

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 58....of.1997...decided on 5.11.97.....

Name of Applicant: Shri S.P. Sareen.

By advocate: Shri K.K. Ruri...

Versus

Name of Respondents: Union of India through The General Manager,
Northern Rly. and Anr.

By advocate: Shri R.L. Dhanwan

Coram

Hon'ble Mr. N. Sahu, Member (A)

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

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

(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.58 of 1997

New Delhi, this the 5th day of November, 1997

Hon'ble Mr. N. Sahu, Member (Admnv)

S.P.Sareen, S/o Shrfi Mohkam Chand,
Aged 66 years, Ex-Assistant Accounts Officer,
Northern Rly., Hd.Qrs Office, Baroda House,
New Delhi, Resident of Flat No.26A, Group II,
Pocket A, Dilshad Garden, Delhi -110 095 -APPLICANT

(By Advocate Shri K.K.Puri)

Versus

The Union of India, through :

- 1.The General Manager, Northern Railway,
Headquarters Office, Baroda House,
New Delhi - 110 001.
- 2.The Financial Adviser & Chief Accounts
Officer, Northern Railway, Headquarters
Office, Baroda House, New Delhi-110 001 -RESPONDENTS

(By Advocate Shri R.L.Dhawan)

J U D G M E N T

By Mr. N. Sahu, Member (Admnv)-

The applicant is aggrieved in this Original Application against orders dated 14.5.1996 (Annexure-A-1) and 25.6.1996 (Annexure-A-2) rejecting his request for payment of interest on delayed remittance of retiral benefits like pension, death-cum-retirement gratuity (in short 'DCRG') and leave encashment.

2. The admitted facts are that the applicant submitted resignation from Railway service with effect from 25.12.1984 for his final absorption in Indian Railway Construction Company Ltd., now known as IRCON International Ltd.(hereinafter referred to as "the IRCON"). The resignation was accepted by the competent authority on 7.3.1986. He was accordingly paid all

retirement dues on the basis that he retired on 25.12.84. (12)
The applicant filed O.A.No.991 of 1988 before this Tribunal seeking relief for taking his date of resignation as 7.3.1986 which is the date of acceptance. He claimed for payment of all settlement dues upto the period 7.3.1986. The Tribunal allowed his claim vide its order dated 20.11.1992. The respondents challenged this order of the Tribunal before the Hon'ble Supreme Court in SLP(Civil) No.22052/93 and the SLP was dismissed vide order dated 29.1.1996 (Annexure-A-9). The applicant submitted representations thereafter requesting the respondents to pay him interest on the amount of Rs.1,00,192/- which was actually paid to him on 5.1.1995 representing the additional amount on account of reckoning the date of retirement as 7.3.1986. The applicant claims that interest should be paid from 7.3.1986 to 5.1.1995. In regard to the revision of date of retirement the respondents issued final orders only on 4.11.1996. It is to be noted that even after the Tribunal's judgment dated 20.11.1992 the respondents did not make the payment. It was only after the applicant moved a petition for Contempt of Court that they provisionally implemented the orders dated 20.11.1992 on 10.1.1994. The actual payment was made after one year. The claim of the applicant is that there is a delay of 25 months even after judgment dated 20.11.1992 in arranging payment to him. The minimum that he demands is the interest from 20.11.1992 to 5.1.1995.

3. After hearing the learned counsel for both the sides I find it unnecessary to refer all the citations made in support of rival claims. The basic stand taken by the respondents is two fold. Firstly, the application is

barred under the doctrine of res judicata. For this purpose reliance was placed on a decision of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax Bombay Vs. T.P.Kumaran**, 1997 SCC (L&S)135. The second ground taken is that the application is barred by limitation and is not maintainable under Section 21 of the Administrative Tribunals Act, 1985. According to the learned counsel for the respondents the cause of action had arisen on 7.3.1986 and the present application, filed after 11 years is clearly barred by limitation. He cited a decision of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Gurdev Singh JT 1991(3) SC 465**.

4. I shall first deal with the question of res judicata. In T.P.Kumaran's case (supra) the respondent was working as Income-tax Officer when he was dismissed from service. His suit against the said dismissal was decreed and he was consequently reinstated. Since the arrears were not paid he filed a writ petition in the High Court. The High Court directed for payment of all the arrears and arrears have been paid. Thereafter he filed an O.A. claiming interest, which the Tribunal allowed. On an appeal filed by special leave, the Hon'ble Supreme Court held that when the arrears were claimed he should have claimed also interest. He did not do so and, therefore, it operates as res judicata. Their Lordships further held under Order 2 Rule 2 C.P.C. he is prohibited from seeking the remedy separately. The facts in this case are entirely different.

5. In the O.A. 991/88 referred to above decided on

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20.11.1992 the reliefs claimed by the applicant are mentioned in para 3 of the order, which is extracted below

"(i) Issue of direction to the respondents to absorb the applicants from the date of issuance of the sanction of the Government.

(ii) Declaration that the applicants be entitled to be absorbed from the date of issuance of the sanction by the Government.

(iii) Issue of direction that the liens of the applicants in the Railways could not be terminated without resignation."

6. These reliefs relate to date of absorption and retention of lien. These reliefs claimed were allowed. At the end the Tribunal said that consequential retiral benefits may be paid. The earlier O.A. was not for payment of arrears on the ground that the applicant retired on 7.3.1986. The substantive questions addressed by the Tribunal in that O.A. were not for payment of arrears at all. Thus, J.P. Kumaran's case (supra) does not apply to the applicant. There is no justification to say that the O.A. is barred by res judicata.

7. With regard to limitation, the matter has been decided earlier but the latest decision of the Hon'ble Supreme Court is to be found in **S.R. Bhanrale Vs. Union of India and others**, 1996 SCC(L&S)1384 wherein their Lordships have held that where the retiral benefits and other claims of a retired employee, namely, encashment of earned leave, increment arrears, special pay due, LTC etc.

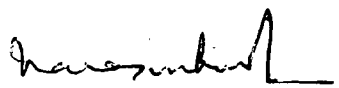
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were wrongly withheld despite numerous representations, it was improper on the part of the Government to raise the plea of limitation against such claims. In view of this decision, I do not find any substance in the plea raised against limitation. That apart, the applicant no doubt claimed his date of retirement as 7.3.1986 but the respondents having opposed the claim, the matter was resolved only by a Court order in November, 1992 and this order was also resisted and the respondents hesitantly made the payment only when the contempt petition was filed in 1995. Thereafter, the applicant's representation for payment of interest was rejected by the impugned orders. Even on merits, this is not a case barred by limitation.

8. The next question at issue is whether interest at 18% is payable on Rs.1,00,192/- from 7.3.1986 to 5.1.1995. We have to clearly distinguish the period from 7.3.1986 to 20.11.1992 when the Tribunal pronounced its order; and the period after this date to the actual date of payment. In my view on merits there is no justification for claiming interest for the period from 7.3.86 to 20.11.92. The claim of the applicant for change of date was vigorously contested for a number of reasons which was discussed in the impugned order. The decision, therefore, resolved this dispute. There was no stay of implementation of the Tribunal's order. There was no stay granted by the Hon'ble Supreme Court in the SLP proceedings. Therefore, the respondents should have remitted the additional retirement benefits within a reasonable time from the date of pronouncement of the order by the Tribunal. While I hold that from 7.3.1986 to 20.11.1992 there is no administrative lapse and no

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interest is payable because there is no delay whatsoever on the part of the respondents yet from November, 1992 till January, 1995 there is no valid explanation for not paying the interest. When the retirement year was taken as 1984, the admitted facts are that all the retirement dues were duly paid. The question related to only the additional retirement dues. The right to these additional retirement dues only accrued as a result of an adjudication by the Tribunal's order dated 20.11.1992 referred to above. Nobody can claim interest on a disputed claim. The right to the amount accrues only when the dispute is resolved. Thus, on merits I do not find any justification for the claim from 7.3.1986 to 20.11.1992. Allowing three months time I direct the respondents to pay interest from 1.3.1993 till the date of payment of differential amount in January, 1995 at a rate of 12% per annum which rate was approved by the Hon'ble Supreme Court in the case of **O.P. Gupta Vs. Union of India and others**, 1987(5)SLR SC 288. The O.A. is partly allowed. In the facts and circumstances of the case there is no order as to costs.


(N. Sahu)
Member (Admnv)

rkv.