

Central Administrative Tribunal
Principal Bench

O.A. 992/99

New Delhi this 28 th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Smt. Lakshmi Rani Kapoor,
widow of Late Shri Bhagwan Kapoor,
R/o C-40/92-C, Janakpuri,
Delhi.

Applicant.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The General Manager,
North-Eastern Railway,
Gorakhpur.

2. The Divisional Railway Manager,
North-Eastern Railway,
Izatnagar.

Respondents.

By Advocate Shri B.S. Jain.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant in this case is aggrieved by the action of the respondents in refusing to pay interest on the amount of gratuity which was withheld from her husband in 1985 and has been paid only in February, 1999. Hence, this O.A. claiming interest @ 18% per annum on the withheld amount of gratuity which was due on the retirement of her husband from service on 30.4.1985 till the actual payment.

2. This is the second round of litigation as the applicant had filed an earlier application (OA 2016/93) which was disposed of by a Division Bench in which one of us (Smt. Lakshmi Swaminathan, Member(J)) was a Member,

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with the connected case on 6.1.1998. In that order, it was held that the disciplinary proceedings held against the applicant's husband while in service the respondents had not been done in accordance with the relevant rules. Accordingly, the impugned orders were quashed and set aside and the respondents were directed to pass appropriate orders by the President in accordance with the relevant Rules within one month from the date of receipt of a copy of that order. The appeal filed against this judgement was dismissed by the High Court. Thereafter, the respondents had paid an amount of Rs.12,175/- on 4.2.1999. The applicant states that this has been done without paying any interest. She had made a representation on 7.2.1999 in respect of interest to which according to the applicant no reply has been given.

3. Shri B.S. Mainee, learned counsel, has submitted that the gratuity of the applicant's husband amounting to Rs.11,137/- had been wrongfully and unjustifiably withheld by the respondents and, therefore, in accordance with the rules, they are liable to pay interest thereon. He has submitted that the respondents are liable to pay interest on the withheld amount of gratuity for this long period till the date of actual payment.

4. The respondents in their reply have submitted that an amount of Rs.11,137/- was found outstanding against the applicant's husband at the time of his retirement. They have referred to the Tribunal's orders dated 6.1.1998 in OA 2016/93. They have submitted that after the

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dismissal of the writ petition by the Delhi High Court by order dated 5.10.1998, copy of which was received by them on 12.11.1998 within a period of less than three months, they have paid this amount of Rs.11,137/- to the applicant on 4.2.1999. (11)

5. Shri B.S. Jain, learned counsel has submitted that as the judgement of the Tribunal dated 6.1.1998 in OA 2016/93 has become final, the applicant cannot raise the same issue in this O.A. as it is barred by the principles of res judicata. He has submitted that if the applicant had wanted to, he could have claimed interest in OA 2016/93 and previously the applicant had filed a writ petition in the High Court which was transferred to the Allahabad Bench of the Tribunal as TA 1770/87 in which the Tribunal had also quashed the orders after which OA 2016/93 had been filed. He has submitted that as the respondents have fully implemented the orders of the Tribunal, there was nothing illegal or arbitrary and the applicant is not entitled to any interest, as claimed in this O.A.

6. From the facts mentioned above, it is seen that the applicant in this O.A. and her husband who was earlier working as Coach Superintendent in Northern Railway, had filed earlier applications which have been disposed of by the Tribunal (Allahabad Bench) by order dated 25.11.1991 and 6.1.1998 (Principal Bench). Para 7 of the order dated 6.1.1998 reads as follows:

"In the facts and circumstances of the case and taking into consideration the Tribunal's orders dated 25.11.1991 and 21.5.1993, we are of the view that the final order passed in the departmental proceeding held against the applicant has not been done in terms of paragraph 2308 of IREC which is

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the relevant provision. The rule makes it clear that it is the President alone who has the right of withholding or withdrawing a pension or any part of it. If, in a departmental proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The impugned orders have not been passed by the President for withdrawing pension or any part of it for the pecuniary loss caused to the Government, and to this extent, the contentions of the applicants are entitled to succeed".

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7. Taking into account the aforesaid order and the reliefs prayed for in the present application, I find merit in the contention of the learned counsel for the respondents that this O.A. is barred by the principles of res judicata and constructive res judicata. When the applicant had challenged the validity of the final order passed in the disciplinary proceedings for withholding or withdrawing of pension or any part of it as being invalid as if it is not in accordance with the Rules, she could have also claimed return of the same with interest for the intervening period. Shri Mainee, learned counsel, has contended that even now it is not delayed as this could be done by the Tribunal under any other reliefs claimed by the applicant. I am unable to agree with this contention having regard to the settled principles of res judicata and constructive res judicata (See the judgements of the Supreme Court in **Daryao Vs. State of Uttar Pradesh** (AIR 1961 SC 1457) and **The Workmen of Cochin Port Trust Vs. The Board of Trustees of the Cochin Port Trust and Anr.** (AIR 1978 SC 1283). In **The Workmen of Cochin Port Trust** (supra), the Supreme Court has held that the principle of res judicata also comes into play when the judgement and order or a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res

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judicata on that issue is directly applicable. In
Commissioner of Income Tax, Bombay Vs. T.P. Kumaran
(1996(10) SCC 561), the Supreme Court has held that where
the claim for interest was not made in the original suit,
the petitioner cannot seek the remedy separately.

8. In Union of India Vs. Ujagar Lal (1997(1) SLR
125), the Supreme Court has held that the delayed payment
of DCRG to the respondent was not due to the delay on
account of administrative lapses but it was on account of
the circular issued by the Railway Board. It was held that
the respondent was not entitled to any interest as directed
by the Tribunal. In the present case, the delay in the
payment of gratuity cannot also be held to be due to any
administrative lapses for which the respondents can be
blamed, but part of it is due to the number of cases filed
by the applicant and her husband, as referred to above. In
the facts and circumstances of the case, the claim for
interest is untenable.

9. For the reasons given above, this application
fails and is accordingly dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'