

LPA No. 181 of 2014. [O&M]
Date of Decision: 30th March, 2015.

Raj Kumar Respondent through
Mr. V.B.Aggarwal, Advocate.

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The pension claim of a poor Class-IV employee who served the appellants for more than 22 years was rejected for the alleged non-compliance of Rule 21 of the Central Civil Service [Pension] Rules, 1972. Learned Single Judge has repelled the appellants' objection and while setting aside their order, has directed that the respondent be granted proportionate pension on pro-rata basis taking into consideration the entire length of service rendered by him.

[31]. It is undeniable that the pension claim of the respondent

is regulated under the Central Civil Services [Pension] Rules, 1972 [for short '1972 Rules']. Chapter-III of these Rules deals with 'Qualifying Service' and according to Rule 13, "qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity....." Rule 21, which has been heavily relied upon by the appellants reads as follows:-

"21. Counting of period 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;

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 Government servant-

[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".

[4]. Since there is a reference to Rule 49 by learned Single Judge, as also by the appellants, it may be mentioned that the said Rule deals with 'determination of pension' and it says that if a government servant retires before completion of qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service. Similarly, sub-clause [b] of Rule 49[2] says in case a Government employee retires before completing the qualifying service of thirty three years, but after completing qualifying

service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause [a] and in no case the amount of pension shall be less than the amount specified therein.

[5]. The contention raised by the appellants is that since the respondent did not produce 'medical certificate' for the period he was granted extraordinary leave on medical grounds, such service shall not count as qualifying service.

[6]. Having given our thoughtful consideration to the contention, we find the same devoid of any merit. We say so for the reason that it was the discretion of the Competent Authority to sanction extraordinary leave applied for by the respondent with or without medical certificate. Having sanctioned such leave at the relevant point of time in the year 1993, the appellants can not bounce back after over two decades to exclude that period on the plea that the respondent must produce the medical certificate. Secondly, it is not the case of the appellants that they ever demanded the medical certificate from the appellant and he failed to produce the same. After a long gap of more than twenty years, the respondent who is a semi-literate can not be expected to secure the medical certificate for the ailment suffered in the year 1993. Thirdly, the Rule itself enables the Competent Authority to dispense with the requirement of medical certificate. It obviously means that the matter has to be dealt with on case to case basis and if the competent authority was satisfied with regard to genuineness of case of the respondent in the year 1993, we see no reason whatsoever to doubt such genuineness after he

has retired from service. Fourthly, once the rule enables the Competent Authority to dispense with the requirement of medical certificate, it obviously means that the condition is not mandatory in nature. It is only a rule of caution which has been incorporated and ordinarily ought to be adhered to so as to avoid false, fake or ingenuine claims for the grant of medical leave. That being the object of the Rule, the same can not be employed in the case in hand to deny pension to the respondent.

[7]. For the reasons aforementioned, we do not find any merits in this appeal, which is accordingly dismissed. It is, however, directed that if the order of the learned Single Judge is not complied within two months, there shall be costs of ₹20,000/-.

**(SURYA KANT)
JUDGE**

**March 30, 2015.
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**(P.B.BAJANTHRI)
JUDGE**