

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-1494/88

Date: 10-02-1989

Shri Radha Kant Jha

.... Applicant

Versus

Union of India and
Another

.... Respondents

For the Applicant

.... Shri V. K. Choudhry, Advocate

For the Respondents

.... Shri N. S. Mehta, Advocate.

CORAM: Hon'ble Shri B.N. Jayasimha, Vice-Chairman(Admn.)
Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.).

1. Whether Reporters of local papers may be allowed to
see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The question whether a Government servant whose
termination from service was held to be illegal by the
Supreme Court and who was awarded 3/4 back wages from
the date of termination upto the date of his attaining
the age of 58 years, can move this Tribunal claiming
damages to the tune of Rs.50 lakhs for alleged violation
of his Fundamental Rights under Articles 14 and 16 of the
Constitution on account of such wrongful termination of
service arises for consideration in this application
filed by the applicant under Section 19 of the Administra-
tive Tribunals Act, 1985.

2. The facts of the case in brief are that the
applicant had been initially appointed to the post of
Teacher/Instructor in the Teachers Training Wings
Reformatory School, Hazari Bagh in the State of Bihar.
In 1959, in response to an advertisement published in
the newspapers, he made an application to the Chief

Commissioner, Andaman & Nicobar Islands, for his appointment to the post of Instructor (Cane and Bamboo Works) under Andaman & Nicobar Administration. - He was appointed to the said post w.e.f. 9.10.1959 and continued to work till 1966 when he was appointed to the post of Extension Officer (Industries) on an officiating basis. His services were, however, terminated by an order dated 11.5.1971 w.e.f.

25.7.1967. The order of termination reads as follows:-

"In pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Services (Temporary Service) Rules, 1955, I hereby terminate with effect from 25th July, 1967 the services of Shri Radha Kant Jha and direct that he shall be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of one month in lieu of the period of notice) calculated at the same rate at which he was drawing them immediately before the 20th July, 1967 (this supersedes my order No. 1899 dated 7th July, 1957)."

3. The applicant challenged the order of termination of his services before the Calcutta High Court. The High Court upheld the impugned order of termination but held that the order of termination should be effective from 11.5.1971 and not from 25.7.1967.

4. Against the judgement of the Calcutta High Court, the applicant preferred and appeal to the Supreme Court which was disposed of vide judgement and order dated 5.5.1987, the operative part of which reads as follows:-

".....We think that it was not right that the services of the appellant should have been terminated in that fashion. He was entitled to be reverted to the post which he was previously holding. In that view, the order terminating the service of the appellant is quashed. The question now is what is the relief to be granted to the appellant. At this distance of time there is no point in directing the reinstatement of the appellant as Instructor. Nor is it possible for us to award full back wages for this long period. Instead of remitting the matter to the High Court to find out whether the appellant was gainfully employed during this period, we think that the interests of justice will be

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sufficiently met if the appellant is awarded three-fourth back wages from the date of termination of service upto date or to the date of his attaining the age of 58 years, whichever is earlier."

4. In the present application, the applicant has again challenged the impugned order of termination as illegal and unjustified. He has further stated that he has suffered huge loss as described below:-

- i) The petitioner was a young and promising officer and in normal course, he would have risen high in service and would have become by now the Director of Industries, but the promising future was cut short by the wrongful termination of his service.
- ii) The petitioner lost his reputation and lost social prestige and suffered indig-
nity in life on account of the wrongful termination of his service.
- iii) The petitioner has suffered great financial hardship in maintaining himself and his family members on account of the wrongful termination of his service. Ever since the termination of his service, the petitioner remained out of job and had to sell off his movable and immovable property and his wife's ornaments and take recourse to borrowings to sustain himself.
- iv) The education of the children of the petitioner suffered greatly on account of the financial difficulties caused to the petitioner. *On*

v) The marriage of three of the petitioner's daughters could not be held so far on account of the financial difficulties.

vi) The marriage of three daughters of the petitioner could not be suitably solemnised according to the social status of the petitioner due to difficulties arising out of the termination order.

vii) The health of the family including that of the petitioner suffered on account of mal-nutrition and improper diet due to the financial hardship caused by the wrongful termination order.

viii) The petitioner suffered mental agony and torture as a result of which his hair have gone grey prematurely and his health has been shattered due to trauma caused by the wrongful termination order.

ix) The fundamental rights of the petitioner guaranteed by Articles 14, 16 and 21 of the Constitution have been violated by the wrongful termination order.

5. The applicant has assessed his claim for compensation by way of damages for wrongful termination of his services at Rs.50 lakhs.

6. The respondents have filed a counter-affidavit wherein they have contended that the application is not maintainable and is liable to be dismissed at the admission stage itself. They have contended that the applicant did not claim any damages when he had filed an appeal in the Supreme Court and, therefore, the claim is now barred on

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the principles of Order 2, Rule 2 of the Civil Procedure Code and the principle of res judicata. The respondents have also contended that this Tribunal is invested with the jurisdiction relating to service matters only and not with any other powers of a civil court. The claim for damages made by the applicant is not a service matter and hence the Tribunal has no jurisdiction in the matter. Finally, it has been contended that the application is barred by limitation.

7. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The learned counsel for the applicant stated that the point raised in the present application is the first of its kind and, therefore, an authoritative ruling on the same is called for.

8. At the outset, we may refer to the definition of "service matters" contained in Section 3(q) of the Administrative Tribunals Act, 1985 which is as follows:-

"service matters", in relation to a person means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;"

In our opinion, the expression "service matters" is wide enough to cover any matter whatsoever other than those

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enumerated in (i) to (iv) above. This is clear from the residuary clause (v) which deals with "any other matter whatsoever". In view of this, the Tribunal has adjudicated upon matters not specifically enumerated in (i) to (iv), such as matters relating to the allotment of Government accommodation and the like.

8-A. The point arises whether in the facts and circumstances of the case, it is open to the applicant to claim general damages on account of the alleged wrongful termination of service when he had already sought reliefs before the Calcutta High Court and the Supreme Court against the termination of his services. The further point is whether a claim for damages for tort can be made in an application filed before the Tribunal on the plea that it is a service matter.

8-B. In our opinion, if a claim could have been raised by the applicant before the Calcutta High Court and the Supreme Court, where he had challenged the alleged wrongful termination of his services, he will not be entitled to file an application in the Tribunal. In such a case, we think that the rule of constructive res judicata would apply. We are not impressed by the contention of the applicant that he could come up with such a claim only after the Supreme Court had adjudged the termination to be wrongful. In *Shri Devi Lal Modi Vs. Sales Tax Officer, Ratlam, A.I.R. 1965 SC 1150* at 1152, the Supreme Court declared the law as follows:-

".....This rule postulates that if a plea could have been taken a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred."

Or

9. The above ruling was followed by the Supreme Court in State of U.P. Vs. Nawab Hussain, 1977 S.C. (L&S) 362 (see also Workmen of Cochin Port Trust Vs. Board of Trustees, Cochin Port Trust, A.I.R. 1978, S.C. 1283).

10. In view of the above, the present application is barred by the rule of constructive res judicata.

11. The applicant is also under a basic misconception that for the alleged infringement of his fundamental rights under Articles 14 and 16 of the Constitution, he is entitled to file the present application claiming damages over and above the relief already granted by the Supreme Court to him towards back wages. Any such claim may be raised in an action for tortious liability of the Union of India in a civil court. To our mind, such a claim is unrelated to any cause of action arising out of infringement of any fundamental right. In a case where the fundamental right enshrined in Articles 14 and 16 of the Constitution are infringed, the applicant is entitled to seek reinstatement in service with full back wages and similar other reliefs. He cannot, however, claim general damages for the same cause of action under a separate head of relief in another writ proceeding or in an application before the Tribunal.

12. The question whether the Tribunal has the jurisdiction to adjudicate upon the claim for damages as a service matter, has been considered by the Madras Bench of the Tribunal in Lakshmi Pennappan Vs. the Controller, V.S.S.C., ISRO, Trivandrum, 1988 (1) SLJ, CAT 449 and by the Ahmedabad Bench in Dr. Dhum Singh Vs. Union of India & Others, 1986 (4) SLJ, CAT 307.

13. In the case before the Madras Bench, the applicant had been sanctioned a house-building advance by the

respondents. The respondents passed an order stating that as he had failed to utilise the funds allotted, he should refund the entire advance drawn by him. The applicant challenged the validity of the said order and sought for a direction to the respondents to release the next instalment of the advance. He also prayed for a sum of Rs.1140/- by way of damages for non-disbursement of the subsequent instalment in time. The Tribunal accepted the contention of the respondents that the claim for damages "does not pertain to service matter and has to be pursued in a civil court". The Tribunal did not, however, give any reasoning for the above conclusion.

14. In the case before the Ahmedabad Bench, the applicant had claimed a sum of Rs.1500/- by way of damages for wrongful suspension. It was held that the claim for damages on the basis of tort is not legally sustainable on the ground that "reversion from higher post to a lower post, suspension from duty, removal from service, etc., of any Government servant are the sovereign acts of the Govt." In this context, the Tribunal relied upon the decision of the Supreme Court in Kasturi Lal Vs. State of U.P., A.I.R. 1965 S.C. 1039.

15. The question whether the Supreme Court can award damages in proceedings under Article 32 of the Constitution, came up for consideration in Kamal Kumar Puri Vs. M/s Bombay Marine Engineering Works (P), Ltd., 1982 (1) S.C.C. 500. In that case, the petitioner, who was employed as a Seaman Crew in a private company, contended that since the respondents withheld his service-book without any lawful excuse and thus deprived him of the chance of employment, they are liable to pay damages to him. Rejecting this

contention, the Supreme Court observed as follows:-

"Unfortunately, however, in proceedings under Article 32 of the Constitution, we cannot award damages for which the petitioner can file an appropriate civil suit, if so advised".

16. The claim for damages can be viewed from two angles - for breach of contract of service, and for the employer having committed a tort. Any ~~or~~ breach of contract of service arises in the relationship of master and servant in private employment. In such a case, a suit for wrongful dismissal and damages will lie. Under Industrial Law as well as Service Law applicable to Government servants, the court is entitled to direct reinstatement in service, payment of back wages and the like, instead of awarding damages (vide Indian Airlines Corporation Vs. Sukhdeo Rai, 1971 (1) SLR 1496 (Supreme Court); Smt. J. Tewari Vs. Smt. Jawala Devi Vidyamandir & Others, 1979 (1) SLR 614 (SC); and Executive Committee of Vaish Degree College Vs. Lakshmi Narain, AIR 1978 S.C. 888). The claim for damages for tort is a separate head of liability and can be enforced only in accordance with the provisions of Article 300 of the Constitution by filing a civil suit in a competent court.

17. The plea that the Government is liable to pay general damages for alleged violation of Articles 14 and 16 of the Constitution, is, therefore, untenable in law. The Supreme Court has already directed the respondents to pay to the applicant 3/4 back wages from the date of termination of service upto the date of his attaining the age of 58 years. The said sum represents damages or compensation for wrongful termination of his services. In addition to this, if the applicant wants to claim damages, he may file a civil suit, if so advised. In that event, the civil court may consider

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the tenability of the claim in the light of the principles laid down by the Supreme Court in regard to the tortious liability of the Government for the acts of its servants.

18. In the facts and circumstances of the case, we see no merit in the present application and the same is dismissed at the admission stage. There will be no order as to costs.

Q. K. Kartha
(P. K. Kartha)
Vice-Chairman(Judl.)

B. N. Jayasimha
(B. N. Jayasimha)
Vice-Chairman(Admn.)