

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 23rd day of May, 2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

ORIGINAL APPLICATION No.241/2007

Buddha Ram Gudesar S/o Shri Ramu Ram, aged about 50 years, Resident of III-152, A.G. Colony, Bajaj Nagar, Jaipur presently holding the post of Senior Auditor in the A.G. Office, Jaipur

... Applicant

(By Advocate : Shri Vinod Goyal)

Versus

1. Union of India through
Comptroller and Auditor General of India,
10, Bahadurshah Zafar Marg, New Delhi.
2. The Principal Accountant General (Civil Audit)
Rajasthan, A.G. Office, Near Statue Circle, Jaipur.
3. Senior Audit Officer,
I.C. -II. A.G. Office, Near Statue Circle,
Jaipur.

... Respondents

(By Advocate: Shri Hemant Mathur)

ORIGINAL APPLICATION No.241/2007

Ram Kishore Meena S/o Shri Shiv Narayan Meena, aged about 44 years, Resident of 169, Vivek Vihar, Jagatpura, Jaipur, presently holding the post of Senior Auditor in the A.G. Office, Jaipur.

... Applicant

(By Advocate : Shri Vinod Goyal)

Versus

1. Union of India through
Comptroller and Auditor General of India,

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10, Bahadurshah Zafar Marg, New Delhi.

2. The Principal Accountant General (Civil Audit)
Rajasthan, A.G. Office, Near Statue Circle, Jaipur.
3. Senior Audit Officer,
I.C. -II. A.G. Office, Near Statue Circle,
Jaipur.

... Respondents

(By Advocate: Shri R.G.Gupta)

ORDER (ORAL)

OA.241/2007 and OA.242/2007 filed by the applicants Shri Buddha Ram Gudesar and Shri Ram Kishore Meena respectively for similar point of fact and law, therefore, these OAs are being dealt with by a single order.

2. The relief sought by the applicants in both the OAs are as follows:-

" i) That by an appropriate order or direction the impugned orders dated 3.5.2007 (Annex.A/1) and 20.9.2004 (Annex.A/2) and the memo dated 00/8/2004 (Annex.A/3) may kindly be quashed and set aside.

ii) That by an appropriate order or direction the respondents be directed to treat the period from 19.8.2004 to 26.8.2004 spent on duty for all purposes and all consequential benefits be given to the applicant with interest and cost in favour of the applicant.

iii) Any other appropriate order or direction, which this Hon'ble Tribunal thinks just and proper may also be given.

3. The brief facts of the case are that the applicants while holding the post of Senior Auditor was entrusted the audit work alongwith the other members of audit team from 19.8.2004 to 26.8.2004 at Block Education Office, Sapotara. The applicant was doing his duty of Audit with utmost satisfaction and requirement of the Rules then a memo dated 00/8/04 (actual date has not been mentioned in the memo) in which it has been alleged on the basis of the complaint made by Shri Shanker Chouhan that the

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applicant has not performed his duty on 19.8.04 and presented himself late in the office on 23.8.2004 and misbehaved with the office-in-charge Shri Shankar Singh Chouhan. It was further stated that on 24.8.04 the office was closed at 12 noon and returned at about 1.30 PM. The charge No.4 was not pertained to the applicant. In view of the above contents made in the memo it was required from the applicant to submit his explanation. From bare reading of the aforesaid memo it is crystal clear that it is not sustainable in eye of law being based on the hypothetical grounds as much as no specific averments have been made in this memo that the applicant has remained absent unauthorizedly continuously from 19.8.04 to 26.8.04 but it has just stated that on 19.8.04 the applicant did not perform his duty and on 23.8.04 he came in the office late. No explanation for the intervening period of 20.8.04, 21.8.04 and 22.8.04 has been mentioned by the respondent stating whether the applicant was remained absent in this intervening period also. Photocopy of the memo dated 00/8/2004 has been marked as Annex.A-3.

4. That the applicant thereafter submitted his explanation of the aforesaid memo on 3.9..2004 stating that on 19.08.04 he performed his duty of Audit of Cash-book in the office for the month of March, 2004 and prepared a detailed report in this respect. It was further stated that on 23.8.04 he presented himself in the office in time and never misbehaved with any persons as such the allegations levelled against him in this respect are wholly misconceived. The contents made in the reply to the memo may be treated as part and parcel of this OA also.

5. That an another memo was issued on 27.8.2004 whereby it was stated that the compliant has been received from Shri Shankar Chouhan A.A.O that the applicant is not coming in the office in time and leaving the office prior to completion of the work and he is not

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cooperating with the Audit work. The photo-copy of the memo dated 27.8.2004 has been marked as Annex.A-5.

6. That the applicant thereafter submitted his explanation of the aforesaid memo on the same date i.e. 27.8.04 denying the allegations levelled against him.

It would not be out of place to mention herein that in none of the memo it has been alleged that the applicant has been remained absent willfully from 19.8.04 to 26.8.04 but has been issued only on the complaints made by Shri Shankar Chouhan A.A.O., which has no basis as much as the applicant with best of his ability performed his duty ~~of~~ Audit work, which can be verified from the documents annexed in the OA.

7. That the respondents thereafter without appreciating the contention made in the reply to the memo and without providing any opportunity of being heard personally passed the order on 20.9.04 thereby the period dated 19.8.2004 to 26.8.2004 has been declared as dies-non on the basis of the indiscipline as stated in the order that the applicant did not perform his Audit work on 19.8.04 but for remaining period from 20.8.04 to 26.8.04 nothing has been said. The photocopy of the order dated 20.9.2004 has been marked as Annexure A/2. From bare reading of this order it is crystal clear that the order of the dies-non has not been passed on the basis of the willful absence but it has been passed on the basis of the indiscipline.

8. The appeal of the applicants has also been rejected vide order dated 3.5.2007 (Annex.A/1)

9. The respondents have submitted their reply. In their reply they have stated that an Audit Party consisting of S/shri Shankar Chouhan, Asstt. Audit Officer, Budha Ram Gudesar, Sr. Auditor and Ram Kishore Meena, Sr. Auditor was entrusted with the audit of Block Primary

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Education Officer at SAPOTARA, Distt. Karauli from the period 19.08.2004 to 26.8.2004. Shri Shankar Chouhan was the in-charge of audit party. He was sanctioned casual leave on 19.8.2004 and joined audit party on 20.8.2004. During the course of audit, Shri Chouhan made several complaints on telephone to Headquarter about the non performance, irregularity in attendance of office, insubordination of S/Shri Budha Ram Gudesar Sr. Auditor and Ram Kishore Meen, Sr. Auditor of the audit party.

10. After conclusion of the audit the members came to headquarters and they were directed to intimate the facts and circumstances occurred in the audit party vide Annexure R/1 and R/2 on 27.08.2004. Shri Shankar Chouhan, Asstt. Audit Officer intimated all facts and circumstances in details vide Annexure R/3. He also enclosed a memo which was stated to have been issued to Shri Meena on 24.8.2004 but Shri Meena refused to accept this. Based on this, a memo was issued to the applicant vide Annexure A/3, which was replied by him vide Annexure A/4. The office obtained the comments of the superior officer vide Annexure R/4 and the superior officer furnished his comments vide Annexure R/5. He clearly pointed out the instances of various irregularities in attendance etc. He also attached photo-copies of relevant documents. The duty list indicated that applicant tried to change the date of noting of duty list. His work did not match with duty list.

11. That after careful consideration of the facts and circumstances of the case the Competent Authority decided to declare the said period as 'dies-non'. His successive appeals to the same Authority were dismissed. His time barred appeal to the Appellate Authority was considered and rejected. He did not prefer Revision Petition to the CAG of India, and thus has not exhausted

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departmental remedies. Thus the Original Application of the applicant is premature and liable to be dismissed in limine.

12. Heard the learned counsel for the both parties and perused the documents available on record. The learned counsel for the applicants reiterated the same facts as stated in the OA. He further pointed out the provisions under which the day can be marked as dies-non by his leave sanctioning authorities which are quoted below:-

"(3) No marking of dies non for latecoming.- According to orders above, the day can 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."

13. The learned counsel for the applicant argued that his case is not covered under these provisions and therefore the orders passed by the respondents of dies-non are illegal and be set-aside. He further argued that at best dies-non can be declared for 19.8.2004 when the applicant was absent from duty. That the applicant performed his assigned duties with full devotion therefore the order of dies non dated 20.9.2004 (Annexure A/2) be quashed.

14. Learned counsel for the respondents argued that the applicants did not perform their assigned duties with devotion as expected from a Government servant during the entire period of audit and had indulged in activities of leaving office without prior permission of the officer-in-charge of the party and misbehaved with the officer-in-charge. The competent authority had considered the case in its entirety and ordered to treat the period in question as dies-non which is perfectly legal and covered under

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relevant rules. He also relied upon the provisions as contained in Government of India's instruction No.6 below Rule 11 of CCS (CCA) Rules 1965. He referred to Annexure A/6 in which the applicants have noted the work distribution details on 20.8.2004. He indicated that there is an over-writing in these dates. He also referred R-5 which is photo-copy of the same document in which the applicants have noted the work distribution details on 18.8.2004. Thus, he indicated that it appears that the applicants have subsequently changed the dates. He further argued that the applicants left office without the prior permission of their superior who was officer-in-charge of the audit party. That the applicants did not perform the work as assigned to them with full devotion. The applicant remained absent on 19.8.2004. Thus, looking into the fact and circumstance of the case, the decision taken by the competent authority of dies-non is legal and within the provisions of the Rules.

15. It is not disputed that the applicants were absent on 19.8.2004 without proper leave. The officer-in-charge of the audit party also complained about the work and conduct of the applicants from the place of audit itself that the applicants refused to accept the memo issued to him by the officer-in-charge of the audit party. The applicant also left office without the permission of the officer-in-charge from time to time. The order of dies-non has been passed by the competent authority on the following grounds;-

- i) No work was performed on 19.8.2004
- ii) Work was not performed in accordance with the date list.
- iii) did not attend the office on time.
- iv) disobeyed the orders of officer-in-charge and misbehaved with him.
- v) cooperated with another senior auditor Shri Kishore Meena in threatening officer-in-charge.

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16. From the perusal of the conditions mentioned for marking of dies-non, it is clear that an official can be marked as dies-non even if he performs duty for a part of the day in case he leaves the office without proper permission or when he refuses to perform duties while remaining in office.

17. The perusal of the order dated 20.9.2004 (Annexure A/2) clearly shows that the order is covered under the provisions of dies-non as per rules and there is no infirmity in this order. Therefore, we do not find any reason to interfere with this order (Annexure A/2) and also the order of appeal (Annexure A-1). The OA is devoid of merit and therefore these two OAs are dismissed with no order as to the cost.

A copy of this order may also be placed in the file of OA.242/2007



(Anil Kumar)
Member (A)



(Justice K.S. Rathore)
Member (J)

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