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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 124/2005

Date of Order: /0-02-2010

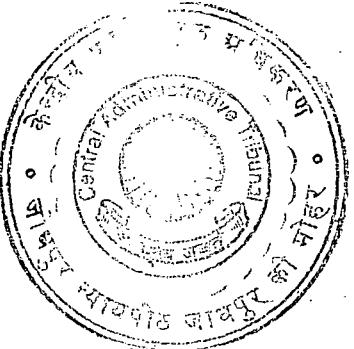
**HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER
HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER**

Sukh Lal Meena S/o Shri Mana ji, aged 45 years, GDS Branch Post Master, Gadvas Post Office, Gadvas, (Dhariawad) District Udaipur, r/o village Gadvas, District Udaipur.

....Applicant

Mr. Vijay Mehta, counsel for applicant.

VERSUS



1. Union of India, through Secretary to the Government, Ministry of Communication (Dept. of Posts) Sanchar Bhawan, New Delhi.
2. Director, Office of Post Master General, Rajasthan, Southern Region, Ajmer.
3. Senior Superintendent of Post Offices, Udaipur.

....Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, Counsel for respondents.

**ORDER
(Per Hon'ble Mr. V.K. Kapoor, Administrative Member)**

Shri Sukh Lal Meena has filed the present OA against orders of respondents dt 09.3.2004 (Ann.A-1) and 10.02.2005 (Ann.A-2). The applicant has sought the reliefs that are as follows:-

"the applicant prays that the impugned orders Ann.A-1 and Ann.A-2 may kindly be quashed and the respondents may kindly be directed to make payment of pay and allowances of the period 08.10.1992 to 30.03.2000. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

2. The factual matrix of present case is that the applicant was appointed as GES BPM, Gadvas (Dhariawad) w.e.f. 03.02.1981.

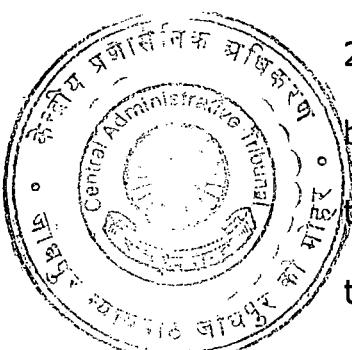
The SPM, Dhariawad vide letter dated 09th Oct, 1992 intimated

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that the applicant was taken into custody and sent to civil jail on 08.10.1992, remained in imprisonment for one month u/s 91 of the Tenancy Act in revenue case no.327/1992. He remained in judicial custody from 08 Oct to 17 Oct 1992, thenafter released on bail. He was again taken into judicial custody during period 26 July to 14 Aug, 1994. Applicant did not inform about his arrest to his senior postal authorities. The respondents issued a show cause notice to him on 10 Nov 1997 to explain circumstances of his unauthorized absence from duty for a period exceeding 180 days on 18 March, 1999; applicant submitted his explanation on 22 March, 1999. In the meantime, he filed an OA no.09/1999 before this Tribunal which was allowed on 13 March, 2000. Vide this order, respondents were directed to take applicant on duty on the post, he was holding as on date of his arrest. As regards back wages, he was asked to make representation to appropriate resp't authority; applicant was allowed to join duty on/before 01 April, 2000 before respondent no.2. In the meantime, applicant was served with a chargesheet under rule 8 of Extra Departmental Agents (Conduct & Service) Rules, 1964 vide letter dt 05 May, 2000; he was awarded a penalty of censure vide order dt 31 Oct, 2001. Respondents ordered this period to be treated as unauthorized absence from duty, his absence from 08 Oct, 1992 to 30 March, 2000 would constitute break in service which would not counted for any purpose. Applicant preferred an appeal on 04 Feb, 2002, competent authority rejected the appeal on 22.5.2002 after due thought. Applicant preferred second OA no. 210/2002 before CAT, Jodhpur; this was partly allowed on 08 Jan 2004 with

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some directions. On applicant's representation, competent authority passed an order of dies-non in regard to period of absence from 08 Oct 1992 to 30 March 2000 on 09 Aug, 2004 (Ann.A-1). Applicant preferred an appeal against this order which was rejected by appellate authority on 10 Feb 2005 (Ann.A-2).

3. The applicant has quoted that the impugned orders were absolutely non-speaking; no reasons were given as to why dies-non was imposed on him. In show cause notice (Ann.A-4) or in the impugned orders, no reference to the rules is made. The provisions of dies-non are not applicable on the applicant, these rules do not provide for dies-non. As regards his willful absence; he was prevented by respondents from discharging the duties. Applicant tried his best to join his duties after he was released, but the respondents did not permit him to join; their action is totally arbitrary and discriminatory. Applicant has prayed to quash the impugned orders Ann.A-1 & Ann.A-2; and make payment of pay and allowances for the period 08 Oct, 1992 to 30 Oct, 2000. Learned counsel for the applicant while arguing at length, has prayed to provide relief to him as per request.

4. The respondents have narrated a detailed reply mentioning thereby the sequence of events. The order of appellate authority was a speaking one; these two orders i.e. Ann.A-1 and Ann.A-2 are strictly in accordance with rules and passed after considering entire facts by the competent authorities. These orders were passed after due application of mind and giving sufficient opportunity to the applicant. Applicant was absent from duties for

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a long period of 07½ years; wages and period of absence of applicant from duty were decided by competent authority on 09 Aug, 2004 on general principle of no work, no pay. The respts have taken a lenient view as dies-non does not constitute a break in service. The applicant is given benefit to save from forfeiture of his past service which is a major relief to him. The unauthorized absence of applicant from 08 Oct, 1992 to 30 March, 2000 is established; he could not prove his innocence despite being given full opportunity. Applicant's willful absence is proved during conduct of enquiry in evidence; thus order of dies-non was issued on the basis of fully proved evidence. Applicant could not prove that the order was bad in itself. Learned counsel for respondents during arguments has reiterated all these facts and legal points.

5. As stated above, applicant was arrested in a revenue case, detained in civil imprisonment on 08 Oct to 17 Oct 1992; released on bail thereafter. He was taken in judicial custody from 26 July to 14 Aug, 1994 again. He did not tell or intimate about his arrest to his superior officers as regards his absence. From date of arrest till 30 March 2000, he remained absent from duties; on show cause notice of 18 March 1999, he submitted his explanation on 22 March, 1999. During this period, he filed OA no.09/1999 before CAT Jodhpur; vide order dated 13 March, 2000, the Tribunal directed the respondents to take applicant on duty. As regards back wages, matter was left over to respondents to decide the case after hearing the applicant. Applicant was served with a chargesheet on 05 May, 1999, he was awarded penalty of censure vide order dt 31 Oct, 2001. The respondents ordered this


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period to be treated as unauthorized absence from 08 Oct, 1992 to 30 March, 2000, break in service during his absence period. Applicant again filed OA 210/2002, which was decided on 08 Jan, 2004 in which some adverse remarks were ordered to be deleted; he was entitled to get all consequential benefits to that extent. As regards applicant's period of absence, Tribunal directed the respondent to give show cause notice, on hearing him passed the orders as per law. The respondents passed an order as on 09 Aug, 2000 (Ann.A-1) treating the absence period as of dies-non i.e. no work, no pay rule was followed. The appeal against this order was rejected by the appellate authority on 10 Feb, 2005 (Ann.A-2).

6. Applicant has come to this Tribunal third time against orders Ann.A-1 and Ann.A-2 stated above. He has contended that rules were not properly followed and that provisions of dies-non are not applicable to him. On perusal of records, this is clear that he was unauthorisedly absent from duties during the period in question for a long span of 7½ years. Applicant's version is that he tried to give joining, but respondents prevented him to join the service. But no such proof is given by him that he was prevented from joining the post at which he was working earlier. Applicant has termed the order as non-speaking one, but no such vacuum/default is found on respondents' part. The respondents have given proper opportunity to applicant, after getting his representation, decided the case on merits. On perusal of records, this is apparent that quite a liberal view has been taken in his case; he was absent wilfully from 08 Oct, 1992 to 30 March, 2000, this period of wilful unauthorized absence has been treated as that of

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no work, no pay. He was provided with an opportunity to save his services from forfeiture, there is no break in service; a big relief as per directions of CAT, Jodhpur was given. Appellate order itself is equally quite specific; there are no latches on respondents' part. Here also, a liberal view is adopted to save applicant's service; but period of absence is treated as dies-non and there is no break in his service. Applicant is afforded sufficient opportunity in defense of his case in support of his contentions. Applicant's version cannot be accepted that rule of dies-non is not applicable. There is a general principle of no work, no pay as in applicant's case; as he was absent for a long time. Thus, rule of no work no pay would apply in case of his continued willful absence from service. Much relief is given to him by way of issuing such an order of dies-non on the basis of evidence adduced during the course of enquiry and that his services are intact today with no break in service. During enquiry, his unauthorized absence was established beyond doubt, thus the absence period was treated as 'dies-non' which was liberally construed by the respondents. The respondents have tried to give maximum possible relief to the applicant, thereby saving his future service career.

7. In the light of deliberations made above, no interference is called for in the orders dated 09.8.2004 (Ann.A-1) & 10.02.2005 (Ann.A-2). Resultantly, the present OA is hereby dismissed. No order as to costs.

V.K. KAPOOR
(V.K. KAPOOR)
ADMINISTRATIVE MEMBER

Dr. K.B. SURESH
(Dr. K.B. SURESH)
JUDICIAL MEMBER

दिनांक 17/12/15 राजेश्वर
मेरी उम्र ४६ है १७/१२/१६
जो जाय-१६ दिसंबर २०१६ तक ।

अपने बचपन से
केन्द्रीय राजस्व विभाग द्वारा
जोधपुर नवांबरीठ, जोधपुर

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