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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.411/86

Vasant Balkrishna Alurkar,
Retired Tax Recogery Inspector,
(Income Tax),
40 A, Trimbak Nivas,
Mahatma Gandhi Road,
Vile Parle(East),
Bombay - 400 057.

.. Applicant

vs.

Union of India
through
Chief Commissioner of Income Tax(Admn.),
Aayakar Bhavan,
Maharshi Karve Road,
Bombay 400 020.

.. Respondent

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

1. Mr.D.V.Gangal
Advocate for the
Applicant.
2. Mr.A.I.Bhatkar
Counsel for the
Respondent.

ORAL JUDGMENT:
(Per U.C.Srivastava,Vice-Chairman)

Date: 9-8-1991

The applicant who was Income Tax Inspector was compulsorily retired on 13-2-1976 vide order dated 11-11-1975. He made a representation against the same and the Commissioner of Income Tax allowed his representation and reinstated the applicant in service vide order dtd. 10-6-1981. So far as the intervening period is concerned it was mentioned that separate orders will be issued later on. The applicant retired from service on 30-11-1984 but even till then the orders regarding the payment of salary and allowances etc. for the intervening period was not decided. . The applicant approached this Tribunal on 27th of April,1986 praying that the pension,provident fund and leave salary has not been given to him and salary for the intervening period has not been fixed.

2. It was only thereafter an order was passed regarding the intervening period which according to the respondents ^{was} passed in the year 1985 i.e. after the applicant [^] retired from service. Vide order dated 27th January, 1976 it was informed that the applicant is granted:

"Earned Leave for 120 days from 9-2-1976 followed by 522 days Half Pay Leave with permission to prefix Sunday dated the 8th Feb. 1976.

On expiry of the above, leave he retires from Govt. service

The above order is issued in terms of provisions contained in sub-rule 1(c) of Rule 39 of Central Civil Services, Leave Rules, 1972."


On behalf of the applicant it was contended that by order dtd 21-3-1985 it was decided to treat a particular period as dies non. It is contended that so far as the period of dies non is concerned no unilateral order could have been passed ~~by~~ ^{without} associating the applicant with the same and further there ~~was~~ an error and negligence on the part of the department itself. The applicant cannot be deprived of the service as the order of compulsory retirement was withdrawn and the applicant was reinstated in service, he is to be treated as deemed to be in continuous service and he is entitled to full pay and allowances minus the period during which he was on leave


3. On behalf of the respondents reliance has been placed on the Ministry of Home Affairs O.M. dtd. 10-8-1978 in which a decision has been taken which ~~that~~ ^{that where} indicates ~~of~~ Premature retirement of the Government servant was on account of political or personal victimisation, the intervening period should be treated as duty with full pay and allowances. In other words, it would not be appropriate to treat the period during which the employee had not worked as duty and allow him duty pay

for the same. In such cases the period may, as hitherto, be treated as leave due and admissible or dies non as the authority ordering reinstatement decides.

4. The circular itself indicates that the decision was to be given by the authority when the order of reinstatement was passed. Here in this case it is not the pleadings of the parties as to what was the ground on which he was compulsorily retired. But one fact is clear that there was an error on the part of the respondents to retire the applicant compulsorily and further there was also an error on the part of the Commissioner of Income Tax to pass an order regarding the intervening period and there was yet another negligence in not deciding the matter before the applicant retired.

5. In view of the facts and circumstance of this case which is full of error and negligence the applicant cannot be deprived of salary for the period he has been treated as dies non. The treatment of the intervening period as dies non is not justified and warranted. Accordingly on the special circumstance of this case this application is allowed and the respondents are directed to pay full salary and allowances to the applicant for the period which has been treated as dies non. Let this payment be made within three months from the date of receipt of a copy of this order. There will be no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRI ASTAVA)
Vice-Chairman