

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH  
CIRCUIT BENCH, RANCHI  
OA/051/00340/2019**

Reserved on: 22.01.2020  
Pronounced on : 23.01.2020

**C O R A M**

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER  
HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER**



Faiyaz Ahmad, aged about 68 years, Son of Late Wahid Alam, resident of Idgah Mohalla, P.O.- Pathardih, P.S.- Sudamdih, Dist.- Dhanbad, Pin No. 826001.

.... Applicant

By Advocate(s): - Mrs. M.M. Pal, Sr. counsel  
Mrs. Ruby Pandey  
Mr. Manish  
Ms. Aparajita Sinha

-Versus-

1. Steel Authority of India Ltd. Colliery Division, P.O. & P.S- Chasnala, Dist.- Dhanbad, Pin No. 828135.
2. M/s Indian Iron and Steel Plant, Chasnala, Dhanbad through its Managing Director, Baranpur, PO & PS- Baranpur, Dist.- Burdwan, West Bengal.
3. Dy. General Manager (P&A) Indian Iron and Steel Plant, Chasnala, PO & PS- Chasnala, Dist.- Dhanbad, Pin No. 828135.
4. Chief Personnel Manager, Indian Iron & Steel Plant, Chasnala, PO & PS- Chasnala, Dist. Dhanbad, Pin No.- 828135.
5. Deputy Chief Personnel Officer, Indian Iron and Steel Plant, Chasnala, PO & PS- Chasnala, Dist. Dhanbad, Pin No.- 828135.
6. Assistant General Manager, E.M.E Department, Indian Iron and Steel Plant, Chasnala, PO & PS- Chasnala, Dist.- Dhanmbad, Pin No. 828135.
7. Deputy General Manager/Agent, Indian Iron and Steel Plant, Chasnala, PO & PS- Chasnala, Dist- Dhanbad, Pin No. 828135.
8. General Manager, Indian Iron and Steel Plant, Chasnala, PO & PS- Chasnala, Dist. Dhanbad, Pin No. 828135.

.... Respondents.

By Advocate(s): - Mr. Abhishek Kumar Singh with Mr. V.K. Dubey

**ORDER**

**[ORAL]**

**Per Dinesh Sharma, A.M.:-** In the instant OA, the applicant has prayed for the following reliefs:-



“1) The respondents be directed to pay all consequential benefits consequent upon his reinstatement in service after correction of his date of birth within a specified period.

2) The respondents be directed to pay all the allowances viz Qtrs allowance, cycle allowance, LTC/LLTC, increment and vehicle allowances payable after the retirement and increment from due dates the period, i.e. from 01.03.2006 to 11.02.2011 when he was restrained to perform his duties for his premature retirement order.

3) The respondents be directed to extend the benefit of his promotion/up-gradation to Grade S-10 with all monetary benefits on and from 12.12.2008, i.e. the date when his juniors were promoted.

4) The Respondents be directed to calculate the pension amount and PF payable to the petitioner for the period from the date of his reinstatement to the actual retirement, i.e. from 12.02.2006 to 31.07.2011 and to pay the due amount to this petitioner within a stipulated period.

5) The respondents be directed not to discriminate the petitioner and to extend all service benefits at par with the same and similarly situated persons as he was in continuous services till 31.07.2011, i.e. the date of his retirement.

6) Any other relief or reliefs for which this petitioner is entitled to.”

2. The applicant had earlier approached the Hon’ble High Court of Jharkhand through WP(S) No. 3971 of 2011 with a prayer for making the payment of entire back wages and all other benefits to petitioner w.e.f. 01.03.2006. This Writ Petition was allowed to be withdrawn by order dated 09.10.2017 in view of the notification No.

SO727(E) dated 31.03.2010 by which the jurisdiction to handle service matters related to SAIL came under the Central Administrative Tribunal. The applicant filed OA/051/00241/2018 which was allowed with a direction to the respondents to pay salary to the applicant from 01.03.2006 to 11.02.2011. It was however made clear that the applicant shall not be entitled for payment of any interest on the arrears amount of salary. The present OA is mainly for grant of allowances other than salary, extending the benefit of promotion upgradation and for calculating the pension amount payable to the applicant for the period from the date of his re-instatement to the date of actual retirement. The applicant claims that consequent upon his reinstatement he is not only entitled for his back wages but also other consequential benefits. Since any other interpretation would amount to punishing him without any fault of his. He has stated that one person junior to him (Ram Naresh Singh) was promoted along with the applicant in the Grade S-9 and again he was promoted to Grade S-10 on 12.12.2008 and as such the applicant is also entitled for his promotion to Grade S-10 from 12.12.2008 with consequential monetary benefits. He is also entitled to get sick leave, CL and LTC/LLTC, quarter's rent, cycle allowance, conveyance allowance which should have also been paid along with his salary.



3. A written statement has been filed in which the respondents have denied the claim of the applicant. They have stated that this application is barred by period of limitation. The applicant has admittedly

not worked for the period of 01.03.2006 to 11.02.2011 and hence he is not entitled for any allowances for this period. The OA is also hit by the principle of res-judicata since he has already approached this Tribunal for the same relief .

4. A rejoinder has been filed by the applicant in which he reiterated his earlier arguments and denied that the principle of res-judicata is applicable from the facts of this case. In the previous OA, prayer was for a direction to his pay salary for the period from 01.03.2006 to 11.02.2011, whereas in the present OA the prayer has been made for other reliefs which are not the same as were claimed in the earlier OA. It is also stated that though month to month salary for that period has been paid no pension amount and PF amount was deducted from the salary and the respondents have also not deposited any amount in respect of PF and pension for the period from February, 2011 to July, 2011 and till date it has not been calculated and paid to the applicant.



5. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. During the course of arguments, the learned counsel for the applicant cited the decision of the Hon'ble Supreme Court in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak mahavidyalay (D. ED.) & Ors.** [(2013) 10 SCC 3245] to support her argument that reinstatement entitles an employee to claim full back wages and denial of back wages would amount to indirectly punishing

the employee and rewarding the employer by relieving him of the obligation to pay back wages. On the other hand, the learned counsel for the respondents cited the decision of Hon'ble Supreme Court dated 04.04.1977 in the **State of U.P. Vs. Nawab Hussain** [ 1977 Law Suit (SC) 173] to support his argument about constructive res-judicata, i.e. a plea though available but not taken in earlier litigation cannot be raised in subsequent petition in respect of same cause of action.



4. After going through the pleadings and hearing the arguments of the parties, we find that the principle of constructive res-judicata squarely fits on the facts of this case. The earlier OA filed by the applicant (OA/051/00240/2018) was for getting arrears of salary for the period for which he had been allegedly kept out of service illegally from 01.03.2006 to 11.02.2011. The Tribunal found that superannuating the applicant from service on 28.02.2006, considering his date of birth as 28.02.1946 was wrong. The respondents had themselves, after accepting his date of birth as 18.07.1951 had reinstated him in service w.e.f. 12.02.2011. In that situation, the applicant was entitled for receiving salary for the period from 01.03.2006 to 11.02.2011. Under these circumstances, this Tribunal had directed to the respondents to pay salary to the applicant from 01.03.2006 to 11.02.2011 but had made it clear that the applicant shall not be entitled for payment of interest on the arrears amount of salary. It is admitted that salary for the period has been granted and now the applicant claims for getting other allowances,

promotion and revision of pension based on re-calculating contribution to pension from the salary of this period. As the applicant has himself admitted that none of these things were claimed by him in his earlier OA it is obvious that all these claims arise from the same cause of action (keeping him away from service due to earlier than due retirement from service). Since the applicant himself admits in the rejoinder that none of these were sought by him in his earlier litigation, he will be barred by principle of constructive res-judicata. We reproduce here a quotation from **Devilal Modi's** case (AIR 1965 SC 1150) which was found to be the clearly laid down law regarding the applicability of principle of res-judicata in the judgments cited by the learned counsel for the respondents (State of U.P. Vs. Nawab Hussain) :-



“ This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive re judicata is not applied to writ proceedings, it would be open to the party to take one proceedings after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred. ”

Since all these remedies could have been sought under the earlier OA, they cannot be raised now following the above principle of constructive res-judicata.

5. It was argued by the learned counsel for the applicant that the relief regarding contribution to pension could be sought only after

the applicant received salary arrears following the decision of this Tribunal and when he found that no contribution towards GPF and pension was made. She also argued that the salary includes all the allowances and therefore these should have been paid without there being any need for further filing of a fresh OA. We do not agree with this argument since if that was true the applicant should have taken appropriate action for proper compliance of the order made by this Tribunal (through contempt proceedings etc.). We, however, give liberty to the applicant to pursue the matter regarding revision of pension on the basis of the contributions which she says should have been deducted (and employer's contribution added) following the release of his salary arrears. The OA is disposed of accordingly. No order as to costs.



**[M.C. Verma ]**  
**Judicial Member**  
**Srk.**

**[ Dinesh Sharma ]**  
**Administrative Member**