



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

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Date of decision: July 12, 2023

+ W.P.(C) 6429/2017

UNION OF INDIA & ORS

..... Petitioners

Through: Sh. Sushil Raaja, Sr. Panel Counsel

versus

NARINDER SINGH

..... Respondent

Through: Mr. Karanjot Singh Mainee, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated July 4, 2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in C.P./100/611/2016 in O.A./100/2604/2012, whereby the Tribunal while considering the Contempt Petition has directed the petitioners as under:

“Under such circumstances and in view of the categorical directions, the order of the respondents, treating the period of the applicant from removal to reinstatement in service as dies non, is not in consonance with the directions. We are inclined to issue further directions for personal appearance of the respondents, however, learned counsel appearing for the respondents have assured that the respondents will re-examine the issue and pass afresh order in compliance of the aforesaid directions, within four weeks.”

2. The facts as noted from the petition are that the respondent had



earlier filed a petition being OA 2604/2012 which was decided on May 2, 2016. The challenge in the said petition was to an order dated August 26, 2010, whereby the respondent was issued a show-cause notice as to why punishment of removal from service could not be imposed upon him. Finally on May 21, 2011, the Disciplinary Authority has imposed the punishment of removal from service on the respondent. The charge against the respondent was of unauthorized absence between the period September 21, 2007 to February 27, 2008. The case of the respondent was that he was attending his wife, who was unwell. Be that as it may, the Tribunal disposed of the said petition by stating in Para 9 as under:

“In the conspectus, we quash and set aside the impugned Annexure A-1 and Annexure A-2 orders passed by the respondents. We also direct the respondents to award a lesser punishment to the applicant for the offence committed.”

3. Pursuant thereto, petitioners have passed the order dated July 12, 2017, wherein they have stated as under:

“In compliance of Hon’ble CAT direction passed in OA. No. 2604/12 dated 20.5.16, Punishment removal from service of Sh Narendra Singh Safaiwala / NDLS has been set aside and re-instated in service on initial state in lower pay i.e. Rs 18000/- as Safaiwala and his absence period from removal to reinstate in service is treated as dies non for all purpose viz. Salary, Increment, Leave, Final upgradaion and pension.

Now Sh Narendra Singh S/o Sh. Baldev Singh Safaiwala under CHI / NDLS, PF no.-03157404 is reinstated and posted under CHI / NDLS as compliance of Hon’ble CAT direction passed in OA No. 2604/12 dt- 20.05.16.



His date of resumption may be advised to him immediately.”

4. According to the respondent, there was no proper compliance of the order by the petitioners herein as they have treated the period of absence as “*dies non*” and the same amounted to contempt. The Tribunal, in the contempt petition, has stated that the petitioners were only required to pass a lesser punishment which they have done by bringing the respondent to his initial stage of appointment as Safaiwala, but under no circumstances, the period of absence could have been treated as “*dies non*” as the same was not in consonance with the directions.

5. The submission of the learned counsel for the petitioners is that any unauthorized absence has to be treated as “*dies non*” in accordance with FR 17(A)(iii).

6. We are of the view, the consequence of treating the period as “*dies non*” is serious. It is clear from the order dated June 12, 2017 itself that the period of five months shall not be treated as service for the purpose of salary, increment, leave, financial upgradation and pension. In effect the period is washed off for all purposes. It is a fact that the respondent is working as Safaiwala, who may not be aware of the consequence of being absent without intimation. He remained absent as he was attending to his wife who was unwell. In that sense his absence was bonafide though without intimation. It can be said, the absence was not wilfull. Nor it constitute deserting the post. So a serious decision of treating the period as “*dies non*” may not be justified. The pension sanctioning authority has discretion to treat, the



period as leave without allowance under Article 421 of Civil Service Regulations. The Tribunal may be right in stating that the lesser punishment as was directed vide order dated May 2, 2016 cannot be construed to mean that the period of absence need to be treated as “*dies non*”. We do not see any reason to interfere with the order passed by the Tribunal in exercise of our powers under Article 226 of the Constitution of India and dismiss the petition.

7. As directed by the Tribunal, the petitioners shall pass a fresh order within three weeks which shall be filed before the Tribunal in the contempt petition being C.P./100/611/2016, which we revive on the Board of the Tribunal, for which we fix the date of hearing as September 4, 2023.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 12, 2023/jg

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