

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.1743/94

New Delhi this the 31st Day of March, 1995.

Hon'ble Shri B.K. Singh, Member (A)

Gurdarshan Singh,
Retd C.I.T. Dehradun,
R/o Bunglow No.T-11/B
Railway Colony,
Dehradun. Applicant

(By Advocate : Shri R.K. Kamal)

Versus

UNION OF INDIA, THROUGH

1. Railway Board,
Rail Bhawan,
Rafi Marg,
New Delhi.
2. General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway,
Moradabad Division,
Moradabad. Respondents

(By Advocate : Shri K.K. Patel)

JUDGEMENT

(By Hon'ble Shri B.K. Singh, Member (A))

This Application No.1743/94 along with PT No.166/94 has been filed in continuation of O.A.No.1063/92 decided on 17/12/92. The reliefs sought in the previous o.A are the same as relief sought in the present O.A.

2. The operative portion of the previous judgement is as follows :-

"So far as promotion from 1.1.1984 under restructuring scheme is concerned, the applicant would not be entitled for arrears in terms of the aforesaid letter of 22.8.1986 since he had retired on 30.11.1990 prior to the issue of the letter dated 22.2.1991 and no legal direction to pay arrears can be given. But keeping in view of

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the facts that a decision to give him the benefit of option exercised in 1976 was taken in a meeting as late as of 17.9.1990 and if the process were exercised, the implementation could have been possibly done before 30.11.1990, the respondents are expected to consider the case for paying him the arrears in respect of promotion from 1.1.1984 onwards keeping in view the special features of the case."

This was passed by the Division Bench comprising of Mr Justice Ram Pal Singh, Vice Chairman (J) and Hon'ble Mr I.P. Gupta, Member (A). The applicant has retired on 30.11.90 and it is stated that he has not been paid settlement dues as ordered by the Hon'ble Bench in their judgement in O.A.No.1063/92.

3. The reliefs sought in the present O.A. is to ;

(i) quash and set aside the impugned order dated 12.01.94 (Annexure A-1) and 30.5.1994 (Annexure A-2).

(ii) a direction to respondents to pay arrears of pay and allowances for the promotional post from 1.1.1984 to 30.11.1990 with 18% interest per annum thereon.

4. The operative portion of the judgement given in the previous O.A. is clear and unambiguous.

5. The Tribunal held the view that the applicant was not entitled for arrears in terms of the aforesaid letter dated 22.2.91 since he

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had retired on 30.11.1990 prior to the issue of the letter dated 22.02.91 and therefore no legal direction to pay the arrears was given. He was allowed the benefit of option exercised in 1976 in a meeting held on 17.09.93 and if the process were expedited, the implementation could have been possibly done before 30.11.1990. In the 10th para of that judgement the benefit of arrears was given to the applicant from 16.5.1979 to 31.12.1983 but as regards the period from 1984 onwards till the date of retirement it was just mentioned, "the respondents are expected to consider the case for paying the arrears in respect of promotion from 1.01.1984 onwards keeping in view the special features of this case." The word expectation used in the last para does not refer any subsisting right to to get the arrears for that period which has been prayed for in the present O.A. The word expectation means only probability of a thing happening and there is no certainty about it. Thus this is not a direction. Expectation means - may happen, which also implies may not happen. So expectations are a mixture of probability and anticipation. Expect to happen does not imply that that things will happen. It may not happen at all. If I expect a person to come, there is also likelihood that he may not come. In Cr P.C when the word may take cognisance is used it implies may not take cognisance. Thus going by the Chambers dictionary, this is not a direction given to the respondents to implement this order. The

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discretion was entirely left to the respondents since the Division Bench of the Tribunal did realise that they cannot issue a legal direction in that regard. Legal direction given was only for payment of arrears from 16.5.79 to 31.12.83. The impugned order to that effect cannot be challenged before the Tribunal because the direction contained in the last para i.e. Para 11 does not contain any subsisting right in favour of the applicant. If the right claimed has already been negatived by a Court decision earlier then it has to be deemed that there is no subsisting legal right. This has been held in the case of Gurdev Singh Vs Union Territory of Chandigarh (1988) 2 SLJ CAT; Ganesh Prasad Bhatt Vs Union of India (1987) 2 ATC 177; M. Prakasam Vs Southern Railway (1988) 6 ATC 251. If thus a writ petition in which a similar relief was claimed has been dismissed, or suit of declaration has been given or has been negatived then the principle of res judicata which applies to all judicial proceedings and not only to suits as mentioned in Section 10 of the CPC would imply that the applicant has no legal right to file an application under CAT Act, 1985. Although, the provisions of the Civil Procedure Code do not apply to writ petitions, but the principles of res judicata have been held to be applicable to writ petitions as well as suits. It has been held by the Hon'ble Supreme Court in case of Daryao Singh Vs State of U.P. AIR 1961 SC 1457 that binding character of judgement pronounced by

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Court of competent jurisdiction is an essential part of rule of law and the rule of law obviously is the basis of administration of justice subject to appeal and the judgement being amended or set-aside. The judgement is conclusive as between parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences. Thus on general considerations of public policy, the rule of res judicata has been applied to writ petitions although in the aforesaid case it was clarified that the rule can be invoked, only where earlier decision was rendered by a court of competent jurisdiction and there was a dispute akin to the present one before the court which judicially determined it.

6. In the instant case it is clear that it was the same relief sought in the previous O.A. which are being agitated in the present O.A. and these are not only akin but identical and as such the decision given by the Division Bench cannot be challenged again under Section 19 of the CAT Act, 1985 and is rejected as barred by the principles of res judicata. With these observations the O.A. is dismissed but without any order as to costs.



(B.K. Singh)
Member (A)