

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated this the 1²th day of May 2010.

CORAM:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

Original Application No. 651 of 2005
(U/s 19 of the Administrative Tribunals Act 1985)

S.T.Williams,
S/o late Shri A.D.William,
Working as Dy. Director (Recruitment & Enrolment)
(Group 'A' Service) Staff Selection Commission,
(Central Region), 8A. B. Beli Road,
Allahabad.Applicant

By Adv: S/Shri. K.M.Asthana & Rakesh Verma

V E R S U S

1. Union of India through the Secretary,
Ministry of Personnel and Public Grievances
(Department of Personnel & Training),
North Block, New Delhi-110001.
2. The Regional Director,
Staff Selection Commission(Central Region),
8A. B. Beli Road,
Allahabad- 211 002... Respondents

By Adv: Sri. S.P. Sharma

OR D E R

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

The applicant is working as Deputy Director (Recruitment & Enrolment) (Group 'A' Service), Staff Selection Commission, Central Region, Allahabad. Aggrieved by the impugned order dated 26.5.2005 by which his service for 26.5.2005 has been treated as dies-non with



deduction of one day's salary. He has filed the present O.A. seeking the following reliefs:

- i. To issue a writ, order or direction in the nature of *CERTIORARI* quashing impugned order dated 26.5.2005 passed by the respondent No.2 treating the service rendered by the petitioner on 26.5.2005 as *dies-non* with a direction to the accounts section to deduct one salary (Annexure -A1).
- ii. To issue a writ, order or direction in the nature of *mandamus* directing the respondents to regularize the period of *dies-non* i.e. 26.5.2005 condoning the interruption in service, if any, with all consequential benefits as if no such illegal impugned order would have ever been passed, within a period as may be stipulated by this Hon'ble Tribunal.
- iii. To issue a Writ, order or direction in the nature of *mandamus* directing the respondents not to give effect to the impugned order dated 26.5.2005 and not to interfere with the peaceful functioning of the petitioner as Deputy Director (Recruitment & Enrolment) and to pay him his pay and allowances etc. from time to time regularly.
- iv. To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.

2. According to the Swamy's Handbook, provisions for marking service as *dies-non* and its effect reads as follows:

"When a day can be marked dies non and its effect

*Absence of officials from duty without proper permission or when on duty in office, leaving office without proper permission, or while in the office, refusal to perform 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. In the present case, the facts are that the applicant was in the office the whole day on 26.5.2005. According to the impugned orders, the applicant did not comply with the instructions given to him and did not co-operate with the conduct of Government work. At about 3 p.m. the applicant was verbally instructed to provide certain group 'D' employees to help in placing of box containing question papers in the treasury. The applicant instead of complying, asked for orders in writing. Due to this act of his, his service for 26.5.2005 were declared dies non and one day's Salary was ordered to be deducted. According to the rules quoted above, it is clear that the case of the applicant falls in the category of "Refusal to perform the duties assigned to them." Rule also states that orders of dies non can be passed by the leave sanctioning authority.

4. The main issue that has been raised by the applicant in his support are that the impugned orders are without jurisdiction and that his asking for written instructions was due to the fact that, according to the office order dated 17.3.2005 placed at Annexure SRA-6, there are written instructions that any deployment of group 'D' employee would be done by Dy. Director, Administration and therefore, the applicant was well within his right to ask for written instructions in accordance with the standing instructions. The applicant has also stated that, no enquiry was conducted in the matter and the impugned orders were issued without affording him any opportunity to be heard. /

be heard.

5. The case of the respondents is that, the applicant is not cooperative and does not comply with the instructions. The impugned orders are totally within the jurisdiction of the leave sanctioning authority and therefore, there is no illegality in them. In the counter affidavit it is also clarified that, a verbal enquiry was held in the matter and that since the report of Shri R.K. Bharti, Assistant Director was so self sufficient that there was no need to make any further enquiry or to give an opportunity of hearing to the applicant.

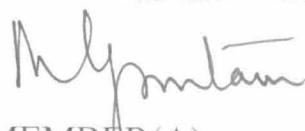
6. It is also pointed out by the counsel for the applicant that Shri R.K.Bharti, Assistant Director retracted his earlier statement vide his letter dated 7.6.2005, in which it has been stated that, his earlier letter was written under duress. On perusing the short counter affidavit and then the supplementary counter affidavit filed by the respondents, it is very clear that the relationship between the applicant and the respondent No.2, Regional Director, Staff Selection Commission at Allahabad was far from pleasant. In fact, in the affidavit sworn by the respondent No.2 he has categorically stated that according to him the applicant was not a good worker and indulged in conspiracies against his superiors. The fact that the Assistant director Shri, R.K.Bhartiya, had first given a written report and later retracted, also creates a poor impression of the organization. Now, it is to be seen whether the impugned orders are in conformity with the rules and the facts of the case. According to the records on file, the 2nd respondent did not directly give any instruction to the applicant which he did not comply with. He was merely asked to deploy the services of



group'D' staff working under him, and in view of the instructions referred to earlier the applicant rightly stated that, he needed written instructions or instructions from Dy. Director, Administration. In normal circumstances, in a situation of this kind, the two officers should have spoken to each other and sorted out the problem. Without doing so, the 2nd respondent who already showed a prejudiced mind against the applicant, without conducting a proper enquiry in the matter and passing his orders relying only on the report of the Assistant Director, Shri R.K.Bharti, which was later retracted, passed the impugned orders. The compelling fact in the matter is that, the applicant was not given any opportunity to be heard or to explain his actions. This goes against the principle of natural justice. It may be seen that, dies non does not constitute break in service, but deduction of one day's salary is certainly punitive in nature, and before taking any such action against a Class I officer, it would be in the fitness of things if he is given an opportunity to explain. In this case, this opportunity was denied to him.

7. In view of the above observations, the impugned orders cannot be sustained and are hereby quashed and set aside. There is also nothing on record to show that the applicant disobeyed any instructions or any work allotted to him and as such, no case is made out against him.

8. O.A. is accordingly allowed. No costs.


MEMBER(A)