

(To)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 419/98

New Delhi, this the 20<sup>th</sup> day of January, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)  
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri Vir Chand,  
S/o Shri Sadhu Ram Brahaman,  
C-58/1, Bhajan Pura

Delhi - 110053.  
(By Advocate: Sh. M.L.Ohri)

.... Applicant

Vs.

1. Union of India through  
The Secretary,  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi.

2. The Chief Commissioner of  
Customs and Central Excise (DZ)  
Central Revenues Building,  
I.P.Estate, New Delhi.

3. The Pay & Accounts Officer,  
Central Excise Commissionerate,  
Central Revenues Building,  
I.P.Estate,  
New Delhi.

.... Respondents

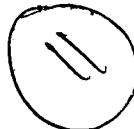
(By Advocate: Sh. R.R.Bharti)

O R D E R

**delivered by Hon'ble Shri T.N.Bhat, Member (J)**

Applicant who is a retired Central Govt. employee and was at the relevant time working as Inspector in the Office of Chief Commissioner of Customs and Central Excise, has filed this OA assailing the order/letter dated 28.11.97 by which, according to the applicant, the financial benefits of his promotion in the grade of Superintendent have been denied to him. The applicant had claimed financial benefits by way of arrears of pay, encashment of leave and grant of enhanced pension consequent upon his promotion to the grade of Superintendent w.e.f. 8.1.88.

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20.1.99.



2. The applicant was involved in a criminal case and was accordingly not given promotion as Superintendent on the due date, i.e., 8.1.98, as the recommendations of the DPC were kept in a sealed cover. During the pendency of the criminal case the applicant retired from service as Inspector on 31.10.90. However, his post-retirement benefits such as pension, gratuity, leave encashment were not released for the reason that the criminal case was still pending against him.

3. The applicant came to be acquitted in the criminal case vide the judgment passed by Special Judge, CBI, Jodhpur vide the judgment dated 1.5.93 (copy at Annexure A-2). Even after his acquittal the applicant was not paid his retirement dues nor was he promoted as Superintendent after opening the sealed cover. He accordingly filed OA - 2282/95 in this Bench of the Tribunal. In the OA the applicant, according to his own averment made in para 4.7 of the OA, had prayed for grant of pre-retirement benefits as well as post-retirement benefits w.e.f. 1.11.90 as well as arrears of pension from the date of retirement together with interest thereon @ 18% per annum. During the pendency of the OA the respondents filed the copy of an Order No.11/96 dated 22.5.96 issued by the competent authority whereby the applicant had been notionally promoted to the grade of Superintendent w.e.f. 8.1.88 which was the due date. The Tribunal accordingly disposed of the OA with a direction that the applicant should exercise option as stated in the order dated 22.5.96 ibid and Resp. No.2 in that OA shall thereon take follow up action for payment of retirement benefits alongwith interest @ 12% p.a. It was further

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directed that if the amount so calculated is not paid by 15.10.96, the entire amount shall carry interest @ 18% p.a. In regard to the GPF it was directed that the applicant shall be paid interest on the delayed payment as provided in the relevant rules.

4. In pursuance to the directions of the Tribunal in the aforesaid OA the applicant exercised his option and his pay as Superintendent was fixed by the respondents vide order dated 7.10.96. He was also paid revised DCRG, commutation of pension and interest. However, the arrears of salary as Superintendent from the date of notional promotion, i.e., 8.1.88 to the date of retirement, the difference in the amount of encashment of leave due as per the revised pay fixation and the enhanced pension due as Superintendent together with arrears of pension resulting from the fixation of his pay were not paid to him. The applicant submitted his representation dated 24.10.97 to Resp. No.1 & 2 in this regard. Resp. No.2 vide the impugned order/letter dated 28.11.97 has informed the applicant that the financial benefits of his promotion as Superintendent cannot be given to him as he did not actually perform duties as Superintendent.

5. The applicant has assailed the impugned order mainly on the ground that the respondents could not refuse to pay to the applicant the consequential benefits flowing from his promotion from the back date which had been held up only because of the criminal case in which he eventually got acquitted. Relying upon the judgment of the Apex Court in Union of India and Others vs. K.V. Janaki Raman and Others reported in (1993) 23

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Administrative Tribunal Cases 322 the applicant contends that on his exoneration from the charges in the disciplinary proceedings or his acquittal in the criminal proceedings the applicant has to be given back wages from the date of his notional promotion. It is further contended that the encashment of leave has to be commuted on the basis of the applicant's pay as Superintendent and he is accordingly entitled to the difference in cash equivalent of leave salary already paid and that which would be payable to him on his promotion as Superintendent on the date of his superannuation.

6. The applicant prays for the following reliefs:-

- i) quash letter C.No.CCU(DZ) Admn/37/97/7157 dated 28.11.97 (Annexure A-1) denying to the applicant the financial benefits of his promotion as Superintendent on notional basis;
- ii) direct the Respondents to grant him back wages from the date of his notional promotion as Superintendent to the date of his superannuation with 18% interest.
- iii) direct the Respondents to revise his pension on the basis of his promotion in the grade of Superintendent and grant him arrears of pension resulting therefrom with 18% interest thereon.

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iv) direct the respondents to recompute his encashment of leave benefits consequent upon his promotion as Superintendent and pay to him the arrears of difference between the amount already paid and the amount due based upon his pay as Superintendent with 18% interest thereon.

v) award costs to the applicant;

vi) pass such other order or issue such direction as may be deemed fit in the interest of justice.

7. The respondents have resisted the applicant's claim by filing a detailed reply in which it is averred that this OA is hit by the principles of res judicata, as in the previous OA filed by the applicant the Tribunal had not granted him the reliefs which he is claiming in the present OA. Amplifying this contention the respondents have stated that the applicant had prayed for those reliefs in the earlier OA and that even if he did not pray specifically for those reliefs in the earlier OA, the present OA would still be hit by res judicata in view of the provisions contained in Section 11 read with Order 2 Rule 2 of the Code of Civil Procedure. Further, relying upon the provisions contained in FR 17 (1) the respondents have averred that the applicant is not entitled to additional pay and allowances from a date when he was not actually working but from which only notional promotion was granted to him.





8. To the counter filed by the respondents the applicant has also filed rejoinder in which it is stated that the previous OA related only to "pre and post retiral benefits" and that in that OA the Tribunal did not adjudicate the matter relating to the payment of back wages.

9. We have heard at length the arguments of the learned counsel for the parties and have perused the material on record.

10. As already stated the applicant had earlier also filed an original application, being OA-2282/95 wherein he had prayed for post-retirement benefits as also other benefits which would be available to the applicant at that time. The term used by the applicant is "pre-retirement benefits". This terms would also include all consequential benefits that would be available to the applicant on his acquittal in the criminal case. The Tribunal considered the contentions of both the parties raised in the aforesaid OA and vide the judgment dated 11.7.96 directed the respondents to take follow up action for payment of retiral benefits and also to see to it that the entire amount together with interest is paid to the applicant by a particular date. Siginificantly, no relief in relation to the consequential benefits like back wages on the applicant's promotion to the post of Superintendent was granted. Payment of the back wages would certainly be one of the consequential benefits and since the applicant had filed that OA claiming both the pre-retiral as well as post-retiral benefits the relief relating to payment of back wages on



promotion to the post of Superintendent should be deemed to have been claimed by the applicant in the previous suit. Since that relief was not specifically granted to the applicant it should be deemed to have been refused. Explanation V to Section 11 of the CCP provides that any relief claimed in the plaint which is not expressly granted by the decree shall for the purposes of that Section be deemed to have been refused. The principles laid down in the aforesaid explanation as also the main Section 11 would very much be attracted to the instant case. The learned counsel for the respondents has also cited before us a judgment of the Apex Court reported in 1997 (1) SC Services Law Judgments 12 to support his contention that this OA is hit by res judicata. On going through the aforesaid judgment we are inclined to agree with the respondents' counsel. In that case an earlier suit had been filed seeking promotion which was decreed. No prayer had been made for the back wages. Subsequently, the employee file an application before the authority under the Payment of Wages Act claiming back wages. The authority granted back wages to the employee. On appeal, the Apex Court held that the employee was debarred to claim the relief of back wages under Order 2 Rule 2 of CCP and therefore the authority under the Payment of Wages Act had no power or jurisdiction to entertain the claim for back wages and to grant the same. That appeal was also directed against an order of the Central Administrative Tribunal, Allahabad Bench passed in OA-617/90. The aforesaid observations are very much applicable to the instant case.

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11. The learned counsel for the applicant, however, seeks to draw support from the judgment of the Apex Court in F. Jamal Din and others vs. High Court of Madras & others, reported in 1997 SCC (L&S) 918. We have carefully gone through that judgment and are of the considered view that it does not apply to the facts of the instant case. That case related to a dispute between two sections of employees, namely, those who had been recruited directly and those who had been regularised as judicial officers and integrated into the service. An earlier case had been filed questioning the validity of the statutory provisions. In that earlier case all the affected persons were not made parties. In the subsequent case which related to inter-se-seniority of the two groups of employees an objection had been raised that the case would be hit by res judicata. the Apex court held that since in the earlier case the question related to validity of third proviso of rule 20 introduced by the Govt. the subsequent suit which essentially related to a dispute relating to inter-se-seniority would not be hit by res judicata, particularly so when the later suit had been filed by a large number of persons who were not parties to the earlier suit. In the instant case the subject matter in issue in both the OAs was the same viz. what benefits would the applicant be entitled to on his acquittal in the criminal case. We are, therefore, of the considered view that the judgment in Jamal Din (supra) would not be attracted to the present case.

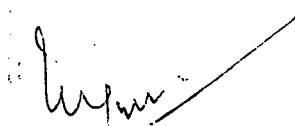
12. The learned counsel for the applicant also relies upon the judgment of the Apex Court in Union of India vs. K.V. Janaki Raman, reported in (1993) 23 ATC

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322. In that case it was held that if an employee is prevented from working on a particular post though he is willing to do so, back wages cannot be denied to him on the principle of no work no pay. In the present case, as already mentioned, this contention was available to the applicant and he should be deemed to have raised it in the earlier OA. Since the Tribunal did not grant this relief to him nor did the applicant assail the judgment in the earlier OA the subsequent OA claiming the same relief would not lie.

13. The learned counsel for the applicant has also pressed into aid the Apex Court judgment in State of Madhya Pradesh vs. Sayed Naseem Zahir and others, (1993) SCC (L&S) 429. In that case the question at issue was as to at what stage would the sealed cover procedure apply. It was held that the sealed cover procedure would apply after a decision has been taken to initiate disciplinary proceedings and not from the date the charge sheet is actually issued. It was in the peculiar circumstances of that case held that consequential benefits including back wages could not be denied to a person who had been notionally promoted after his exoneration in the departmental enquiry. The above observations would not apply to this case, as the Tribunal had not granted this relief to the applicant in the earlier OA and he had not assailed that part of the judgment in a superior court.

14. For the foregoing reasons, we are convinced that the instant OA claiming a relief which was available to the applicant when he filed the earlier OA and which he must be deemed to have raised in that OA



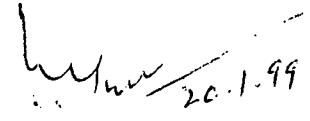
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would not be maintainable being hit by the principle of constructive judicata contained in Section 11 and Order 2 Rule 2 of the Code of Civil Procedure.

15. For the foregoing reasons this OA is dismissed, but without any order as to costs.

  
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Member (A)

  
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( T.N. BHAT )  
Member (J)

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