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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 779/94.

Date of decision: 6th Jan 1995

Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial).

Shri Banshi Dhar,
son of Shri Wasanda Ram,
ex. SPC/MB, 32/28, East
Patel Nagar,
New Delhi.

... Applicant

(By Advocate Shri B.K. Choudhary).

versus:

1. Union of India
through General Manager (P),
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad (U.P.). ... Respondents

(By Advocate Shri K.K. Patel)

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Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)

The applicant is aggrieved by the Order dated 29.12.1993 passed by the D.R.M., Moradabad rejecting his claim for penal interest on the delayed payment of pensionary dues (Annexure I).

2. The applicant, who was working as a Clerk in the Northern Railway from 1948, had a chequered career and he had to face a number of disciplinary proceedings. He has since retired from service on 31.12.1981. He had filed an original suit No. 288/82 in the Court of VIII Additional Munsif, Moradabad for various reliefs which had been transferred to the Tribunal, Allahabad Bench.

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under Section 29 of the Administrative Tribunals Act, 1985.

3. According to the applicant, this Tribunal (Allahabad Bench) in Review Application No. 58/RT/89 of 1990 and CCA 46/8/RT/89 of 1989 vide their order dated 14.10.1992 (Annexure III) had directed the respondents to implement the earlier order of the Tribunal dated 13.2.1989 in T.A. No. 469/86 within a period of three months from the date of communication of the order. The Tribunal in the order dated 14.10.1992, however, held that there was no intention whatsoever on the part of the respondents not to comply with the order dated 13.2.1989 and the contempt petition was dismissed. By this order, the respondents were directed to comply with the earlier order of the Tribunal in which it had been held that the applicant was entitled to notional promotions in the grades of Rs. 425-640, Rs. 455-700 and Rs. 550-750 from the dates the persons junior to him were promoted in the said grades with all consequential benefits. He filed a contempt petition against non-implementation of this Order which had been disposed of as mentioned above by the Tribunal's Order dated 14.10.1992.

4. The applicant has filed this application on the ground that the respondents had delayed payment of the difference in arrears of pensionary benefits, which he was entitled on the higher grades due on the

notional promotions, amounting to Rs. 19,179/- till 29.11.1993. He claims that this amount was due to be paid to him by ~~the~~ 13th February, 1989.

~~B~~ ~~RECEIVED~~ ~~6.2.1994~~
~~RECORDED~~ ~~6.2.1994~~

He, therefore, claimed an amount of Rs. 18,225/- being the penal interest at 20% per annum on the delayed payment of pensionary benefits from 13.2.1989 to 5.11.1989 which has been rejected by the impugned order dated 29.12.1993. Hence, this application under Section 19 of the Administrative Tribunals Act, 1985 for grant of penal interest at 20% per annum amounting to Rs. 18,225/- on the delayed payment.

5. The respondents have taken ^{the} preliminary objection that this application is not maintainable here on the ground of jurisdiction. They submit that the application ought to have been filed in the Allahabad Bench of this Tribunal as this application is based on the earlier decisions of the Allahabad Bench referred to above.

6. The respondents also state that the applicant had got the benefit of the notional promotions as claimed by him in the petition in T.A. No. 469/86. In that petition, the applicant had not claimed any relief pertaining to payment of penal interest and, therefore, the same is barred under order 2 Rule 2 of the Civil Procedure Code. Hence, the claim should be

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rejected.

7. I have carefully considered the arguments of both the learned counsel and perused the record in the case.

8. Rule 6 of the Central Administrative Tribunals (Procedure) Rules, 1987 made under the Central Administrative Tribunals Act, 1985 deals with the place in which an application may be filed. Sub-Rule (2) of this Rule provides as under :-

"(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application".

In this case the applicant has retired from Railway service on 31.12.1981. In the verification of the application signed by the applicant, he has given his address as 32/28, East Patel Nagar, New Delhi as his residence, which fact has not been disputed by the respondents. Therefore, having regard to the provisions of Rule 6(2) of the CAT (Procedure) Rules and the fact that the applicant is a retired person, the preliminary objection taken by the respondents with at the Principal Bench regard to jurisdiction of this Tribunal is rejected.

9. With regard to the claim for penal interest at

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20% per annum on delayed payment of pensionary benefits, I find that there is merit in the objection taken by the respondents. The applicant is barred by constructive resjudicata as he has failed to include this relief in the OA and he cannot now claim this relief as an after-thought. Neither of the orders passed by this Tribunal (Allahabad Bench) dated 13.2.1989 or 14.10.1992 has referred to any such claim or allowed the claim for interest on the pensionary amounts. Having, therefore, regard to the principles of constructive resjudicata, the applicant's claim is without any merit.

10. The application is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)