

**HIGH COURT OF MADHYA PRADESH BENCH AT
GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

MISCELLANEOUS PETITION NO.7135/2023

DHARMVIR S. AGNIHOTRI

VS.

**UNION OF INDIA THROUGH CHAIRMAN & MANAGING
DIRECTOR AND OTHERS**

Appearances:-

Petitioner is present in person.

*Shri Praveen Kumar Newaskar – Deputy Solicitor General for
respondent No.1/ Union of India.*

*Shri Rajendra Bhargava and Ms. Priyanka Tonk – Advocates
for respondents No.2 , 3 and 4.*

ORDER

(Delivered on 16th day of June, 2025)

1. The instant petition under Article 227 of the Constitution of India is filed being crestfallen by the order dated 03rd July, 2023 passed in Original Application No.202/00125/2019 passed by the Central Administrative Tribunal, Jabalpur (Annexure P-1) (hereinafter referred as “CAT”), whereby O.A. preferred by the

petitioner got dismissed on the point of limitation as well as on merits.

2. Precisely stated facts of the case are that petitioner joined his duty as Sub Divisional Engineer (SDE) in the year 1991 in the Ministry of Telecommunication. In the year 2000, Bharat Sanchar Nigam Limited (BSNL) became a Public Sector Undertaking and came into force w.e.f. 01/10/2000 and therefore, many employees of Union of India came on deputation in BSNL. Petitioner stood retired on attaining the age of superannuation on 31/12/2018 from Guna Division.

3. In the year 2011, when petitioner was posted as SDE, Gwalior, he was transferred to Circle North East-1 because his services were transferable at all India level. He challenged the said transfer order by way of a petition before the CAT. When stay order was not granted in favour of the petitioner, then he remained absent from duty from 30/07/2011. Later on, his transfer order was modified to Gujrat Circle but he did not join there too. Thereafter, his transfer order was again modified to M.P. Circle then only, he joined at Guna on 24/10/2013 but he did not file any application for medical leave for the period he remained absent.

4. Later on, petitioner was posted at Mungaoli then again he remained absent with an excuse that while he was going to Mungaoli to join the duty then he met with an accident and he went to Hathras

U.P. Which is his paternal place for his treatment. Petitioner again remained absent from the duty for the period from 21/11/2013 to 26/07/2015. Assembly election was scheduled for 25/11/2013 and leaves of all employees were cancelled so of petitioner. Similarly, Lok Sabha Election was held in April-May, 2013 and no employee was permitted to remain absent from their duty. Even medical leave had to be considered only after recommendation of the District Medical Board. Matter was informed to the petitioner with a request to appear before the District Medical Board vide letter dated 20/03/2014 but petitioner did not respond to the letter and after commencement of election scheduled on 17/04/2014 (after lapse of one month), on 21/04/2014, he sent a certificate of the Medical Board, Hathras, therefore, the Assistant General Manager, Guna passed the order dated 07/05/2014 (Annexure P/19) whereby period between 21/11/2013 to 30/04/2014 was treated as *dies non* without break in service.

5. It is the submission of learned counsel for the petitioner that learned CAT erred in ignoring the fact that order dated 07/05/2014 (Annexure A/1 of O.A.) for unauthorized absence of the petitioner between 21/11/2013 to 30/04/2014, but it was *dies non* without break in service. But another order dated 09/11/2019 (Annexure A/2 of O.A.) was for the period 31/07/2011 to 23/10/2013 but it was *dies non* with break in service and another order dated 09/11/2019

(Annexure A/3 of O.A.) was passed in which period of unauthorized absence between 01/05/2014 to 26/07/2015 was treated as *dies non* with break in service. All these orders were passed as per provisions of Rule 17-A(iii) of the Fundamental Rules.

6. The period in which petitioner has been treated as *dies non* bears contradictions because Annexure A/1 talks about *dies non* without break in service whereas, other two orders Annexure A/2 and A/3 discussed the period as *dies non* with break in service.

7. Since orders Annexure A/1 and A/2 were passed in the year 2019 and immediately thereafter, petitioner filed O.A. before the learned CAT, therefore, it was not a case of delay for orders Annexure A/2 and A/3 because orders were passed in the year 2019 itself. Petitioner assigned the reason of medical condition due to accident he met with for his absence during the period in his representation and O.A.

8. According to counsel for the petitioner, authorities caused illegality and arbitrariness in passing the impugned orders and the learned CAT ignored this aspect and caused illegality. Petitioner already stood retired in the year 2018. Pension and other service benefits have not been disbursed to him yet and he is finding hard to make both the ends meet. Therefore, present petition has been preferred.

9. Learned counsel for the respondents No.2, 3 & 4/ BSNL

opposed the prayer and submits that petitioner deliberately avoided and remained absent from the duty when he was asked to. When he was transferred to Circle North East-1, then instead of joining there he remained absent and engaged in the litigation but no stay was granted in favour of the petitioner. Therefore, it was not a case where petitioner was denied work despite his presence. Petitioner remained absent therefore, the period of his absence was treated as unauthorized absence. The impugned order dated 07/05/2014 suffers from delay and latches also.

10. It is further submitted that during the election period, instead of doing his duty, petitioner remained absent on false pretext and submitted medical certificate later on (after lapse of one month).

11. Learned counsel for the respondent/ Union of India also opposed the prayer and supported the order impugned.

12. Heard the learned counsel for the parties and perused the documents appended thereto.

13. This is a case where petitioner before the learned CAT in O.A. prayed for following reliefs:-

“8.1 The order of Dies non from 31.07.2011 to 23.10.2013 and from 21.11.13 to 26.07.15 issued by Respondent No.3 i.e. TDM Guna, kindly be quashed and directions for payment of salary for the period alongwith interest @ 12% per annum please be issued for delay period.

8.2 Suitable cost of application may also be ordered because respondents has issued dies non order

for harassing applicant and for delaying payment of his salary.

8.3 Any other order which may be deemed just and proper in the circumstances of this case.”

14. On close reading of reliefs, it appears that petitioner is aggrieved by the order of *dies non* for the period *31.07.2011 to 23.10.2013 and from 21.11.13 to 26.07.15*. So far as order dated 07/05/2014 (Annexure A/1 of O.A.) is concerned, it was for the period from 21/11/2013 to 30/04/2014 was held as *dies non* without break in service and the same was rightly rejected by the learned CAT on the ground of delay and latches.

15. Order dated 07/05/2014 tried to be challenged by the petitioner by way of filing O.A. It appears that O.A. was filed when petitioner received orders dated 09/11/2019 (Annexure A/2 and A/3). Beside that order dated 07/05/2014 clarifies the position that the period between 21/11/2013 to 30/04/2014 was *dies non* without break in service. Therefore, petitioner is bound by the order passed by the learned CAT treating the impugned order dated 07/05/2014 as time barred to challenge it.

16. So far as other orders Annexure A/2 and A/3 of O.A. is concerned, they could have been challenged very well before the learned CAT. Nonetheless, from the contents of the impugned orders, it appears that the learned CAT touched the merits of the case also, therefore, it appears that the said aspect is required to be considered.

Dies non means that continuity of service is maintained but the period treated as *dies non* will not be counted for leave, salary, increment and pension etc.

17. Similarly, *dies non* as held by the learned Single Bench of this Court in the case of **Mahesh Kumar Shrivastava Vs. State of M.P. and Others, 2007 (3) MPLJ 525** is a major penalty because the period is not counted for leave, salary and increments, therefore, it could not be imposed without a regular departmental enquiry.

18. From the discussion as well as documents submitted by the parties, it does not transpire that whether any departmental inquiry was held or not. Therefore, in the considered opinion of this Court, matter requires re-consideration by the competent authority because orders Annexure A/2 and A/3 of O.A. treated the period of unauthorized absence of petitioner as *dies non* with break in service, which is a major penalty therefore, it would cause prejudice to the petitioner, therefore, departmental inquiry was required to be held. However, petitioner stood retired in the year 2018 itself then how it is to be reconciled is the discretion of the respondents/authorities because the impugned orders Annexure A/2 and A/3 were passed after the retirement of the petitioner.

19. In view of the above, in the considered opinion of this Court, order dated 07/05/2014 Annexure A/1 of O.A. stands affirmed and petitioner cannot challenge the said proceedings at such belated stage

specially when said period of absence was treated as *dies non* without break in service and no prejudice has been caused to the petitioner by the said order. However, for the orders Annexure A/2 and A/3 dated 09/11/2019 of O.A. it requires reconsideration by the competent authority taking call on the facts and circumstances of the case and thereafter, pass appropriate order keeping in view the law applicable in case of *dies non* with break in service would be counted or not.

20. In view of the above, order dated 03rd July, 2023 passed by the learned CAT, Jabalpur is partly affirmed and partly set aside. Order dated 07/05/2014 Annexure A/1 of O.A. passed by the respondents/authorities is just and proper and needs no interference. However, orders dated Annexure A/2 and A/3 of O.A. deserves reconsideration and thus, respondents are directed to do the needful as referred above within a period of 03 months from the date of receipt of certified copy of this order.

21. From the earlier proceedings of this Court, it appears that the Coordinate Bench of this Court referred the fact that pension is not disbursed to the petitioner, although, this issue is not the subject matter of this petition but looking to the fact that petitioner stood retired in the year 2018 and finding hard to make both the ends meet, respondents are directed to settle the due and would release the pension and other emoluments except the emoluments pertaining to

the period for which petitioner is declared *dies non*.

22. With the aforesaid observation, the Misc. Petition stands *disposed of*.

(ANAND PATHAK)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE