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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9815/2017

RAJESH GUPTA

..... Petitioner

Through: Ms.Isha Aggarwal, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Anurag Ahluwalia, CGSC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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29.01.2019

The petitioner has assailed the order dated 17.08.2017 passed by Central Administrative Tribunal (CAT) in OA No.844/2015. The petitioner had preferred the said original application to assail the communication/order dated 17.01.2015 whereby the period from 22.08.2005 to 03.03.2006 was treated as unauthorized absence from duty and on that premise, the respondents concluded that the petitioner did not complete 20 years of qualifying service to entitle him to seek voluntary retirement.

The petitioner also sought a direction from the CAT that he should be deemed to have voluntarily retired on 16.08.2005 or on 31.07.2006 on completion of three months notice period vide his request dated 15.05.2005 and thereafter on 31.07.2006.

The issue in the instant petition is with regard to the length of

qualifying service which the petitioner has put in – while the petitioner claimed that he had rendered more than 20 years of qualifying service, thus entitling him to apply for voluntary retirement, the respondents contended that the petitioner was on unauthorized leave from 01.06.2004 to 24.07.2005, therefore, that period could not be counted towards qualifying service. The petitioner had rendered 19 years service against the mandatory requirement of 20 years. Consequentially, his request was not acceded to.

The submission of the learned counsel for the petitioner is that for a period of ten months, during the aforesaid period, between 01.06.2004 to 24.07.2005, the petitioner was also paid the salary. This aspect has been considered by the CAT. The stand taken by the respondents was that the salary had wrongly been paid to the petitioner due to the inadvertent mistake committed by the concerned clerk and admittedly the petitioner was on leave during the said period.

The petitioner, however, could not produce any document to show that he reported for duty during the said period. Consequentially, in our view, the finding returned by the CAT that the petitioner was on unauthorized leave during the said period cannot be faulted and the impugned order does not call for any interference in the judicial review.

At this stage, the learned counsel for the petitioner, has drawn our attention to Rule 39 of the CCS (Pension) Rules, which entitles a Government servant to pension on completion of 10 years of qualifying service. We leave it open to the petitioner to pursue the

claim under Rule 39 of the CCS (Pension) Rules and his claim for gratuity, if admissible in law. We, however, make it clear that we have not expressed any opinion on the maintainability of such claim.

The petition stands disposed of.

VIPIN SANGHI, J

YOGESH KHANNA, J

JANUARY 29, 2019/dm