

12-02-97

Central Administrative Tribunal, Principal Bench

O.A.No.1541/96

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

New Delhi, this 12<sup>th</sup> day of February, 1997

Shri H.R.Khokhar  
Retired Senior Loco Inspector  
Northern Railway Diesel Shed  
Tughlakabad  
r/o 48, Vishnu Garden  
Rajghera Road  
Gurgaon(Haryana). ... Applicant

(Applicant in person)

Vs. -

1. Union of India through  
The Secretary  
Ministry of Railways  
(Railway Board)  
New Delhi.
2. The General Manager  
Northern Railway  
New Delhi.
3. Divisional Railway Manager  
Delhi Division  
Northern Railway  
State Entry Road  
New Delhi: ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

The applicant seeks a direction to the respondents to grant interest on stepping up of his pay on 13.1.1987 in the scale of Rs.2000-3200 from the date of promotion in the scale of Rs.2375-3500/- with reference to the higher pay granted to his junior and any other relief deemed fit and proper in the facts and circumstances of the case.

2. The applicant filed an earlier OA No.3252/92 which was decided on 25.3.1994. That OA had been filed against the rejection of his representation for stepping up of his pay with reference to higher pay drawn by his junior

consequent upon the revision of the pay scales from 1.1.1986. That application was allowed and the following order was passed:

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"Accordingly, this application is allowed and the impugned orders dated 13.1.1992 and 14.1.1992 are hereby quashed. The applicant is entitled to the benefit of stepping up of pay as envisaged in the Railway Board's instructions dated 16.9.1988. After stepping up of his pay with effect from 13.1.1987 in the scale of Rs.2000-3200 and from the date of promotion in the scale Rs.2375-3500 with reference to the higher pay granted to Shri Bajpai of Allahabad Division, his pension and retirement benefits shall also be calculated. The required orders shall be passed within three months from the date of communication of this order. No costs."

3. The applicant thereafter filed a Miscellaneous Application No.1780/95 seeking a direction to the respondents to pay interest on the delayed payment. This MA was dismissed on 18.7.1995 with the observation that on account of the delayed payment, the applicant may perhaps have a cause of action to recover interest for the period for which the payment was delayed. But this is a cause of action which accrued to him separately and not as a part of the order in OA No.3252/92. The applicant thereafter filed a Review Application No.241/95 against the orders in MA No.1780/95 which was also dismissed on 15.2.1996.

4. The present application has been filed for claiming interest on the ground that the delay in payment of the arrears was entirely due to the mistakes of the respondents, who should have raised his pay in due time. Now that the Tribunal had ordered that his representation for stepping up of the pay had been wrongly rejected, he was entitled to the payment of interest, as well, on the arrears.

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5. The respondents in reply submitted that the present OA is not maintainable both on account of limitation as well as constructive res-judicata since the matter of stepping up pertains to 1987 and also because the applicant had already agitated the same matter before the Tribunal in OA No.3252/92.

6. I have heard the applicant in person and Shri R.L.Dhawan, learned counsel for the respondents. There is no bar of limitation in the present case as the applicant had come before the Tribunal by way of Original Application against the order of rejection of his representation which was admitted and allowed in February, 1995. However, the position in respect of res-judicata is different. The applicant should have asked interest on payment of arrears as one of his consequential reliefs when he sought stepping up of his pay with retrospective effect in OA No.3252/92. In Commissioner of Income Tax, Bombay Vs. T.P.Kumaran (SLJ 1996(2) SC 377) in a similar case when arrears came to be paid the respondents filed an OA claiming interest at 18% per annum which plea was allowed. The Hon'ble Supreme Court held that the Tribunal had committed a gross error of law in directing the payment of interest since it is barred by constructive res-judicata under Section-11, Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attack in former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion by the petitioner he should have or might have sought and secured decree for interest. The issue of arrears was agitated in OA No.3252/92 and the relief of payment of interest ought

given, it cannot be reagitated in any claim for payment of interest on the basis of the prayer made in that OA. Such a relief is hence barred by the principle of constructive res-judicata. 8

7. There is however, another part of the applicant's claim which deserves consideration. The Tribunal had in its judgment dated 25.3.1994 in OA No.3252/92 ordered that the payment of the arrears within three months from the date of the communication of the order. Subsequently, a prayer was made by the respondents for 8 weeks further time to comply with the judgment. No order was passed on that prayer and the matter was adjourned. The payment of interest on any period of delay in payment of arrears beyond the period prescribed by the Tribunal is a separate cause of action relative to the payment of interest on the period prior to that order. The respondents were given three months time to make the payment of arrears but apparently they failed to do so on the ground that the applicant's service record had been lost. The applicant cannot be held responsible for the loss of service record by the respondents. Accordingly, the present OA is allowed to the extent that the respondents will pay 12% interest to the applicant for the period of delay beyond the time prescribed by this Tribunal in OA No.3252/92. This amount will be paid to the applicant within one month from the date of receipt of a copy of this order.

8. The OA stands disposed of with the above directions. No costs.

*R.K. Ahoocha*  
(R.K. AHOCHA)  
MEMBER(A)