

Central Administrative Tribunal  
Principal Bench

O.A.No.1528/96

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

New Delhi, this the 18 day of May, 1998

Shri Suresh Chandra Saxena  
Retd. Asstt. Engineer  
Western Railway  
presently residing at  
c/o Shri Vivek Saxena  
186-H/3, Jeevan Nagar  
New Delhi-110 014.

... Applicant

(By Shri D.R.Roy, Advocate)

Vs.

1. Union of India through  
Secretary  
Railway Board  
Rail Bhawan  
New Delhi - 110 001.
2. General Manager  
Western Railway Headquarters  
Church Gate  
Bombay - 400 020.
3. Divisional Railway Manager  
Western Railway  
Kota - 324 001.
4. Divisional Railway Manager  
Western Railway  
Bombay Central  
Mumbai - 400 020.

... Respondents

(By Mrs. B.Sunita Rao, Advocate)

O R D E R

The applicant while working as Assistant Engineer, Group 'B' Headquarters at Kota was sanctioned leave w.e.f. 1.7.1991. He submits that he fell ill on 2.7.1991 and continued under treatment till 2.3.1992, under the care of a Private Practitioner. He reported back on 3.3.1992 with a fitness certificate from the Private Medical Practitioner. He alleges that he was not allowed to join and ultimately he had approached Jaipur Bench of this Tribunal in OA No.259/92 followed by CP No.27/92. As a result, the respondents were directed to issue railway passes to him for travel to Bombay for

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examination at a railway hospital for his fitness certificate. Thereafter he was allowed to join duty on 26.2.1993 and he retired on 30.6.1993. He alleges that the respondents did not release his full salary for the period while he was waiting to join duty and have also started an enquiry against him on the charge of unauthorised absence and non-compliance of transfer orders. As a result, his various retiral benefits have also been withheld. He has now come with this OA before the Tribunal seeking the following reliefs:

"a) to direct the respondents to treat the entire period from 3.3.1991 to 8.2.1993 as waiting for orders and refrain from treating it differently as respondents themselves have wilfully and injuriously prevented the applicant from picking up his duties in flagrant violation of IRMM Rules 552(2)(a)(iii);

b) to direct respondents to make good/equalise losses like grade promotion as DEN, etc./withdraw all actions/consequences flowing from their perverse interpretation of this period from 3.3.1992 to 8.2.1993 where they have no jurisdiction by their own lapses and are estopped to take any action against the applicant;

c) direct the respondents to pay interest @ 18% per annum on all delayed payment of DCRG, 1/3rd commutation value of pension, under payment of pension etc. from 30.6.1993 till the actual payment and sort out such other issues related to settlement of dues/pension;"

2. The respondents in reply have alleged that the applicant has not come before this Tribunal with clean hands as he has not mentioned, in his present OA, that he had also filed another OA No.196/93 which was disposed of by order dated 19.10.1994 in which similar reliefs were sought and were disallowed.

3. I have heard the counsel on both sides. Having perused the records, I have no hesitation in concluding that the present application is squarely hit by res-judicata. The order of the Jaipur Bench of this Tribunal dated 19.10.1994, Annexure-R1 shows that he had approached this Tribunal in that OA with the prayer that

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the respondents may be directed to pay him salary for the period from 9.8.1992 to 26.2.1993 and to pay him leave salary from 1.1.1992 to 2.3.1993. The same facts which he has raised here and were also pleaded in that OA. The OA No.196/93 was disposed of by concluding as follows:

(13)

"The respondents are, therefore, justified in not granting pay and allowances to the applicant for the period from 8.8.1992 onwards. It is seen that the applicant reported for duty to the Dy. Chief Personnel Officer (Gazetted) on 8.2.1993. We are, therefore, of the view that the applicant shall be entitled to pay and allowances from 8.2.1993 onwards. In another words the denial of pay and allowances to him shall be restricted to the period 9.8.1992 to 7.2.1993. The respondents shall arrange to make payment of pay and allowances for the period from 8.2.1993 to 26.2.1993 within a period of 3 months from the date of receipt of a copy of this order. No other reliefs are admissible to the applicant."


4. It is thus clear that the same issue between the same parties has already been adjudicated upon in so far as the prayer of the applicant for grant of leave salary is concerned.

5. In so far as the relief sought for by the applicant in respect of his retiral benefits is concerned here too I find the matter has already been agitated before this Tribunal in OA No.552/95, decided on 16.4.1996, Annexure A9. The reliefs sought for by him in that OA are reproduced in Para 1 of that Judgment and that OA was disposed with various directions on each of the claims made in the present OA and this matter has already been settled. In case there was any other related claim the same would also be appear to be barred by constructive res judicate as it should have been raised by the applicant in OA No.552/95.

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6. I, therefore, find that the present application is liable to be dismissed on the ground of res judicate. I am also constrained to note that the applicant did not bring both the full facts and particulars regarding his other OA No.196/93 and 552/95. However considering that he is a retired person, I refrain from imposing cost.

The OA is dismissed. No costs.

  
(R.K. Anooja)  
Member(A)

/rao/