

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2260 of 1997

New Delhi, dated this the 21st August, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Shri I.S. Bhama,
S/o Shri Harchand,
R/o A-1/244, Paschim Vihar,
New Delhi.

..... APPLICANT

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through

the Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delh.

2. The Accounts Officer (C-III),
Pay & Accounts Office (IRLA),
Ministry of Information & Broadcasting,
AGCR Building,
New Delhi-110002.

..... RESPONDENTS

(By Advocate: Shri Rajeev Bansal)

JUDGMENT

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

Applicant seeks interest at the rate of 18% p.a. on the arrears of pay and allowances pertaining to the period 29.4.72 to 31.3.94 amounting to Rs.36,469/- paid to him on 2.3.96 on account of his promotion. The claim of interest is for Rs.4,95,756/-.

2. Upon filing of the O.A. notices were issued to the respondents but as they failed to file their reply, their right to file the same was forfeited vide order dated 2.6.98.

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3. As per averments in the O.A. applicant was commissioned in the Indian Army as Emergency Commissioned Officer on 30.8.64 and was released on 1.8.70. After a spell of about 9 months in the NCC he joined All India Radio as an Asst. Station Director on 25.4.72. On 8.5.72 he represented for fixation of his seniority and pay as he was senior in the cadre of Asst. Station Director, by giving him the benefit of his Army service of six years, five months and 15 days as per DP& AR's letter dated 20.6.71. He completed the two years probationary period as ASD on 25.4.74 and was subsequently promoted to the post of Station Director (Ordinary Grade) on ad hoc basis and was later regularised against that post in mid-1976.

4. Applicant filed O.As No.761/86, 203/88 and 2339/88, all of which were disposed of by a common judgment dated 24.9.91. A perusal of the aforesaid judgment indicates that in the aforesaid three OAs applicant sought the following reliefs:

(i) The applicant is entitled to be considered for notional promotion to the post of Station Director (Ordinary Grade) from the date from which his juniors were promoted i.e. from 20.3.71 with all consequential benefits;

(ii) Refixation of his seniority by allotting him year 1965 in the grade of Asst. Director, alternatively fixing his seniority as above the promotees of the year 1966 and below the direct recruits who were appointed against unreserved vacancies and direction to the respondents to make a review DPC sit for the year 1971 for consideration of case of the applicant for the post of Station Director;

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(iii) The applicant may be considered for promotion as Station Director (Selection Grade) with effect from 1982 onwards eschewing from consideration the adverse remarks made against the applicant during 1977 to 1980;

(iv) The applicant is entitled to be promoted as Dy. Director General with effect from the date from which the post of DDG was filled up by quashing the appointment of the ineligible persons who were promoted to the post of DDG without following the criteria as laid down in O.M. No. 22011/3/76-Estt (D) dated 24.12.80 which provides that where a number of eligible officers in the feeder grade is less than the number of officers to be considered according to the determined zone, all officers so eligible should be considered.

(v) Rule No.6 of the AIR (Group A Posts) Recruitment Rules may be declared as ultra vires of Articles 14 & 16 of the Constitution.

5. By the aforesaid judgment dated 24.9.91

the official respondents were directed as follows:

(i) To review the seniority of the applicant in the grade of Asst. Station Director in terms of Dept. of Personnel Notification No.9/20/89 dated 26.8.71 keeping in view the fact that promotees with the year of allotment as of the applicant are placed below him and only direct recruits or those recruited through competitive examination or test or interview conducted by UPSC corresponding to the year to which the applicant is allotted are placed above him.

(ii) To review the promotion of the applicant subject to suitability and availability of vacancy in the grade of Station Director (OG) on the recommendation of the appropriate DPC which might be deemed to sit after completion of probation by the applicant. But the promotion can be effected, subject to vacancy even from a date during the period of probation but not earlier than 25.4.72, on the assumption that he would be deemed to have completed his probation from an earlier date (such an assumption is to be made only on actual completion of satisfactory probation). The

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applicant was promoted as officiating Station Director (OG) from 8.5.74 and there seems no reason why he should not be considered for regularisation at least from that date, if not from an earlier date between 25.4.72 & 8.5.74, subject to of course to the availability of vacancy & suitability.

- (iii) To review the case of promotion of the applicant to the post of DDG on the basis of the position emerging in regard to seniority in the light of the above, more so when it appears that some vacancies are existing and the applicant was even recommended by DPC of 1988.

With the above directions which should be complied with within four months, the three applications namely; OA-761/86; OA-203/88 and OA-2339/88 are disposed of. There is no order as to costs."

6. As per recital in the present O.A. Respondents sought further extension of time to implement the aforesaid judgment dated 24.9.91 which was granted upto 10.4.92 and yet another extension upto 31.12.92. Upon respondents' alleged failure to comply fully with those directions applicant filed CCP No.112/93 which was disposed of by order dated 5.4.94 and pursuant to that order applicant was promoted to the grade of Station Director (OG) ^{by respondents' order dated 17.6.94} w.e.f. the date a vacancy became available i.e. 29.4.72, and a total sum of Rs.37,491/- was paid to applicant on account of arrears from 29.4.72 onwards, on which amount applicant now claims interest @ 18% p.a. on account of delayed payment which works out to Rs.4,95,756/-.

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7. In this connection applicant states that he had represented to the respondents on 28.2.97 (Ann. A), but so far received no reply to the same, and hence has been compelled to file this O.A.

8. I have heard applicant's counsel Shri Raval and respondents' counsel Shri Bansal.

9. While Shri Raval has taken various grounds for the claim in the O.A., Shri Bansal has shown me the relevant File of Ministry of I & B bearing No. 45013/3/98-B(A) in which respondents have taken the stand that there is no provision in the rule for payment of interest on arrears of pay and allowances and hence applicant's claim cannot be accepted.

10. It is noticed that in the present O.A. there is no averment that in the several OAs applicant had filed earlier, claiming seniority, notional promotion and promotion from retrospective date, etc. he had made any claim for interest and a recital of the reliefs in those O.As also establishes that no such claim was made in those O.As. This claim is therefore now barred by the principles of constructive res judicata. In Daryao Vs. State of U.P. (AIR 1961) SC 1457, the Hon'ble Supreme Court has held

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that 'res judicata' is a rule of "universal law pervading every well regulated system of jurisprudence....".

11. In this connection a similar issue came up before the Hon'ble Supreme Court in Commissioner of Income Tax Bombay Vs. T.P. Kumaran ATJ 1996 (2) 665. Their Lordships' order is extracted below in full:

1. Leave granted.

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

3. This appeal by special leave arises against an order of the CAT, Ernakulam made on 16.8.94 in OA-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 16.8.82 directed the appellant to pay all the arrears. That order became final. Consequently, arrears came to be paid. The respondent filed an OA 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 u/s 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

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petitioner to seek the remedy separately.
In either event, the OA is not
sustainable.

5. The appeal is accordingly allowed.
No costs.

12. The ratio of the aforesaid judgment is
also squarely applicable to the facts and
circumstances of the present case, and applicant's
claim for interest is therefore barred by the
principles of res judicata.

13. The O.A. is dismissed. No costs.

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

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