

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 144/1997
T.A. No.

199

Sept. 1, 1997.

DATE OF DECISION

~~29/8/1997~~

Shri Balbir Singh Mehndiratta **Petitioner**

Shri V.P. Kohli **Advocate for the Petitioner(s)**

Versus

UDI & Anr. **Respondent**

Shri R.L. Dhawan **Advocate for the Respondent(s)**

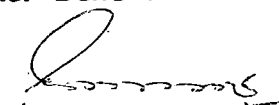
CORAM

The Hon'ble Mr. S.P. Biswas

The Hon'ble Mr.

1. To be referred to the Reporter or not? ✓

2. Whether it needs to be circulated to other Benches of the Tribunal?


(S.P. Biswas)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 144/1997

New Delhi, this 1st day of September, 1997.

Hon'ble Shri S.P. Biswas, Member(A)

Shri Balbir Singh Mehndiratta
s/o Shri Sant Singh
II-C/52, Nehru Nagar, Ghaziabad .. Applicant

(By Shri V.P. Kohli)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. FA & CAO
Northern Railway, New Delhi .. Respondents

(Shri R.L.Dhawan, Advocate)

ORDER

The short question for determination in this OA is whether a retired government employee can legally claim interest on delayed payment of settlement dues on a second or third round of limitation after having claimed only payment of arrears and allowed accordingly in an earlier OA?

2. In an OA No.1071/88 decided on 20.11.92, this Tribunal held that the applicant "could not be retired from railway service earlier than the date of issue of order". Respondents filed an SLP against the said order as well as against a similar order of this Tribunal in the case of J. Saran (OA 364/86) decided on 9.9.87. The SLPs against the orders of this Tribunal dated 20.11.92 and 9.9.87 were dismissed on 29.1.96 and 13.12.93 respectively. Accordingly, the date of retirement of the applicant from the railway service was revised from 21.11.82 to 15.1.86 by an

order dated 23.9.93(A-3). The applicant thus became eligible for arrears of dues on account of pending DCRG, leave encashment for the period from 20.11.82 to 15.1.86.

3. Since neither the payment on differences nor reply was forthcoming, ^{the} applicant approached this Tribunal with a Contempt Petition No.238/92. The said contempt petition was dismissed on 28.9.93 with a direction to the respondents to make necessary payment to the applicant subject only to the decision in SLP filed by the respondents against the judgement dated 20.11.92 in OA 1071/88, within a period of two months from the date of production of certified copy of the order. Against the total amount of Rs.1,91,131/- due to the applicant as on 15.11.86, only Rs.1,02,090/- was paid on 15.11.86 while the balance amount of Rs.89,051/- was paid only on 22.2.94/31.3.94, the applicant contended. The only dispute that remains to be sorted out is with regard to payment of interest @ 18% per annum on Rs.89,051/- which the applicant had subsequently claimed in his representation dated 5/20.5.96, for the period from 15.1.86 to 31.3.94, when the full payment was made. The aforesaid claim of relief in terms of "payment of interest" now claimed was never raised in OA 1071/88 or in CP No. 238/93. As per the applicant, representation made by him for grant of interest on delayed payment of settlement dues (A-3) has fallen on deaf ears. The present application is the outcome of respondents' denial of interest payment.

4. The applicant's claim is based on the following:



(i) That in similar cases of P.M.Venkatesan, P.S.Dutt and others decided on 2.3.90 in OAs 1304/89, 1305/89, 1306/89, 1307/89 and 1308/89, payments of interest were made taking into consideration the decision of the HOn'ble Supreme Court in the case of State of Kerala Vs. M. Padmanabhan Nair (AIR 1985 SC 356). In the said decision, it was held that "pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at market rate till actual payment".

(ii) That the Supreme Court allowed interest at the rate of 18% per annum on delayed payment of settlement dues in the case of R.Kapur Vs. Director of Inspection (Printing & Publication), I.Tax & Anr. (1994 (2)ATJ 679). Even the Bombay Bench of this Tribunal has allowed similar relief decided in the case of the applicant in B.L. Agarwal Vs. UOI & Anr. (1994(1)SLJ CT 428);

(iii) The decision of the Tribunal dated 15.1.93 in OA 525/96 wherein interest payment @ 10% per annum was allowed on the basis of direction in J. Saran's case. (9)

5. The respondents have traversed the claim on several grounds. It has been submitted that the cause of action, as per applicant's own statement, arose on 15.1.86 and the present application has been filed after more than 11 years and is clearly barred by limitation. Drawing strength from the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Gurdev Singh (JT 1991(3)SC 465) Respondents have further averred that statutory limitation was intended to provide time limit for all such suits. That apart, in terms of Railway Board's instructions circulated under Sl.No.7044, interest on delayed payment is payable only where it is clearly established that the payment of DCRG etc. were delayed on account of administrative lapses. The instructions further provide that interest is not payable on arrears of DCRG which may become due as a result of enhancement in emoluments after retirement. The applicant's claim, therefore, is in violation of administrative instructions, the counsel for the respondents contended.

6. As per applicant's own admission, "he did not ask for similar relief earlier as the matter was subjudice..." Neither the present claim was made in CCP

238/93 decided on 28.11.93 nor even in the month of January, 1996 when the SLP against the order of OA 1071/88 was dismissed.

7. Opposing the claim of the applicant, the learned counsel for respondents placed reliance on the law laid down by the Supreme Court in the case of Commissioner of Income Tax, Bombay Vs. T.P. Kumaran decided on 16.8.96 (ATJ 1996(2) 265. In this case, their Lordships held that:

"This appeal by special leave arises against an order of the CAT, Ernakulam made on 16.8.1994 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 August 16, 1982 directed the appellant to pay all the arrears. That order became final. Consequently, arrears came to be paid. Then the respondent filed an OA claiming interest at 18% p.a. The Administrative Tribunal in the impugned order directed the payment of interest. Thus, this appeal by special leave.

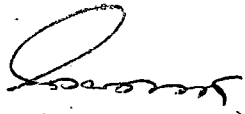
The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive resjudicata under Section 11. Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter directly and substantially an 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 resjudicata. 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 OA is not sustainable.

The appeal is accordingly allowed. No costs."

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8. I also find that the reliance of learned counsel for applicant on the decision of this Tribunal in OA 529/96 dated 15.1.96 is wrongly placed. This is because in the above OA, which was a follow up of contempt petition, a liberty was given to the applicant therein by the Tribunal to make representation to the respondents for grant of interest on delayed payment. The said representation was made in time and the respondents replied to the same by order dated 6.9.96. So far as applicant's contempt petition is concerned, the Tribunal's order did not contain any liberty having been given to the applicant to make representation for the purpose of granting interest on delayed payment. It is not in dispute that the present claim has been made only in 1997. The applicant admits such an undue delay. As observed by the Hon'ble Supreme Court in the cases of Bhoop Singh V. UOI (AIR 1992 SC 1414) and Hansavani & Ors. Vs. State of TN (1994) 6 SCC 51, long and inordinate delay extinguishes right and remedy. I do not think a belated claim for a period going back to 15.1.86 can be granted, compelling respondents to incur unbudgeted expenditure. Delay deprives a person both right and remedy in law.

9. In the light of law laid down by the Supreme Court in the cases aforequoted, the claims fails on merit and is accordingly dismissed. There shall be no order as to costs.


(S.P. Biswas)
Member (A)