

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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C.A./T.A. No. 756/96 /10 Decided on: 21.2.97

Krishna Kumar

..... APPLICANT(S)

(By Shri N.Ranganathaśwamy Advocate)

VERSUS

U.O.I. & Ors.

..... RESPONDENTS

(By Shri S.M.Arif Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI S.R. ADIGE~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

*S.R. Adige*  
(S.R. ADIGE)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

O.A. No. 756 of 1996

New Delhi, dated this the 21<sup>st</sup> February, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)  
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Shri Krishna Kumar,  
23, Maitri Apartment,  
Mayur Vihar Phase-I,  
Delhi.

.... APPLICANT

(By Advocate: Shri N. Ranganathaswamy)

VERSUS

1. Union of India through  
the Secretary,  
Dept. of Company Affairs,  
'A' Wing, Shastri Bhawan,  
New Delhi.
2. The Chief Controller of Accounts,  
Ministry of Industry & Company Affairs,  
Room No. 172, 1st Floor,  
Udyog Bhawan,  
New Delhi-110011.
3. The Pay & Accounts Officer,  
Dept. of Company Affairs,  
Room No.106, 'B' Block,  
Paryavaran Bhawan,  
CGO Complex,  
New Delhi.

... RESPONDENTS

(By Advocate: Shri S.M.Arif)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant seeks interest on his claim for enhancement of his addl. pension from Rs.154/- p.m. to Rs.166 p.m. w.e.f. 1.1.86, together with costs.

2. Applicant had filed CWP No.2677/85 in Delhi High Court against respondent dept. for denial of Rs.200/- p.m. as Special Pay to him consequent to the transfer of the post he was

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holding in Bombay to Delhi temporarily, for 6 months at his own request, to accommodate him prior to his retirement on superannuation on 31.10.85. Upon constitution of C.A.T the C.W.P. was transferred to the Tribunal and was renumbered as T-1255/85, and after hearing both parties, was allowed by judgment dated 7.11.91 (Ann. E) and respondents were directed to pay him @ Rs.200/- p.m. for the period 1.5.85 to 31.10.85 and refund recoveries already made. Furthermore pension, DCRG and leave encashment was also ordered to be revised reckoning the Special Pay for the purpose of retiral benefits, and these directions were ordered to be implemented within 8 weeks of the communication of that judgment.

3. The judgment dated 7.11.91 (Supra) does not speak of any claim for interest on delayed payment or costs being pressed by the applicant in T. No.1255/85, and at any rate neither interest nor costs were awarded by that judgment. The present O.A. also does not speak of any interest and or costs being claimed in that <sup>1</sup>O.A.

4. At the time of the applicant's retirement on 31.10.85 his basic pension was calculated @ Rs.1245/- p.m. (Ann. D) on the average salary for the last 10 months which

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was Rs.2798/-. As a result of recalculation of pension in accordance with DOPT's O.M. dated 16.4.87 at 50% of the average of last 10 months salary, the applicant's basic pension came to Rs.1399/- p.m. w.e.f. 1.1.86 and admittedly the resultant addl. pension of Rs.154/- (Rs.1399 - 1245) p.m. was allowed to him by letter dated 8.7.87 (Ann. F). Subsequently by virtue of the judgment dated 7.11.91 (Supra) his last 10 months average pay was raised Rs.2918/- and pension which was at 50% of pay now worked out to Rs.1459/- w.e.f. 1.1.86.

4. In response to Pay & Accounts Officer, Finance Ministry's letter dated 2.4.92 communicating revised rates of pension admissible to the applicant from Rs.1245/- p.m. to Rs.1293/- p.m. w.e.f. 1.5.85 the Punjab National bank in their letter dated 13.1.93 informed him that the applicant was drawing basic pension @ Rs.1462/- p.m. and sought clarification as to what rates applicant should be released revised pension.

In reply the PAO, Finance Ministry in his letter dated 3.5.93 intimated that the revised pension had been correctly intimated in their letter dated 2.4.92 and sought details of disbursement of Rs.1462/-.

6. On 21.7.93 applicant represented to PAO, Company Affairs (Ann. H) that at the time of his retirement on 31.10.85 his basis pension had been calculated @ Rs.1245/- p.m. on last 10 months average salary of Rs.2798/-, which had subsequently been raised to 50% of Rs.2798/- vide O.M. dated 16.4.87 i.e.

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Rs.1399/- p.m. and the addl. pension of Rs.154/- p.m. (1399-1245) had been sanctioned vide letter dated 8.7.87, but in view of CAT judgment dated 19.11.91 ~~his~~ <sup>his</sup> 10 months average salary had been raised to Rs.2918/- as a result of which his basic pension was now Rs.1459/- and the addl. monthly pension admissible was not Rs.154/- but Rs.214/- and he prayed that authority revising the addl. pension from Rs.154/- to Rs.214/- (net difference of Rs.60/-) <sup>be</sup> issued forthwith. (12)

7. Respondents in their reply contend that as applicant was admittedly drawing pension of Rs.3/- (Rs.1462 - 1459) more than what he was demanding in his representation, it became necessary to obtain clarification from the Punjab National Bank regarding the actual amount of pension and relief thereon drawn by him from time to time. The Central Pay & Accounts Officer wrote to the PNB <sup>P</sup> vide letter dated 3.5.93 seeking details of disbursement of Rs.1462/- to which there was no reply despite reminders on 28.1.94; 22.9.94; 28.3.95; 27.4.95 and 8.5.95. Meanwhile applicant had also represented again on 23.8.94, and after correspondence between Principal Accounts Office and P&AO, was informed by letter dated 24.1.95 that it was not possible to accede to his request. <sup>1</sup> ~~for~~. Again applicant represented on 20.10.94 and 9.2.95 claiming increase of Rs.12/- in pension from 1.1.86. Respondents contend that sometimes <sup>1</sup> he was demanding increase of Rs.60/- and ~~sometimes~~ <sup>sometimes</sup> was claiming increase of Rs.12/- only, whereas according to PAO he was already drawing Rs.3/- in excess of 50% of his average emoluments and was asked to refund

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Rs.267/- vide PAO's letter dated 28.5.96. It was only after the matter was reviewed that revised PPO was issued.

5. Applicant in his rejoinder <sup>to respondents' addl. reply</sup> has clarified that he was not drawing excess from pension of Rs.3/- and in fact the Rs.1462/- he was drawing as pension was a compound of Rs.1245/- as basic pension; Rs.154/- as addl. pension; and Rs.63/- as D.A.. He states that pursuant to the Tribunal's judgment dated 7.11.91 respondents in April 1992 refixed his pension as Rs.1293/- as against Rs.1245/- fixed earlier but no orders were passed in respect of the effect of this increase on his pension in the background of the departmental <sup>O.M.</sup> ~~notification~~ dated 16.4.1987, the effect of which was to raise his addl. pension from Rs.154/- to Rs.166/-. He admits that in para 4 of his representation dated 20.7.91 he had wrongly mentioned that the addl. pension due to him was Rs.214/- (Rs.1459-1245) instead of Rs.166/- (1459 -1293) which was the result of initial miscalculation. However, he contends that the main cause of grievance was the same, namely that the addl. pension had not been increased and the benefit of the Tribunal's judgment dated 7.11.91 had not been passed on to him by recalculating his addl. pension due from 1.1.96.

6. Admittedly the revised pension authority revising the applicant's pension has since been issued on 22.8.96 (Ann. A to respondents' reply) w.e.f. 1.1.86.

7. The only question that now remains for adjudication is whether the applicant is entitled to interest and/or costs.

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8. In so far as applicant's claim for interest is concerned, we hold the same is barred by constructive Res Judicata. We are fortified in our view by the Hon'ble Supreme Court's judgment in Commissioner of Income Tax, Bombay Vs. T.P.Kumaran 1996 (2) ATC 665 which is reproduced in full.

"1. Leave granted.

2. We have hard ld. counsel for the parties.

3. This appeal by special leave arises against an order of the Central Administrative Tribunal, Ernakulam made on 16.8.94 in O.A. No.2026/93. The admitted position is that while the respondent was working as Income Tax Officer, he was dismissed from service. He laid a suit against the order of dismissal. The suit came to be decreed and he was consequently reinstated. Since the arrears were not paid, he filed a writ petition in the High Court. The High Court by order dated 16.8.1982 directed the appellant to pay all the arrears. That order became final. Consequently, arrears came be paid. Then the respondent filed an O.A. claiming interest @ 18% p.a. The Administrative Tribunal in the impugned order directed the payment of interest. Thus, this appeal by special leave.

4. The Tribunal has committed a gross error of law in directing the payment. The claim 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 a 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, he should have or might have sought and secured decree for interest. He did not set and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2 Rule 2 CPC prohibits the petitioner to seek the remedy separately. In either event, the O.A. is not sustainable.

5. The appeal is accordingly allowed. No costs."

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9. In this connection, we note that when T-1255/85 was disposed of by judgment dated 7.11.91, applicant stood retired on superannuation since the previous 6 years. Under the circumstances, he would have been aware that if his prayer for counting of special pay of Rs.200/- p.m. prior to his retirement, pressed by him in T-1255/85, were allowed, it would increase his pension also, and before T-1255/85 was disposed of he should have amended his prayer clause in the application, specifically praying for payment of interest on any delay in not sanctioning him additional pension, in case that application was allowed, and the special pay of Rs.200/- p.m. was <sup>granted</sup> ~~not granted~~, Not having pressed the claim in that application (T-1255/85), his claim in the present O.A. is barred by constructive Res Judicata, in view of the judgment cited above.

10. In so far as costs are concerned, we note that the PAO's letter was dated 2.4.92, while the applicant's first representation was dated <sup>1</sup>21.7.93, that is over a year later, and he has frankly admitted in his rejoinder that in that representation he had wrongly <sup>mentioned</sup> ~~mentioned~~ the amount of additional pension due to him. Under the circumstances, the applicant is himself not entirely blameless in the calculation of the additional pension due to him, which contributed to the delay in setting the record straight. This in our

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view forfeits his rights to any costs.

11. The O.A. is therefore dismissed.

No costs.

*A. Vedavalli*

(DR. A. VEDAVALLI)  
Member (J)

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*S.R. Adige*

(S.R. ADIGE)  
Member (A)