

Central Administrative Tribunal  
Principal Bench, New Delhi

O.A.No.1738/96

New Delhi this the 25th Day of February, 1997

Hon'ble Dr Jose P. Verghese, Vice Chairman (J)  
Hon'ble Mr S.P. Biswas, Member (A)

1. Shri Janak Raj Sharma,  
S/o Shri Sadhu Ram Sharma  
Head Clerk  
Diesel Shed, Shakurbsti,
  2. Shri Om Prakash,  
S/o Shri Kundan Lal  
Office Superintendent Gr.II  
Under D.M.E. (Op)  
Northern Railway, Ambala
  3. Shri Dilbag Rai,  
Office Superintendent Gr II  
Under D.M.E. (Op)  
Northern Railway, Ambala
- ..... Applicants

(By Advocate : Shri B.S. Mainee )

Versus

UNION OF INDIA, THROUGH

1. The General Manager,  
Northern Railway,  
Baroda House, New Delhi
  2. The Divisional Railway Manager,  
Northern Railway,  
States Entry Road,  
New Delhi
  3. The Divisional Railway Manager,  
Northern Railway,  
Ambala Cantt.
- ..... Respondents

(By Advocate : Shri B.S. Jain)

ORDER (ORAL)

(By Hon'ble Dr Jose P. Verghese, Vice Chairman (J) )

1. This is a O.A. substantially for certain arrears of payment after they were promoted in accordance with the orders of this Court in O.A. 1176/87 by the Judgement of this Court dated 25.8.1993. In the Contempt of Court proceedings that followed thereafter this Hon'ble Court on 9.5.96 passed an order stating " that the applicant would also be entitled to arrears of salary

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consequent to the retrospective promotion. This is a separate cause of action and the applicant may agitate the same through appropriate original proceedings in accordance with law if so advised."

2. After receipt of notice the respondents have filed their reply and they have raised their objections against allowing this O.A. The first objection, the respondents have raised is that the petition is hit by the rule of resjudicata. The submission of the counsel for the respondents is that arrears being a consequential relief to promotion it could have been asked at the time when the original O.A. was filed and in the absence the applicant had specifically asked for the same and that, being a relief which could have been asked in the first O.A. itself, is hit by the rule of resjudicata and he could not have prayed for this relief and subsequently, namely when this present O.A. is filed. The respondents have cited the decision of the Hon'ble Supreme Court to show that this amounts to constructive res-judicata.

3. Even though there is substance in the submissions of the respondents we are constrained to hold that by the order dated 9.5.96 passed by this Hon'ble Court in Contempt of Court proceedings whether rightly or wrongly the petitioner was given liberty to approach this Court for arrears of pay as if fresh cause of action has arisen. The respondents admit that they have not filed any appeal against this order and it has become final in view of the matter, the plea of res-judicata is not available to the respondents.

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4. The second objection raised by the respondents are that the reliefs now sought is awfully time barred; for the same reason as stated in the just above para the plea of limitation also does not arise especially for the reason that liberty was given in Contempt of Court proceedings which was filed at the instance of petitioner for implementation of the orders of this Court in the previous O.A. namely O.A.No:1176/87. secondly because similar relief has been granted by this Court and payments have been made by the respondents to some of the similarly placed colleagues and thirdly, that in substance, the present O.A. is only in a continuation of the previous O.A., for the purpose of complete implementation of the previous O.A. which was continued through Contempt of Court proceedings and thereafter present Original Application. Thus we are holding that the plea of limitation is also not available to the respondents.

5. The third objection raised by the respondents are that this Court has no jurisdiction in as much as objection of Respondent No.2 & 3 are now stated to be at Ambala and Respondent No.2 & 3 are also at Ambala. In the normal circumstances, in the absence of application and order under Section 25 of the Administrative Tribunal Act, we would have hesitated to grant relief except for the reasons that the impugned order at Page 21 namely Annexure A-3 has been passed by the D.R.M, Northern Railway, New Delhi, in the year 1995 and the Counsel for the Petitioner submits that at the time when the original orders in the O.A. were passed, there was no separate division at Ambala; the Ambala division came only in the year 1987 therefore, all the orders of payment are being

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passed by the DRM, New Delhi and accordingly order at Page-27 also continued to be passed in July, 1995 by the D.R.M., New Delhi. This is because the subject matter pertains to pre-division period. We are not called upon to decide whether D.R.M. New Delhi has jurisdiction to pass this order or not. We are only taking stock of the entire view of the matter namely that since DRM, New Delhi passed the impugned order in July, 1995 we consider that the same DRM, New Delhi could pass orders required to be passed under direction now being given in this O.A. In view of the matter the third objection is also being disposed of in these terms.

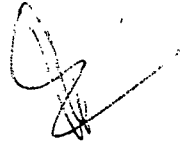
6. Finally, this Court is constrained to give the following directions :-

(i) Reliefs sought in Para 8.1 namely; payment of arrears to the extent mentioned therein are to be directed to be passed by the Respondents and the respondents shall pass appropriate orders for payment of arrears with respect to the details given in Para 8.1 of the relief clause within three months from today and intimate to the petitioners; as to the orders passed for payment of arrears.

(ii) That the respondents are also directed to pay 10% interest from the date of filing of this O.A. till the payment is actually made.

(iii) With these directions the O.A. is disposed of with no order as to costs.

  
(S.P. Biswas)  
Member (A)

  
(Dr Jose P. Verghese)  
Vice Chairman (J)