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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR
BENCH
JA BALPUR

Original Application No.991 of 2005

Jabalpur, this the 12th day of December, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman

Smt. Kamrunnisha, W/o Late Pappu Khan, aged about 60
years, R/o Garha Chhoti Bajariya, Kari Mohalla, Jabalpur
M.P.

-Applicant

(By Advocate – Shri Deepak Panjwani)

V E R S U S

1. Union of India through its Secretary, Ministry of
Defence, New Block, New Delhi.

2. General Manager, Vehicle Factory, Jabalpur M.P.

3. Asstt. Works Manager, Vehicle Factory, Jabalpur M.P.

-Respondents

(By Advocate – Shri P.Shankaran)

O R D E R

This Original Application has been filed against denial of
pension to the applicant on the ground that she did not have the
required length of qualifying service. Accordingly, the applicant
has prayed for the following main relief :-

“8(i)....to set aside impugned order (Annex A/1).

(ii) ...to direct the respondents to grant pension to the
petitioner from the date of her superannuation”.

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2. The case of the applicant is that she was appointed on a class-IV post on 11.4.1995 on compassionate grounds after the death of her husband in harness. She retired on 30.4.2005 on attaining the age of superannuation. She has been paid all other retirement benefits except pension on the ground that she has only 9 years 8 months and 2 days of qualifying service as against minimum of 10 years of qualifying service for earning pension. She was informed through letter dated 18.1.2005 (annexure A-1) that she had taken extraordinary leave without pay for 4 months and 18 days which has to be deducted from her total service, leaving qualifying service of less than 10 years. The applicant has claimed that the period of leave without pay was on account of extraordinary leave taken by her on medical grounds and this has not been declared to be dies non or break in service. Hence, the said period cannot be deducted from the qualifying service.

3. In their reply, the respondents have stated that as per Central Civil Services (Pension) Rules, 1972 extraordinary leave granted only on medical certificate can be counted as qualifying service. Accordingly, extraordinary leave granted to the applicant without medical certificate has to be deducted from the total service to arrive at the length of qualifying service. Since after such deduction, the qualifying service comes to less than 10 years, which is the minimum prescribed for earning pension as per CCS (Pension) Rules, 1972, the applicant is not entitled to get pension. She has already been granted other retiral benefits to which she is entitled.

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4. Heard the arguments advanced by the counsel of both the parties.

5. The learned counsel for the applicant made a prayer through MA No.685/2006 to call for the service record of the applicant to verify whether the applicant took extraordinary leave without medical certificate. Accepting this prayer, service record was also called and perused.

6. The crux of the matter in the instant OA is deduction of extraordinary leave from the total length of service of the applicant. It has not been denied by the applicant that she has taken extraordinary leave. The only contention of the applicant is that the extraordinary leave was taken by the applicant on medical grounds and there is no order declaring the period of leave to be dies non or break in service and hence this period cannot be deducted from the applicant's service period.

7. On perusal of the service record of the applicant, it is found that the applicant's leave record indicates extraordinary leave without pay of a total of 175 days as per the break up given below:

1995 -	13 days
1996 -	9 days
1997 -	7 days
1998 -	17 days
1999 -	40 days
2000 -	33 days
2001 -	29 days
2002 -	6 days
2003 -	12 days
2004 -	8 days
2005 -	<u>1 day</u>
Total -	175 days

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As per the entries made in the service record, extraordinary leave without pay was granted for 29 days on production of medical certificates, as per the break up given below:

2001 – 19 days
2000 - 3 days
1999 - 3 days
1997 - 4 days
Total – 29 days

It is, therefore, clear from the service record that 146 days of extraordinary leave without pay was taken by the applicant without production of medical certificate. The respondents have rightly contended that extraordinary leave granted on medical certificate only counts towards qualifying service. In this connection Rule 21 of CCS (Pension) Rules, 1972 is reproduced below:

“21. Counting of periods 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 extraordinary leave other than extraordinary leave granted on medical certificate the appointing authority may, at the time of 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 commotion; or
- (iii) for prosecuting higher scientific and technical studies”.

Since it is not the applicant's case that she was unable to come to duty on account of civil commotion, she does not have any case. She cannot get the benefit of the proviso to the above mentioned rule. In fact, it has been noticed from the service record that most of the days on which she was granted extraordinary leave, she was

in fact, absent without application. Rule 27 of the CCS (Pension) Rules, 1972 provides that unauthorized absence amounts to an interruption in service and entails forfeiture of past service, but this rule also provides that the appointing authority has the power to commute retrospectively the periods of absence without leave as extraordinary leave. This provision, however, does not give the benefit of counting the period of extraordinary leave towards qualifying service unless it is on medical grounds.

8. In view of the rule position and the circumstances of the case as discussed above, I do not find any error in the respondents' action in deducting the period of extraordinary leave taken by the applicant without production of medical certificates, from the total length of service, to arrive at the length of qualifying service. Since this results in qualifying service of less than 10 years' service, the applicant has rightly been denied the benefit of pension.

9. In the result, the OA is dismissed, however, without any order as to costs.


(Dr. G.C. Srivastava)
Vice Chairman

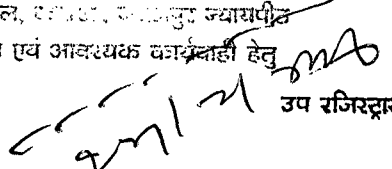
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पृष्ठांकन सं ओ/व्या.....जबलपुर, दि.....

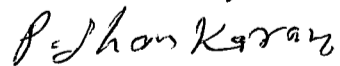
प्रतिदिशि अन्वेषित:-


- (1) सचिव, उच्च न्यायालय, जबलपुर
- (2) आदेशक, जबलपुरके काउंसल
- (3) प्रत्यक्ष, जबलपुर, जबलपुरके काउंसल
- (4) बंधुपाल, जबलपुर, जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु


उप रजिस्ट्रार


Deepak Ranjwani
A 20780


P. Shan Karan


22-12-06