

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.2042/2003

This the 20th day of April, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Om Prakash Gauba S/O Jagan Nath,
Quarter No.45, 4 Marla Colony,
Gurgaon.

... Applicant

(Shri Sandeep Gupta, Advocate)

-Versus-

1. Union of India through
Secretary, Central Electricity Authority,
Bhikaji Cama Place, R.K.Puram,
New Delhi.

2. Pay & Accounts Officer through
the Chairman, Central Electricity
Authority, Bhikaji Cama Place,
R.K.Puram, New Delhi.

... Respondents

(By Shri B.S.Jain, Advocate)

ORDER

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Applicant joined service as a Fitter on 21.8.1971. Prior to retirement on 30.11.2001 he was working on the post of Electrician since 1988. Applicant has alleged that respondents have not counted the period of extraordinary leave from 16.11.1983 to 1.12.1985 and 1.12.1988 to 14.3.1991 for pensionary purposes. It has been pointed out that vide Annexure A-5 dated 22.2.2000 service rendered by him prior to 1.11.1998¹⁹⁹⁸ would be treated as qualifying service for the purpose of pensionary benefits. However, later on vide Annexure A-1 dated 30.11.2000 respondents withdrew Annexure A-5 stating that the period of his unauthorised absence from 17.12.1988 to 14.3.1991 was not regularised as

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extraordinary leave and would be treated as dies non without causing break in service. However, this period will not be treated as qualifying service. Vide Annexure A-2 dated 27.11.2001 the Pay and Accounts Office has not counted applicant's period of extraordinary leave from 16.11.1983 to 1.12.1985 and 1.12.1988 to 14.3.1991 for purpose of pension. Applicant has assailed Annexures A-1, A-2 and A-3.

2. The learned counsel of applicant stated that earlier OA No.2284/2002 of the applicant was disposed of by this Court on 23.10.2002 directing the respondents to dispose of applicant's representation dated 27.11.2001. Applicant is now aggrieved by Annexures A-1, A-2 and A-3 whereby periods of extraordinary leave of the applicant have not been taken into account for pensionary purposes. The learned counsel of the applicant pointed out that under rule 28 of the CCS (Pension) Rules, 1972 the competent authority to sanction leave has power to condone interruption of service. It is also provided therein that if no entries are made in the service book of the employee to the effect whether the same has been condoned or not, the same shall be taken as automatically condoned and the service treated as qualifying service. The learned counsel maintained that respondents have vide Annexure A-5 dated 22.2.2000 condoned interruption in service in the case of the applicant and treated the service rendered by him prior to 1.11.1998 as qualifying service for purposes of pensionary benefits. He further maintained that after these orders it is not permissible for respondents to review them and pass contrary orders,

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the executive authority having no power to review their own order.

3.. On the other hand, the learned counsel of the respondents contended that period of extraordinary leave does not count for pension, no formal orders regarding conversion of unauthorised absence into leave without pay having been issued by the Government. He maintained that the spirit of letter dated 22.2.2000 was that the period of dies non will not cause break in service so that the past service rendered by the Government is not forfeited and it was indicated that pre-interruption service will be treated as qualifying service for the purposes of pensionary benefits. As the applicant had misinterpreted the period of extraordinary leave as qualifying service, a clarification was issued on 30.11.2000 indicating that periods of extraordinary leave without medical certificate and dies non will not be treated as qualifying service, however, this will not cause break in service. As such, memo dated 22.2.2000 was treated as withdrawn. The learned counsel further stated that Annexure A-3 dated 31.1.2003 was only a communication to the applicant on decision of applicant's representation in pursuance of Tribunal's order dated 23.10.2002 in OA No.2284/2002.

4.. We have considered the rival contentions.

5.. Vide Annexure A-5 dated 22.2.2000 respondents have stated that the service rendered by the applicant before 1.11.1998 will be treated as qualifying service

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for the purpose of pensionary benefits. These orders were withdrawn vide Annexure A-1 dated 30.11.2000 by Under Secretary (P) who had issued the earlier orders dated 22.2.2000. In this memorandum it was further stated that the periods of extraordinary leave from 16.11.1983 to 1.2.1985 and 17.12.1988 to 14.3.1991 (dies non) will not be treated as qualifying service. However, this will not cause break in service. On this basis Annexure A-2 was issued by the Pay & Account Office which is a pension payment order excluding the periods of extraordinary leave of the applicant from qualifying service. Annexure A-3 dated 31.1.2003 purported to have been issued in pursuance of Tribunal's orders dated 23.10.2002 for disposal of applicant's representation dated 27.6.2001 states that applicant's unauthorised absence from 17.12.1988 to 14.3.1991 was not regularised as extraordinary leave and that period has been treated as dies non without causing break in service. However, the same will not be treated as qualifying service as the period of unauthorised absence treated as dies non does not count as qualifying service.

6. Annexure A-5 dated 22.2.2000 had been issued by Under Secretary to the effect that service rendered by the applicant before 1.11.1998 will be treated as qualifying service for the purpose of pensionary benefits. Civil consequences had immediately flowed to the applicant on communication of Government's decision that service rendered by the applicant prior to 1.11.1998 will be treated as qualifying service for purposes of pensionary benefits. Respondents withdrew these orders

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and issued impugned orders Annexures A-2 and A-3 to the effect that period of unauthorised absence from 17.12.1988 to 14.3.1991 treated as dies non would not count as qualifying service. Annexures A-1 and A-2 were issued by the same authority who had issued Annexure A-5. The question is whether Annexure A-5 could have been reviewed by the same authority. It has been held in **Patel Narshi Thakershi & Ors. v. Pradyumnasinghji Arjunsinghji**, AIR 1970 SC 1273 that the power to review is not an inherent power. It has to be conferred by law either specifically or by necessary implication. No rules have been shown to us regarding the powers vested in the same authority for reviving its own order. On treatment of entire service of the applicant prior to 1.11.1998 as qualifying service for pensionary purpose in terms of Annexure A-5, civil consequences having arisen in favour of the applicant, the impugned orders could not have been issued by the respondents without affording an opportunity of hearing to the applicant following the principles of natural justice. Respondents' action has been arbitrary in withdrawing Annexure A-5 and issuing Annexures A-2 and A-3.

7. In result, annexures A-1, A-2 and A-3 are quashed and set aside directing the respondents to effectuate the decision contained in Annexure A-5 dated 22.2.2000 treating the service of the applicant prior to 1.11.1998 ^{as qualifying service} for purposes of pensionary benefits. The consequential benefits shall be accorded by the respondents within a period of two months from the date of communication of these orders.

11

8. The OA is allowed in the above terms. No costs.

S. Raju
(Shanker Raju)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

30.4.04