

Central Administrative Tribunal Lucknow Bench Lucknow.

Original Application No. 309/2007

This, the 20th day of November, 2009

Hon'ble Dr. A. K. Mishra, Member (A)

1. (i) Smt. Ayesha Begum.
(ii) Mohammad Farid
(iii) Mohammad Anis
(iv) Mohammad Sagir
(v) Mohammad Sheab
(vi) Sabnam Banu

(Applicant No. 1 is the wife of Late Sri Mohammad Rais, Applicant 2 to 5 are the sons while Applicant No. 6 is the daughter of Late Sri Mohammad Rais, all residents of 266/212 Khala Bazar, Lucknow)

2. Puttan aged about 51 years son of Sri Chabban resident of Takiya Azam Bagh Golaganj, Lucknow.
3. Salim aged about 46 years son of Sri Karim resident of Gopalpuri Azadngar, Alambagh Lucknow
4. Abdual Mazid aged about 50 years son of Sri Basir Khan resident of 146/9527, Basiratganj Lucknow,
5. Abdul Wasi aged about 49 year's son of Sri Abdul Hamid resident of C/o 103 A, Sujanpura Railway Colony, Lucknow.
6. (i) Smt. Shamim Jahan w/o Late Sri Habib
(ii) Rais s/o Late Sri Habib
(iii) Anis s/o Late Sri Habib
(iv) Km Hasin jahan d/o Late Sri Habib
(v) Km Anisa D/o Late Sri Habib.
(all residents of Khanna Ki Takiya Saadatganj Lucknow).
7. Mukhtiyar aged about 50 years son of Sri Dulari resident of Wazirbagh Bhuiyan Mandir, Lucknow.

Applicants

By Advocate Sri P.K. Srivastava.

Versus

1. Union of India through the Secretary Ministry of Railways Government of India Rail Bhawan New Delhi.
2. Northern Railway through its General Manager Rail Bhawan New Delhi.

3. The Divisional Rail Manager Northern Railway Hazratganj Lucknow.

Respondents

By Advocate Sri V.K. Khare.

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been made for a direction to the respondents to pay the salary of late Mohammad Rais, and other applicant employees of Northern Railway for the period 1.1.2003 to 28.8.2006 when they were kept out of job due to delay in appropriate redeployment.

2. Late Mohammad Rais and applicants No. 7 to 12 were appointed at different times on the post of Bhishti. They were declared surplus on the post of Bhishti and redeployed as Safiwala which carried the same pay scale. They filed an Original Application before this Tribunal challenging their redeployment on the post of Safiwala. The Original Application No. 544/2002 was allowed on 30.8.2003 with a direction that late Rais and the other applicants may be redeployed on any other post except that of Safiwala subject to availability of vacancy. The respondents filed Writ Petition No. 1302 (S/B) of 2003 against this order which was dismissed on 9.12.2005. The respondents, thereafter, complied with the direction of the Tribunal and redeployed them as Trolleymen on 25.8.2006. No salary was paid to them for the period 1.1.2003 when the original order of redeployment was issued till 28.8.2006 when they joined on the post of Trolleymen. Sri Rais had died in the meanwhile and his legal heirs along with others have filed this application claiming salary for the intervening period in this application.



3. The respondents have submitted that the applicants were redeployed on availability of vacancy in compliance with the direction of this Tribunal which was upheld by the High Court on 9.12.2005. Since, the applicants did not perform any duty during the intervening period, they were not entitled to any salary for it. Their case for deployment on any post was taken up after the decision of the High Court was communicated to respondents. The time taken from the final decision of the High court and issue of fresh deployment order on 21.8.2008 was on account of identifying vacancies and processing the case for redeployment in other suitable posts of similar grade. The case of the applicants is that since no stay was granted by the High Court, the respondents should have complied with the direction of the Tribunal straightaway without waiting for the results of the Writ Petition.

4. However, the fact remains that the respondents have offered the applicant posts carrying the same pay scale once they were declared surplus on the post of Bhishti; but the applicants themselves did not join on the posts offered to them and chose to seek legal redress in matter. The respondents have ultimately complied with the direction of this Tribunal after a finality was reached in the Writ Petition filed by them before the High Court.

4.1. The learned counsel for the petitioner has cited the case of Union of India Vs. K.V. Jankiraman 1991 LAB I.C. 2045 in support of his contention that salary should be paid to him for the intervening period in which he could not perform any duty. The observation of the Hon'ble Supreme Court that the normal



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rule of no work no pay was not applicable to the case which was before them where the employee although willing to perform the work was kept away from it by the action of the authorities for no fault of his. In the present case, the authorities had offered an alternative post carrying the same pay scale to the applicant who himself chose not to join on the post. Therefore, the facts of the present case are clearly distinguishable.

5. In the circumstances, it is difficult to entertain the application for grant of salary for the period for which the employee did not render any work. Since no other relief has been sought for and the applicants did not work for the period for which salary is being claimed, it is not possible to support such a claim.

In the result, O.A. is dismissed. No costs.

A. K. Mishra
(Dr. A. K. Mishra)
Member (A) 20/11/09

vidya