

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2752/2003

New Delhi this the 4th day of January, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Bhoop Singh Yadav,
S/o Shri Sheo Narayan Yadav,
R/o Village Shah Bajpur,
Post Majra Gurdas,
Distt. Rewari (Haryana)

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India through the
Secretary, Ministry of Defence,
South Block, New Delhi.
2. The Controller of Defence Accounts (R&D),
L Block, New Delhi-110001.

-Respondents

(By Advocate Shri Anil Singhal proxy for Mrs. P.K. Gupta, Counsel)

O R D E R (ORAL)

Applicant impugns respondents' order dated 4.4.2003, whereby his request for grant of pension in terms of Rule 49 (2)(b) of the CCS (Pension) Rules, 1972 (hereinafter referred to as Pension Rules) was rejected.

2. A brief factual matrix is that applicant was enrolled in the Indian Air Force in 1963 and was discharged on 31.8.1978. He was appointed as Clerk on 7.5.1981.
3. A minor penalty charge sheet issued to applicant culminated into major punishment of compulsory retirement from service, which was imposed by the appointing authority, ACDA (AM), wherein he was made entitled to receive pension and gratuity (full compensation pension) in terms of Rule 40 of the Pension Rules.

4. As pension was not disbursed to applicant, he preferred OA-3119/2002 whereby by an order dated 29.11.2002, directions had been issued to respondents to pass a detailed speaking order.

5. An order passed in compliance thereof on 4.4.2003 rejected the claim of applicant, giving rise to the present OA.

6. Learned counsel of applicant states that once the appointing authority on compulsory retiring applicant on 17.7.1992, having accorded the pension and gratuity to him under Rule 40 of the Pension Rules, which does not stipulate any minimum qualifying service for grant of pension, denial of it only on the basis that the period of around 865 days has been treated as extra-ordinary leave (for short EOL). On private affairs for want of medical certificates is not sustainable as respondents are estopped from acting to the contrary.

7. By resorting to Rule 21 of the Pension Rules and Govt. of India's decision contained in Ministry of Finance OM, learned counsel of applicant further stated that the period of absence has to be treated as EOL only by the appointing authority and a specific entry to this effect shall be made in the service record, failing which any EOL not covered by specific entry will be deemed to be qualifying service.

8. In the above conspectus, it is contended by the learned counsel that applicant had compulsorily retired on 17.7.1992 as a major penalty, the period of absence was certified and treated as EOL by an incompetent authority, i.e., the Accounts Officer, who is not the appointing authority. As such, the entry made in the service record by the Accounts Officer would not be a valid entry and while referring to page 12 of service book, annexed with the counter reply, it is contended that this entry has been made without any date and refers to the decision taken by the Accounts Officer, as such, for want of any specific entry recorded in accordance with the rules and for want of decision to that effect by the appointing authority, the period of EOL shall be deemed to be qualifying service, and in that event applicant completes 10 years' service, which would entitle him to pension.

9. On the other hand, respondents' proxy learned counsel vehemently opposed the contention and contended that as the absence period was regularized on 19.1.2004 as EOL on private affairs, no medical certificates have been produced by applicant. Accordingly, the aforesaid EOL on private affairs would not count towards qualifying service as applicant, who had only 8 years' service, is not entitled to grant of pension.

10. I have carefully considered the rival contentions of the parties and perused the material on record. Annexure A-3 of the OA shows a letter dated 7.12.1993 from Accounts Officer before he decided the period as EOL on private affairs. There is an endorsement to the effect that medical record had already been submitted and forwarded to the competent authority. This belies the averment of respondents that no medical record was submitted by applicant. Accordingly, the decision to treat the EOL on private affairs by an incompetent authority in the wake of medical certificates is not sustainable.

11. Moreover, having decided at the time of compulsory retirement, the order of appointing authority to grant full pension to the applicant, subsequent decision to deny it on the basis of an entry made post-retirement is not the valid compliance of the rules. Rule 21 and the instructions contained therein are reproduced as under:-

"21. Counting of periods spent on leave

All leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service:

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

GOVERNMENT OF INDIA'S DECISIONS

(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 spells of extraordinary leave not covered by such specific entries will be deemed to be qualifying service."

[G.I., M.F., O.M. No.F.11 (3)-E. V (A)/76, dated the 28th February, 1976- Paragraph 3 (a)."

12. If one has regard to the above, it is incumbent upon the appointing authority at the time of grant of EOL to treat as non-qualifying or qualifying and to make the specific entries in the service records. This has also to be necessarily communicated to the concerned.
13. As the applicant had retired on 17.7.1992, the period was decided by the Accounts Officer on a proposal mooted on 17.12.1993, on 19.1.1994. The medical record has not been considered and there is no order passed by the appointing authority, i.e., ACDA (AM) as to treatment of the absence period as EOL. This decision has been taken by the Accounts Officer, who is not competent, as such, any entry made subsequent to the retirement in the service record is not a specific entry within the meaning of Govt. of India's instructions, which supplements the rules. As such, the period of EOL not covered by the specific entry is deemed to be qualifying service.
14. Moreover, I find that despite medical record forwarded to the appointing authority, the same has not been considered and even the Accounts Officer has not taken into consideration the medical record. Otherwise, the medical record would have covered the EOL and would be a qualifying service for the purpose of pension.
15. Another aspect of the matter is that the competent authority having taken a decision to grant pension and gratuity to the applicant on

20

17.7.1992, any decision by a subordinate authority cannot countenanced and the respondents are estopped from acting to the detriment of applicant.

16. Pension is a right of a retired Government servant whether by way of punishment or otherwise and is not a bounty. One has a right to claim it. Moreover, being a welfare legislation, beneficial construction should be imported to the provisions. Rule 21 of the Pension Rules and Govt. of India's instructions cover the applicant on all fours.

17. In the result, having decided to grant pension, the appointing authority has treated the EOL as qualifying service and the decision taken by the Accounts Officer to the contrary cannot be countenanced. Accordingly, the OA is allowed. Impugned order is quashed and set aside. Respondents are directed to grant service pension to applicant in terms of letter dated 17.7.1992 with all consequential benefits within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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