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

+ W.P.(C) 10207/2015

% *Judgment dated 2nd November, 2015*

T.M. SAMPATH

..... Petitioner

Through : Petitioner in person

versus

UNION OF INDIA & ANOTHER

..... Respondents

Through : Mr. Dev. P. Bhardwaj, CGSC with Mr.
Siddharth Khatana and Ms. Anubha
Bhardwaj, Advocates.

Mr. R. V. Sinha, Advocate for respondent
no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Aggrieved by the order of the Central Administrative Tribunal (hereinafter referred to for short as 'the Tribunal') dated 23.07.2015 has led to the filing of the present writ petition.
2. The petitioner had approached the Tribunal seeking a direction to quash the order dated 02.02.2015 by which the period of absence of 09.12.2014, 10.12.2014 and 16.12.2014 were to be treated as 'dies non'. A representation made by the petitioner also stands rejected.

3. The case of the petitioner before the Tribunal was that the respondent treated his absence on 09.12.2014, 10.12.2014 and 16.12.2014 as dies non in terms of FR 17(1) and FR 18 illegally and arbitrarily. The petitioner relied on the record of the biometric register to show the time of his reporting for duty and departure from office on 09.12.2014, 10.12.2014 and 16.12.2014 were 10.39, 18.49; 09.19, 20.56 and 09.43, 18.07 respectively. According to the petitioner, he had only left the office for a couple of hours to attend to some court cases for which he had duly applied for half day casual leave on 28.12.2014. Respondent, however, did not sanction the leave and instead treated the absence as dies non and ordered recovery of Rs.8,251/- from his salary. According to the petitioner, the departmental instructions provide for two hours permission in a month on four occasions and no public interest is affected in granting two hours permission as the petitioner had not been entrusted with any work by the respondent.
4. The petition of the petitioner was opposed on the ground that the petitioner is a habitual litigant, who has filed more than 60 cases before the High Court and the Tribunal. He is facing criminal cases and in all the cases, he has been appearing in person without applying for leave. It was explained that on 09.12.2014 also, he left office without obtaining any permission though he claims to have submitted an application for grant of half day casual leave subsequently on 28.12.2014, but the same was never received in the office. The respondent also produced the record showing that in December, 2014, there was no application for casual leave received from the petitioner. Moreover, there was no sufficient balance in his casual leave account by December, 2014. Earlier the competent authority had treated his absence for 97 days as dies non for the same reason of remaining absent from duty for court cases which was the subject matter for adjudication in OA.1070/2015 before the Tribunal. Reliance was also

placed on the OM dated 21.02.2014 which clearly stated that any absence from duty without proper permission etc. will be treated as dies non and the employee will be liable for disciplinary action.

5. The petitioner, who appears in person, submits that the learned Tribunal has failed to take note of the fact that casual leave was available in the account of the petitioner and thus, the representation has been wrongly decided by the respondent.
6. We have heard the petitioner, who appears in person and carefully examined the order passed by the Tribunal. We have also examined the order by which the representation of the petitioner was rejected. The relevant portions of the OM dated 21.02.2014, reads as under:

“2. To avoid any hardship to the employees to punch their card or otherwise, late coming up to 9.15 a.m. in the morning will be exempted. In exigencies or due to social obligations, late coming up to 10.00 a.m. is permitted, further late coming up to 11.30 a.m. or early going after 4.00 p.m. (with prior written permission, total six times in a month), can be permitted but all such short falls in time (except above 15 minutes only up to 9.15 a.m.) has to be compensated by late sitting in said calendar month. In case of late coming or early going over and above the casual leave is exhausted), immediately for that day.

7. Any employee who desires to avail any type of leave, should preferably apply in advance to her/his controlling authority for sanction. Any absence from duty without proper permission/leaving office early without proper permission/refusal to perform assigned duty, will be treated as dies non and liable for disciplinary action. It will be the responsibility of the employees to make a record of their late coming/early going to ensure adjustment of any shortfall in hours.”

7. It would also be relevant to refer to Rule 11 of the CCS(CCA) Rules, 1965 which deals with an employee leaving the office without permission, relevant portions of which are reproduced as under:

“(2) **When a day can be marked as dies non and its effect.**- Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies non, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the Competent Authorities might take against the persons resorting to such practices.

(3) **No marking of dies non for latecoming.** - According to orders above, the day can be marked as dies non by the leave sanctioning authority only under three circumstances, viz.,

- (i) when the official remains absent from duty without prior information;
- (ii) when on duty in office, the official leaves the office without proper permission; and
- (iii) the official remains in office, but refuses to perform duty assigned to him.”

8. Reading of Rule 11 referred to hereinabove would show that an employee who has left the office without permission, the leave sanctioning authority may order that the days on which the work is not performed be treated as dies non. Three conditions have been laid down. One of the conditions is when a person on duty leaves the office without proper permission. In our view, Rule 11 sub Rule 3 would be fully applicable to the facts of this case as admittedly the petitioner was on duty in his office and he left the office without permission.
9. We may note that the representation of the petitioner was rejected, taking into account the following factors:

“9. Further, Shri T.M. Sampath in his representation dated 5.2.1015 has stated that he has applied on 28.12.2014 for half a day casual leave each for 9.12.14, 10.12.14 & 16.12.14 on 28.12.2014. In this regard, it is stated that no application applying for casual leave for the above said period has yet been received in Administration Section. The matter was also taken up with the Superintending Engineer-II, NWDA, Palika Bhawan vide letter No.2/72/2011-Admn/Vol-X/2958 dated 25.2.2015. In response, Shri O.P.S. Kushwah, Superintending Engineer-II has confirmed that Shri Sampath, Administrative Officer did not submit any application for casual leave during the month of December 2014, vide his letter No.NWDA/Tech-II/3/7/2015/65 dated 10.3.2015. Moreover, there was no sufficient balance in his casual leave account by December, 2014.”

10. We have examined the impugned order passed by the Tribunal and also heard the petitioner in person. Mr. Sinha, learned counsel for the respondent submits that the petitioner has been taking casual leave and as many as on 97 occasions, the petitioner had failed to perform his duties. The order passed by the Tribunal would also show that no application was made for the leave which is sought. Petitioner submits that in case the application has not been received, he should have been asked to give the application. This submission of the petitioner is without any force especially in view of the fact that record would show that it has not been disputed before us that the petitioner has filed more than 60 cases in various Courts and he has been appearing in person even in the past on account of his absence the period of absence has been treated as dies non. Thus, the petitioner will be conversant of the procedure to be followed seeking leave.
11. We find no grounds made out to entertain this petition. No grounds for judicial review made out in this case.
12. The writ petition is without any merit; the same is accordingly dismissed.

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13. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 02, 2015
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