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IN THE ~~ADMINISTRATIVE~~ TRIBUNAL
NEW DELHI

O.A. No. 152 198 6
TAX No.

DATE OF DECISION 27.5.1986

N. N. Saxena Petitioner

In person Advocate for the Petitioner(s)

Versus

All India Radio Respondent

Shri K. C. Mittal Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H. P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGEMENT (*pronounced in open Court - Oral*)

The petitioner has moved this Tribunal under Section 19 of the Administrative Tribunals Act praying that the period from 6.2.1982 to 14.9.83 excluding joining time should be treated as "duty".

2. We have heard the arguments of the petitioner in person and the learned counsel for the respondents and gone through the record very carefully.

3. The main grievance of the petitioner is that having been posted from Bombay to Delhi, hardly had he been in Delhi for about 2½ months that he was transferred again from Delhi to Aligarh. He handed over the charge in Delhi on 9.2.82 but did not take over at Aligarh until 15.9.83. Thus he was on unauthorised absence from duty from 10.2.82 to 14.9.1983 during which period the petitioner did not apply for any leave. The respondents were good enough to allow him to take over at Aligarh on 15.9.83. He retired on superannuation on 31.10.84 with all pensionary benefits except that the period between 10.2.82 and 14.9.83 has been regarded as dies-non so that it would not be counted as qualifying service but it would not constitute a break in his pensionary career. It is conceded by the learned counsel for the respondents at the Bar that by the length of his qualifying service the petitioner is otherwise entitled to full pensionary benefits.

4. The learned counsel for the respondents has reiterated the averment made in the counter affidavit that in spite of repeated requests made by the Directorate, the petitioner has not so far formally applied for grant of leave to cover the aforesaid period of unauthorised absence. The learned counsel further states that the Directorate is agreeable, ignoring the limitation period, to regularise his absence from 10.2.82 to 14.9.83 as per rules, provided the petitioner applies for grant of leave admissible to him. This is because the leave sanctioning authority should not and unilaterally decide grant of leave of any kind without a formal application under Rule 14 of the Central Civil Service(Leave) Rules 1972. Some files were shown to us

and we are satisfied that the transfer of the petitioner from Delhi to Aligarh was done entirely in the exigencies of public service and valid administrative reasons and that there was no element of malafide involved in the order of transfer. It is not conceivable that the petitioner should have generated such malafide elements in the minds of his superiors as alleged by him, as would have motivated them to engineer his transfer to Aligarh. If malafide intentions had been there, there is no reason why only a simple transfer was inflicted on him. The period of 2½ months by itself does not appear to us to be ^a sufficiently long period in the normal course of human conduct and human reaction for the generation of such animus as the petitioner has alleged in his petition.

5. On the other hand, we are inclined to note from the perusal of the files placed before us that the petitioner had been treated with considerable degree of generosity by being allowed to join duty even after unauthorised absence of more than one and a half years. As a disciplined civil servant it was incumbent on him to comply with the transfer order promptly or apply for leave. Even now, the respondents are prepared to regularise his period of absence if the petitioner applies for leave for this period. This is the maximum possible limit to which the respondents have gone to accommodate the petitioner.

6. In the circumstances indicated above, we feel that there is no miscarriage of justice or any element of harassment or any inhuman treatment or any malafide brought out in this case so as to warrant any intervention on our part. The respondents are however directed to consider the application if any filed by the petitioner for leave in accordance with law with a view to cover the period of his unauthorised absence in an

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appropriate manner with all consequential benefits to the petitioner. The application, if any, should be filed by the petitioner within a period of two months and the respondents should dispose of that application within a period of two months thereafter. Subject to these directions the petition is dismissed.

There will be no order as to costs. ~~The judgment has been pronounced in an open court.~~

(H. P. BAGCHI)
JUDICIAL MEMBER

27.5.86

(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

27.5.86