

CENTRAL ADMINISTRATIVE TRIBUNAL,

DELHI

1985

(43)

F.N. No. 2/91(TL)
(A.P. No. 8297/80)

Smt. Laxmi Devi & others

Respondents

Versus

Central Government Industrial
Labour Court, Kanpur and
others

Respondents.

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

After dismissal of their application under section 33(c) (2) of the Industrial Disputes Act, 1948 the heirs and legal representatives of late Prem Singh, who retired on 30.6.1982 as Station Master, Northern Railway and died on 10.3.1984, allegedly for want of proper treatment and no relief was paid to him, they filed writ petition before the High Court, Lucknow Bench, which, by operation of law has been transferred to this Tribunal, under section 29 of the Administrative Tribunals Act, 1985.

2. The applicant ^{has} prayed for issue of a writ, order or direction in the nature of certiorari for quashing the order dated 23-11-1987 passed by the Central Government Industrial Labour Court, Kanpur dismissing the application under section 33(c)(2) and also ~~prayed~~ for issue of a mandamus directing the opposite party No. 2 to make payment of arrears of salary and the amount of gratuity

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of late Sri Prem Singh.

3. From the facts it appears that before his retirement while, in service, the said Prem Singh was implicated in an offence of misappropriation of Rs 15.00 and was prosecuted under section 120 B of I.P.C. read with section 5(2), 5(i) and (d) of the Prevention of Corruption Act in the court of Special Judge (East) Anti Corruption U.P., Lucknow and he was acquitted by the High Court vide order dated 24.7.1968. As the department was of the view that the applicant had been held guilty of the departmental irregularities, the applicant moved an application for clarification ^{before High Court} and it was done vide High Court's order dated 19.5.70. In the mean time, vide order dated 4.6.1966 the petitioner (deceased Prem Singh) was placed under suspension with effect from 6.6.1966 and after his acquittal the suspension order was revoked vide order dated 11.9.1968 with immediate effect. According to the applicant, no order of deduction of wages was passed but it has been stated by the respondents that although the said Prem Singh was taken back on duty but the respondents vide notice dated 10.6.69 recited that the period of Sri Prem Singh will be treated as suspension and no further amount except the subsistence allowance will be paid to him. Prior to that, in the departmental action, the disciplinary authority vide order ~~dated~~

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awarded penalty of withholding of his one increment for one year without cumulative effect. Although the deceased made several efforts but of no avail. When the matter went into the Labour Court, the respondents filed written statement dated 23.11.87, i.e. some five years after the date of retirement of deceased stating that as D.P.O. had decided the matter, the deceased was not entitled to the arrears of salary of the suspension period and also not entitled to gratuity as due against him. According to the respondents the gratuity due was Rs 16,458.75 and the amount recoverable from the deceased was Rs 17,880.35. According to the railway administration the dues were in respect of the following items:

a) Goods admitted debits of	Rs 1024.00
b) Coaching admitted debits	Rs 304.35
c) Goods objected debits	Rs 12624.00
d) TIA debits	Rs 3928.00

Total	Rs 17,880.35

There is no denial of the fact that during the life time of the said Ram Singh he was apprised of any dues and he was never informed of any proceedings. Noting like that was done even after his retirement, nor his heirs or legal representatives

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were told that the applicant was not apprised of this fact too, as no proceedings for recovery were taken and the legal representatives / never associated with. It was not open for the respondents to take unilateral decision after the death of the deceased and deprive the legal representatives of the dues. The respondents should have given reply at the proceedings should have been taken. Accordingly, the respondents are liable to pay the said amount ^{of gratuity} to the heirs and legal representatives along with interest. In case they can take any proceedings for the same, it is for them to take proceedings for the recovery of the said amount in accordance with law. Regarding suspension ^{he} allowance of the deceased / was suspended because of criminal charges in which he was acquitted. Later on departmental proceedings took place and only a minor penalty was given, yet he was deprived of full salary which was not permissible. In this connection, a reference may be made to O.A. No. 43/56/64-NWD, dated 22.10.64 which contains guidelines for placing the government servant under suspension which lays down that the government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that the suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the

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proceedings and not a minor penalty. The Staff side of the Committee of the National Council set up to review the C.C.S. (C.C.A.), July 9, 1965 had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowance paid for suspension period. Government have accepted this suggestion against a suspended employee for the imposition of a major penalty finally and with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of P.R. 54-B and the employee concerned should, therefore, be paid full pay and allowance for the period of suspension by passing a suitable order under P.R. 54-B.

In the Railway Administration, the position is not different at all. Minor penalty was given to the applicant who was placed under suspension and he is entitled to full salary and period to be treated as on duty and the difference of amount of salary of suspension period are to be paid. Accordingly, the respondents are directed to make the payment of the aforesaid amounts to the applicants within a period of three months from the date of communication of this order, together with interest at the rate of

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10 per cent or at any other rate in respect of the gratuity if the same has been prescribed by the Railway Administration. Three months after the same became due to be calculated from 3 months of the date of death of deceased. No order as to costs.



Vice Chairman.

Lucknow: Dated: 6.5.92.

Shakeel/