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

+ **W.P.(C) 6513/2015**

% ***Judgment dated 10<sup>th</sup> July, 2015***

**BRAHAM PRAKASH** ..... Petitioner

Through : **Mr.Y.S. Chauhan, Adv.**

versus

**UNION OF INDIA & ORS** ..... Respondents

Through : **Mr.Vivek Goyal, CGSC, Mr.Dhirender  
Yadav and Mr.Vikramjeet, Advs. for  
respondents no.1 and 2.  
Mr.Sameer Agrawal, Adv. for  
respondents no.3 to 5.**

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S.SISTANI, J (ORAL)**

**CM APPL. 11862/2015.**

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

**W.P.(C) 6513/2015**

3. Present petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking to set aside the order dated 24.12.2014 passed by Central Administrative Tribunal by which the Original Application, being O.A.No.4271/2012, filed by the petitioner herein seeking to release his pay and allowances for the period 1.2.2007 to 27.7.2007 was dismissed.

4. Counsel for the petitioner submits that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and against the principles of natural justice. It is further contended that the Tribunal has failed to appreciate that the petitioner has not received any pay and allowances from 01.02.2007 to 27.07.2007 while working as Sub-Divisional Engineer (SDE), Gurgaon and no transfer order was given to him for joining at Sonapat. Neither any relieving order was issued to him and he continued to discharge his duties at Gurgaon and ultimately, it is from Gurgaon that the petitioner was finally transferred from Gurgaon to Corporate Office, New Delhi.
5. It is further clarified by Mr. Chauhan, counsel for the petitioner that the petitioner was employed with respondent no.3 as Sub-Divisional Engineer (SDE) (Broad Band) and was posted at Gurgaon. Counsel further submits that on 26.6.2007, the petitioner was promoted to officiate as Divisional Engineer (DE) under the General Manager (GM) (Telecom), Sonapat. Vide order dated 4.7.2007, the petitioner was transferred from Gurgaon to the Corporate Office at New Delhi, but his salary and allowances for the aforesaid period (1.2.2007 to 27.7.2007) were not released.
6. Learned counsel for the respondent enters appearance on an advance copy and submits that although the petitioner was transferred from Gurgaon to Sonapat on officiating promotion as a Divisional Engineer but he neither joined the office at Sonapat nor performed his duties as Sub-Divisional Engineer at Gurgaon, nor submitted any representation for release of his salary or addressed a letter of refusal to join the duty at Sonapat.
7. Learned counsel for the petitioner, on the other hand, contends that no written orders with respect to transfer of the petitioner from Gurgaon to Sonapat were received by the petitioner.
8. Learned counsel for the respondent clarifies that no formal order of

transfer from Sonapat to Delhi was required as the petitioner was shifted to officiate as Divisional Engineer at Sonapat. The six months' period at Sonapat was treated as officiating period and it was only after the officiating period expired, he was transferred from Gurgaon to the Corporate Office, New Delhi.

9. We have heard learned counsel for the parties and considered their rival submissions. We have also carefully examined the impugned order passed by the Central Administrative Tribunal dated 24.12.2014. It is the case of the petitioner that the respondents have failed to release his salary and allowances for the period 01.02.2007 to 27.07.2007 and this period has been treated as dies non by the respondents. The short point which comes up for consideration before this Court is as to whether the petitioner performed his duties during the period 01.02.2007 to 27.07.2007 and, if so, whether the duty was performed at Gurgaon or Sonapat where he was directed to officiate. It would be useful to reproduce paras 5 and 7 of the judgment of the Central Administrative Tribunal, which read as under:

“5. The respondent's case is that the applicant has produced no proof of his having performed duties as SDE Gurgaon from 1.02.2007 to 27.07.2007. When he was transferred from Gurgaon to Sonapat on officiating promotion as Divisional Engineer, he could have submitted refusal for officiating promotion within ten days but no refusal was submitted by him. The pay and allowances of the applicant were not disbursed to him by the GMTD Gurgaon as his LPC was issued to GMTD Sonapat by the GMTD Gurgaon on his officiating promotion as DE and posting in Sonapat. It is submitted that the applicant even did not represent for non-payment of pay and allowances for the period 1.02.2007 to 27.06.2007 and he made a representation only on 28.06.2007 as these orders of promotion were upto 23.06.2007. The respondents argue that they have been lenient with the

applicant as this unauthorized absence between 1.02.2007 and 27.06.2007 was not treated as “break in service” but only as “dies non”.

7. The fact is that the applicant was transferred on 26.06.2007 and he did not join his new posting. This was clear defiance of government orders and he resurfaced only on 27.07.2007 when he managed to get a posting in BSNL Corporate Office, New Delhi. There is no record of his whereabouts during this period. Since the LPC had been issued by the Gurgaon Office, there was no question of his drawing salary from there. Instead of taking strict action against the applicant for his gross misconduct, the respondents took a lenient view and just treated the period as “dies non”.
10. During the course of hearing, we have again asked the learned counsel for the petitioner as to whether the petitioner carried out his duties at Gurgaon or at Sonapat during the period 01.02.2007 to 27.07.2007. We were informed that the petitioner was carrying out his duties at Gurgaon during this period. We thereafter asked the learned counsel as to whether there is any document to show that the petitioner was performing his duties at Gurgaon during the period 01.02.2007 to 27.07.2007 or as to whether he had signed any official document or communication. The answer was in the negative. It is rather strange that during the period 01.02.2007 to 27.07.2007, the absence of the petitioner was neither noticed at Gurgaon nor at Sonapat where he was to report. It is rather strange that the petitioner did not protest during the period 01.02.2007 to 27.07.2007, as admittedly he was not receiving his salary. This would only show that the petitioner remained absent from his duty during February 2007 to July, 2007. We agree with the observations of the Tribunal that the Respondents had not taken strict action against the petitioner but a lenient view of treating the period as *dies non*.

11. We find no infirmity in the judgment of the Central Administrative Tribunal; resultantly the writ petition is dismissed.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**JULY 10, 2015**  
msr/pst