CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

OA No. 286/2018

Present: Hon'ble Mr.Gokul Chandra Pati, Administrative Member

Hon'ble Mr.Swarup Kumar Mishra, Judicial Member

P.Sulekha @ Sulekha palaki, aged about 62 years, W/o P.L. Narayan, Ex-Chief Matron under Chief Medical Superintendent, East Coast Railway, Waltair Division, resident of LIG, J-54, D.No.50-19-1, TPT Colony, Vizag, Andhra Pradesh.

.....Applicant.

VERSUS

1. Union of India, represented through its General Manager, E.Co.Rly., E.Co.R Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda – 751017.
2. Chief Medical Officer, E.Co.Rly., E.Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda – 751017.
3. Senior Divisional Personnel Officer, Waltair Division, East Coast Railway, At/PO- Dondaparthy, Dist. – Visakhapatnam, Andhra Pradesh – 530023.
4. Chief Medical Superintendent, Waltair Division, East Coast Railway, At/PO- Dondaparthy, Dist. – Visakhapatnam, Andhra Pradesh – 530023.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 21.12.2018 Order on : 4/1/2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant Smt. P. Sulekha was appointed initially as a temporary staff nurse under the respondent no. 4 on 28.11.1988 and was subsequently promoted to the post of Nursing Sister and Matron. While working as Matron, she applied for leave to go to USA to see her husband and she was sanctioned 57 days of leave. At the end of the leave period, she did not return to join duty due to illness of her husband as stated in the OA. Later on she came to know that she has been removed from service through ex-parte proceeding. She filed appeal dated 20.8.2011 before the Appellate Authority, who passed the order

dated 28.2.2013 (Annexure-A/2), modifying the punishment order to compulsory retirement. The details of service particulars issued by the respondent no. 3 on 3.10.2013 (Annexure-A/3) noted the period of her service from 23.11.2005 to 29.11.2010 as unauthorized period which is deemed to be regularized. The respondents issued the PPO and sanctioned the pension without considering the period from 23.11.2005 to 29.11.2010 as qualifying service.

2. The applicant moved a Revision petition dated 25.4.2016 (Annexure-A/5) addressed to the respondent no. 2, who rejected the petition of the applicant vide order dated 2.3.2017 9Annexure-A/6), which was communicated to the applicant through the forwarding letter dated 9.5.2017 (Annexure-A/7).

3. The applicant's case is that although the respondents have noted in her service particulars dated 3.10.2013 (A/3) that the period has been deemed to be regularized, as extra ordinary leave, but it has not been taken as qualifying service for the purpose of pension. The applicant, has therefore, filed the OA seeking the following main reliefs:-

> "(a) To quash the order of rejection dtd. 02.03.2017 under Ann.-A/6;
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> (b) And to direct the Respondents to regularize the period from 23.11.2005 to 29.11.2010 by grant of extra ordinary leave and treat the said period as qualifying service for all purpose;
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> (c) And to direct the Respondents to grant full pension, issue post retirement complementary pass and brought under RELH Scheme."

4. The respondents, in their counter, have not contradicted the sequence of facts and stated that after imposition of the penalty of removal from service in 2010, the applicant filed appeal on 20.8.2011 to accept her voluntary retirement and on 27.7.2012, she requested for reduction of punishment. Considering her past service and health consideration, the Appellate authority revised the punishment to compulsory retirement even if the charges were proved based on the documentary evidence. It is further stated that the applicant, while staying in USA never informed about her postal address till 13.7.2007 and changed her address twice without informing the authorities and the applicant was advised to report for duty before initiating the disciplinary proceeding. It is also stated that while modifying the punishment, the Appellate Authority did not order for regularizing the period of unauthorized absence of the applicant since 23.11.2005. The para 10 of the counter refers to the rule 2022 of the IREC which provides for sanction of extra-ordinary leave (in short EOL), which can be counted as qualifying service for pension if it is sanctioned on medical ground with the discretion of the competent authority and the EOL granted due to inability to join/re-join on account of civil commotion or natural calamity provided the employee has no

other type of leave and if the EOL is availed for prosecuting higher studies. In this case, since the competent authority has not sanctioned EOL in favour of the applicant, it cannot be counted as qualifying service for pension.

5. The applicant, in Rejoinder, has stated that she had sent a number of applications from USA for extension of leave on the ground of illness of herself and her husband. It is also stated that the EOL granted on medical ground can be counted as qualifying service. The Annexure-A/8 has been enclosed to the Rejoinder, stating as under:-

> ".....The extraordinary leave granted on medical certificate started counting as qualifying service for pension in all cases with effect from 22.9.1973. On or after 18.2.1986, extraordinary leave sanctioned for higher scientific and technical studies shall count as qualifying service for pension."

It is further stated in the Rejoinder that as noted in the counter, her unauthorized absence was not intentional or deliberate and hence, the impugned order cannot be sustained.

6. We have heard Mr. N.R. Routray, learned counsel for the applicant who reiterated the grounds taken in the pleadings of the applicant and pointed out that the service particulars of the applicant as stated in the Annexure-A/3, which notes the period to have been deemed regularized, while arguing that after regularizing the period as EOL, there is no justification not to count the period as qualifying service for pension. He drew our attention to the Annexure-A/8, which states clearly that the EOL granted on medical ground qualifies for pension as per the guidelines of the Railway Board.

7. Per contra, Mr. S.K. Ojha, learned counsel for the respondents argued that the penalty imposed was modified taking a lenient view of the matter in view of the past record of the applicant and pointed out that as explained in para 10 of the counter, the EOL cannot be taken as qualifying service unless it is specifically ordered by the competent authority.

8. We have given our careful consideration to the submissions of learned counsels and also perused the record. The applicant is admittedly getting pension based on her service without taking into account the period of unauthorized absence from 23.11.2005 to 29.11.2010 as qualifying service. The applicant's case is that as per the guidelines at Annexure-A/8, the EOL granted on medical ground will qualify for pension. Respondents' averment is that the competent authority has not decided to count the said period as qualifying service for pension as per the para 2022 of IREC. In this regard, we would like to refer to the rule 36 of the Railway Services Pension Rules, 1993, which states as under:-

> **"36. Counting of period spent on leave-** All leave during service for which leave salary is payable and all extraordinary leave granted on medical grounds shall count as qualifying services:
> 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 railway servant,
>
> **(Authority: Railway Board's letter No. F(E)III/99/PN 1/(Modification) dated 23.5.2000)**
> (i)due to his inability to join or rejoin duty on account of civil commotion, or
> (ii) for prosecuting higher scientific or technical studies."

From above provisions of the rule 36, it is clear that the EOL granted on medical ground is to be counted as qualifying service for the purpose of pension. There is no order produced before us to show if the period in question has been sanctioned as EOL by the competent authority, except for the order dated 3.10.2013 (Annexure-A/3), which states that the period of unauthorized absence of the applicant from 23.11.2005 to 29.11.2010 is the period of unauthorized absence, which is deemed to be regularized as LWP/EXL, which implies that the period has been treated as extraordinary leave by the respondents. But such period treated as EOL will count as qualifying service for pension if it fulfills conditions laid down under the Rule 36 of the Railway Services Pension Rules, 1993. If the EOL is granted by the competent authority on medical ground, then it has to be treated as qualifying service.

9. In the impugned order dated 2.3.2017 (Annexure-A/6), it is stated that the procedure specified for the disciplinary proceedings has been followed and hence, there is limited scope for judicial review. While we agree with that averment, we note that the dispute in this case is not the punishment of compulsory retirement ordered by the Appellate Authority, which has been accepted by the applicant. The dispute is whether the period from 23.11.2005 to 29.11.2010 will be counted as qualifying service for pension of the applicant as per the provisions of the Rule 36 (supra).

10. In the circumstances, the OA is disposed of with a direction to the respondents to treat the period from 23.11.2005 to 29.11.2010 as qualifying service of the applicant for pension and to allow the consequential benefits as per law, if the EOL for the said period has been granted on medical ground. If the EOL is granted on any other grounds, then whether the said period will be counted as qualifying service or not shall be decided by the respondents/ competent authority as per law and communicated to the applicant within two months from the date of receipt of a certified copy of this order. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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