

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 4120/2013

This the 28th day of July, 2016

Hon'ble Shri K.N. Shrivastava, Member (A)

Dr. Madhu Bhardwaj,
W/o Maj. Rakesh Bhardwaj,
R/o B-4/3098, VasantKunj,
New Delhi-110030.

.... Applicant

(By Advocate: Ms. Pallavi Parmer)

Versus

The All India Institute of Medical Sciences,
Through its Director,
Ansari Nagar,
New Delhi.

..... Respondent

(By Advocate: Sh. N.K. Singh for Mrs. Avnish Ahlawat)

ORDER(ORAL)

By Hon'ble Mr. K.N. Shrivastva, Member(A):

This OA has been filed under Section 19 of the Administrative Tribunal Act, 1985 by the applicant. The specific reliefs prayed by the applicant read as under:-

2. The brief facts of the case are as under:

(a) *The applicant joined the All India Institute of Medical Services (AIIMS) as a Sr. Research Fellow on a research scheme of Indian Council of Medical Research (ICMR) in February, 1979. She was selected to a regular post of Clinical Psychologist in AIIMS in April, 1983. She continued in that post upto October, 1997.*

(b) She availed Earned Leave (EL) and Half Pay Leave(HPL) in four spells whereby she remain on leave from 04.11.1997 to 27.09.1998 (about 11 months). Thereafter she also availed Extra Ordinary Leave (EOL) for about 4 years. During this leave period i.e. from 23.09.1998 to 30.09.2002, she was in Canada. All the aforementioned leaves of the applicant were regularized by the respondents vide Annexure-C dated 18.10.2003.

(c) The applicant vide Annexure-G letter dated 27.02.2003 applied to Director, AIIMS for voluntary retirement. While her request for voluntary retirement was still under pending for consideration, the applicant, vide here Annexure-H letter dated 27.04.2003, tendered her resignation which was accepted by the respondents retrospectively w.e.f. 31.10.2002, vide Memo F6-29/83-Estt-1 dated 23.05.2003.

3. The grievance of the applicant is that vide her letters dated 19.01.2012 and 30.04.2013, she had requested o the respondent for sanctioning her the pensionary benefits under CCS(Pension) Rules, 1972, which has been declined by the respondents vide Annexure-Y letter dated 24.06.2013.

4. Pursuant to the notice issued, the respondent entered appearance and filed their reply. The applicant, thereafter, filed her rejoinder. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 28.07.2016. Ms. Pallavi Parmar, learned counsel for the applicant and Shri N.K. Singh, learned counsel for the respondents argued the case.

5. The learned counsel for the applicant submitted that the applicant has rendered continuous service under the respondent from April, 1983 to October, 1997 before proceeding to Canada from 04.11.1997 to 30.09.2002, for which the respondent have already sanctioned the leave. It was also submitted that the Governing Body(GB) of AIIMS, in its meeting held in 21.08.2002 decided that the past services of various employees of AIIMS under Research Projects will be considered for their leave salary and pensionary benefits (Annexure-B). Learned counsel for the applicant concluded her arguments by saying that if the services rendered by the applicant as Sr. Research Fellow from February, 1979 to April, 2003, is taken into consideration her total service in AIIMS becomes more than 20 years and thus in terms of Rule 13 of CCS(Pension) Rules, 1972, she becomes eligible for grant of the pensionary benefits.

6. Per contra , learned counsel for the respondent stated that the applicant has rendered service in AIIMS only for 19 years 6 months and 19 days excluding the period of 4 years and 2 months when she worked as Sr. Research Fellow. He however, agreed that if the period of service rendered as Sr. Research Fellow is taken into consideration, her total service rendered exceeds 20 years. The learned counsel further stated that the period from 23.09.1998 to 30.09.2002 i.e. about 4 years, when the applicant was on EOL, cannot be considered for computing the qualifying service. It was also submitted that in the respondent's letter dated 21.06.2013 (Annexure-Y) whereby the applicant's resignation has been accepted w.e.f. 30.10.2002, the applicant has been asked to pay sum of

Rs.1,29,178/- to the respondent in lieu of the 3 months' notice period (*An employee of AIIMS is required to send 3 months' advance notice before tendering his/her resignation from the service of AIIMS*). Concluding his arguments learned counsel submitted that the applicant is not entitled for pensionary benefits in terms of Rule 26 (1) of CCS (Pension) Rules, 1972 on account of not having the qualifying service.

7. I have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto. My observations are as under:

(i) Admittedly, the applicant has worked as a Sr.Research Fellow from February, 1979 upto April, 1983. As per the decision of the governing body of AIIMS on 07.09.2002, the services rendered by an employee under Research Projects are to be accounted towards leave salary and pensionary benefits. The decision of the governing body is reproduced below:-

"The scheduled meeting to discuss the issue of counting of of past services rendered by various employees of the Institute under Research Project and for making availability of funds towards their leave salary/pension contribution, was held on 21st August 2002, at 3.30pm in the office of the Director, AIIMS. The following were present:

- 1). Dr. P.K.Dave, Director
- 2). Sh. N. Baijendra Kumar, Dy. Director(Admn)
- 3). Dr.P.P.Kotwal, Professor in Charge, Research Section
- 4). Mrs. Sujata Prasad, Sr.Financial Advisor
- 5). Sh. R.G. Garg, Financial Advisor
- 6). Sh. Attar Singh, Chief Admn Officer(aeig.)
- 7). Sh.K.M.Gupta,Accounts Officer(Research Officer)
- 8). Sh. K.C.Gupta, Accounts Officer(Research Section)

The aforesaid issue was discussed in detail and it was finally agreed to that the liability on account of leave Salary/Pension Contribution is not a large amount and the same can be arranged out of the "Overhead Charges" account of the Institute. It was also decided that all such cases be forwarded to the Research Section

and the Research Section will bear the Leave Salary/Pension Contribution towards the services rendered by the various employees of the Institute in Research Projects for counting of their past services."

In view of the above decision of the governing body, the service rendered by the applicant as Sr. Research Fellow has to be considered for computing the qualifying years of service for the pensionary benefits.

(ii) The applicant went to Canada and remained there from 04.11.1997 to 30.09.2002 for which she availed a combination of EL, HPL and EOL. The respondent have regularized the said leaves vide memorandum dated 08.10.2002 (Annexure-C). Hence, her visit and stay in Canada cannot be questioned at this stage by the respondent.

(iii) The applicant applied for VRS on 27.02.2013 (Annexure-H). The respondent have failed to furnish any convincing explanation for prevaricating over this issue. The applicant resigned from service on 27.04.2003 which was accepted on 23.05.2003 w.e.f. 31.10.2002, she was asked to pay a sum of Rs.1,29,178/- in lieu of the 3 months' notice period. This action of respondent defies all logic. As inordinate delay was taking place at the end of respondent in accepting her request for voluntary retirement, the applicant resigned from service on 27.04.2002, which is understandable. She was on duty upto 27.04.2003 whereas her resignation has been accepted w.e.f. 31.10.2002. This action of the respondents is beyond anyone's comprehension. Had the respondent acted on the applicant's request for voluntary retirement dated 27.02.2003, the 3 months' notice period would have ended on 27.05.2003. Thus she should have been allowed to retire w.e.f.01.06.2003.

8. In view of above observations, I issue the following directions to the respondent:

- I) Take into account the services rendered by the applicant as Sr. Research Fellow from February, 1979 to April, 1983 for computing her qualifying years of service for the purpose of pensionary benefits in accordance when the decision of governing body of AIIMS dated 07.09.2002(Annexure-B)
- II) Compute the applicant's qualifying years of service in accordance with Rule 13 of CCS (Pension) Rules, 1972. While doing so, keep in mind the direction contained in (I) supra.
- III) If the applicant is found to have rendered adequate qualifying years of service in the light of (I)& (II), supra, grant her pension w.e.f. April, 2003.
- IV) Do not to recover any amount in lieu of the notice period as there has been inexplicable delay at the end of the respondent in deciding on the request of applicant for voluntary retirement dated 27.02.2003.

9. The respondent shall comply with these directions within a period of three months from the date of receipt of a copy of this order.

10. In terms of the above directions, the OA is partly allowed. No costs.

(K.N.Shrivastava)
Member(A)

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