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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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OA No.1140 of 1992

New Delhi, this the 22nd day of November, 1993.

Hon'ble Mr B.N.Dhoundiyal, Member(A).

S.M.Mukherjee, A.E.(Retd.) AIR, New Delhi
M-28, Sector IV, Saheed Bhagat Singh Marg,
New Delhi. Applicant.

(by G.K.Banerjee, Advocate)

vs.

1. Director General, AIR, New Delhi
Akashvani Bhawan, Sansad Marg,
New Delhi.
2. Station Director AIR New Delhi
Broadcasting House Sansad Marg
New Delhi.
3. Pay & Accounts Officer IRLA
New Delhi
AGOR Building, I.P.Estate
New Delhi. Respondents.

(by P.H.Ramchandani, Advocate).

ORDER (Oral)

B.N.Dhoundiyal, Member(A)

Heard the learned counsel for the parties. It was agreed that the relief under consideration will be confined to the period between 24.4.1989, when the applicant was relieved from his post of Assistant Engineer from AIR Delhi to 31.5.1991, when he was deemed to have retired. The impugned order dated 14.10.1991 treats this period as Dies non and provides for adjusting the over-paid salary from the retirement dues.

2. The learned counsel for the applicant has challenged this order on the ground that though this amounts to punitive order, no notice was given,

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that after 31.5.1991, the master and servant's relationship had ceased and no order treating the period as dies non could have been imposed and that even if the proceedings had been initiated against him, he would have been given suspension allowance. He has relied on the judgment of this Tribunal in a bunch of O.As, the leading case being S.N.Ramaswamy & others v. Union of India and others, (1989) 10 A.T.C.80 and Ramji Dass vs. Union of India & others, A.T.R.1986(2) C.A.T.455, in which it was held that a similar period of absence without leave would not be held as dies non without issuing show-cause notice. He has also relied on the judgment of this Tribunal Kashi Nath Banerjee vs. Union of India and others, (1991)17 A.T.C.88, in which it was held that a punishment given after the retirement of the government servant is not legal and the departmental ^{are} inquiries continued after the retirement only under the pension rules. The learned counsel for the respondents has drawn attention of this Court to the history of litigation ^{Sw} ^{The} conduct of the employee, who refused to join his new place of posting and after absenting himself over two years sought voluntary retirement. He also pointed out that the so-called recovery of over Rs.1.00 lac also included amounts due from the applicant on account of House Building Advocance etc.

3. In view of the aforesaid discussion, I hold that the respondents had the option to initiate departmental proceedings and refuse to accept voluntary retirement but once an employee had retired they could not have passed a punitive

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order. I, therefore, hold that the impugned order dated 14.10.1991 is not sustainable and it is hereby set aside. The period between 24.4.1989 to 1.6.1991 shall be treated as 'leave of kind due' and shall be counted for the purpose of pension to the extent permissible under the relevant rules. Any leave encashed by the applicant at the time of his retirement will also be taken into account while calculating the amount due to him. The respondents shall issue orders regularising this period within three months of the date of this order.

4. There will be no order as to costs.

22nd Nov., 1993.
/sds/

B. N. Dhondiyal
(B.N.Dhondiyal)
Member(A).