

17

OPEN COURT

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 10th day of March, 1997

Original Application No, 702/1993

District : Gorakhpur

CORAM :-

Hon'ble Mr. S. Das Gupta, A.M.
Hon'ble Mr. T.L. Verma, J.M.

1. Abdul Ahed Khan
2. Zainul Abddin Khan
3. Shakulul Arfin Khan
4. Shakukul Saleheen Khan
5. Abubakar Khan

All are sons of Late Abdul Quayum Khan permanent resident of Risaldar house Basantpur, Distt. Gorakhpur.

6. Smt. Anjum Shakeela Daughter of Late Abdul Quayum Khan W/o Sri Hakim Mohammed Ahmed Khan R/o Mohalla-Basantpur, District Gorakhpur.
7. Smt. Ashraf Bano D/o Late Abdul Quayum, W/o Abdul Sami Khan R/o Dodhpur, Distt. Aligarh.

(By Sri Anil Kumar, Advocate)

. Applicants

Versus

1. Union of India through General Manager (North-Eastern Railway), Gorakhpur.
2. F.A. & C.A.O., N.E. Railway, District Gorakhpur.

(By Sri Amith Sthalekar, Advocate)

. Respondents

ORDER (O r a l)

By Hon'ble Mr. S. Das Gupta, A.M.

This application has been filed by the sons and daughters of the Late Abdul Quayum Khan, who was working as a T.T.E. under the respondents. From the facts of the case averred, it transpires that the said Abdul Quayum Khan was chargesheeted in 1949 which culminated in his removal from service. He filed a civil suit which was dismissed by the lower court. Thereafter, he preferred an Appeal before the District Judge, which

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was also dismissed. However, in the second appeal before the Hon'ble High Court, the order of removal from service was set aside and ~~the~~ he was reinstated in service. However, shortly thereafter on 28-9-1967 the same charge memo was served on him which finally ended in his removal from service again. This order was also challenged in the civil court and the civil suit was later transferred to this Tribunal and was decided by the order dated 14-5-1992. The Tribunal held the impugned order of removal from service as not tenable in law and quashed the same granting ~~the~~ liberty to the respondents to pass an order on the evidence and other materials on record.

2. It further transpires that the said Abdul Quayum Khan died before a copy of the said order dated 14-5-1992 could be issued. In these circumstances, these applicants who claim to be heirs to the Late Abdul Quayum Khan ~~have~~ submitted a representation for payment of salary and other terminal benefits to the General Manager. Despite several reminders, no order has been passed on the same. In this situation, they have approached this Tribunal seeking a direction to the respondents for payment of salary and other emoluments as well as terminal benefits with 18% interest thereon for the period 2-12-1971 till 17-6-1992 i.e. the day on which Late Abdul Quayum Khan expired.

3. The respondents have filed a counter affidavit in which reasons why the disciplinary action was initiated against Late Abdul Quayum Khan ~~has~~ been indicated. There is only a bald assertion that the applicants are not entitled to any emoluments of arrears or salary of terminal benefits and that the present application is ~~only~~ devoid of merits.

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4. During the course of argument the learned counsel for the applicant brought to our notice the provisions contained in Para 1345 (2) of the Indian Railway Establishment Code, Vol II(1987 Edn.). This para reads as follows :-

"(2) Notwithstanding anything contained in Rule 1343 where a railway servant under suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid".

5. Even otherwise, it is settled law that on the expiry of an employee ^{any} ~~in~~ disciplinary proceedings against him abates.

6. As the facts stand, the father of the applicant had actually expired before the respondents could initiate any proceedings against him. In pursuance of the operative portion of the Tribunal's orders, he also could not be reinstated in service as even before the copy of the order could be supplied, he had already expired. In this situation, the said Abdul Quayum Khan, would be deemed to have been reinstated in service prior to his expiry on the date of Tribunal's order and the entire period from the date of his removal from service till the date of his expiry will be taken as period spent on duty. The following consequences will flow from this position:-

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- (ii) the said Sri Abdul Quayum Khan would have been entitled to salary for the entire period as T.T.E. on the basis of his last pay drawn.
 - (ii) on his expiry, the family members would be entitled to all terminal benefits as if he had died in harness.

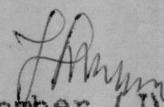
7. The aforesaid view is also supported by a decision of the Principal Bench of the Tribunal in the case of Om Prakash Vs. UOI , 1992 (20) ATC 362.

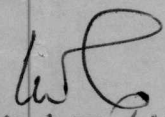
8. In view of the foregoing, we dispose of this application with the following directions:-

- (i) the applicants in this OA, in case they are legal heirs of Abdul Quayum Khan, shall be granted pay and other allowances for the period from the date from which he was removed from service till the date of his expiry.
- (ii) The applicants, in case, they are heirs of Abdul Quayum Khan, shall also be entitled to all terminal benefits payable, under the extant rules.

9. The prayer for payment of interest is rejected in the peculiar circumstances of the case.

10. The aforesaid direction shall be complied with within a period of three months from the date of execution of this order. The parties shall, however, bear their own costs.


Member (J)


Member (A)

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