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CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

O.A. No. 281/1990

Bhartiya Dak Karmchhari Sangh Kheri
and others

Applicants.

versus

Union of India & others

Respondents.

Shri M. Dubey Counsel for Applicants.
Shri D.Chandra Counsel for Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Two Unions of the employees alongwith 12 employees working in the Postal department (Class III and IV) have filed this application praying that the order dated 24.7.90 by which the period between 30.3.90 to 3.4.90 has been treated to be dies-non, be quashed.

2. Facts, as it appears^{are} that one Shri S.N.Singh Yadav was working as Sub Postmaster Maigalganj, became a victim of Dacoity in the night of 24.3.90/25.3.90 and was murdered by the dacoits. It appears^{As} that no action was taken by the police, on the F.I.R. filed with them, so the matter which created a sensation and agitation amongst the employees and a grave apprehension in their mind that their life and property were not safe and they could be done away with any time. Accordingly, applicants No. 1 and 2 served notice

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on the post Master General, Bareilly making a demand for the arrest of the murderers of Shri S.N. Singh Yadav, for ensurance of safety of postal employees and arrangement for armed chowkidar. When no action, was taken, yet another notice was served on 28.3.90 with copies to various authorities. The respondent No. 2 apprised that the demands could not be met and the entire staff went on strike and accordingly they proceeded on strike, which strike has been treated as illegal and the period of strike has been treated as dies-non, which adversely affects the applicants. The order has been passed as per Fundamental Rule -17 and F.R. 17(1).

3. On behalf of the applicants it was contended that the notice itself was required and in this connection my attention has been drawn to Annexure R-1 of the rejoinder-affidavit filed in reply to the counter-affidavit. From the facts it is clear that so far as performance of duty is concerned, the applicants did not perform any duty from 30.3.90 to 3.4.90. The strike was called off or not but the work was not done and that is why the period was treated as dies-non. The performance of duty in government service is not dependant on the murder or calling off duty. It is not necessary to go on strike more so, when the strike was allegedly at the behest of the Union and that too for such a purpose. The learned counsel for the applicant contended that as the recovery was made subsequently, recovery could not have been made without notice. The order of recovery was passed as the payment of salary was made by mistake

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can always be rectified and was so rectified. Merely because such a plea has been taken in Rejoinder-affidavit notice of same need not be taken up even then the same is being considered. Though the case has been filed by the two unions, neither name nor period of employees whose cases were similar to that of applicant treated as dies non and as such the contention in this behalf that discrimination has been done cannot be accepted. It may be pointed out that no specific plea in this behalf has been taken, but arguments were advanced.

4. The respondents have pointed out that only three demands were made and the matter was discussed with the Superintendent of Police and the District Magistrate and the Union leaders were requested not to proceed on strike and their demands will be considered. An appeal was also issued on 29.3.90 and another on 30.3.90 indicating that the strike notice was illegal and the Union should not proceed on strike and even then they proceeded on strike and due to absence without prior permission, Notice was issued under rule 62 of P & T Manual Vol. III, against which the applicants did not make any representation and have directly approached the Tribunal.

5. As the strike has already been declared illegal, thereafter the applicants proceeded on strike and that is why the action taken by the respondents is not illegal. Notice having already been given to the applicants the contention that no notice was issued, is devoid of merit. There is no merit in the

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application, and it is dismissed. However, it is being made clear that it will be open for the applicants to approach the department for reconsideration and grant any relief. No order as to costs.

Vesnu Singh

Vice Chairman.

Shakeel/

Lucknow Dated 1.10.92