

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

Judgment Reserved on May 06, 2013
Judgment Delivered on May 24, 2013

+ **W.P.(C) 2649/2010**

JEET RAM

..... Petitioner

Represented by: Mr.S.K Gupta, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Represented by: Ms.Ruchi Sindhvani and
Ms.Bandana Shukla, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The present petition has been filed by the petitioner challenging the order dated July 21, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in Original Application No.981/2007 and order dated November 04, 2009 in Review Application No.201/2009, whereby the Tribunal has dismissed the Original Application and Review Application filed by the petitioner.

2. The brief facts are that the petitioner superannuated as Senior PET under the Directorate of Education, Government of NCT of Delhi. He filed Original Application No.2099/2002 claiming full pay and allowances for the period from February 01, 1984 to September 14, 1989 and from September

01, 1995 to April 07, 1999. During the pendency of the said Original Application, the respondent passed an order dated September 20, 2002 treating the entire period as ‘*dies non*’. The Original Application was dismissed by the Tribunal. The petitioner filed Writ Petition No.1767/2004 before this Court, which was disposed of by an order dated March 10, 2005, whereby this Court remanded the matter to the Tribunal to consider the matter afresh in accordance with the law. The relevant portion of order of this Court is reproduced as under:

“Thereafter a final order was passed by CAT on 5th August, 2003. The point which had been raised in the said MA, has not been specifically dealt with by the CAT. As a matter of act in para 5 the CAT has relied upon the said impugned order without particularly adverting to the issue raised in the MA. The reliance placed by CAT on the said order of the Director of Education declaring the unauthorised absence as Dies-Non to be treated as break in service was in our view an error apparent on the face of the record. Thereafter, the review petition which was filed by the petitioner ought to have been entertained which has not been done in the case. Without expressing any opinion on merits of the controversy, we set aside the impugned order and remand the case back to the Tribunal to decide afresh in accordance of law, after giving opportunities to both the parties”.

3. The Tribunal reconsidered the matter and after holding that as there was no show cause notice issued to the petitioner before passing the order dated September 20, 2002, set asides the order and direct the respondents to proceed in accordance with law and rules. Consequently a show cause notice dated December 05, 2005 was issued to the petitioner calling upon to explain as to why not the period of unauthorized and wilful absence with effect from February 01, 1984 to March 12, 1985, October 21, 1986 to September 14, 1989 and September 01, 1995 to April 07, 1999 be treated

'dies; non' for all purposes including break in service and further the suspension period with effect from March 13, 1985 to October 20, 1986 be treated as not spent on duty. A reply was given by the petitioner vide his letter dated December 22, 2005. After considering the same, the Director of Education passed order dated November 02, 2006, whereby he decides that the period of unauthorized and wilful absence w.e.f. February 01, 1984 to September 14, 1989 and September 01, 1995 to April 07, 1999 shall be treated as dies non for all purposes and constituting a break in service and further the suspension period w.e.f. March 13, 1985 to October 20, 1986 shall be treated as period not spent on duty.

4. The order dated November 02, 2006 was challenged by the petitioner before the Tribunal in Original Application No.981/2007. Two contentions were raised by the petitioner. One on the point of suspension, stating that since the suspension was not followed by any departmental proceedings, the suspension itself is bad in law and he is entitled to full pay allowances. The second one being that treating the period of unauthorized absence as *'dies non'* is not as per law, as the petitioner had already retired and the decision in question would affect his pension.

5. In so far as the first contention is concerned, the Tribunal noting the observation of the Director of Education holds that after revocation of suspension, the petitioner was charge-sheeted for unauthorized absence. According to the Tribunal since the departmental proceedings had followed the suspension, which even though culminated in the penalty of removal, which penalty was set aside in appeal and since an obligation is cast on the authority concerned to pass an order on the suspension period, it has been decided, that such period be treated as not spent on duty. Whether this decision of the authority is correct or not falls for our consideration in so far

as this contention is concerned. It is seen that even after the suspension was revoked vide order dated October 21, 1986, the petitioner continued to be unauthorizedly absent. This would also justify the treating of period of suspension as not spent on duty, otherwise it would amount to giving a premium to a person who is a perpetual absentee. A difference has to be drawn between a case where after the revocation of suspension, a person joins his duties and a case where a person despite revocation of suspension doesn't join the duties, which is a case in hand.

6. In so far as the second contention is concerned, the Tribunal holds the reliance placed by the petitioner on Rule 9 of CCS (Pension) Rules is not tenable as Rule 9 of the CCS Pension Rules deals specifically with those cases where there is decision to withhold or withdraw the pension, which is not the case. According to the Tribunal, the decision in this case is to treat certain previous periods as '*dies non*' and does not fall within the parameters of Rule 9 of CCS (Pension) Rules.

7. The attempt of the petitioner to argue the case on facts inasmuch as he has been performing the duties all these periods had not impressed the Tribunal, in view of the stand of the respondents that the petitioner, despite being transferred several times refused to receive the transfer and reliving orders and also had not joined the assigned places and remained unauthorizedly absent. The Rule position is clear. Rule 17A of Fundamental Rules is reproduced as under:

“F.R. 17-A. Without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972, a period of an unauthorized absence-

- (i) in the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the*

Industrial Disputes Act, 1947, or any other law for the first time being in force;

- (ii) in the case of other employees as a result of action in combination or in concerted manner, such as during a strike, without any authority from, or valid reason to the satisfaction of the competent authority; and*
- (iii) in the case of an individual employee, remaining absent unauthorizedly or deserting the post'*

shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required."

8. It contemplates that in a case where an individual employee remains absent unauthorizedly then the said period of unauthorized absence shall be deemed to cause an interruption or break in service of the employee. In this case the order of the Director of Education dated November 11, 2006 states as under:

"And whereas he was transferred and relieved from Acharya Tulsi Rajkiya SKV Chattarpur, New Delhi w.e.f. 01/09/1995 with the direction to report for duty to GGSSS, Sector IV, Dr. Ambedkar Nagar, New Delhi but he failed to join his duty in the above said school and remained unauthorizedly absent from 01/09/1995 to 07/04/1999. He neither received the transfer orders nor relieving orders. Hence, he remained absent from his duty wilfully from 01.09.1995 to 07.04.1999".

9. When an authority has drawn a positive conclusion in so far as the petitioner's unauthorized absence, which the Tribunal had accepted, we in the Writ Court can't reappreciate the same and come to a different conclusion. It is not a case of the petitioner that for certain valid reasons he

remained absent. Rather he in his reply joined an issue with his employer that he was performing his duties in the respective school. This position has been dis-believed by the authority concerned. Suffice would it be to state that the action which has been taken to treat the period between September 01, 1995 to April 07, 1999 is in order as the mandate of instruction issued by DoP&T dated May 20/23, 1985, contemplates reasonable opportunity of representation be given to the individual officer before treating the period as break in service be given. The same has been complied with. That apart the Tribunal in its earlier round of litigation had set aside the order dated September 20, 2002 on the limited issue that there is no show cause notice before passing of the said order. Subsequently, show cause notice dated December 22, 2005 was issued to the petitioner and the order dated November 02, 2006 was passed. In view of the aforesaid, we don't see any infirmity in the order of the Tribunal and accordingly dismiss the writ petition.

10. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 24, 2013
km