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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. J122/98

New Delhi this the 16th Day of December, 1998.

Hon'ble Mr. R.K. Ahooja, Member (A)

1. Shri Hari Singh,
S/o Shri Sewa Ram,
B-9, Gourav Apartment,
Patpar Ganj (Near DTC Depot),
New Delhi. Applicant No. 1
2. Shri Mahesh Nand
S/o Shri Ishwari Dutt,
R/o H.No. B-75, Sector 12,
Vijay Nagar,
Ghaziabad, (UP). Applicant No. 2
3. Shri Tota Singh,
S/o Shri Dev Karan,
R/o Village Nangla Banshi,
P.O. Chola,
Distt. Baland Shehar (UP). Applicant No. 3

(By Advocate: Shri P.M. Ahlawat)

-Versus-

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad (UP)
3. The Senior Divisional Electrical Engineer (RS),
Northern Railway,
Ghaziabad (UP). Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

Hon'ble Shri R.K. Ahooja, Member (A)

The applicants herein retired from Government service on 31.7.1995, 30.11.1995 and 31.1.1996 respectively. At the time of their retirement on the basis of an objection by audit regarding grant of an additional increment on their promotion seven years earlier, the respondents raised a recovery demand and

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ordered deduction from their gratuity. Aggrieved by this action of the respondents, the three applicants herein filed an O.A. No. 555/96 on 27.7.1996. The same was allowed by an order dated 1.4.1997 with direction to the respondents to refund the amount recovered from the gratuity. Failing compliance of these directions, the applicants filed C.P. No. 300/97. In the mean time, the requisite amounts were refunded and the CP was closed by the order of the Tribunal on 22.12.97 on the following terms.

"The learned counsel for the petitioners submits that the deduction made out his gratuity has already been paid to him but the consequential revision of his pension has still not been made. We have perused the judgement and found that there is no such direction contained in the said order but in case the petitioners make a representation, the respondents shall consider the same in accordance with rules. With this, this C.P. is disposed of. Notice issued to the alleged contemner is discharged".

The present O.A. has been filed on the allegation that since the respondents have not agreed to revise the pension of the applicants.

2. The claim of the applicants, in brief, is that their pay was wrongly reduced at the time of their retirement. Accordingly they pray for a direction that their pay should be restored to the old level and their retiral benefits be recalculated and arrears paid to them on that basis with 18% penal interest.

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3. The respondents in reply have raised the plea of constructive res judicata. They also point out that pay revision had been done while they were still in service and that such a revision was in accordance with law. They also raise an objection that two of the applicants reside outside Delhi and they are, therefore, outside the jurisdiction of the Principal Bench.

4. I have heard counsel on both sides. The present O.A. is clearly barred by the Principle of Constructive res judicata. The orders of the respondents of stepping down the pay of the applicants, as per copies annexed to their reply and not rebutted by the applicants were issued on the eve of the retirement of the applicants. On the basis of stepping down of their pay from 1986 onwards, certain recoveries were calculated and the relevant amounts were deducted from the gratuity to be paid to the applicants. In O.A.No. 555/96, the applicants sought the waiver of these over payments on the ground that they were on account of non detection of the mistake in and the fixation of their pay which had occurred seven years back and the recovery was sought to be made without any show cause notice to the applicants. It was also alleged by them that in terms of para 1013 of the Indian Railway Establishment Manual ; Vol. I, all personal " claims" had to be normally checked finally within one year from the date of payment and if only within this period an amount is discovered to have been paid erroneously, it will be recovered

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ordinarily without hardship to the party concerned. The question of over payment would not have arisen if the relief sought for by the applicants were that their pay could not be stepped down. The root cause of recovery of over payment was the stepping down of the pay but the applicants challenged only the recovery of the over payments and not the stepping down of the pay. The argument advanced on behalf of the applicants that at the time of filing the O.A. No. 555/96, their present claim for proper refixation of pension and other retiral benefits had not arisen cannot be accepted since the allegation is not that their retiral benefits are not in accordance with the stepped down pay. Clearly, the relief sought for now should have been asked at the time of filing the earlier O.A. No. 555/96. Since the relief sought for was limited to the refund of the recoveries, by implication the stepping down of the pay on detection of the mistake was accepted by the applicants.

5. It was argued by the learned counsel, Shri P.M. Ahlawat, that in its order on C.P. No. 300/97, reproduced above, the Tribunal itself had directed that the applicants should file a representation in regard to their proper fixation of pension to the respondents who will consider the same in accordance with the rules. Such a direction in a C.P. does not, in my view, affect the bar on raising the issue in a fresh O.A. for obtaining a relief which could and should have been asked for in the earlier O.A. The directions in C.P. are

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concerned with the compliance of the order of the Tribunal and not for deciding fresh matters. Therefore, the observations and directions of the Tribunal in the C.P. have to be interpreted within the four walls of the issues taken up and the decisions made in the main petition.

6. In the light of the above discussion, the present O.A. is dismissed as barred by res judicata.

There will no order as to costs.

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(R.K. Ahooja)
Member (A)

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