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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR.**

Original Application No. 108/2005  
&  
Misc. Application No. 52/2005

Date of decision: 12.01.2007

**Hon'ble Mr. J K Kaushik, Judicial Member.  
Hon'ble Mr. R R Bhandari, Administrative Member.**

Anurodh Chobey, S/o Shri Ram Darash Chobey age 28 years, r/o ward No. 12, (DHAB) Near Samudayik Bhawan, Surat Garh, Dist. Sriganganagar (Rajasthan) Office address: Fitter 815, Combat Engineer Trading Camp, C/o 56 APO.

: Applicant.

Rep. by Mr. P.R Singh: Counsel for the applicant.

**VERSUS**



1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Engineer in Chief, E in C Branch Army Headquarter, Kashmir House, New Delhi.
3. Headquarters Western Command, Engineers Branch, Chandi Mandi, Chandigarh.
4. The Officer Commanding, 815, Combat Engineer Trading Camp. C/o APO

Mr. Vinit Mathur & Mr. M. Godhara: Counsel for the respondents.

**ORDER**

**Per Mr. J K Kaushik, Judicial Member.**

Shri Anurodh Chobey, the applicant, has assailed the validity of orders at Annexure A-1 to A-1(g) and has sought for quashing and setting aside of the same with a direction to the respondents not to give effect to the same and allow the Original Application with costs and all consequential (sic. circumstantial) benefits.

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2. We have heard learned counsel for both the parties at a considerable length and have anxiously considered the pleadings as well as the records of this case.

3. The facts of this case are at a very narrow compass. The applicant is a civilian employee employed in 815 CETC. He has been serving with sincerity, honesty and dedication. He was issued with a warning letter stating that he refused to supervise the staff at Suratgarh Cantt. on 14.02.2002. He was issued with various impugned orders in a mechanical way whereby it has been ordered that the periods mentioned therein would be treated as 'dies non' for the reason that the applicant did not do any work on those days. He submitted the representation to the competent authority. He has not been paid the salary for the said period. The details of the period are given in the impugned orders. His representation did not yield any fruitful result and the same came to be rejected through a non-speaking order. The applicant made a request to make available to him the list of prescribed duties and responsibilities meant for him. Consequently, his annual increment due on 1<sup>st</sup> January 2003 was postponed to 1<sup>st</sup> February 2003 as in the year 2002; 33 days were marked as 'dies non'. He filed an appeal and the Engineering Branch did not entertain the same. The Original Application has been preferred on numerous grounds mentioned in para 5 and its sub-paras.

4. The respondents have contested the case and have filed an exhaustive reply to the Original Application. It has been averred that the Original Application suffers from multiple causes of action and also is not maintainable for the reason as the same is barred by the law of



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limitation. The applicant is habitual of arguing with the superior officers and instigating the fellow men on one or other issues and over all behaviour of the applicant could be termed as unbecoming behaviour of the Government Servant. He did not obey the orders of the competent authority and flatly refused to do so. He was given verbal warning by the then Officer Commanding but there was no improvement in his behaviour. As the Suratgarh Cantt falls within the jurisdiction of Station Headquarter Suratgarh, no movement order was required to be issued to the applicant and the move was a routine move to meet the day-to-day requirements. The competent authority after considering his representation rejected the same. Therefore, the orders passed by the competent authority for treating certain number of days, as 'dies non' are perfectly legal and valid. The grounds raised on behalf of the applicant have been generally denied.



5. The Misc. Application No. 52/2005 has been preferred for seeking condonation of delay on various grounds mentioned therein including that the petitioner got a recurring cause of action inasmuch as his yearly increment has been deferred by 33 days every year. The delay in filing of the Original Application is bonafide and unintentional which may be condoned and the applicant's case may be heard on merits as no prejudice would be caused to anybody.

6. Both the learned counsel for the parties have reiterated the facts and grounds mentioned in their respective pleadings. The learned counsel for the applicant has submitted that the applicant never disobeyed any lawful command given by his superiors and he carried out his duties diligently. On the other hand, learned counsel for the respondents repeated the grounds of defence as set out in the

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reply. Firstly, we would deal with the preliminary objection regarding the limitation. Admittedly, the postponement of annual increment of the applicant due to treating the period as dies non, gives rise to a recurring cause of action. More so, it is a matter relating to counting of service for qualifying service and until the dies-non period is condoned; it would cause a break in service. Therefore, the pensionary benefits would also be affected. In this view of the matter, there is a recurring cause of action. Otherwise also keeping in view that this is a meritorious case, we are inclined to condone the delay, if any, in filing of this Original Application. The Misc. Application No. 52/2005 stands accepted, accordingly.



7. As far as factual aspect of the matter is concerned, there is hardly any dispute. The period alleged during which he did not work, has been ordered to be treated as dies non. We are little sad to note that the pleadings of the respondents indicate that the applicant has committed certain misconduct and probably, the period during which he allegedly committed the misconduct, has been ordered to be treated as dies non. Such is not the spirit of the rules. If one has committed any misconduct, the course of action lies somewhere else. As far as the treatment of any period as dies non is concerned, it is only the absence without leave which could be so treated. In other words, it is only the period of absence which is not covered by grant of leave which can be treated as dies non, and this position is evident from the Government of India instructions issued on 12 September 1958 appended to Rule 27 of CCS (Pension) Rules. The contents of the same are extracted as under: -

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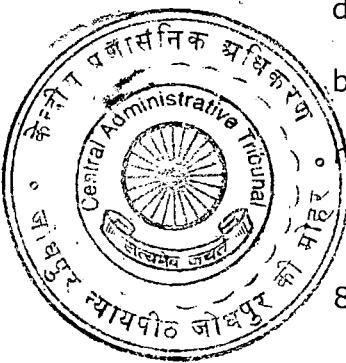
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**"GOVERNMENT OF INDIA'S DECISION****Treatment of wilful absence from duty not regularized. -**

Wilful absence from duty, even though not covered by grant of leave does not entail loss of leave. The period of absence not covered by grant of leave shall have to be treated as "dies non" for all purposes, viz., increment, leave and pension. Such absence without leave where it stands singly and not in continuation of any authorized leave of absence will constitute an interruption of service for the purpose of pension and unless the pension sanctioning authority exercises its powers under Article 421, Civil Service Regulations [now Rule 27 of the CCS (Pension) Rules] to treat the period as leave without allowance, the entire past service will stand forfeited."

[Comptroller and Auditor-General's U.O. No. 1947-A/438-58, dated the 12<sup>th</sup> September, 1958, in Government of India's Ministry of Finance, File No. 11-(52), E. V/58.]"

The bare perusal of the aforesaid instruction would make it evident that 'dies non' is related to absence without leave. Admittedly, the applicant was not absent. The absence from duty cannot be said to be synonymous to disobedience of duty or not carrying out once duty. Therefore, the action of the respondents is void ab initio and can be aptly said as non est in the eyes of law. The action of the respondents is illegal, whimsical and in defiance of the rules.



8. In the result, the Original Application has ample force and the same is hereby allowed. The impugned orders at Annexure A-1 to A-1 (g) are hereby quashed and the applicant shall be entitled to all consequential benefits as if none of the impugned orders were ever in force. This order shall be implemented within a period of two months from date of its receipt. However, in the facts and circumstances of this case, both the parties are directed to bear their own costs.

*R R Bhandari*  
(R R BHANDARI)  
ADMINISTRATIVE MEMBER

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*J K Kaushik*  
(J K KAUSHIK)  
JUDICIAL MEMBER

Received  
Feb 29/11/07  
Hagerman Fish  
200 Pounds

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