

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. O.A. 111/89. 198
~~XXXXXX~~

DATE OF DECISION 10.5.1989.

Shri T. N. Rawal Petitioner

Shri G. K. Aggarwal Advocate for the Petitioner(s)

Versus

U.O. I. & Ors. Respondent

Shri K. C. Mittal Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Ajay Johri, Member (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Central Administrative Tribunal
Principal Bench New Delhi.

(4)

Date of Decision: 10.5.1989.

Regn. No. O.A. 111/89.

Shri T.N. Rawal ... Applicant

vs.

UOI & Ors. ... Respondents.

CORAM:

Hon'ble Mr. Ajay Johri, Member (A)

For the applicant: Shri G.K. Aggarwal, Adv.

For the respondents: Shri K.C. Mittal, Adv.

JUDGMENT.

By this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is aggrieved by non-payment of interest on the arrears of pay and allowances paid to him on 2.5.1988, has prayed for the relief that a direction be issued to the respondents to pay him interest at 15 per cent per annum upto 30.4.1988 on the delayed payment of arrears from due dates and the interest may be allowed from the date of filing of this application to the date of actual payment thereof.

2. The applicant's case is that he was not considered for promotion while his juniors were promoted in the Directorate-General of Inspection while he was on deputation to the Directorate of Research and Design Organisation (D.R.D.O.). When he returned back to his Department, he was given his due promotion with effect from 1974 but in 1985 and ultimately, the arrears due to him on account of this promotion were paid to him in 1988 but without any interest. It is his claim that

3/

since his promotion which was due in 1974 was delayed by the respondents, for no fault on his part, and they have now taken action to rectify the mistake, they should also pay him the interest.

3. The application has been opposed by the learned counsel for the respondents on the sole ground that it is res judicata. The learned counsel for the respondents referred to the judgment given in O.A. No. 41/85 - T.N. Rawal Vs. Union of India by this Tribunal on 9.5.1986. According to him, the applicant had claimed relief of interest in that application and since the application was rejected and his subsequent Special Leave Petition filed in the Hon'ble Supreme Court was also dismissed, the matter became final and, therefore, it could not be agitated now.

4. I have heard the learned counsel for the parties. It is not disputed that the applicant in O.A NO. 41/85 had claimed interest on the arrears ^{✓ applied to be} paid to him subsequent to his promotion from a back date. The dispute in that O.A. related to the claim of the applicant for promotion from 1973 instead of 1974 and for promotion in the DRDO and not in the D.G.I., as well as his final absorption in the DRDO from 13.1.1979 and consequent promotions in that Organisation. According to the learned counsel for the applicant, since the arrears could only be considered for being awarded if the other reliefs were allowed and the other reliefs were rejected, the question of arrears was not considered in that O.A. and therefore, the matter has not become res judicata, while the learned counsel for the respondents has opposed the submissions made on behalf of the applicant by saying that the principle of res judicata squarely applies and the matter cannot be agitated by the applicant.

5. For a matter being res judicata, Section 11 of the Code of Civil Procedure lays down that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

The learned counsel for the respondents referred to Explanations IV and V of this Section. Explanation IV says that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit and Explanation V says that any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

A plain reading of Section 11 of the CPC would, therefore, indicate that if a matter had been raised in an earlier application, though it prayed for modification of the date of promotion which was rejected, if the matter was not considered or relief not expressly granted by the decree, it will be deemed to have been refused. There is no doubt that in the applicant's case, the promotion was inordinately delayed but it can also not be disputed that one of the reliefs sought for in O.A. No. 41/85 was in regard to interest on arrears. It would, therefore, be necessary for the applicant to press for that relief even though his request for granting promotion from 1973 was rejected, meaning thereby that his promotion in 1974 was considered as having been ordered correctly. Since the applicant failed to press for relief on this account, he cannot now raise this issue by this application.

6. The learned counsel for the applicant has relied on judgments of the Hon'ble Supreme Court in AIR 1977 SC 2257 - O.P. Gupta vs. UOI and 1983 (4) SCC 20 - Devki Nandan Prasad Vs. State of Bihar in respect of interest on arrears of pay and allowances. The law in this respect is very clear. But the point before us is whether the relief for interest has now barred by res-judicata.

7. It was the contention of the learned counsel for the applicant that in 1985, when he had moved O.A. No. 41/85, the arrears had not been paid and they were paid only on 3.5.1988. Therefore, the ^{cause} _{course} of action arose in 1988 when at the time of payment of arrears, interest was not paid to him and since the cause of action arose in 1988, he could now agitate the matter before this Tribunal. According to him, the relief of arrears claimed in O.A. No. 41/85 was not substantially considered. I am not impressed by these contentions because the applicant had been given promotion in 1985 with retrospective effect from 1974 when he filed O.A. No. 41/85 seeking relief that instead of 1974, he should be considered to have been promoted from 1973 and, therefore, his claim for relief of arrears with interest was substantially made in respect of the promotion ordered by the respondents in 1985 against which he came to the Tribunal. In State of U.P. Vs. Nawab Hussain, AIR 1977 SC 1680, the Hon'ble Supreme Court had observed that a plea within the knowledge that could well have been taken in a petition which the petitioner did not, it was not permissible for him to challenge the same in a subsequent suit on any other ground. The question of interest was very much in the knowledge of the applicant when he moved the application

in 1985 and that is why he had sought it as one of the reliefs. Though it may not have been the main relief but he could have pressed it at that time for interest on arrears that were due to be paid to him for his promotion ordered with retrospective effect in 1985. I, therefore, find that there is force in the submissions made before me by the learned counsel for the respondents that the Tribunal did not grant the relief though it was claimed. Hence, the matter became final and the chapter is to be considered as closed.

8. In the above view, I reject this application leaving the parties to bear their own costs.

AJAY JOHRI

(Ajay Johri)
Member (A)
10.5.1989.