

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

* * * * *

Allahabad : Dated this 21st day of April, 1997

Original Application No. 445 of 1995

District : Allahabad

CORAM:-

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

1. Mr. Rahman Siddiqui,
S/o Late Nasir Hussain Siddiqui,
R/o M.I.G.-31, Govindpur Colony,
Allahabad.
2. Mrs. Salama Begum Siddiqui,
widow of Late Mustafa Siddiqui,
R/o M.I.G. 31, Govindpur Colony,
Allahabad.
3. Mrs. Nazma Begum Siddiqui,
w/o Altaf Hussain Siddiqui,
R/o 288, Khirki Village,
Malviya Nagar,
New Delhi-17
4. Mrs. Shabana Begum Siddiqui,
w/o Shri Irfan Siddiqui,
R/o 348, Khirki Village,
New Delhi-17
5. Nafees Siddiqui,
S/o Late Nasir Hussain Siddiqui,
R/o M.I.G.-31, Govindpur Colony,
Allahabad,
6. Khursheed Ahmed Siddiqui,
S/o Late Nasir Hussain Siddiqui
R/o M.I.G.-31, Govindpur Colony,
Allahabad.
7. Mahmood Siddiqui,
S/o Late Nasir Hussain Siddiqui,
R/o M.I.G.-31, Govindpur Colony,
Allahabad.
8. Meena Siddiqui (Unmarried) w/o Late Nasir Hussain
Siddiqui, R/o M.I.G. 31, Govindpur Colony, Allahabad.
(By Sri R.C. Sinha, Advocate) Applicants

Versus

1. Union of India
Through The Secretary, Government of India,
Ministry of Railways,
Railway Board,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway,
Baroda House, New Delhi
3. Divisional Railway Manager,
Northern Railway,
Allahabad.

4. Divisional Mechanical Engineer,
Northern Railway,
Allahabad.

5. Loko Foreman,
Northern Railway, Allahabad.

(By Sri D.C. Saxena, Advocate)

..... Respondents

ORDER

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

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, jointly by 8 applicants seeking a direction to the respondents to pay to the applicants various terminal benefits with interest, which was due to the father of the applicants. A further direction sought is to give the applicants the family pension with interest.

2. The father of the applicants was working as an Engine Driver. On the charge of unauthorised absence, a penalty of removal from service was imposed on him by an order dated 25-3-1966. The order was challenged before the Court of Addl. Munsif, Allahabad by filing a suit which was dismissed on 16-5-1969. An appeal from this order before the lower appellate court was, however, allowed and it was held that the order of removal from service was contrary to law. The father of the applicants was reinstated on 11-1-1971 but the Railway Administration filed a Second Appeal before the Hon'ble High Court of Judicature at Allahabad against the order of the lower appellate court. This appeal was allowed on 21-8-1979 with an observation that if only short time was left before the father of the applicant was to retire on attaining the age of superannuation, the Railway Administration should sympathetically consider the option of allowing him to continue in service on the basis of his reinstatement

18

on 11-1-1971 which should be treated as a fresh employment. The father of the applicants was, however, in the meanwhile declared unfit for all medical categories except for medical category C-1 and thereafter he was allowed to retire voluntarily w.e.f. 23-10-1979. Thereafter, he died on 25-3-1980. It is stated that since then the mother of the applicants had been continuously submitting representations to the Railway Authorities and other higher authorities for payment of pension, gratuity, G.P.F. and various other terminal benefits. However, nothing came out of these representations. The family, however, continued to retain the quarter which was allotted to the deceased employee and it was in 1994 that the applicants were directed by the Estates Officer to deposit Rs.2,19,852.00P as rent for the period from 7-12-1977 to 7-5-1994 @ Rs.1116/- per month as against Rs.25/- per month, which the father of the applicant had been paying during his life time. The applicants challenged the order before the Hon'ble High Court of Judicature at Allahabad, but the writ petition was eventually dismissed. On 8-9-1994 the mother of the applicants also died. Thereafter, the present application has been filed by the sons and daughters of the deceased employee seeking a direction to the respondents aforementioned.

3. The respondents have filed a counter affidavit, in which a preliminary objection has been taken to the maintainability of this application on the ground that the same is highly belated and, therefore, barred by limitation. The basic facts of the case, however, have not been disputed. The respondents have only pointed out that the applicants' father's reinstatement in 1971 was considered as a fresh

employment in terms of the order of the Hon'ble High Court allowing the second Appeal filed by the respondents against the order of the lower appellate court. The applicants' father had not accordingly completed 10 years service at the time he was voluntarily retired and, therefore, was not entitled to any pension. The applicants' father was entitled to provident fund, which came to about Rs. 2,000/- and the terminal gratuity of Rs. 423.50. The gratuity was, however, retained as the quarter occupied by the deceased employee was not vacated by his family members. It has further been averred that the father of the applicants was declared medically unfit in all categories except C-1 and C-2. All efforts were made by the administration to provide the applicants' father with a suitable alternative job. However, the applicants' father submitted his request for retirement from service w.e.f. 23-10-79, in his application dated 20-9-1979. A copy of this application has been annexed to the counter affidavit as Annexure-CA-2. The applicants' father was accordingly allowed to retire voluntarily w.e.f. 23-10-1979. The respondents have further stated that as a result of the illegal occupation of the Railway Quarter by the family members of the deceased employee, they are required to pay a sum of Rs. 2,22,084/- on account of rent @Rs. 1116/- per month w.e.f. 7-12-1977.

4. The applicants have filed a rejoinder affidavit, in which it has been stated that the respondents did not offer alternative employment to their father and, therefore, he had to move an application seeking voluntary retirement ^{as} ~~and~~, there was no

W.L.

alternative job ~~suitable~~ to him. It has further been stated that he was on leave at that time since 24-4-1979 and, therefore, he should be deemed to have retired w.e.f. 24-4-1979 and not w.e.f. 23-10-1979. They have also taken a plea that the OA cannot be considered as time barred since non-payment of terminal benefits constitute a recurring cause of auction.

5. I have heard learned counsel for both the parties and perused the record.

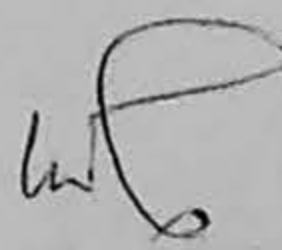
6. I have considered the application on merit as the allegation is that the family of the deceased employee was not being paid terminal benefits and there are several decisions which support the view that non-payment of terminal benefits constitute a continuing cause of auction.

7. The facts of this case are not disputed. The Hon'ble High Court of Allahabad had upheld the original order of removal of the father of the applicants from service. Therefore, he was not entitled to any terminal benefits ~~except~~ ^{except} the provident fund accumulations. The respondents, however, reinstated the father of the applicants on 11-1-1971 and after the Hon'ble High Court of Allahabad had upheld the original order of removal from service, he was allowed to continue in service as a fresh employment. It has also not been in dispute that he was medically decategorised and that no suitable alternative employment can be found for him. Thereafter the applicants' father, therefore, admittedly submitted a representation seeking voluntary retirement which was accepted. He was retired voluntarily w.e.f. 23-10-1979 and reckoning from 11-1-1971, he had not

W.L.

completed 10 years of service. He was, therefore, not entitled to any pension. The respondents are, therefore, right in stating that he was only entitled to provident fund accumulation & a small amount of gratuity. The respondents have suitably explained why the amount of gratuity was retained. The applicants had retained the quarter allotted to their father for many years after his retirement and they owed a substantial amount of money in the form of rent to the respondents. The quantum of rent is much higher than the amount of gratuity. If, therefore, this amount was retained, we do not find any fault with the respondents. As regards the quantum of the rent, which the applicant's father has been directed to pay, this is not the controversy before us. It is, however, not clear whether the respondents had paid to the applicants the provident fund accumulations of their father. This is an asset of the employee, which could not be ~~stopped~~ or retained by the employer. In case, this amount has not been paid, the respondents must pay this amount to the applicants in case they ^{are} legal heirs of their father.

B. With the aforesaid observations this application is dismissed as having no merit. The parties shall, however, bear their own costs.


Member (A)

Subed