

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00114/2016

Pronounced on : 09.02.2018

Reserved on : 23.01.2018

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)**

Rajesh Kumar Luthra, presently holding the post of Head Clerk/Divisional Accountant (CDC), Department of Hospital Engineering & Planning, PGIMER, Chandigarh.

.....Applicant

BY ADVOCATE: **Sh. H.S. Saini**

VERSUS

1. Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh through its Director.
2. Superintending Hospital Engineer, Deptt. Of Hospital Engineering and Planning, PGIMER, Chandigarh.

.....Respondents

BY ADVOCATE: **Sh. Amit Jhanji**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicant was appointed as LDC on 29.06.1983. The services of the applicant were not confirmed on completion of probation due to some alleged adverse remarks. He was also not considered for promotion to the post of UDC alongwith his juniors. CWP No. 19022 of 1995 filed by applicant in the High Court for expunging the adverse remarks was transferred to the Tribunal. On 27.05.2009, the Tribunal allowed the prayer of the applicant and directed the respondents to consider his claim for promotion to the post of UDC at par with his juniors. As the orders were not

implemented, applicant filed CP No. 116/2010, following which the orders were implemented. Applicant was given posting as Head Clerk/Divisional Accountant at par with his juniors with all consequential benefits including first ACP in scale of Rs. 5000-8000 w.e.f. 09.08.1999 on completion of 12 years of service. Based on this date of first ACP, applicant became entitled for grant of 2nd ACP w.e.f. 29.06.2007 in the scale of pay of Rs. 5500-9000 on completion of 24 years of service. As the applicant was not considered by the Screening Committee and his personal request in the matter was also not considered, applicant served a legal notice on 21.11.2012 for grant of 2nd ACP. The applicant also approached the Tribunal in OA No. 1410/CH/2012 for consideration of his claim for grant of 2nd ACP. As interim relief, respondents were directed to consider the claim of the applicant in its meeting of 12.12.2012. The applicant's case was considered and he was declared unfit on the ground that he did not have the requirement of 24 years of regular service.

2. Applicant filed OA No. 78/CH/2013 in this Tribunal challenging the order declaring him unfit for 2nd ACP. The OA was disposed of with a direction to the respondents to consider afresh the dies non period of 02 years 05 months and 03 days which was affecting his claim for 2nd ACP by passing a speaking order. Applicant was given a personal hearing on 19.09.2014. He also submitted his detailed representation to the respondents. The claim of the applicant for treating the period of dies non as eligible for 2nd ACP was rejected.

3. Applicant filed the third OA No. 060/00033/2015 wherein Annexure A-9 order of the respondents was set aside with liberty to the

respondents to pass a fresh order in compliance with the earlier 25.07.2014 (Annexure A-7) order passed by the Tribunal. As the order was not complied within the time frame prescribed, CP. No. 060/00165/2015 was filed. The first respondent, as Disciplinary Authority, declined to treat the period of 02 years 05 months and 03 days of suspension declared as dies non as eligible for 2nd ACP.

4. Applicant brings to notice that the High Court of Guwahati in judgement reported as 2013 LIC 4495 had held that dies non would not be applicable in respect of a suspension period because the absence from duty on account of suspension is not a willful or unauthorized one but a forced one at the instance of the employer. The prayer of the applicant is for withdrawal of the entire period which includes period of suspension of dies non same as duty and grant him 2nd ACP w.e.f. 29.06.2007.

5. The respondents submit that the applicant was placed under suspension in connection with embezzlement of Rs. 3987.62 and was charge sheeted vide order dated 15.03.1995. The inquiry report of 25.01.1996 proved and established the embezzlement against the applicant. The Disciplinary Authority imposed a major penalty of reduction in pay by two stages in the time scale for a period of two years.

6. The applicant's suspension period from 30.07.1994 to 23.08.1996 was revoked on 22.05.1996. The order of revocation was sent to his known address and since he was not available at the known address, was returned back. Applicant reported for duty on 24.08.1996. The period of suspension from 30.07.1994 to 23.08.1996 and the period before actual return to duty on 23.08.1996 was treated as dies non by the Disciplinary

Authority. While passing this order, the respondents relied on GOI decision No. 1 below Rule 25 of CCS Leave Rules, 1972 which lays down the period of absence not covered by grant of leave shall be treated as dies non. Hence, respondent holds the view that on the basis of the applicable rules, the treating of the period of absence as dies non was proper. Hence, the consideration by the second ACP Committee as not having completed the required qualifying service is held to be in order. The said speaking order No. 6608 of 29.09.2014 had not been challenged by the applicant.

7. We note that period of suspension of the applicant on account of the disciplinary proceedings was from 30.07.1994 to 22.05.1996. Prior to this period of suspension which is related to a disciplinary proceeding, applicant has been treated as dies-non for various periods of 32 days from 05.08.1991 to 05.09.1991, 86 days from 22.10.1990 to 15.01.1991, 6 days from 12.10.1990 to 17.10.1990, 4 days from 08.10.1990 to 11.10.1990 and 93 days from 23.05.1996 to 24.08.1996. Hence of the total period of 884 days of dies non, only 663 days related to the suspension period due to disciplinary proceedings. The remaining 221 days was on account of other reasons not adduced by the applicant. Even if the applicant's argument that on imposition of minor penalty, the suspension period should not be treated as dies non, there would still be 221 days of dies non not related to disciplinary proceedings. Hence, this is not a case where the disqualifying period of dies non of the applicant amounting to 884 days related to disciplinary case only. The dies non period also relates to a period of two years prior to the suspension i.e. 1990 to 1991 and post revocation of suspension from May 1996 to August 1996. Hence, applicant's claim to

write off all periods of dies non is a farfetched request. Applicant has also not submitted any arguments as to why the dies non excluding the period of suspension should be condoned.

8. The applicant also appears to be in the habit of taking long period of leave of 86 days and 32 days prior to his suspension and 93 days post revocation of suspension. Hence, this is not a case where the applicant has a clean record of leave, but appears to be a case of habitual absence/non attendance of duty which has been treated as dies non as per applicable rules. The Disciplinary Authority, post receipt of the inquiry report had imposed a minor penalty of reduction in pay by two stages in the time scale of pay for a period of two years. The period of suspension plus the period of unauthorized absence following revocation of suspension was treated by the respondents as dies non. We also note that the applicant has a lackadaisical attitude to his work and suspension as he was not keeping track for revocation of suspension and continued to be on leave post revocation. The applicant had been visited with the minor penalty of stoppage of increment for a period of two years.

9. This is not a case where the applicant is denied the 2nd ACP on completing 24 years of qualifying service. Applicant has been denied ACP on account of not having the qualifying service. Hence, the deduction of 884 days of dies non is not likely to result in permanent denial of ACP to the applicant. The applicant will become eligible for ACP when the shortfall of 884 days of dies non is made good with the required period of regular service to constitute 24 years.

10. The applicant has been held guilty of defalcation of Government funds for which he has been visited by a minor penalty. The respondents base their argument on the ground that decision No. 1 Below Rule 25 of CCS (Leave) Rules provides that a period of absence not covered by grant of leave shall be treated as dies non for all purposes, to be read as not qualifying for the purpose of ACP also. The closure of the ACP Scheme would not result in lack of financial upgradation to the applicant, as the ACP has been replaced by MACP. Hence, if the applicant does not have qualifying service for ACP, he would be entitled for the second MACP Scheme which replaces ACP. If the applicant was so conscious of his right to be granted ACP, he should have been cautious enough not to have proceeded on long periods of unauthorized leave. Having proceeded on such leave, applicant expects leniency as treatment of dies non to be expunged. The Government of India's order on the ACP Scheme clearly lays down that the period of eligibility for grant of benefit under the Scheme includes regular service. The period of dies non cannot be counted as regular service. Hence, this period has to be excluded while deciding the period of eligibility by the applicant.

11. Applicant makes no argument that he was on duty during the period which has been treated as dies non by the respondents other than the period of suspension. We also note that the period of dies non is not one lump sum period, but varies over various periods from 1990 to 1996 as brought out in pre-para.

12. The High Court of Guwahati in WP No. 3698 of 2009 titled Vijay Laxmi Vs. UOI had defined dies non in service law. Generally, dies

non denotes willful and unauthorized absence from work by delinquent employees. Since on such dates of unauthorized absence, no productive work has been generated by the employees, it is treated as dies non based on the principle of no work no pay. In the case of the applicant, during the period of suspension, it cannot be said that he was on unauthorized absence, a suspension had been imposed on applicant by the respondents. Further, during the period of suspension, the applicant would have been paid a suspension allowance. Thus, the period of suspension was imposed by the respondents and based on the rules, the applicant had already been paid a suspension allowance. The period of suspension, therefore, cannot be treated as willful absence or unauthorized absence or no pay period as applicant was being given suspension allowance. Hence, the period of suspension from 30.07.1994 to 22.05.1996 is not entitled to be treated as dies non. Regarding the other periods of absence, since it is not related to suspension, the Tribunal would not like to interfere in revoking the dies non periods excluding suspension.

13. Respondents after inviting a representation from applicant will retain the period of suspension as suspension on subsistence allowance or adjust it against any other kind of available leave. The representation be submitted by the applicant within one month and be disposed off within 60 days by the respondents. The period of suspension will not be treated as dies non by the respondents. The period other than suspension treated as dies non will not be covered by the above order as it covers periods of absence for which applicant has not filed details of reason for which he remained absent from duty which concluded in imposition of dies non. The OA is

disposed of by directing applicant to submit representation within 30 days regarding the treatment of his period of suspension from 30.07.1994 to 22.05.1996 as per applicable rules and the respondents to decide the period of suspension within an order, other than dies non, within a period of 60 days. The period of absence other than above period of suspension and treated as dies non is not interfered with. With these directions, OA is disposed of. Pending MA, if any, shall also be disposed of accordingly. No costs.

(P. GOPINATH)
MEMBER (A)



(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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