

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 85 of 1996

New Delhi, dated this the ¹¹ ~~February~~, 1997

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

Shri R.R. Khosla,
S/o late Shri H.R. Khosla,
R/o 82, Pushpanjali,
Vikas Marg Extn.,
New Delhi-110092. APPLICANT

(By Advocate: Shri S.P. Singha)
VERSUS

1. U.O.I. through
the Secretary,
Ministry of Finance,
Dept. of Revenue,
North Block,
New Delhi-110001.
2. The Secretary,
M/o Personnel, Public Grievances &
Pensions,
North Block,
New Delhi-110001.
3. The Chairman,
Settlement Commission
(Income Tax & Wealth Tax),
4th Floor,
Lok Nayak Bhawan,
New Delhi. RESPONDENTS

(By Advocate: Shri M.K. Gupta)

JUDGMENT

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

Applicant seeks interest @ 18% p.a. on Rs.2,67,871/- paid as retiral benefits to him from 16.8.93 to 1.5.95, with further interest @ 18% from the date of the Tribunal's order till date of actual payment.

2. Applicant had filed O.A. No. 1088/89 impugning respondents' orders dated 17.9.85 and 30.8.88 by which he had been given retiral benefits as if he had retired w.e.f. 31.8.85 on attaining the age of 58 years and not with reference to the date when he ceased

to hold the office of Chairman, Settlement Commission w.e.f. 5.11.88. No prayer was made in that O.A. for interest on retiral benefits to be recomputed in the event the O.A. was allowed. That O.A. was allowed by judgment dated 6.3.92 and respondents were directed to work out the applicant's retiral benefits with reference to his actual date of retirement as Chairman, Settlement Commission in Nov. 1988, within three months from the date of receipt of a copy of that judgment.

That judgment was silent on the question of interest.

3. Respondents filed SLP against that judgment in the Hon'ble Supreme Court in July, 1992 which was dismissed on 23.4.93, and copy of the Hon'ble Supreme Court's order was received in the Finance Ministry on 25.5.93. As per respondents' reply, directions were issued to the Settlement Commission to implement the Tribunal's judgment vide letter dated 25.6.93. The applicant submitted his revised pension papers on 30. 7.93 which after verification by the Settlement Commission office were forwarded to the Zonal Accounts Office, CBDT on 6.8.93.

4. Respondents in their reply state that on the basis of processing of bills/issue of authority by the Zonal Accounts Office the payments were released to the applicant by the Settlement Commission and/or the Bank maintaining his pension account, on the dates referred to in Annexure I to the O.A.

5. In our view the applicant's claim is barred by constructive Res judicata and we are justified in our view by the Hon'ble Supreme Court's decision in Commissioner of Income Tax, Bombay Vs. T.P. Kumaran 1996 (2) ATC 665, which is quoted in full

- "1. Leave granted.
- 2. We have heard learned counsel for the parties.

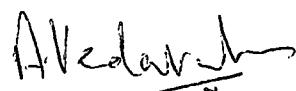
3. This appeal by special leave arises against an order of the C.A.T., Ernakulam made on 16.8.94 in OA No. 2026/93. The admitted position is that while the respondent was working as Income Tax Officer, he was dismissed from service. He laid a suit against the order of dismissal. The suit came to be decreed 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 (to) be paid. Then the respondent filed an O.A. claiming interest at 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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6. The O.A. is accordingly dismissed.
No costs.



(DR. A. VEDAVALLI)

Member (J)



(S.R. ADIGE)

Member (A)

/GK/