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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

.....
Pronounced on: / 8.8.2015 .
Reserved on : 31.07.2015

OA. No. 060/00370/14

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J)**

Tek Chand s/o Sh. Pakhar Ram resident of H. No. 171, Bambiawal, VPO,
Kukkad, Jalandhar.

.....Applicant

BY ADVOCATE: MS. SUNINT KAUR

VERSUS

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Deputy Chief Labour Commissioner (Central), Chandigarh.
3. Labour Enforcement Officer (Central) Jalandhar.
4. Area Account Officer (Pay), Western Command, Jalandhar Cantonment, Jalandhar.
5. Officer Commanding, 181, Pet P1 ASC.

.....Respondents

BY ADVOCATE: SH. V.K. ARYA

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, praying for issuance of a direction to



the respondents to consider the case of the applicant vis-a-vis his pensionary and gratuity benefits in the light of the letter dated 27.3.2009 written by respondent No. 3.

2. Averment has been made in the OA that the applicant joined the FOL Depot ASC, Jalandhar Cantt, as Industrial Mazdoor in 1982 and served the department till 2004 when he took voluntary retirement from service. At the time of taking voluntary retirement, the applicant had completed 22 years of service and had availed leave of about four years, eleven months and 22 days which was granted by the competent authority as Extra Ordinary Leave (EOL) and therefore, this period should have been counted for the purpose of pensionary benefit as per Rule 21 of CCS (Pension) Rules. However, the applicant did not receive any benefit in this regard although he kept submitting representations to the different authorities as per copies annexed as Annexures A-3, A-4 and A-5. He was informed through letter dated 13.09.2008 that EOL availed by him could not be counted for the purpose of pensionary benefits (Annexure A-6). Respondent No. 3 having considered the case of the applicant, forwarded the matter to the Respondent No. 2 for further consideration vide letter dated 27.03.2009 (Annexure A-7). Not getting any relief, the applicant submitted representations (Annexures A-8 and A-

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9). Thereafter, finding himself unable to bear the expenses of a legal battle, he approached the Punjab Legal Services Authority for legal aid and he filed the instant OA with the help of Legal Services Authority.

3. In the grounds for relief, the applicant has relied on Rule 21 of CCS Pension Rules, 1972 and Government of India, Ministry of Finance OM No. F.11(3)-E.V(A)/76 dated 28.2.1976.

4. Written statement has been filed on behalf of the Respondents No. 1 & 5 wherein it has been stated that the applicant had served in HQ 406 Coy ASC (Pet c/o 56 APO) w.e.f. 15.7.1982 to 30.6.2004. The applicant was a habitual absentee for which he was warned verbally and was also issued show cause notices by the OC unit but no improvement was shown by the applicant. The details of EOL period and the AWL period are attached as Annexure R-1/3 by consolidating the same from service book. The request of the applicant for voluntary retirement was accepted by the competent authority and the applicant was retired from service w.e.f. 30.06.2004. The applicant was informed vide order dated 10.6.2004 (Annexure A-1) to appear before the competent authority and submit the documentary proof for the purpose of preparing the pension papers. At the time of his retirement, the applicant had rendered 21 years 11 months and 16 days of service but in this period

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he had a non-qualifying period of 4 years 11 months and 20 days. As per Rule 21 of CCS Pension Rules, 1972, it is clearly mentioned that the leave granted to the Government Servant would be counted as qualifying service, if the salary is paid for the extraordinary leave on medical grounds. Further, Rule 48 A of CCS Pension Rules clearly lays down that a Government employee is entitled to pensionary benefits, if he voluntarily retires after completion of 20 years of qualifying service.

5. It has further been stated that the claim of the applicant was forwarded by the Unit to Respondent No. 4 vide letter dated 29.11.2005 (Annexure A-2). On receipt of the claim of the applicant for pensionary benefits, the matter was referred to higher authorities and the same was conveyed to the Unit by Respondent No. 4 vide office letter dated 7.4.2006 (Annexure R-1/4). The unit submitted gratuity claim again vide letter dated 10.11.2006 (Annexure R-1/5), which was forwarded to the pension sanctioning authority i.e. PCDA (P) Allahabad vide letter dated 12.12.2006 (Annexure R-1/6). The competent authority PCDA(P) Allahabad considered all the documents of the applicant and passed an order dated 13.3.2007 (Annexure R-1/1), whereby claim of the applicant was rejected on the ground that he has not rendered minimum qualifying service of 20 years. The applicant had to his credit 68 days EOL and

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1743 days as Absent Without Leave (AWL), so the provisions of the Rule as referred to in Annexure A-7 are not applicable to the facts of the present case. So, no action was taken on the letter Annexure A-7 dated 27.3.2009. Furthermore, the claim of the applicant was rejected by the competent authority vide order dated 13.3.2007 (Annexure R-1/1) and the present petition has been filed in the year 2014. The petition is highly belated and the same deserves to be dismissed. All the entries of EOL and AWL have been endorsed in the service book by the applicant. The claim of the applicant for grant of pensionary benefits was rejected by the competent authority i.e. Principal Controller of Defence Accounts (Pension) Allahabad vide order dated 13.3.2007. This order had not been challenged by the applicant nor the PCDA had been impleaded as party respondent.

6. Separate reply has been filed on behalf of Respondent No. 4 wherein the position taken by Respondents No. 1 & 5 has been reiterated. It has also been stated that Rule 21 of CCS Pension Rules, 1972 (Annexure R-4) clearly lays down that the leave granted to the Government Servant would be counted as qualifying service, if the salary is paid for the EOL on medical grounds. So, as per Rule 21 of CCS (Pension) Rules, 1972, all leave during service for which leave salary is

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payable and all the EOL granted on medical certificate shall count as qualifying service. The applicant during the entire period of 1811 days has been on AWL for 1743 days. The balance of 68 days EOL has been availed without producing any supporting documents. Hence, the total period of 1811 days cannot be counted for the purpose of qualifying service as per Rule 21 of CCS (Pension) Rules, 1972. Rule 48 A of CCS Pension Rules clearly lays down that a Government employee is entitled to pensionary benefits, if he voluntarily retires after completion of 20 years qualifying service. Thus, the non-qualifying service of the applicant which is 4 years 11 months and 20 days cannot be counted towards qualifying service under Rule 21 of CCS Pension Rules, 1972. Moreover, the applicant did not produce any documents vide which his period of absence could be regularized as per the provisions of Rule 21 of CCS (Pension) Rules, 1972 (Annexure R-4).

7. In the rejoinder filed on behalf of the applicant, the contents of the OA have been reiterated.

8. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicant stated that the leave availed by the applicant had been allowed by the competent authority. There was no mention in the entries regarding EOL that this period would not be treated

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as qualifying service for the pensionary benefits and in this regard, she drew attention to Government of India, Ministry of Finance OM No. F.11(3)-E.V(A)/76 dated 28.2.1976 that reads as follows:-

“(1) Need for making proper entries for treatment of extraordinary leave for pensionary benefits. –

Under Rule 21 of the CCS (Pension) Rules, 1972, extraordinary leave granted on medical certificate qualifies for pension. The Appointing Authority may, at the time of granting extraordinary leave, also allow the period of such leave to count as qualifying for pension if the leave is granted to a Government servant -

(i)	due to his inability to join or rejoin duty on account of civil commotion, or
(ii)	for prosecuting higher technical and scientific studies.

Extraordinary leave taken on other grounds is treated as non-qualifying and, therefore, a definite entry is to be made in the service records to that effect. Entries regarding service being qualifying or otherwise are required to be made simultaneously with the event. Even where this is not done, it should still be possible to rectify the omission during the period allowed for preparatory action, i.e., from two years in advance of the retirement date up to eight months before retirement. At the end of that period, however (i.e., when the actual preparation of the pension papers is taken in hand), no further enquiry into past events or check of past records should be undertaken. Specific entries in the service records regarding non-qualifying periods will be taken note of and such periods excluded from the service. All spell of extraordinary leave not covered by such specific entries will be deemed to be qualifying service.

9. Learned counsel for the respondents reiterated the content of the written statement.

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10. We have given our thoughtful consideration to the matter. It is evident from the material on record that the applicant was treated as absent without leave many times during his service. Periods of unauthorized absence are required to be considered as per the relevant FRs and provisions of the CCS Leave Rules, 1972. These are as follows:-

(a) Proviso to FR 17(1)

This provision stipulates that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

(b) FR 17-A

This provision inter alia provides that where an individual employee remains absent unauthorisedly or deserts the post, the period of such absence shall be deemed to cause an interruption or break in service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession and eligibility for appearing in departmental examinations, for which a minimum period of service is required

(c) FR 25 of the CCS (Leave) Rules, 1972

.....In all cases of unauthorised absence by a Government servant, he should be informed of the consequences of such absence and be directed to rejoin duty immediately/ within a specified period, say within three days, failing which he would be liable for disciplinary action under CCS (CCA) Rules, 1965. a Government servant who remains absent without any authority should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed under the various provisions of CCS (Leave) Rules, 1972 and the disciplinary case should be conducted and concluded as quickly as possible.

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(d) Rule 32(6) of the CCS (Leave) Rules, 1972

This provision allows the authority competent to grant leave, to commute retrospectively periods of absence without leave into extraordinary leave under Rule 32(6) of CCS (Leave) Rules, 1972.

11. However, from the written statement filed on behalf of respondents No. 1 & 5, it appears that action under FRs was not taken and the applicant was not disciplined in any manner. He was simply not paid for the periods when he remained absent without leave. The applicant applied for voluntary retirement 22 years after he had joined service on the plea that his wife was keeping unwell and hence, he could not continue in service. At that time, he was perhaps not advised by the concerned authorities that in view of his long periods of absence having been treated as AWL/EOL, his qualifying service would be less than 20 years and he would not be entitled to pension. Otherwise, it is unimaginable that a Government employee having put in over 22 years of service would apply for voluntary retirement knowing fully well that due to non-completion of 20 years of qualifying service, he would not get any pension.

12. The case of the applicant had not been dealt with keeping in view FR 25 of the CCS (Leave) Rules, 1972. Hence, the present OA is allowed and the respondents are directed to allow pension to the applicant

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treating him as having completed the qualifying service of twenty years plus. Arrears in this regard may be released to the applicant within a period of three months of a certified copy of this order being served upon the respondents. No costs.


(RAJWANT SANDHU)
MEMBER(A)


(DR. BRAHM A. AGRAWAL)
MEMBER(J)

Dated: 18.8.2015.
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