

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

DA.371/88

Date of Decision: 8.7.93

Shri Nand Lal

Applicant

Versus

Union of India through  
Ministry of Defence

Respondents

Mrs. Raj Kumari Chopra

Counsel for the respondents

CORAM:

The Hon. Mr. I.K. RASGOTRA, Member(A)

The Hon. Mr. C.J. ROY, Member(J)

JUDGEMENT (Oral)

(delivered by Hon.Member(A)Shri I.K.RASGOTRA)

This matter came up for hearing on 6.7.93, when the counsel for the applicant was not available to argue the matter. At the request of the proxy counsel, this case was listed for argument on 8.7.93. Again when the matter was taken up, neither the applicant nor his counsel was present. Since this is an old matter, we proceed to dispose of this case on merits on the basis of pleadings before us.

2. This application has been filed by Shri Nand Lal, under Section 19 of the Administrative Tribunal's Act, 1985. The admitted facts of the case are that the petitioner was working as a L.D.C in the office of the respondents. He retired voluntarily w.e.f. 7.12.1986. He has prayed for the following reliefs:-

- (a) To direct the respondents to make all payments finally on account of pensionary/terminal benefits and other dues/arrears, under Revised Pay Rules, 1986
- (b) To direct the respondents to promote him as per law from LDC to UDC over all his juniors, with all consequential benefits including pensionary etc. in terms of Full Bench Judgement of this Hon.Tribunal in DA 201/87 decided on 5.10.87, granting benefit of past services for purposes of promotion.
- (c) To direct the respondents to pay penal rate of interest from the dates they fell due.

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(12)

2. The respondents have stated in their counter affidavit that the petitioner filed a similar Writ Petition in the Delhi High Court in CW.No.2901/81 which was dismissed on 21.5.82 by a Divisional Bench of the High Court. A copy of the order passed by the Delhi High Court is at Annexure R1. The said order of the High Court reads as under:-

"Admittedly the petitioner is governed by Special Army order No.8/S/76 dated April 5, 1976. On his own showing he was transferred on compassionate grounds and, therefore, his seniority has to be determined in accordance with the principles enunciated in the aforesaid Army Order. On that basis petitioner is not within the zone of consideration for promotion. Therefore, there is no case made out for interference. Dismissed"

3. It is apparent from the above, that the petitioner has already agitated this matter before the High Court of Delhi and the matter stands adjudicated. The relief prayed for by the petitioner in this OA, is therefore barred by doctrine of resjudicata.

4. As far as the first relief prayed for by the petitioner is concerned, the respondents have clearly stated in para-8 of the counter affidavit that provisional pension/gratuity has already been paid to the applicant and case for final pension under RPR-86 has also been progressed to CDA Pension Allahabad for notifying the final award. The final amount on account of accumulation GPF have since been paid to the applicant. Pay and Allowances for period he remained on strength also been passed for payment and Bank draft sent to the applicant.

5. As regards the claim for interest, the respondents have submitted that no interest is due to the applicant since it is on his own discretion, he has remained absent for  $5\frac{1}{2}$  years. He cannot claim relief for the unauthorised absenting period.

6. The petitioner has forfeited the right to file rejoinder.

7. In view of the circumstances and clear averments made by the respondents, we see no merit to interfere in the OA. The OA is accordingly dismissed.

*U.S.M.*  
(C.J.ROY)  
MEMBER(J)  
8.7.93

*S. Singh*  
(I.K.RASGOTRA)  
MEMBER(A)  
8.7.93