

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 261 of 1993

Allahabad this the 09th day of February, 2000

Hon'ble Mr. S.K.I. Naqvi, Member (J)

1. Prem Sakhi Kapoor, widow of Late Shri Prem Saran Kapoor, R/o 352 Sabzi Mandi, Sadar Bazar, Mathura.

Applicant

By Advocate Shri M.K. Upadhyay

Versus

1. Union of India representing N.E. Railway Administration through the General Manager, N.E. Railway, Gorakhpur.
2. Chief Mechanical Engineer, N.E. Rly. Izzat Nagar,
3. Divisional Railway Manager, N.E. Railway, Izzat Nagar.

Respondents

By Advocate Shri Lalji Sinha

Q R D E H ( Oral )

By Hon'ble Mr. S.K.I. Naqvi, Member (J)

Late Shri Prem Saran Kapoor was removed from service while he was posted as Driver in Charge at Mathura Cantt. Rly. Station under the control of the respondents. Against this removal, Late Shri Kapoor filed Civil suit before the Munsif at Mathura, which was dismissed, against which

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he preferred appeal which was decided by the 11th Addl. District Judge, Mathura on 25.4.1979 through which the order of Munsif was set aside and the appeal was allowed, decreeing the claim of the applicant in that matter. The Railway Administration filed Second Appeal No. 1951 of 1979 before the Hon'ble High Court of Judicature at Allahabad in which Hon'ble Court was pleased to pass an order on 30/7/79 staying the operation of the order of Lower Appellate Court with a rider that the appellant in the appeal shall deposit half of the arrears of pay of the respondent therein in execution court and in the event of non-compliance of the condition, <sup>shall stand</sup> the stay order automatically vacated. This order was modified by the Hon'ble Court vide order dated 18.12.79 to the effect ~~that~~ that:-

\*Heard learned counsel. In the circumstances the money required to be deposited under the Courts order dated 30th July, 1979 may be deposited latest by 15th January, 1980. If the money is not deposited by 15th January, 1980 the decree shall be executed forthwith without any reference to this court.\*

Unfortunately Shri Prem Saran Kapoor expired on 08.10.1991 and after his death, his widow Smt. Prem Sakhi Kapoor - applicant in this O.A. moved the department concerned for payment of gratuity, arrears of pension as well as family pension. The department i.e. respondent of this O.A. did not pass any order for payment of amounts claimed and, therefore, the applicant has come up before the Tribunal seeking direction to the respondents to make the payment of amounts claimed.

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2. The respondents have contested the case and filed the counter-reply.
3. Heard, the learned counsel for the rival contesting parties and perused the record.
4. Learned counsel for the applicant has pressed that after non-compliance of the order of the Hon'ble High Court dated 30th July, 1979, the stay stood automatically vacated and the applicant becomes entitled to the benefits arising out of order by First Appellate Court. It has also been mentioned on behalf of the applicant that the respondents processed the matter for payment of claimed amount to the applicant and in this connection, they called for the applicant to file the order of the Court through which her husband's removal from service, was set aside. In this regard, the attention has been invited to letter dated 24.6.1992, copy of which has been annexed as annexure A-4 to the application. In this connection, learned counsel for the applicant has further mentioned that inspite of compliance of requirement as indicated in annexure A-4, the respondents have not made any payment as claimed by the applicant.
5. Learned counsel for the respondents has submitted that this U.A. before the Tribunal is premature because the matter is yet to be finally decided by the Hon'ble High Court where the Second Appeal is still pending. He has further mentioned that incase the appeal by the respondents before the Hon'ble High Court is allowed, the applicant will not remain entitled to

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any claim and otherwise if the Second Appeal fails, the applicant may get her remedy through execution in the civil side. I find force in the submission made from the side of the respondents. The entitlement of the applicant is yet to be decided in the Second Appeal which is still pending and <sup>Arshu</sup> ~~then~~ the entitlement is decided only thereafter she may come up with the claim for which this O.A. has been filed and that relief she may get from the Execution side in the civil court. The jurisdiction of the Tribunal will come up only when the Second Appeal is decided in favour of applicant Smt. Prem Sakhi Kapoor and some dispute arises in ascertaining her claim thereafter.

6. Under the circumstances, this O.A. is premature and misconceived, hence, dismissed accordingly. No order as to costs.

*S. M. M.*

Member (J)

/M.M.M./