

(2019) 08 CAT CK 0081
In the Central Administrative Tribunal
Case No : Original Application No. 2386 Of 2017

Renu Rani

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 40, 40(1)

Citation : (2019) 08 CAT CK 0081

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : TN Tripathi, Subhash Gosai, RK Ranjan

Final Decision : Disposed Off

Judgement

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

(a) Set aside the order dated 28.3.2017 vide No.F.No.31-12/2015 -TFS passed by the respondents.

(b) Direct the respondents to grant/sanction pension and release the arrears of pensionary benefits, gratuity, earned leave alongwith interest.

(c) Pass such other and further orders which their lordships of this Hon"ble Tribunal deem fit and proper in the existing facts and circumstances of the case.

2. The applicant in this OA is mainly aggrieved by the impugned order dated 28.03.2017 whereby her claim for pension and pensionary benefits has been denied by the respondents, in spite of the specific observation made by the Tribunal vide its order dated 05.01.2017 in her earlier OA No.28/2017 that the applicant has worked for a period of 11 years 8 months and 18 days before she was compulsorily retired. The applicant has challenged this impugned order on the grounds that this order is contrary to Rule 40 of CCS(Pension) Rules, 1972 as the said rule has not been taken into consideration by the respondents while passing the impugned order. The applicant has further pleaded that the

respondents have themselves admitted that she had completed qualifying service, i.e., 11 years, 8 months and 18 days, whereas the qualifying service required for pension is only 10 years. The applicant has further pleaded that the respondents have no right and authority to withhold the retiral benefits such as leave encashment etc. for which she is entitled for interest on the arrears of retiral benefits. Being aggrieved by the aforesaid impugned order, the applicant has filed the present OA.

3. In reply to the averments of the applicant, the respondents have filed their CA in which they have stated that due to unauthorized absence of the applicant from work from 05.05.1995 to 07.09.2014, a letter dated 28.11.2013 was issued by respondents to report and intimate the reason for such absence, however the applicant failed to report and join the duty and she was again issued notice dated 09.07.2014 to join the duty. They have contended that pursuant to the said notice dated 09.07.2014, the Applicant though joined the duty on 08.09.2014, but due to her prolonged absence for the aforesaid period, a disciplinary proceeding was initiated against her and consequently, a penalty of Compulsory Retirement from Service was imposed upon her vide DOT order dated 07.07.2015 which was served to the official on 23.07.2015 and the absent period was treated as

"Dies-non with Break In Service" vide order dated 21.01.2016. The respondents have contended that payments were made to the applicant under the heads, i.e., GPF, Leave Encashment etc. They have thus prayed that the OA is liable to be dismissed.

4. After hearing learned the counsel for the parties and perusing the pleadings on record, it is noticed that the applicant had joined the respondent department on 21.07.1983 and was compulsorily retired w.e.f. 23.07.2015 vide order dated 07.07.2015 by treating the period of her service from 05.05.1995 to 07.09.2014 as dies non. Hence, according to the applicant's claim, she had rendered more than 10 years of qualifying service for the purpose of pension and pensionary benefits as required under Rule 40(1) of CCS(Pension) Rules, 1972 which reads as under:-

"Compulsory Retirement Pension (1)a Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory rule."

Since the respondents, while imposing the punishment of compulsory retirement upon the applicant, had not passed any orders in her case in consonance with Rule 40(1) of the CCS. Pension Rules, the matter is remitted back to the respondents to consider the case of the applicant in the light of the Rule 40(1) of the CCS. (Pension) Rules and pass a reasoned and speaking order within a period of within a period of three months from the date of receipt of a certified copy of

this order.

5. With the above directions, the O.A. is disposed of. No order as to costs.