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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA



No. O.A.180 of 2013

Present : Hon'ble Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Gaya Prasad, S/o Late Shri Ram deen
Assistant Director, H.N.-145-B, Pkt-A-3
Mayur Bihar Phase-III, Delhi-110096

.....Applicant

- V E R S U S -

1. Union of India represented by Secretary,
M/o Communications & IT,
(Department of telecommunications),
Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001;
2. Sh Sandeep Kumar, Director(C&T),
16/64 A, Old Chandrawal Nagar,
Delhi - 110007;
3. Sh. G.C. Jha, DDG(C&T),
D-II/3, Shahjahan Road,
New Delhi - 110001;
4. Sh. N.K. Shrivastava, Sr. DDG(TEC),
D-1/88, Rabinder Nagar,
Near Khan Market,
New Delhi - 110003

.....Respondents

For the applicant : In person
For the respondents : Ms. R. Basu, counsel
Mr. S.K. Ghosh, counsel

Heard on : 07.12.2016

Order on : 20.12.2016

ORDER

Per Ms. Jaya Das Gupta, A.M.

The applicant, Sri Gaya Prasad approached C.A.T. under Section 19
of Administrative Tribunals Act, 1985 seeking the following reliefs:-

"I. Direct the respondent No.1 to pay the applicant entire amount of salary with appropriate interest which was deducted due to Dies-non periods in the service of the applicant mala-fidly by respondent No.2,3&4;

II. Punish the respondent No.2,3,4 as per provision in the law for causing financial injury, by hatching criminal conspiracy with an intention to attack at livelihood of the applicant by shelving rules, Law and orders of Government. Compensate the applicant for financial harassment and litigation as appropriate as the Hon'ble Court deem fit and proper."

2. It is the case of the applicant that he was working as Assistant Director in Telecom Engineering Centre, Janpath(a supporting wing of Department of Telecommunications). The Assistant Director is a gazetted post and acts as an officer in-charge of any sub-division/unit with an entitlement of office accommodation, requisite resources and staff etc. to carry out a defined domain of the work, duties and responsibilities as required by the post. It is his contention that the respondent authorities did not provide him the office accommodation as per his status; requisite resources/previous records/references, staff etc. and there was no office order mentioning the domain of his work, duties and responsibilities in the capacity of Assistant Director(C&T). On 17.08.2009 he was asked to put up the training proposal received from different officers of TEC/RTEC. As per his submission, he complied with the instructions instantaneously by requesting the Director(C&T) to guide him as to how he would prepare such a programme without required resources/references and defined work and defined duties and responsibilities. Allegedly after this incident, a series of communication was issued to him culminating in imposition of "dies non" for the period ranging from 17.08.2009 to 22.10.2009. Therefore, he has approached this C.A.T. for redressal of his grievances.

3. Per contra the respondents have refuted the submissions of the applicant. The respondents have taken the view that period from

17.08.2009 to 22.10.2009 had been treated as 'dies non' as the applicant did not follow the instructions given to him by his superior officers regarding disposal of official work. He, being the only Assistant Director in the newly carved C&T Division was supposed to handle all the works assigned to the division, acting on his own. According to the respondent authorities, the applicant did not work during those periods, so, imposing the principle of 'no work no pay' his salary for those period was deducted from his pay bill. Hence, the respondent authorities have prayed for dismissal of the O.A. as they have acted only as per rules and the O.A. does not have any merit.

4. Heard the applicant in person and Id. counsel for the respondent authorities and consulted the records.

5. We are of the view that both sides are acting in hyper technical manner. The relevant portions of the communications sent by the respondents to the applicants on various dates are set out below:-

(A)

TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated : 17/08/2009

Order

Subject : Refusal to perform official work by Mr. Gaya Parshad AD (CT)

1. Today on 17.08.2009 at about 12 noon, an official meeting was held in the chamber of DDG (CT). It was attended by DDG (CT), Dir(CT), and AD(CT) Mr. Gaya Prasad.

2. Mr. Gaya Parshad AD was directed to put up the training proposals received from different officers of TEC urgently. However, Mr. Gaya Parshad AD took the plea that he has not yet been provided office accommodation, resources and staff and that he has no work allotment, duties and responsibilities.

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3. It was directed by DDG(CT) that till the alleged resources/staff etc. are arranged for him, he should sit in the office of PS to DDG (CT) and use resources/staff etc. present there and of Director (CT). Still, Mr. Gaya Parshad AD remained adamant and demanded separate resources/staff etc. for him and he refused to obey the instructions of his Senior Officers i.e. DDG(CT) and Director(CT) and did not perform the task assigned to him.

4. There is no PS sitting in the room of DDG(CT) as no PS as yet has been posted with DDG(CT). So, as a interim measure, it was directed by DDG(CT) to MR. Gaya Parshad AD to sit in the said room and use the resources/staff etc. there which are sufficient for him to carry out the tasks assigned to him.

5. Regarding allotment of duties/responsibilities to Mr. Gaya Parshad AD there is only one DDG, one Director and only one Assistant Director in CT Division. Whatever responsibilities are assigned to DDG(CT), Director has to assist him so that work is done efficiently. Similarly is the case with Assistant Director who is required to assist the Director. Thus Assistant Director has to act as a supporting officer. He has already been orally told the nature of the work done by CT Division. Moreover, Mr. Gaya Parshad AD cannot refuse an official work which is specifically assigned in writing to him by DDG (CT).

6. The matter was also discussed with DDG (CT).

7. The above conduct of Mr. Gaya Parshad AD shows that he is deliberately and intentionally not obeying the instructions of his Senior Officers. **Accordingly, he is hereby directed to show cause why not his refusal to carry out the assigned task dated 17.8.2009 be treated as Dies Non with break in service.** Reply, if any, be submitted to the undersigned within three days of the receipt of this order.

8. He is hereby further directed to carry out the tasks assigned to him without fail.

9. In the meanwhile, it is ordered that no pay and allowances shall be issued to Mr. Gaya Parshad AD w.e.f. 17.08.2009 till further orders of the undersigned.

Sd/-
Director(CT)

To
Mr. Gaya Parshad AD"

(B)

"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated : 18/08/2009

Order

1. Mr. Gaya Parshad AD was directed vide order TBCT/F/STAFF/1-15/TEC/2009 dated 17/08/2009 to carry out the tasks assigned by DDG(CT). But not yet reported to the undersigned about the status of the work done by him today. He is also not found sitting in the Chamber of PS to DDG(CT).
2. The matter was discussed with DDG(CT).
3. Accordingly, Mr. Gaya Parshad is hereby again directed to carry out the tasks assigned to him and report compliance to the undersigned and he is further directed to regularly use his official email address

Sd/-
Director(CT)

To

Mr. Gaya Parshad AD"

(C)

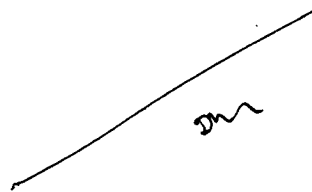
"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated : 20/08/2009

Order

1. Mr. Gaya Parshad AD has not yet reported to the undersigned about the status of the tasks assigned to him. He is never found sitting in the room assigned to him which was ordered as a interim measure by DDG(CT). Even on today by 10 AM, his whereabouts are not known to the undersigned. **The letters/orders are delivered upon him by searching him in the TEC.** He has virtually stopped reporting to me.
2. On 19/08/2009, he was unauthorized absent to his duties without prior information and permission of the undersigned. He is hereby directed to show cause why he was unauthorized absent to his duties on 19/08/2009 without prior permission of the undersigned.
3. He is further directed to start using his official email address immediately and report compliance of the same to the undersigned by today itself. Mr. Rehman, Director(IC), may be contacted by you, if any help is required in this matter.



4. He is further directed to confirm his contact particulars like Residential postal address, Residential telephone number and his mobile telephone number, if any, to the undersigned by today itself.

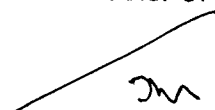
5. The files relating to the works of the CT Division are also being sent herewith for taking necessary action by you.

Sd/-
Director(CT)

To
Mr. Gaya Parshad AD"

(D) "No.TBCT/F/STAFF/1-15/TEC/2009
Dated : 21/08/2009

1. Mr. Gaya Parshad AD was directed vide order dated TBCT/F/STAFF/1-15/TEC/2009 dated 17.08.2009, 18.08.2009 and 20.08.2009 to put up the training proposals received from different officers of TEC urgently. But he has not yet complied the said written instructions and has instead continuously refused since 17.08.2009 to carry out the said task.
2. There is no PS sitting in the room of DDG(CT) as no PS as yet has been posted with DDG(CT). So, as a interim measure, it was directed by DDG(CT) to Mr. Gaya Prasad AD to sit in the said room and use the resources which also includes computer etc./staff etc. there which are sufficient for him to carry out the tasks assigned to him. **However, even today he was not sitting in the said room and even this written instruction was not followed by since 17/08/2009. The letters/orders are delivered upon him by searching him in the TEC.**
3. He was further directed to start using his official email address immediately and report compliance of the same to the undersigned by 20/08/2009. Even this written instruction was not followed by him.
4. When he was delivered letter No. TBCT/F/STAFF/1-15/TEC/2009 dated 20/08/2009, he appears to have made his reply by writing in a very discourteous and insulting manner upon the said letter itself. Some vague, general and insulting allegations are also made against the office of Director(CT) which are denied in toto. If any reply is to be submitted to the Senior Officer, it should be separately addressed in the polite and courteous manner to the Senior Officers.
5. **He was also unauthorized absent to his duties on 19/08/2009. It is alleged by him that SMS was sent to the mobile phone of the undersigned. It is pertinent to state here that leave can not be taken as a matter of right.**



Such SMS can be sent by any person using any phone/email. When my mobile phone number was available with him. Mr. Gaya Prasad AD should have at least talked me on my mobile phone and could have sought oral permission from me for taking leave/RH on 19/08/2009 and more so when he is continuously refusing to carry out the written instructions of the undersigned since 17/08/2009. Keeping in view the above facts, at this stage, I am not inclined to allow his application dated 20/08/2009 for grant of RH on 19/08/2009.

6. The matter was also discussed with DDG(CT).

7. The act of Mr. Gaya Prasad AD amounts to insulting and insubordination to such a degree as to be incompatible with the relation of Superior officer and sub-ordinate staff/ officer. He also appears to adopt dilatory tactics so that work of CT Division is hampered.

8. Mr. Gaya Prasad Ad is hereby warned not to repeat the aforesaid acts in future. He is further directed to submit a status report of the work done by him from 17/08/2009 till date. He is further directed to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by today itself.

Sd/- 21/08/09
Director(CT)

To

Mr. Gaya Prasad AD"

(E)

"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009
Dated : 24/08/2009

Order

1. Mr. Gaya Parshad AD was directed vide order dated TBCT/F/STAFF/1-15/TEC/2009 dated 17.08.2009, 18.08.2009, 20.08.2009 and 21.08.2009 to put up the training proposals received from different officers of TEC urgently. But he has not yet complied the said written instructions and has instead continuously refused since 17.08.2009 to carry out the said task.

2. He was further directed to start using his official email address immediately and report compliance of the same to the undersigned. Even this written instruction was not followed by him.

3. When he was delivered letter No. TBCT/F/STAFF/1-15/TEC/2009 dated 20/08/2009, he appears to have made his reply by writing in a very

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discourteous and insulting manner upon the said letter itself. If any reply is to be submitted to the Senior Officer, it should be separately addressed in the polite and courteous manner to the Senior Officers.

4. He was also unauthorized absent to his duties on 19/08/2009. It is alleged by him that SMS was sent to the mobile phone of the undersigned.

5. Leave can not be taken as a matter of right. Such SMS can be sent by any person using any phone/email. When my mobile phone number was available with him. Mr. Gaya Prasad AD should have at least talked me on my mobile phone and could have sought oral permission from me for taking leave/RH on 19/08/2009 and more so when he is continuously refusing to carry out the written instructions of the undersigned since 17/08/2009. Keeping in view the above facts, at this stage, I am not inclined to allow his application dated 20/08/2009 for grant of RH on 19/08/2009.

6. The substance of the information contained in the reply of Mr. Gaya Prasad AD is given below.

7. First stand Mr. Gaya Prasad AD is that unless he is provided office accommodation, resources and staff by the Administration Wing, he will not commence any official works. On this ground alone, he is continuously not obeying the written instructions No. TBCT/F/STAFF/1-15/TEC/2009 Dated 17/08/2009, 18/08/2009, 20/08/2009 and 21/08/2009 of the undersigned and of DDG(CT).

8. TEC is a technical body. We are required to do mostly technical works. Staff requirement for doing technical works is altogether different while doing Administrative works. Even, the undersigned who is holding the post of Director and is four posts Senior to him (i.e. JTS, STS, JAG AND NFSG), is only provided one Peon. Still, it was directed by DDG(CT) on 17/08/2009, as a interim measure, to Mr. Gaya Prasad AD to use the resources/staff available with DDG(CT)/ Director(CT) and carry out the work assigned to him which instruction was never followed by him. Further no PS was sitting in the room of PS to DDG(CT) as no PS as yet has been posted with DDG(CT). So, as a interim measure, it was directed by DDG(CT) to Mr. Gaya Prasad AD to sit in the said room and use the resources which also includes computer etc./staff there which are sufficient for him to carry out the tasks assigned to him. However, he was never found sitting in the said room till date despite written instruction in this regard since 17/08/2009. The letters/orders are delivered upon him by searching him in the TEC.

9. Second stand of Mr. Gaya Prasad AD is that the said room of PS to DDG(CT) is already occupied by one UDC and two Peon.

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10. UDC and two peon are supporting staff of the office of DDG(CT) with whose help Mr. Gaya Prasad AD was required to carry out his task. The supporting staff always sit along with his Private Secretary/Assistant Director/Section Officers so that efficiency in the work is maintained and the work is not unnecessary delayed.

11. Third stand of Mr. Gaya Prasad AD is that the domain of work, duties and responsibilities for the post of Assistant Director be specified.

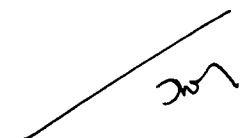
12. Regarding allotment of duties/ responsibilities to Mr. Gaya Prasad AD, there is only one DDG, one Director and only one Assistant Director in CT Division. Whatever responsibilities are assigned to DDG(CT), Director has to assist him so that work is done efficiency. Similar is the case with the Assistant Director who is required to assist the Director. Thus Assistant Director has to act as a supporting officer. He has already been orally told the nature of the work one by CT Division. Moreover, Mr. Gaya Prasad AD cannot refuse an official work which is specifically assigned in writing to him by DDG(CT) on the pretext of specifying domain of work, duties and responsibilities for the post of Assistant Director.

13. Fourth stand of Mr. Gaya Prasad AD is that it may be clarified whether Letter No. TBCT/F/STAFF/1-15/TEC/2009 dated 18/08/2009 is a show cause notice or order.

14. Mr. Gaya Prasad AD was required to follow the written instruction contained in Letter No. TBCT/F/STAFF/1-15/TEC/2009 dated 18/08/2009. It is irrelevant to raise to question whether the said letter is order or show cause notice.

15. All the stands taken by Mr. Gaya Prasad AD irrelevant, vexatious, frivolous and raised on flimsy grounds. Mr. Gaya Prasad AD has deliberately and intentionally, continuously refused to obey the written instruction of the undersigned and of DDG(CT) since 17/08/2009 and has not carried out any work. The acts of Mr. Gaya Prasad AD also amounts to insulting and insubordination to such a degree as to be incompatible with the relation of Superior officer and sub-ordinate staff/officer. He also appears to adopt dilatory tactics so that work of CT division is hampered. He is not maintaining absolute devotion to his duties. He is indulging in acts unbecoming of Government Servant. Even my Senior Officers have taken serious view of the misconducts committed by Mr. Gaya Prasad AD.

16. The principle of "No work-No pay" may be invoked in the present matter. It is the duty of the superior officers to ensure that their subordinates are not issued any Government pay if they are deliberately and intentionally not doing the Government work or they are unauthorized absent to their duties.



17. Accordingly, it is hereby ordered that the period of 17/08/2009 to 24/08/2009 shall be treated as Dies Non to the service of Mr. Gaya Prasad AD.

18. In the meanwhile, it is further ordered that no pay and allowances shall be issued to Mr. Gaya Prasad AD with effect from 25.08.2009 till further orders of the undersigned. However, only this particular order of Para No. 18 will be subject to such modifications/additions/deletion etc, if any, as deem fit and proper by DDG(Admn)/DDG(CT).

19. This order is issued without prejudice to the institution of the disciplinary proceedings contemplated against Mr. Gaya Prasad AD for committing the aforesaid misconducts.

20. Mr. Gaya Prasad AD is hereby directed not to repeat the aforesaid misconducts in future. He is further directed to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 25/08/2009.

Sd/- 24/08/09
Director(CT)

To

Mr. Gaya Prasad AD"

(F)

"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated : 31/08/2009

Order

1. Mr. Gaya Parshad AD was directed vide order dated TBCT/F/STAFF/1-15/TEC/2009 dated 24.08.2009 to put up the training proposals received from different officers of TEC urgently. He was further directed to start using his official email address immediately and report compliance of the same to the undersigned. He was further directed in accordance with order dated 17/08/2009 of DDG(CT) to sit in the room of PS to DDG(CT) and use the resources there which includes computer etc/staff etc. which are sufficient for him to carry out the tasks assigned to him. He was further directed to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 25/08/2009.

2. However, Mr. Gaya Prasad AD has not yet submitted his compliance report to the undersigned. Till today, he was never found sitting in the room of PS to DDG(CT) and has not performed any of the task assigned to

him. He is deliberately and intentionally dis-obeying the written instructions of his superior officers.

3. Accordingly, it is hereby ordered that the period of 25/08/2009 to 31/08/2009 shall be treated as Dies Non to the service of Mr. Gaya Prasad AD.

4. Mr. Gaya Prasad AD is hereby directed not to repeat the aforesaid misconducts in future. He is further directed to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 02/09/2009.

Sd/-
Director(CT)

To

Mr. Gaya Parshad Assistant Director (C&T)"

(G)

"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated : 09/09/2009

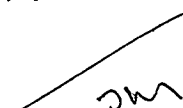
Order

1. Mr. Gaya Parshad AD was directed vide order dated TBCT/F/STAFF/1-15/TEC/2009 dated 31.08.2009 to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 02/09/2009. He was further directed to take necessary action in the three files sent to him. However, he refused to receive the said files on 01/09/2009 and has not taken any action in the matter.

2. Till today, Mr. Gaya Prasad AD has not yet submitted his compliance report to the undersigned. Further he was never found sitting in the room of PS to DDG(CT) and has not performed any of the task assigned to him and is continuously refusing to carry out the tasks assigned to him since 17/08/2009. He is deliberately and intentionally disobeying the written instructions of his superior officers.

3. For the reasons recorded in my earlier Orders No.TBCT/F/STAFF/1-15/TEC/2009 dated 24/08/2009 and 31/08/2009, it is hereby further ordered that the period of 01/09/2009 to 09/09/2009 shall be treated as Dies Non to the service of Mr. Gaya Prasad AD.

4. Mr. Gaya Prasad AD is hereby directed not to repeat the aforesaid misconducts in future. He is further directed to comply all the written



instructions of the undersigned without fail and report compliance of the same to the undersigned by 14/09/2009.

Sd/-
Director(CT)

To
Mr. Gaya Prasad Assistant Director (C&T)"

(H)

"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated : 15/09/2009

Order

1. Mr. Gaya Parshad AD was directed vide order dated TBCT/F/STAFF/1-15/TEC/2009 dated 09.09.2009 to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 14/09/2009.
2. Till today, Mr. Gaya Prasad AD has not yet submitted his compliance report to the undersigned. **Further he was never found sitting in the room of PS to DDG(CT) and has not performed any of the tasks assigned to him and is continuously refusing to carry out the tasks assigned to him since 17/08/2009. He is deliberately and intentionally disobeying the written instructions of his superior officers.**
3. **The service periods from 17/08/2009 to 24/08/2009, 25/08/2009, 25/08/2009 to 31/08/2009 and 01/09/2009 to 09/09/2009 have already been ordered to be treated as Dies Non to the Service of Mr. Gaya Prasad AD vide Orders No. TBCT/F/STAFF/1-15/TEC/2009 dated 24.08.2009, 31.08.2009 and 09.09.2009 respectively. All the said letters have already been sent to Admin Wing and Finance Wing of TEC for making necessary entries to that effect in the service book of Mr. Gaya Prasad AD and making necessary deduction in the salary of Mr. Gaya Prasad AD for the said period of Dies Non.**
4. For the reasons recorded in my earlier Orders No. TBCT/F/STAFF/1-15/TEC/2009 dated 24/08/2009, 31/08/2009 and 09/09/2009, **it is hereby further ordered that the period of 10/09/2009 to 15/09/2009 shall be treated as Dies Non to the service of Mr. Gaya Prasad AD.**
5. Mr. Gaya Prasad AD is hereby directed not to repeat the aforesaid misconducts in future. He is further directed to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 22/09/2009.

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6. Admin Wing and Finance Wing of TEC are again requested to execute all the orders issued by the undersigned in the matter at the earliest, if not done so far. Copy of this order is also being sent through email.

Sd/-
Director(CT)

To

Mr. Gaya Prasad Assistant Director(C&T)"

(I)

"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated : 24/09/2009

Order

1. Mr. Gaya Parshad AD was directed vide order dated TBCT/F/STAFF/1-15/TEC/2009 dated 15.09.2009 to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 22/09/2009.

2. Till today, Mr. Gaya Prasad AD has not yet submitted his compliance report to the undersigned. Further he was never found sitting in the room of PS to DDG(CT) and has not performed any of the tasks assigned to him and is continuously refusing to carry out the tasks assigned to him since 17/08/2009. He is deliberately and intentionally disobeying the written instructions of his superior officers. When the files are sent to him, first his search is made in the TEC Building and when he is found in the TEC Building, he is refusing to receive the files. Even today, it was reported that files could not be delivered to him at 2:30 PM and again at 3 PM as he was not be found anywhere in the TEC Building.

3. The service periods from 17/08/2009 to 24/08/2009, 25/08/2009 to 31/08/2009, 01/09/2009 to 09/09/2009 and 10.09.2009 to 15/09/2009 have already been ordered to be treated as Dies Non to the Service of Mr. Gaya Prasad AD vide Orders No. TBCT/F/STAFF/1-15/TEC/2009 dated 24.08.2009, 31.08.2009, 09.09.2009 and 15/09/2009 respectively. All the said letters have already been sent to Admin Wing and Finance Wing of TEC for making necessary entries to that effect in the service book of Mr. Gaya Prasad AD and making necessary deduction in the salary of Mr. Gaya Prasad AD for the said period of Dies Non.

4. For the reasons recorded in my earlier Orders No. TBCT/F/STAFF/1-15/TEC/2009 dated 24/08/2009, 31/08/2009, 09/09/2009 and 15/09/2009, it is hereby further ordered that the period of 16/09/2009 to 24/09/2009 shall be treated as Dies Non to the service of Mr. Gaya Prasad AD.

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5. Mr. Gaya Prasad AD is hereby directed not to repeat the aforesaid misconducts in future. He is further directed to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 25/09/2009. He is further directed to submit, by today itself, a status report of all the official work done by him from 17/08/2009 till today.

6. Copy of this order is also being sent through email.

Sd/-
Director(CT)

To
Mr. Gaya Prasad Assistant Director(C&T)"

(J)

"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated: 05.10.2009

Order

1. Mr. Gaya Prasad AD was directed vide order dated TBCT/F/STAFF/1-15/TEC/2009 dated 24.09.2009 to comply all the written instructions of the undersigned without fail and report compliance of the same to the undersigned by 25.09.2009. He was further directed to submit, by 24.09.2009 itself, a status report of all the official work done by him from 17.08.2009 till 24.09.2009.
2. Till today, Mr. Gaya Prasad AD has not yet submitted his compliance report to the undersigned. Further he was never found sitting in the room of PS to DDG (CT) and has never met me since 18.08.2009. He has not performed any of the task assigned to him and is continuously refusing to carry out the tasks assigned to him since 17.08.2009. He is deliberately and intentionally dis-obeying the written instructions of his superior officers.
3. The service periods from 17.08.2009 to 24.08.2009, 25.08.2009 to 31.08.2009, 01.09.2009 to 09.09.2009, 10.09.2009 to 15.09.2009 and 16.09.2009 to 24.09.2009 have already been directed to be treated as Dies Non to the Service of Mr. Gaya Prasad AD vide Orders No. TBCT/F/STAFF/1-15/TEC/2009 dated 24.09.2009, 31.08.2009, 09.09.2009, 15.09.2009 and 24.09.2009 respectively. All the said letters have already been sent to Admin Wing and Finance Wing of TEC for making necessary entries to that effect in the service book of Mr. Gaya Prasad AD and making necessary deduction in the salary of Mr. Gaya Prasad AD for the said period of Dies Non. However, it appears that

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4. In view of the above and for the reasons recorded in my earlier Orders No.TBCT/F/STAFF/1-15/TEC/2009 dated 24/08/2009. 31/08/2009, 09/09/2009, 15/09/2009 and 24/09/2009, it is hereby further ordered that the period of 25/09/2009 to 05/10/2009 shall be treated as Dies Non to the service of Mr. Gaya Prasad AD.
5. Mr. Gaya Prasad AD is hereby directed not to repeat the aforesaid misconducts in future. He is further directed to comply all the earlier written instructions of the undersigned without fail.
6. The acts of Mr. Gaya Prasad AD also amounts to insulting and insubordination to such a degree as to be incompatible with the relation of Superior Officer and sub-ordinate staff/officer. He also appears to adopt dilatory tactics so that work of CT Division is hampered. He is not maintaining absolute devotion to his duties. He is indulging in acts unbecoming of Government Servant.
7. Since copies of all such Dies Non Orders, which were issued by me and which contain the requisite information, were immediately sent to Admin Wing, Admin Wing of TEC is requested to send the required information to the competent Disciplinary Authority for also taking suitable action under Central Civil Services(Classification, Control and Appeal) Rules, 1965.
8. Copy of this order is also being sent through email.

Director(CT)

To
Sh. Gaya Prasad, Asstt. Director(C&T)."

"TEC
(CT Division)

No. TBCT/F/STAFF/1-15/TEC/2009

Dated: 22.10.2009

- [illegible]

4. In view of the above and for the reasons recorded in my earlier Orders No. TBCT/F/STAFF/1-15/TEC/2009 dated 24.08.2009, 3.08.2009, 09.09.2009, 15.09.2009, 24.09.2009 and 05.10.2009, it is hereby further ordered that the period of 06.10.2009 to 22.10.2009 shall be treated as Dies Non to the service of Mr. Gaya Prasad AD.

5. XX
 6. XX
 7. XX
 8. XX

Sd/-

Director (CT)

To
 Mr. Gaya Prasad AD"

6. The applicant has also sent communications in reply to the department, relevant portions of which are reproduced below:-

- (a) "To
 The Director (CT)
 TEC, K.L. Bhawan,
 Janpath, New Delhi- 01.

Dated : 20-08-2009

Ref: TBCT/F/STAFF/1-15/TEC/2009, Dated 17.08.2009.

Sir,

In reference to the letter as referred above, you are requested to clarify whether this letter is a show cause notice or order so that suitable reply may be submitted.

Sd/-

(Gaya Prasad)
 Assistant Director (TEC)

Copy to

1. DDG (Adm), TEC Sd/- 20.8.09
2. DDG (CT), TEC Sd/- 20.8.09
3. Director (Admn), TEC"

(b)

"TEC
 (CT Division)

Ref: No. TBCT/F/STAFF/1-15/TEC/2009

Dated : 20.08.2009

1. One task assigned to me has already been disposed off on 17.8.2009.
2. The room is already pre-occupied by one UDC, Sh. Deepak Chadda and two class IV employees Shri Karan, Smt. Rekha working under DDG (C&T).

I have already told you that I sit in the office of my counter part (AD) in Room No. 483 (B) & 459 due to non availability of space and regularly reports you & receive your letter in time.

No computer/internet was provided till date.

Sd/-

My Mobile No. 986886344 (Personal) is already available with you.

Reply to Para-2

I have already submitted a leave (RH) application in your office on 20.08.09 with prior intimation on 19.8.08 through SMS on your mobile & a call to the office of DDG(CT)

Reply to Para-4

My residential address/T.N. is already recorded in Admn Section. No official mobile was given till date.

Reply to Para-5

No, any files was sent.

Neither Director(CT) nor his staff is ready to receive the Dak. He always refuses to receive the DAK.

Received at 14:45 hour on 20.08.09

Sd/-

20.08.09"

(c)

"TEC(CT Division)

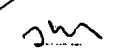
Ref: TBCT/F/STAFF/1-15/TEC/2009 Dated: 21.08.2009

& 18/08.2009

REPLY.

1. As regards para - 1, assigned task has already been complied with appropriate comments on the same on same date 17.8.2009, hereinafter, neither office accommodation, resources/references etc. & staff was provided to the undersigned nor any domain of work, duties & responsibility for the post of Asst. Director (CT). So there is no pendency of the work on my part.
2. As regards para-2, as already conveyed, that room is already preoccupied by one UDC (Sh. Deepak Chadda), two class IV employees i.e. Smt. Rekha & Sh. Karan working under DDG (CT). No requisite resources/reference etc have been allocated to the undersigned till date. So allegation of not sitting in the said room is baseless & false. Undersigned has already conveyed his temporarily day to day sitting in room No. 483B & 459 of his office counter part (Asst. Director) and also provided his personal Mobile No. 9868863344 for communication. So the matter of searching is wrongly blamed.
3. As regards para-3, as no, any resources are allocated to the undersigned, the matter of not being used the official E-mail by the undersigned is also wrongly blamed.
4. As regards para-4, undersigned feels that reply was sufficiently courteous & polite and receives your letter issued on day to day basis but neither you nor your staff receives my reply to your letter, therefore he had to comply, instantaneously on the said letter while receiving it with appropriate comments on peon book.
5. As regards para-5, undersigned has already submitted an application for RH availed with prior intimation of serious condition of his sister through an SMS, from my personal mobile to your official mobile and also through a call to the office of DDG (CT) on dated 19.08.2009. So the allegation of unauthorized absence is false, baseless, and vested with malafide intention.
6. As regards para 7, the act of undersigned is as per CCS rules, the allegation of dilatory tactics is false and baseless. Director (CT) is treating me as a personal servant instead of Govt. Servant.
7. As regards para 8, undersigned has already complied the written instruction with an appropriate comments. Therefore, I request you to provide me a copy of training proposal recorded with my comments (by today).

Sd/- 24/8/09



(Gaya Prasad)

Asstt. Director (TEC)

Copy to :

DDG (CT) TEC for n/a pl.

DDG (Admn) TEC for n/a pl."

(d)

"Reminder-II

Dated : 09.09.09

To

Director (CT)

TEC, K.L. Bhawan, Janpath, ND-1.

Ref: TBCT/F/Staff/1-15/TEC/2009 Dated : 17.8.2009.

Sir,

In reference to the letter as referred above, I requested to clarify whether the said letter is a show cause notice on an order so that suitable reply may be submitted at the earliest.

In this connection, nothing was conveyed me even on repeated request. I therefore, request you once more for an adequate reply.

If the reply is not communicated me within 15 days, it would be understood that said letter has been issued for my harassment in contravention of rule of Govt. of India and vested with malafide intention.

Sd/-

(Gaya Prasad)

Asstt. Director (CT)"

7. From the above communications between the respondent authorities and the applicant it is seen that the applicant refused to carry out instructions as he was not provided a room with required office infrastructure. Therefore, as it appears all the communications have been issued to him imposing the penalty of dies non for his refusal to carry out instructions of superior officers. Respondent authorities had ordered, suo moto, without show cause to deduct his salary for about two months

subsequently when he did not carry out official instructions. Shri Gaya Prasad had replied to the communications of his superior officers. Apparently it appears that since the applicant was Assistant Director by designation, he expected that a better room should have been given to him as per his status. Also he has clearly mentioned in his letter that he was occupying the room allotted to another AD and it is not in dispute that all letters/communications of the authorities were received by him while he was sitting in the above room of the counterpart AD. He was physically present in office everyday except on 19.08.2009 when he applied for R.H. Further allegations of the applicant was that there was no office order stipulating his duties as Assistant Director.

8. The respondent authorities have admitted that documents had to be delivered to the applicant after searching him in office as he was never found sitting in the allocated room. On 23.10.2009 the Director, C&T had personally searched for the applicant in the office as the memorandum of the Vigilance Department issued by DOT headquarters was to be delivered to him personally. The applicant was found to be present in the TEC building.

9. Having considered the allegations and counter allegations we have to resolve whether imposition of "Dies Non" by the authorities was correct.

(a) We note that the applicant had submitted in para 5.9. of his pleadings as follows:-

"5.9 Respondent No.2 Shri Sandeep Kumar with the consent of DDG (C&T) Sh. Ganesh Chand Jha and Administration of TEC hatched a criminal conspiracy to cause him financial injury by misusing Government machinery and malafidly issued order of Dies-non periods in the service of the applicant for more than two months & orders of withholding the pay & allowances vide letter No.TBCT/F/staff/1-15/TEC/2009, dated : 17/08/2009, 18/08/2009,

20/08/2009, 21/08/2009, 24/08/2009, 31/08/2009. 09/09/2009. 15/09/2009, 24/09/2009. 05/10/2009, 22/10/2009(Annexure -1 Colly). Subsequently, Rs.64,750+1685 has been arbitrarily deducted from the salary for the months of Nov, Dec 2009, Jan, Feb and March 2010 with approval of TEC(Admn.) without taking in view the appropriate submission of the applicant in response to the orders and without giving him opportunity for his defence, where as an appeal to Secretary(Dot) against the said orders was also pending to be disposed of. (Annexure-15)."

- (b) The above fact is corroborated by the letter dated 25.02.2010 issued by the Director, Accounts to Shri Gaya Prasad which is extracted below:-

**"DEPARTMENT OF TELECOMMUNICATIONS
TA-I Section, Room No.918,
20, Ashoka Road, Sanchar Bhawan, New Delhi -110001.**

No. 6-24/2009/TA-I/29/Gaya Prasad/311

Dated : 25.02.2010.

To
Shri Gaya Prasad,
Asstt Director(C&T),
TEC, New Delhi.

Sub: Financial harassment due to wrong deduction from salary for the month of November, 2009-Case of Shri Gaya Prasad, Assist. Director(C&T), TEC.

Kindly refer to your representation addressed to Member(F), Telecom Commission dated 30.11.2009 on the subject cited above. The matter was taken up with TEC unit. As per the reply received from office of Sr.DDG(TEC), the following period of duty was treated as dies non by the Director (C&T), TEC.

17.08.2009 to 24.08.2009, 25.08.2009 to 31.08.2009, 01.09.2009 to 09.09.2009, 10.09.2009 to 15.09.2009, 16.09.2009 to 24.09.2009 and 25.09.2009 to 05.10.2009.

TEC has intimated that the total overpayment works out to Rs. 64750/- for the said period. As the salary for the above period was already paid, the recovery of overpayment of pay for an amount of Rs. 13000/- only was effected from your salary for the month of November, 2009.

It is understood that you must be aware of the facts of the dies non period of your service. Therefore, the allegation of financial harassment and non intimation are misrepresentation of facts which must be avoided as they vitiate the working environment.

SW

Sd/-
 (Manish Pathak)
 Director (Accounts-I)
 Ph-23096014
 E-mail: dir-acsl-dot@nic.in

Thus, it appears that the authority made payment of full salary to the applicant for the period for which allegedly he did not carry out the official instructions of the superior authorities i.e. from 17.08.2009 to 22.10.2009. However, as the salary has already been paid to the applicant, the recovery of overpayment was to be made from his salary starting from November, 2009.

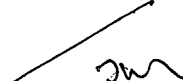
(c) Dies non was imposed not for unauthorized absence, but because he refused to carry out official orders during the above period though he was present in the office.

(d) When the authorities have given his salary against the above period of alleged "dies non" i.e. legitimizing the leave from the work, how can the same respondent authority later give instruction for recovery of overdrawal of salary?

(e) "Qualifying Service" has been defined in Swamy's Handbook, 2016 for Central Government Staff, relevant portion of which is reproduced below:-

"3. Periods counting as qualifying service- The following periods of service count as qualifying service:-

- (i) Duty and periods treated as 'duty'.
- (ii) **All kinds of leave with leave salary.**
- (iii) Deputation and Foreign service.
- (iv) Extraordinary leave on medical certificate and Extraordinary leave without medical certificate



granted due to inability of the employee to join/rejoin duty on account of civil commotion or for prosecuting higher technical and scientific studies. This period automatically counts as qualifying service without an express sanction for this purpose.

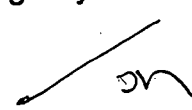
- (v) Pre-appointment training followed immediately by appointment as Groups 'C' and 'D' employees.
- (vi) Service on probation followed by confirmation.
- (vii) Service as SAS Apprentice.
- (viii) Suspension followed by minor penalty.
- (ix) Suspension followed by major penalty; absence from duty including suspension if any, if the reinstating authority orders that it shall count.

4. **Periods not counting as qualifying service:-** The following periods will not count as qualifying service:-

- (i) **Service rendered before attaining the age of 18 years.**
- (ii) Service as Apprentice except SAS Apprentice.
- (iii) **Unauthorized absence treated as 'dies non'.**
- (iv) Ovetstatal of leave/joining time not regularized as leave with leave salary.
- (v) EOL without MC other than the circumstances specified in (iv) of Para. 3 above.
- (vi) Suspension followed by major penalty, if the reinstating authority does not order that it shall count as qualifying service."

We note from the above definitions of "Qualifying Service" that unauthorized absence treated as "dies non" are not counted as qualifying service. Hence, on retirement, this period has to be deducted for calculation of the employee's pension. Therefore, the period treated as 'dies non' has serious civil consequences.

(f) We also find that on 17.08.2009, 24. 08.2009, 15.09.2009, 24.09.2009, 05.10.2009 orders have been given for deduction of salary and also for making relevant entry in his Service Book without giving any chance to the



applicant for making representation against such orders which means that the authorities had deducted the salary of the applicant unilaterally.

(g) Neither the applicant nor the respondents mentioned for which occasion the restricted holiday was applied for. Generally R.H. which is allowed for religious, cultural and such other occasions cannot be refused.

10. In the case of **Budh Ram & Others vs State of Harayana and Another**, reported in (2009) 4 SLR 298, the Full Bench (headed by the Chief Justice, the Hon'ble Mr. Justice T.S.Thakur) of the P&H High Court, was pleased to hold that payment already made cannot be recovered unless the employee is found guilty of any fraud or disruption or misrepresentation. It is a fact that the applicant was not the DDO of his office.

11. The above findings on the part of the respondent authorities goes wholly against the principles of natural justice. Hence all such orders issued from 17.08.2009 to 22.10.2009 are quashed and set aside. The authorities will make payment of the salary which has been deducted for the above period for "dies non" within 2 months of getting a certified copy of this order. Leave is, however, granted to the authorities to initiate disciplinary proceedings if they deem fit, on issue of non performance of duty and give statutory penalty as per law.

12. This OA is disposed of with the above directions. No costs.


(Ms. Jaya Das Gupta)
Administrative Member


(Justice V.C. Gupta)
Judicial Member