

Mayur

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2879 OF 2023

**G.N. Mohanty,**

Age: 61 Years, Indian inhabitant,  
303, Tejas Apartment,  
Marol, Military Road, Andheri (East),  
Mumbai – 400059.

...Petitioner

**Versus**

**1. Union of India**

Through its Principal Secretary,  
Ministry of Civil Aviation  
Rajiv Gandhi Bhavan, Safdurjung,  
New Delhi – 11003.

**2. Airports Authority of India,**

Through its Chairman,  
Rajiv Gandhi Bhavan, Safdurjung,  
New Delhi – 110 003.

**3. The Present Member (Operation), AAI,**

Rajiv Gandhi Bhavan, Safdarjung,  
New Delhi – 110 003.

**4. Executive Director (HR), AAI,**

Rajiv Gandhi Bhavan, Safdurjung,  
New Delhi – 110 003.

**5. GM (HR), CHQ, AAI,**

Rajiv Gandhi Bhavan, Safdurjung,  
New Delhi – 110 003.

**6. Jt. GM (HR), CHQ, AAI,**

Rajiv Gandhi Bhavan, Safdurjung,  
New Delhi – 110 003.

7. **The then AGM (HR), WR, AAI,**  
 C/o The Regional Executive Director,  
 New Integrated Operations Complex,  
 Airports Authority of India, New Airport Colony,  
 Opposite Parsiwada, Vile Parle (East),  
 Mumbai – 400099.

...Respondents

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Mr. Shailesh More, a/w Ms. Virakthi S. Hegde, for Petitioner.  
 Mr. Rui Rodrigues, a/w Ms. Gargi Warunjikar, for Respondent No.1.  
 Ms. Shilpa Kapil, a/w Mr. Chidanand Kapil, Ms. Vishwabharati Devkhile, for  
 Respondent No. 2 (AAI).

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**CORAM : R. I. CHAGLA AND  
 ADVAIT M. SETHNA, JJ.**

**JUDGMENT RESERVED ON : 09 MARCH 2026**

**JUDGMENT PRONOUNCED ON : 02 APRIL 2026**

**JUDGMENT (Per Advait M. Sethna, J.):-**

1. Rule. The Rule is made returnable forthwith with the consent of the parties.
2. The Petitioner has preferred this petition under Article 226 of the Constitution of India. The substantive relief being to quash and set aside the Order dated 18 August 2023 ("**Impugned Order**" for short) by allowing the representation of the Petitioner dated 18 May 2023 by directing the Respondents to treat the period from 3 December 2016 to 18 September 2017 as the duty period for payment of such salary/pay and allowances along with accrued interest at 9% p.a. for the said period.
3. The succinct issue that arises for determination in these proceedings

is as to whether the Petitioner is entitled to salary, pay /allowances for the period between 3 December 2016 to 18 September 2017 attributable to the Petitioner's absence from duty, from issuance of the Relieving Order dated 2 December 2016, after which the Petitioner's transfer order stood cancelled on 17 August 2017. This is to be tested on the touchstone of the order passed by Respondent No.2 – AAI on 18 August 2023 which is assailed by the Petitioner.

**Factual Matrix:-**

4. The Petitioner was initially appointed in the service of Air Traffic Control (ATC), in the year 1986 on the post of Aerodrome Assistant.

5. Vide a transfer order dated 29 March 2016 issued by Respondent No.2 – Airports Authority of India (“AAI” for short). The Petitioner was transferred from Mumbai to Bhubaneshwar, by way of a routine transfer with several other persons, his name being at Sr. No.16 of the said list.

6. Pursuant to the above, the Respondent No.2 – AAI received representations from the persons transferred, including the Petitioner, requesting for amendment to the transfer order dated 29 March 2016. In this regard, the Respondent No.2 – AAI issued a communication dated 13 May 2016, referring to the transfer order dated 29 March 2016. By the said communication, the Respondent No.2 – AAI clearly stated that request from certain persons – AGMs/ SMs were considered but not acceded to, which included the name of the Petitioner at Sr. No.15 of the said list.

7. The Petitioner aggrieved by the above transfer order made a grievance application dated 16 May 2016, addressed to the Respondent No.2 – AAI, GRC.

8. By communication dated 22 November 2016 the grievance application of the Petitioner dated 16 May 2016 was rejected and the Petitioner was directed to report to his new place of posting at Bhubaneshwar and the matter was treated as closed.

9. The Petitioner made another representation dated 1 December 2016 through the proper channel addressed to the Chairman of the Respondent No.2 – AAI *inter alia* calling upon the said Authority to cancel the said communication dated 22 November 2016.

10. The Respondent No.2 – AAI issued a Memorandum dated 2 December 2016, with the subject bearing Annual Transfer – 2016 – Relieving Order. The Petitioner was accordingly directed to report to the Airport Director, Bhubaneshwar with immediate effect, reiterating that the transfer of the Petitioner was in public interest. The Transfer Order also recorded/noted that the Petitioner was issued readiness for the transfer from Mumbai to Bhubaneshwar vide office letter dated 4 April 2016.

11. The Petitioner approached this Court by way of an earlier Writ Petition No.1017 of 2017 filed on 25 January 2017 being primarily aggrieved by the transfer and relieving orders issued by the Respondent No.2 – AAI.

**12.** In the meantime, during the pendency of the above Petition, the Grievance Redressal Committee, AAI (“**GRC**” for short) addressed a communication dated 17 August 2017 to the Petitioner. Vide the said communication, the Respondent No.2 – AAI concluded that considering the long service of the Petitioner and the skill set acquired for performing an important job, interest of justice would be served if the said transfer order dated 29 March 2016 is cancelled and the Petitioner is allowed to continue at his present place of posting i.e. Mumbai, until the next transfer season i.e. 2018, when his case would be considered on its own merit.

**13.** The earlier Writ Petition No.1017 of 2017 was listed before this Court on several dates, resulting in passing of various orders, in the said proceedings. By an order dated 3 May 2017 this Court observed that since the Petitioner has not joined the place of transfer and considering that Respondent – GRC is directed to decide the Petitioner’s representations dated 1 December 2016 and 4 December 2016 preferably on or before 30 June 2017, the Respondent Authorities is refrained from initiating any coercive action against the Petitioner, until the next date.

**14.** The above order was followed by a subsequent order dated 18 September 2017, where the Court noted the Petitioner’s prayer for releasing the salary for the period between the relieving order and joining of the Petitioner. This Court granted four weeks time to the Respondent No.2 – AAI to file its reply.

15. This Court by an order dated 5 April 2023 passed in Writ Petition No.1017 of 2017 allowed the Petitioner to make a representation with GRC with regard to his salary claim for the period from which the Petitioner was relieved until the cancellation of the transfer order of the Petitioner by the GRC i.e. on 17 August 2017 (10 months' period as claimed by the Petitioner). The GRC was granted four months time to decide such representation of the Petitioner by the said order. With the said directions the Writ Petition No.1017 of 2017 was disposed of.

16. Pursuant to the above, the Petitioner addressed a grievance letter dated 18 May 2023 to the Respondent – GRC in regard to the non-payment of salary/pay and allowances for the period ranging from 3 December 2016 to 18 September 2017, which the Petitioner may be entitled to.

17. The Respondent – GRC by an order dated 18 August 2023 which is impugned in the present Petition decided the representation of the Petitioner dated 18 May 2023. For the reasons set out in the Impugned Order, the Respondent – GRC was of the view that the absence of the Petitioner from 3 December 2016 to 18 September 2017 be treated as '*dies non*'. Accordingly, the Petitioner was not entitled to his claim of salary/pay and allowances for such period of unauthorized absence from work.

18. The Petitioner being aggrieved by the Impugned Order of the Respondent – GRC dated 18 August 2023 has assailed the same by way of the present Petition.

**Rival Contentions :-****Submissions of the Petitioner :-**

19. Mr. More, learned counsel appearing for the Petitioner, has emphatically submitted that the Impugned Order passed by Respondent No. 2 – AAI is legally untenable. It has completely misconstrued and misapplied the applicable statutory provisions, leading to a conclusion that is without legal basis and, therefore, deserves to be set aside by this Court.

20. Mr. More would place due emphasis on the Clauses 6.1 and 7.1 of the AAI's Personnel Guide, 2004, corresponding to Rules 12.6.1 and 12.7.1 of the AAI Human Resource Policies and Procedure Manual, 2014 (for short "AAI HR Manual 2004 & 2014"), for the sake of brevity, the relevant clauses are reproduced which read as follows:

*"6.0- Joining Time Pay and Reckoning Joining Time for increment*

*6.1- Joining time is regarded as duty and pay equal to the pay drawn before relinquishment of charge in the old post is admissible during joining time. In addition, Dearness Allowance appropriate to the pay and House Rent Allowance and Compensatory City Allowance as applicable to the old headquarters, are admissible. However, permanent Travelling Allowance and Conveyance Allowance, if any paid, are not admissible during joining time.*

*6.2- Joining time will count for increment in the substantive post and the post for which pay is paid during that period. Joining time in continuation of leave counts for increments in the time-scale applicable to the post/posts on which the last day of leave before commencement of joining time counts for increments.*

*7.0- Miscellaneous*

*7.1- When transfer is cancelled: When the order of transfer is cancelled after the employee has handed over charge of the old*

*post but before taking over charge of the new post, the period intervening between the dates of handing over and taking over is treated joining time.*

*7.2- Transfer at own request: No joining time is admissible. Regular leave may be availed of to cover the period from the date of relinquishing charge of the old post to the date of assumption of charge of the new post. If, however, holiday(s) intervene(s) between the date of relief at the old station and joining at the new station, the intervening holidays may be availed as "holidays" and the employee need not take any leave for such period. The pay for the period so availed will be payable."*

**21.** Mr. More would contend that it is the above specific clauses that governs the case of the Petitioner, and not the General Service Rules. Accordingly, the period of the Petitioner's absence from 3 December 2016 to 18 September 2017 ought to be treated as joining time at Bhubaneswar, i.e., the place of transfer. In view thereof, the Petitioner is legally entitled to salary/pay/allowances for such period in accordance with, and not in contravention of the AAI HR Manual 2004 & 2014. Denial of salary by the Respondents to the Petitioner has deprived the Petitioner of the right to receive salary for the said period. The Respondents have therefore acted in gross violation of the AAI HR Manual 2004 & 2014, without any justification and in an arbitrary manner.

**22.** Mr. More would submit that the relieving order dated 2 December 2016 is illegal, as the basis for its issuance is *mala fide*. This is because it was based on a communication dated 22 November 2016 issued by Respondent No. 2 – AAI to the Petitioner. By this communication, the Petitioner was directed to report at Bhubaneswar, and his Grievance

Application dated 16 May 2016 was rejected. For these reasons, the relieving order is bad in law and could not have been issued at all by the Respondent No. 2 in the given facts and circumstances.

**23.** Mr. More would then submit that none of the Fundamental Rules (FR), as relied upon by the Respondent No. 2, deal with the situation of cancellation or setting aside of a transfer order, which has occurred in the present case. Thus, the reliance placed on such Rules by the Respondent No.2 is completely misplaced and does not assist them in any manner whatsoever.

**24.** Mr. More, in the above context, would place reliance on the Comptroller and Auditor General's decision dated 30 August 1967, which, according to him, deals with a case of cancellation of transfer similar to the AAI HR Manual 2004 & 2014. The said decision also states that the period between the date of handing over charge of the old post and taking over the same post again, on account of the cancellation of the transfer order, should be treated as joining time. Even on this ground, the Petitioner is entitled to salary/pay/allowances for the said period.

**25.** Mr. More would submit that the deponent of the Affidavit in Reply filed by the Respondent No.2 has deliberately suppressed the fact that the Petitioner was never under suspension at any point in his career. Therefore, suspension is not the only scenario wherein intervening periods between prevention from entering office and resumption of duty in the same office

would arise.

**26.** Mr. More would strenuously urge that the transfer order was cancelled on 17 August 2017 because Respondent No. 2 – AAI was fully aware that it was illegal. Therefore, pursuant to the cancellation of such transfer order, the said provisions of the AAI HR Manual, 2004 & 2014 shall become applicable, and accordingly, the Petitioner would be entitled to salary for the period between 3 December 2016 and 18 September 2017, as such period shall be treated as joining time.

**27.** Mr. More contends that the constitution of the GRC, which decided the representation of the Petitioner dated 18 May 2023 pursuant to the order of this Court dated 5 April 2023, is bad in law. In view thereof, the Respondents wrongly and illegally treated the period from 3 December 2016 to 18 September 2017 as '*dies non*', with the intent to deprive the Petitioner of his rightful salary, pay, and/or allowances for the said period.

**28.** Mr. More has contended that the Respondents erroneously applied the principle of "no work, no pay" for unauthorized absence, thereby denying the Petitioner's salary for the said period. According to him, the term "unauthorized absence" would be applicable only if the Petitioner had been marked on the ATC duty roster and failed to perform his duties. However, in the present case, the Petitioner was prevented from performing his duties due to the issuance of an illegal relieving order, which was in violation of order of ATC duty roster of December 2016. Therefore, it was

the Respondents' fault that prevented the Petitioner from entering the Mumbai ATC office and performing his duties from 3 December 2016 to 18 September 2017. Hence, such findings in the Impugned Order is contrary to Article 39(1)(d) of the Constitution of India and therefore cannot be sustained.

**29.** Mr. More would place due reliance on the reply to the RTI application submitted on his behalf by his colleague. In view thereof, Mr. More would contend that the intervening period from 3 December 2016 to 18 September 2017 should be treated as joining time, and that the Petitioner is entitled to salary and allowances. However, the GRC erroneously did not consider the stand taken by the Respondent No. 2 in such reply to the RTI application, instead relying on rules and regulations that are not applicable to the present case.

**30.** Mr. More would submit that the Petitioner was always ready and willing to perform his duties. He challenged the transfer order dated 29 March 2016 before this Court, which was ultimately set aside by an order dated 17 August 2017. Considering the cancellation of the transfer order, it cannot be said that the Petitioner was unauthorizedly absent from duty from 3 December 2016 to 18 September 2017.

**31.** Mr. More would submit that the findings in the Impugned Order, to the effect that the service rendered prior to unauthorized absence shall not be counted for all purpose but the period of break shall not be counted for

any purpose, implying that the said period shall be treated as '*dies non*,' are erroneous. The Respondents ought to have relied on the specific AAI HR Manual 2004 & 2014 applicable to the given situation.

**32.** Mr. More would contend that the Rules and Regulations, including the AAI (General Conditions of Service and Remuneration of Employees) Regulations, 2003, relied upon by the Respondents have no application whatsoever in the present factual matrix. This is in as much as, pursuant to the cancellation order of the Petitioner, the period from 3 December 2016 to 18 September 2017 should be treated as joining time and cannot, under any circumstances, be regarded as unauthorized absence.

**33.** Mr. More, in the course of his submission, has relied upon the Affidavit in Rejoinder dated 8 October 2024 to dispute the factually incorrect averments made by the Respondent No. 2 in their Affidavit in Reply, according to the Petitioner.

**34.** Mr. More would rely on the Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003 as notified by the Ministry of Civil Aviation vide notification dated 9 May 2003 to submit that the absence of the Petitioner for the period from 3 December 2016 to 18 September 2017 cannot fall within Regulation 5 of the said notification, which deals with misconduct in any manner whatsoever.

**35.** Mr. More would contend that the conclusion reached in the Impugned Order, which recommends that the period of absence from 3

December 2016 to 18 September 2017 be treated as '*dies non*', is completely misconceived and untenable. Considering the specific provisions of the AAI HR Manual 2004 & 2014, which treat such a period as joining time, it can never be considered as '*dies non*'. Therefore, this finding is entirely contrary to the AAI HR Manual 2004 & 2014 and cannot be sustained.

**36.** For all of the above reasons, Mr. More would urge that petition be allowed and the Rule be made absolute.

**Submission of the Respondents :-**

**37.** Ms. Shilpa Kapil, learned counsel for the Respondent No. 2 - AAI, would at the outset submit that the Impugned Order is a detailed, speaking, and reasoned order, passed after duly considering the submissions and the case of the Petitioner in its entirety. The principles of natural justice have been thoroughly followed in passing such an order, which is pursuant to this Court's order dated 5 April 2023. For these reasons, the Impugned Order warrants no interference and deserves to be upheld.

**38.** Ms. Kapil has strongly supported the Impugned Order and the reasonings recorded therein. She has placed due reliance on the Affidavit-in-Reply dated 6 March 2024 filed by Respondent No.2-AAI.

**39.** According to Ms. Kapil the Impugned Order in light of the reasons set out therein has correctly treated the period from 3 December 2016 to 18 September 2017 as '*dies non*' on account of unauthorized absence of the

Petitioner. The said Order is passed by the Respondent following the due procedure, in reaching to such conclusion.

40. Ms. Kapil would contend that for such unauthorized absence the Petitioner cannot be entitled to any salary/pay and allowances. She would gainfully rely on the 'No Work No Pay' principle as she would contend that the Petitioner has remained absent without approval/sanction for the said period and as he has not worked, he cannot claim any salary and/or pay/allowances for such period.

41. Ms. Kapil would submit that, Petitioner was booked in a CBI case. On the recommendation of the CBI, a charge-sheet dated 18 August 2023 was issued to the Petitioner for unauthorizedly shifting furniture from Imphal to Kolkata for personal gain. Thereafter, another charge-sheet was issued vide a memo dated 3/8 December 2014 for the alleged irregularities committed by the Petitioner at the terminal management of Imphal Airport.

42. Ms. Kapil would thus urge that the petition is devoid of merit and same ought to be dismissed by discharging the Rule.

**Analysis:-**

43. We have extensively heard the parties. With their assistance, we have carefully gone through the pleadings on record, including the affidavit-in-reply of the Respondent No.2 dated 6 March 2024 followed by the Affidavit-in-Rejoinder of the Petitioner dated 8 October 2024.

44. At the very outset, we may observe that the Impugned Order is

passed in due compliance with the order of this Court dated 5 April 2023, in WP No.1017 of 2017. It is a reasoned/speaking order where the second Respondent/GRC has duly considered the representation/grievance application of the Petitioner dated 18 May 2023, exhaustively and in detail.

**45.** The contention of Mr. More that the name of the Petitioner was not on the duty roster, and therefore the Petitioner's absence cannot be treated as unauthorized, is flawed. The Petitioner, as per the settled legal position, was legally obligated to report to the place of transfer in Bhubaneswar immediately upon issuance of the transfer order. The Petitioner failed to do so, without any legal or other impediment preventing him from joining the place of transfer, i.e., Bhubaneswar. He cannot, therefore, take advantage of his own wrong (*Nullus commodum capere potest de injuria sua propria*) by contending that his name was not on the duty roster. The Petitioner was not in a position to visualize at the time of issuance of the transfer order that the same would be eventually set aside. That cannot be an excuse/pretext to not join the place of transfer i.e. Bhubaneswar, pursuant to the issuance of the transfer order dated 29 March 2016.

**46.** Mr. Shailesh More has placed emphasis on the AAI HR Manual 2004 & 2014 issued by Respondent No.2 – AAI. He would draw the Court's attention more particularly to clauses 6.1 and 7.1 r/w 12.6.1 and 12.7.1 of the AAI HR Manual 2004 & 2014. He is at pains to submit that upon cancellation of transfer order after the employee has handed over charge of

the old post but before taking over charge of the new post, the intervening period between the dates of handing over and taking over shall be treated as joining time. However, on a perusal of the Clause 7.1 of the AAI HR Manual 2004 & Clause 12.7.1 of the AAI HR Manual of 2014, it bears out that the 'joining time' would be admissible in cases where an employee, hands over charge and then joins the new place of posting. Accepting such plea of the Petitioner, would lead to reading down the said provisions in a manner the law does not mandate, which we cannot countenance, persuading us to agree with the contentions of the Respondents, in this regard.

**47.** The reliance placed by the Petitioner on the response dated 24 February 2021 of the Respondent No.2 to the Application under RTI does not assist the Petitioner. This is because as noted supra, the interpretation of the clauses in the AAI HR Manual of 2004 and 2014 would come to the Petitioner's aid only if the Petitioner had actually joined the place of transfer pursuant to handing over the charge at Mumbai, which was not done.

**48.** The given factual matrix demonstrates a case where the Petitioner was absent from 3 December 2016 to 18 September 2017 without leave. Such absence was without an application, much less permission and/or sanction from the competent authority. Accordingly, we find substance in the submission of the Respondent No. 2 that such period ought to be treated as unauthorized absence, which was neither regularized nor

sanctioned by the competent authority.

49. Contextually, it is trite law that upon transfer order being passed the Petitioner ought to report/join such place of transfer even if it is on a without prejudice basis and has no vested right to remain posted at one place, as held in *S.C. Saxena Vs. Union of India & Ors.*<sup>1</sup>; *The Tamil Nadu Agricultural University & Anr. Etc. Vs. R. Agila Etc.*<sup>2</sup> and *Shilpi Bose & Ors. Vs. State of Bihar & Ors.*<sup>3</sup>.

50. The Respondent No. 2 through their counsel are at pains to take this Court to the notification dated 23 May 2003 issued by Ministry of Civil Aviation viz. Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 (the said “Notification” for short). Clauses 14 and 15 of the said Notification read thus:-

*“14. Treatment of Unauthorized absence. - An employee who is absent from duty without any authority, shall not be entitled to the pay and allowances during the period of such absence. The unauthorized absence of this kind, apart from resulting in loss of pay and allowances for the period of such absence, shall also constitute a break in service entailing forfeiture of past service unless the break is condoned and treated as ‘dies-non’ by the Competent Authority. The service rendered prior to unauthorized absence shall not be counted for all purposes, but the period of break itself shall not count for any purpose.*

*15. Consequences of unauthorized absence- The consequences of unauthorized absence from duty which is not condoned in any manner shall be as follows, namely :-*

- (a) no pay and allowances are admissible during the period of unauthorized absence;*
- (b) no increment shall be counted for the period of such unauthorized absence;*

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1. 2006 SCC 9 583.

2. Special Leave to Appeal (C) Nos. 13070-13075/2022; 20 August 2024.

3. 1991 Supp (2) SCC 659.

- (c) *no earned leave shall be counted for the period of such unauthorized absence;*
- (d) *no benefits under the Contributory Provident Fund shall be entitled for the period of unauthorized absence; and*
- (e) *no gratuity shall be given in the interruption in service caused by such unauthorized absence.”*

51. Reference is made to clause 13 of Regulation 10 of Airports Authority of India (Leave) Regulations, 2003, which read as under:-

***“(13) Absence from duty after the expiry of leave, Over stay of leave and unauthorized absence from duty. -***

- (a) *Unless the authority competent to grant leave, extends the leave, an employee who remains absent after his leave is over is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.*
- (b) ***Willful absence from duty after the expiry of leave renders an employee liable to disciplinary action.***
- (c) *The unauthorized absence of this kind apart from resulting in loss of pay and allowances for the period of such absence would also constitute a break in service entailing forfeiture of past service, unless the break itself is condoned and treated as ‘dies-non’. If the break is condoned and treated as ‘dies non’ by the Competent Authority, the service rendered prior to unauthorized absence be counted for all purposes but the period of break itself will not count for any purpose and treated as dies non unless the employee represents in this regard.*
- (d) ***The consequence of unauthorized absence from duty, which is not condoned, would be as follows:***
  - (i) ***Pay and Allowances – No pay and allowances are admissible during the period of unauthorized absence.***
  - (ii) *Increment – The period of such unauthorized absence would not count for increment.*
  - (iii) *Leave – The period of such unauthorized absence would not count for earning leave.*
  - (iv) *Contributory Provident Fund – The period of unauthorized absence would be ignored for the purpose of entitlement of Contributory Provident Fund benefits.*
  - (v) *Gratuity – The interruption in service caused by such unauthorized absence would entail forfeiture of past*

- service for the purpose of entitlement to gratuity.*
- (e) *If such employee reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension.”*

52. We now refer to the relevant extract of DoPT OM No. 13026/3/2012-Estt (Leave) dated 28 March 2013 which read as under:-

- “(a) Proviso to FR 17(1)*  
*The said provision stipulates that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.*
- (b) FR 17-A*  
*The said provision inter alia provides that where an individual employee remains absent unauthorisedly or deserts the post, the period of such absence shall be deemed to cause an interruption or break in service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession and eligibility for appearing in departmental examinations, for which a minimum period of service is required.”*

A perusal of the Impugned Order would clearly indicate that it has taken into consideration all of the Rules/Regulations noted (supra). The sum and substance of the above Rules/Regulations is that the unauthorized absence would constitute break in service which if not condoned is treated as ‘*dies non*’. Accordingly, there is no entitlement for any pay and/or allowances during such period of unauthorized absence. Evidently, the second Respondent-AAI, having holistically considered all of the above, has duly applied its mind in passing the Impugned Order.

53. Ms. Shilpa Kapil has during her submissions referred to Fundamental Rule 17(1) and its binding nature as they are framed under Article 309 of

the Constitution of India. A perusal of the said proviso to FR 17(1) demonstrates that an officer who is absent from duty without any authority shall not be entitled to any pay and allowance during the period of such absence. Further, FR 17-A clearly provides that where an individual employee remains absent unauthorizedly or deserts the post, the period of such absence shall be deemed to cause an interruption or break in service of the employee. In the present facts, as noted above, the Petitioner had only applied for a casual leave of three days after being served with the reliving order dated 2 December 2016. Thereafter, even though the transfer order dated 29 March 2016 was canceled by the Respondent No.2 – AAI much belatedly on 17 August 2017, nothing prevented the Petitioner from assuming charge, join his duties at Bhubaneswar and actually working for such period, so as to legally be entitled to the salary for the same.

**54.** In light of the clear provisions in the FR (supra) the reliance of the Petitioner on the AAI HR Manual 2004 & 2014 is misplaced and not well-founded. For the reasons discussed (supra), such clauses of the said AAI HR Manual 2004 & 2014 are not applicable in the given factual matrix. The submission of the Petitioner that specific provisions of the AAI HR Manual 2004 & 2014 prevails over the general provisions/Rules is not tenable, more particularly considering the clear and categorical provisions enshrined under proviso to FR 17(1), FR 17-A read with the Regulations (supra).

**55.** At this juncture we advert to the expression “*dies non*,” which, as

defined in Black's Law Dictionary (Tenth Edition), carries the same meaning as "*dies non juridicus*," meaning a day exempt from court proceedings, such as a holiday or a Sunday. The Supreme Court in ***Sukhdarshan Singh Vs. State of Punjab & Ors***<sup>4</sup> has held that denial of salary by the competent authority for the period to be treated as "*dies non*" is not a punishment nor a penalty contemplated in law. Accordingly, the Respondents have correctly applied the 'No Work No Pay' principle in the given case for the unauthorized absence. This would consequentially disentitle the Petitioner from any salary/pay/allowance for such said period. In view thereof, we see no jurisdictional infirmity or perversity in the view taken by the second Respondent-AAI, in the Impugned Order.

56. It would be apposite at this juncture to refer to the decision of the Supreme Court in ***The Tamil Nadu Agricultural University & Anr. Etc*** (supra). The Supreme Court was confronted with a nearly identical situation where an employee gets transferred to another place. Instead of joining the new place of posting they challenged the said order of transfer while also demanding the salary for a period, they remained in unauthorized absence. The Supreme Court in the said case, clarified that as the transfer order was set aside by the Single Judge, their service period shall continue to be treated in continuity. However, no salary for the said period of unauthorized absence is to be paid to such employee except for

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4. Civil Appeal Nos. 811-812 of 2022 on 3 March 2022.

whatever other benefits that may accrue to them, due to such continuity.

57. We may now juxtapose the above to the given case. It is in similar circumstances where though the transfer order being eventually set aside by the Respondent – GRC the Petitioner would not be entitled to the salary for the period of unauthorized absence from 3 December 2016 to 18 September 2017. In any event, here the Respondents have not disputed the entitlement of the Petitioner towards his TA/DA in accordance with the Rules, as set out in the Relieving Order issued by Respondent No.2- AAI dated 2 December 2016.

58. A similar view to the above was taken by the Division Bench of this Court in *The Deputy Commissioner of Police Vs. Sanjay Govind Parab*<sup>5</sup>. In similar facts even where the transfer order was set aside, the Court held that the Petitioner would not be entitled for any salary/pay and allowance for the period of unauthorized absence.

59. We have considered the submission of the Respondent No. 2 that the Petitioner was charge-sheeted on earlier occasions for the alleged irregularities committed by him at the terminal of Imphal Airport. However, at this stage, we are not delving into the correctness and/or otherwise of the said submission, as it would not have a bearing on the issue that confronts us in the present Petition.

60. We have carefully examined the contention of the Petitioner that

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5. W.P No. 10200 of 2022 dated 6 September 2024.

despite unauthorized absence no disciplinary proceeding were initiated by the Respondents. It may not be out of place to mention that during the pendency of the transfer order and before the same was set aside, the Respondent authorities were directed not to take any coercive steps against the Petitioner. This was in terms of an earlier order of this Court dated 3 May 2017 passed in Writ Petition No.1017 of 2017. In fact, in the absence of a disciplinary/departmental proceeding, a situation does not arise where a suspension period is to be treated as 'spent on duty' or not 'spent on duty' in accordance with the applicable Rules/Regulations,.

**61.** It is not the Petitioner's case that the principle of natural justice have been violated before the Impugned Order declaring period from 3 December 2016 to 18 September 2017 as "*Dies Non*". As noted (supra), the Impugned Order was passed pursuant to an order of this Court dated 5 April 2023 in Writ Petition No. 1017 of 2017. In our view, this cannot be treated as harsh or excessive in the peculiar factual complexion. Therefore, even on such count the Impugned Order suffers from no irregularity much less illegality warranting interference in our exercise of writ jurisdiction, in the give factual complexion.

**62.** In light of the foregoing discussion, the Impugned Order has duly considered/dealt with all issues raised by the Petitioner including those in the Petitioner's representation dated 18 May 2023. In view thereof, it does not suffer from the vice of arbitrariness, lack of reasons, much less non-

application of mind in as much as it is a speaking order, supporting the conclusions arrived at. At this juncture, we may gainfully refer to the decision of the Supreme Court in *Raj Kishore Jha Vs. State of Bihar and Ors.*<sup>6</sup>. It was held that reason is the heartbeat of every conclusion. Without the same, it becomes lifeless. The Impugned Order evidently passes such threshold and litmus test which, for all such reasons, deserves to be upheld, *sans* interference.

63. We pass the following order:-

**ORDER**

- a) The Petition is Dismissed. The Rule is discharged.
- b) No order as to costs.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]

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6. (2003) 11 SCC 519)