

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2339/2001

New Delhi this the 30th day of May, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri V.P. Sharma,  
S/o Sh. O.P. Sharma,  
R/o E-150, New Vijay Nagar,  
Ghaziabad, Uttar Pradesh.

-Applicant

(By Advocate Shri S.K. Gupta)

-Versus-

1. Govt. of NCT of Delhi,  
through the Chief Secretary,  
Delhi Secretariat, I.G. Stadium,  
I.P. Estate, New Delhi.

2. Chief Fire Officer,  
Fire Headquarters,  
Delhi Fire Service,  
Connaught Place,  
New Delhi-110001.

-Respondents

(By Advocate Ms. Jasmine Ahmed)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns an action of the respondents whereby he has not been paid interest on the arrears of increment calculated with effect from 1982 to March, 1991.

2. Applicant assailed non-release of annual increment in OA-73/1999, which was disposed of by an order dated 14.7.99, with the following directions:

"I, therefore, direct respondent No.2 to work out the arrears due to the applicant on account of his increments from time to time at least till March, 1991 and pay the same with an interest of 15% per annum within a period of three months from the date of receipt of a copy of this order. I further direct that a decision be taken on his alleged unauthorized absence and if any enquiry is contemplated, the same should be concluded within a period of four months from the date of receipt of a copy of this order. Consequential benefits, to the applicant, in terms of his pay in the pay scale, will depend on the decision taken on the vigilance enquiry conducted against the applicant."

(2)

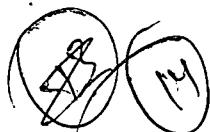
3. In pursuance of the directions respondents have released arrears of increment to the applicant for the aforesaid period by paying him an amount of Rs.18,164/- and have paid him interest till March, 1991, amounting to Rs.31,498. Being aggrieved applicant preferred CP-383/99, which has been disposed of on 30.4.2001, with the following directions:

"In the absence of any specific direction in the Tribunal's order dated 14.7.99 to pay applicant interest @15% p.a. on the arrears of increment from March, 1991 till the actual date of payment, it cannot be said that respondents have deliberately, wilfully, and wantonly and contumaciously disobeyed the Tribunal's order dated 14.7.99 to justify contempt action against respondents.

4. Giving aforesaid liberty to applicant to agitate his grievance separately in accordance with law, if so advised, the CP is dropped. Notices discharged."

4. Having accorded liberty applicant preferred this OA, wherein he has contended that the intention of the Tribunal was to give interest for the period when increment was not given till its actual payment, which is by common parlance and logic is the principle <sup>on</sup> ~~on~~ which the interest is to be accorded. As the payment was made to the applicant by an order dated 13.4.2000 he is entitled for an interest on the amount of Rs.18,164/- till it was actually paid on 13.4.2000 and not till March, 1991.

5. On the other hand respondents' counsel stated that as the applicant has approached this court earlier in OA-73/99 wherein no directions have been issued to pay the interest upto the date of actual payment they have rightly accorded interest till March, 1991 at the rate of 15% per annum. The CP was also dismissed with the observation that no directions have been given in the OA to disburse

 (Signature)

interest upto the date of actual payment. The present OA suffers from the vice of constructive res judicata and is not maintainable. It is also stated that the decision of the court has been meticulously complied with and the OA is liable to be rejected, as not maintainable.

6. I have carefully considered the rival contentions of the parties and perused the material on record. In view of the liberty accorded to the applicant in the CP to raise his grievance separately in accordance with law, I find that in the earlier OA directions have been issued to disburse to the applicant arrears from 1980 to March, 1991 and to pay the same with an interest of 15% p.a., cannot be countenanced and construed in such a manner to hold that the interest was payable upto the date of actual payment. Applicant has not taken up any pursuant action to get the order clarified. In this view of the matter as he has an opportunity to take the plea of interest till the date of actual payment and the same having not been taken is deemed to have been rejected in the earlier OA. As such despite opportunity accorded to him in the CP the same would be exercised in accordance with law. Law does not permit filing of OA on same cause of action when the matter had already attained finality. The claim of the applicant contained in this OA is barred by the doctrine of constructive res judicata and is not maintainable.

7. In the result and having regard to the discussion made above, OA is found bereft of merit and is accordingly dismissed. No costs.

 (Signature)

(Shanker Raju)  
Member (J)

"San."