

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2476/2000

New Delhi, this the 19th day of September, 2001

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

In the matter of:

R.L. Gupta
S/o Late Sh. Tulsi Ram,
R/o E-2/114, Shastri Nagar,
P.O. Ashok Vihar, Delhi-110052.
Retired Principal,
Govt. Boys Senior Secondary School,
Rampura, Delhi-110035. Applicant
(Applicant in person)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
5, Sham Nath Marg, Delhi-110054.
2. Director of Education,
Govt. of NCT of Delhi,
Old Secretariat, Delhi-110054.
3. Deputy Director of Education,
District North-West (B),
F.U. Block, Pitampura, Delhi-110052.
4. Drawing & Disbursing Officer (DDO),
Govt. Boys Senior Secondary School,
Rampura, Delhi-110035. Respondents
(By Advocate: Sh. Ashwani Bhardwaj proxy for
Sh. Rajan Sharma)

ORDER (ORAL)

By Hon'ble Sh. V.K. Majotra, Member (A)

The applicant retired on attaining the age of superannuation on 30.4.96 from the post of Principal under the respondents. The applicant has alleged that whereas the respondents have paid him an amount of Rs.10,170/- towards leave encashment after a great deal of delay, they have not paid him any interest on delayed payment. He has sought direction to the respondents to pay him interest @ 18% p.a. on the aforesaid amount for the period 30.4.96 to 14.9.2000, i.e., from the date of his retirement upto the actual date of payment.

[Signature]

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2. In their counter the respondents have stated that the applicant had filed OA-1627/99 for the same reliefs which was dismissed by this Tribunal on 22.7.99 (Annexure R-1). Respondents have stated that the present OA is barred by res judicata and that they have already paid the applicant an amount of Rs.10,170/- for leave encashment which had been claimed by the applicant in his previous OA.

3. We have heard the applicant in person and the learned counsel for the respondents and also considered the material on record.

4. Learned counsel for respondents states that whereas the applicant's earlier OA was dismissed on the ground of limitation the applicant has already been paid the amount of leave encashment. Learned counsel also pointed out that the applicant had suppressed information about the earlier OA. Learned counsel relied on 1989 (5) SLR SC 3 **Employees Welfare Association Vs. Union of India** contending that even when a petition is dismissed in limini the judgment operates as res judicata between the parties. He further relied on 1991 (1) ATJ 257 **Anil Kumar Dhanda vs. Union of India & others** and also 1993 (1) ATJ 578 **K.Kathaiah vs. Director General Department of Post** (OA-143/99 decided by Hyderabad Bench of CAT on 15.3.93) in which relief claimed in application being same which was claimed in the earlier OA filed by the applicant, the application was rejected being barred by the principle of res judicata.

5. The applicant on the other hand stated that he did not mention about the earlier OA in the present OA thinking that the present matter was a fresh cause of action and that on his

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representation the respondents having sanctioned him an amount of Rs.10,170/- in respect of leave encashment raises him a fresh cause of action.


6. From the material on record we find that whereas applicant's earlier OA was dismissed in limini on 22.7.99 his representation for grant of leave encashment had been pending decision with the respondents and the respondents sanctioned him an amount of Rs.10,170/- in respect of leave encashment due to the applicant. In our considered view, the ratio in AIR 37 1950 Allahabad 7 **Baljeet and others Vs. Chand Kiran** is applicable to the facts of the present case. Therein it was held that although limitation appears remitted which does not destroy the right, the respondents in the present case by sanctioning an amount of Rs.10,170/- by way of leave encashment to the applicant after the dismissal of the earlier OA themselves acknowledged respondents' liability towards the applicant and the action of the respondents after dismissal of the previous OA has suddenly given rise to a fresh cause of action in the present matter which had also not been finally adjudicated upon in the previous OA.

7. In the facts and circumstances of the case we consider that whereas the respondents should have paid the applicant leave encashment within a reasonable period of his retirement they have caused inordinate delay in making such payment which has caused the applicant undue harassment and financial hardship. We consider in the interest of justice that the applicant is entitled to interest on delayed payment of leave encashment. The applicant retired on 30.4.1996. The respondents, having regard to the discussion made above, are directed to pay to the applicant interest @6% on an amount of.

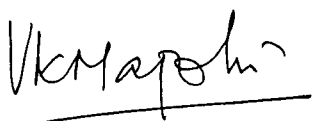


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Rs.10,170/- from 3 months of applicant's date of retirement till the date of payment of the said amount. The respondents are further directed to comply with the above direction within a period of 8 weeks from service of the present orders. The OA is decided in the above terms.


(KULDIP SINGH)
Member (J)

'sd'


(V.K. MAJOTRA)
MEMBER (A)

19.9.2001