pension. After determination of pension in the manner as stated above, the applicant will also be entitled to arrears of pension and pensionary benefits. In the facts and circumstances of the case, the applicant shall not be entitled to any interest on the arrears of pension and pensionary benefits. The whole exercise must be completed within a period of 6 months from the date of receipt of a copy of this order.

14. No order as to costs.


(N.F. Hawaani)

Member (A)


(S.P. Agarwal)

Member (J).