

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 326 of 2018

Date of order : 2.8.2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

1. Ashalata Das, aged about 58 years, W/o Late Ramakanta Das.
2. Surajit Das, aged about 40 years, S/o Late Ramakanta Das, Both are of Vill – Nuapatna, PO – Olaver, PS – Rajkanika, Dist. – Kendrapara.

.....Applicants

VERSUS

1. Union of India represented through its Secretary, Ministry of Culture, Library Section, government of India, Shastri Bhawan, C Wing, New Delhi – 110115.
2. Director General, National Library, Ministry of Culture, Government of India, Belvedere Estate, Alipore, Kolkata – 700027.
3. Library & Information Officer and Head of Office, Government of India, National Library, Belvedere Estate, Alipore, Kolkata – 700027.
4. Senior Accounts Officer, pay & Accounts Office, Ministry of Culture, 15 R.N.Mukherjee Road, 3rd Floor, Kolkata – 700001.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.D.K.Mallick, counsel

O R D E R (ORAL)

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

- “(1) That the memo No. AND/S-I(56)/6649 issued by the respondent No.3 by closing retiral benefit case of the husband of the applicant No.1 be set aside.;
- (2) That the respondent No.1 be directed to convey approval from the competent authority for granting the extraordinary leave

- from 6.2.1997 to 25.3.2009 of husband of the applicant No.1 by quashing order dated 19.12.2017 (Annexure A/17);
- (3) That direction be issued to the respondent NO.4 to release the retiral benefit of the husband of the applicant within a stipulated period with 12 % per annum;
 - (4) And further be pleased to pass any order/order(s) as deem fit and proper to give complete relief to the applicant."

2. The husband of the applicant retired from service under the respondents on 31.1.2013, but he was not sanctioned the retiral benefits as per the rules. The case of the applicant is that her husband was appointed first time on 6.9.1072 and he remained on leave from 6.2.1997, informing the respondents about his illness and inability to join from time to time. Finally, after his recovery he joined in service on 26.3.2009. He retired from service on 31.1.2013 and expired on 25.4.2013. Thereafter, the applicant approached the respondents for sanction of retiral benefits of her husband by submitting an application on 17.6.2013 (Annexure-A/3). The respondent no. 2 moved the respondent no. 1 vide letter dated 7.12.2015 (Annexure-A/4) for grant of extra ordinary leave in favour of the applicant for the period of leave/break from 6.2.1997 to 25.3.2009 so that his retiral benefits can be released. Prior to that, the Accounts Office of the respondents returned the case since the period of absence had exceeded five years for which approval of the respondent no. 1 was required. The respondent no. 2 again moved the respondent no. 1 in the matter vide letter dated 10.11.2016 (Annexure-A/9) for sanction of extra ordinary leave.

3. When the matter was considered on 29.6.2018, vide order dated 26.9.2018, the applicant's counsel restricted his prayer to sanction of the retiral benefits for the service period from 1972 to 1997 i.e. till the date (6.2.1997) when the applicant's husband proceeded on leave till 26.3.2009. A reply was filed by the respondents on 3.9.2018 in which a copy of the order dated 26.7.2012 was enclosed by which it was decided by the respondent no. 3 under the rule 27 of the CCS (Pension) Rules, 1972 to treat the dies-non period of service of the applicant's husband from 6.2.1997 to 25.3.2009 as leave without pay i.e. extra ordinary leave. It was pointed out in the letter dated 14.11.2013 of the respondent no. 4 that the period of absence from 6.2.1997 to 25.3.2009 exceeded 5 years, the extra ordinary

can only be sanctioned by the President of India and the respondent no. 3 is not competent to sanction such leave.

3. The respondents have filed Counter averred that the respondents No. 2 and 3 are not competent to sanction extra ordinary leave (in short EOL) for the aforesaid period. It was therefore referred to the respondent no. 1 and vide order dated 29.9.2014 (Annexure-R/4) , the request was not acceded to by the competent authority as the absence period is too long to be justified. The proposal of the respondent no.3 for grant of extra ordinary leave has also not been approved by the competent authority vide order dated 19.12.2017 (Annexure-A/17), copy of which has also been enclosed to the Counter as Annexure-R/6.

4. Learned counsels for both the applicant as well as the respondents were heard. The pleadings of both the parties were also examined. It is noticed that the disputed period of service for which grant of extra ordinary leave has been refused pertain to the period from 6.2.1997 till 25.3.2009 vide order dated 19.12.2017 (A/17) of the respondent No.1, which is extracted below:-

"To
Director General
National Library,
Belvedere,
Kolkata – 700027.

Subject :- Settlement of retirement benefits in respect of Shri Ramakanta Das, MTS-reg.

Sir,

I am directed to refer to your letter dated 13.9.2017 on the subject mentioned above and to intimate that the request to grant Extraordinary Leave to Shri Ramakanta Das, Ex-MTS, national Library, Kolkata from 6.2.1997 to 25.3.2009 has not been approved by the competent authority.

Yours faithfully,
Sd/-

(N.K.Sinha)

Under Secretary to the Government of India
Tel/Fax:-2338 2539."

It is noted that the order at Annexure-A/17 does not mention any reason for not approving the extraordinary leave for the period which was recommended by the respondent no. 2 and 3. It is stated in the Counter (para 10) that since the said period has not been regularized in terms of the

rule 12 of the CCS (Leave) Rules, 1972, the PAO is unable to accept the pension case and the respondents have closed his case. Through the Counter, the respondents have stated that the OA is liable to be dismissed.

5. It is unfortunate that the competent authority rejected the proposal vide order at Annexure-A/17 without mentioning the reason for such decision. Such decision has been taken by the respondents to imply that the period from 6.2.1997 to 25.3.2009 of the service of the applicant's husband was treated as interruption in service, resulting in forfeiture of the past service of the applicant's husband from 6.9.1972 to 5.2.1977 as per the rule 27 of the CCS (Pension) Rules, 1972. No such specific averment is there in the Counter and no reason has been furnished by the authorities for not releasing the retiral benefits to the applicant except that the said period needs to be regularized. The least that was expected from the authorities in this regard is that before taking a decision regarding release of retiral benefits in favour of the applicant, there should have been application of mind with by the competent authority regard to the extant rules and the decision should have been taken by passing a reasoned order.

6. **In the circumstances, the issue to be decided in this case is whether the decision of the respondents not to release the retiral benefits payable to the applicant on the ground that no extraordinary leave for the period of service from 6.2.1997 to 25.3.2009 has been sanctioned by the competent authority, is sustainable under the provisions of law.**

7. In this regard, the rule 27 and 28 of the CCS (Pension) Rules, 1972 (in short 'rule') state as under:-

"27. Effect of interruption in service

An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases :-

- (a) authorized leave of absence ;
- (b) unauthorized absence in continuation of authorized leave of absence so long as the post of absentee is not filled substantively ;
- (c) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension ;

- (d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest ;
- (e) joining time while on transfer from one post to another.

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

Footnote : 1.

Substituted by G.I., D.P. & A.R., Notification No. 6 (1), Pen. (A)/79, dated the 19th May, 1980

28. Condonation of interruption in service

(a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(b) Nothing in Clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(c) The period of interruption referred to in Clause (a) shall not count as qualifying service.

GOVERNMENT OF INDIA'S DECISIONS

(1) Opportunity of representation to be given to Government servant before making entry in service book regarding forfeiture of past service. - FR 17-A provides that a period of an unauthorized absence, in the category of cases mentioned therein, shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for certain purposes. An order passed by the P & T authorities in the case of some of their employees invoking FR 17-A was struck down by the Lucknow Bench of Allahabad High Court on the ground that issue of such an order without giving a reasonable opportunity of representation and being heard in person, if so desired, to the person concerned, would be against the principle of natural justice. In this Department's OM of even number, dated 20/23-5-1985 [Order No.(2) below], it was accordingly brought to the notice of all Ministries/Departments that an order under FR 17-A, etc., should be

preceded by extending to the person concerned a reasonable opportunity of representation and being heard in person, if so desired by him/her.

....."

8. In case a period in service of an employee has not been regularized by sanction of leave and the period is treated as interruption in service for the purpose of pension, then there has to be an entry to that effect in the service book of the employee and such an entry is required to be made after giving an opportunity of representation to the concerned employee as per the Government of India's decision below the rule 27 and 28 as extracted above. In this OA, there is nothing in the pleadings of the respondents that such an entry in the service book of the applicant's husband was made by the competent authority following due procedure as laid down above. In absence a specific entry in the service book that the period of absence from duty has been treated as an interruption in service resulting in forfeiture of the past service of the employee concerned, such period is automatically condoned in accordance with the sub-rule (a) of the rule 28 of the CCS (Pension) Rules, 1972 as extracted in the preceding para. Hence, in absence of a specific entry in the service book of the applicant's husband that the period from 6.2.1997 to 25.3.2009 was treated as interruption in service resulting in forfeiture of his back service, this period is to be automatically condoned for the purpose of pensionary benefits under the rule 28(a) even without sanction of extraordinary leave for the said period by the respondent No.1. However, such period will not be counted as qualifying service as per the rule 28(c). It was, therefore, unjustified on the part of the respondent no.3 and 4 not to sanction the retiral benefit in accordance with the rule 27 and 28 of the CCS (Pension) Rules, 1972.

9. This case can be examined from another angle also. Under the rule 27(2) of the CCS (Pension) Rules, 1972, the appointing authority has the power to commute any period of interruption in service as extraordinary leave. In this case, the respondent No. 2 being the pension sanctioning authority and the appointing authority for the applicant's husband, had already allowed the period from 6.2.1997 to 25.3.2009 to be treated as

extraordinary leave vide the order dated 26.7.2012 (Annexure-R/1 of the Counter), which was passed under the rule 27. Hence, the said period cannot be treated as an interruption in service as per the rule 27 of the CCS (Pension) Rules, 1972 and it was not necessary on the part of the respondent No. 4 to have insisted for an order of the respondent no. 1 under the rule 12 of the CCS (Leave) Rules, 1972 (vide letter at Annexure-R/3 of the Counter). Under the rule 12 of the CCS (Leave) Rules, 1972, no leave can be granted for more than 5 years by any authority except the President and the provision has no bearing for the issue relevant in this OA.

10. In view of the discussions above, the decision of the respondents not to release the retiral benefits on the ground that the leave for the above period has not been sanctioned by the respondent no. 1, is not in accordance with the provisions of the CCS (Pension) Rules, 1972 and hence, it is bad in law. The issue at para 6 is answered accordingly.

11. In the circumstances as discussed above, the respondents are directed to sanction the retiral benefits admissible to the applicant in respect of her husband's service as per the provisions of the CCS (Pension) Rules, 1972, treating the period from 6.2.1997 to 25.3.2009 as extraordinary leave as per the order dated 26.7.2012 of the respondent No. 2 (Annexure-R/1) and the said period is not to be counted as qualifying service for pension and disburse the retiral benefits to the applicant as per the rules within three months from the date of receipt of a copy of this order, failing which, the interest at the rate of 9% per annum will also be payable to the applicant from the due date of the payment as per the extant rules and such interest is to be recovered as per provision of law from the officials responsible for such delay in release of the retiral benefits to the applicant. The OA is accordingly allowed with no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

