

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH.
NEW DELHI.

Date of Decision: 20.05.1992

QA 2739/1990

R.L. DHINGRA

... APPLICANT.

VS.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... Shri R.P. OBEROI

For the Respondents

... Shri R.S. AGGARWAL

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporters or not?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER(J).)

The deceased applicant is represented by his legal heir Shri G.D. Dhingra, son, who filed this application under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by non-crossing of the Efficiency Bar w.e.f. 1.3.74 in the scale of Rs.330-560 while he was working in the grade of UDC in the Income Tax Department. The applicant employee had also been earlier compulsorily retired in February 1976 and he had attained the age of 55 years on 1.4.74. The applicant Shri R.L. Dhingra challenged that order

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by filing Suit before the Senior Sub Judge Delhi on 28.6.82 which ultimately under Section 29 stood transferred to the Principal Bench and was registered as TA 21/86. This TA has been disposed of on 19.5.87 by the following order:-

"In the circumstances of the case, the suit is partly allowed with the direction that the plaintiff petitioner shall be deemed as having held a substantive post before his retirement and shall be paid terminal gratuity and pension from the date he was prematurely retired. He shall also be entitled to payment of interest @ 7% from three months after the date of retirement upto 9 months and @ 10% per annum thereafter till the date of actual payment. The directions given in this order shall be implemented and necessary payments made within a period of three months from the date of receipt of this order by the defendant-respondents. There shall be no order as to costs."

In this Original Application Shri R.L. Dhingra claimed the following relief:- (a) a direction to the respondents that the annual increment beyond the first stage of efficiency bar in the pay scale of Rs.330-10-380-EB-12-500-EB-15-560 w.e.f. 1.3.74 under FR 25 be granted and the pay on 1.3.74 be fixed at Rs.392/-. (b) Another increment due to the applicant w.e.f. 1.3.75 be ordered to be granted and to fix his salary at the stage of Rs.404/-. (c) All the arrears of salary with interest @ 24% per annum be ordered to be paid with a direction to revise the pension and pensionary benefits on the basis of the last pay drawn.

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Notices were issued to the respondents but they did not file any counter and on 20.4.92 since none appeared for the respondents, so their right to file counter was forfeited.

Shri R.S. Aggarwal represents the respondents and argued the matter on the basis of the record already on the file.

I have heard the learned counsel for both the parties at length. The grievance of the applicant employee since deceased relates to the period only two years before the premature retirement when EB fell due from March, 1974. The applicant employee has since retired prematurely under FR 56(J) in February, 1976 and he has assailed the matter in a Civil Suit in 1982. At the time when he filed the Civil Suit, the provisions of Civil Procedure Code applied to such suits and order 2 Rule-2 of the CPC bars the subsequent filing of the suit without taking specific permission in the suit itself, for action for which the cause of action was existing at the time when the earlier suit was filed. Thus, what is claimed by the applicant employee in the

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present application is barred by provision-2 Rule-2 of the CPC as he has not taken that issue of non-crossing of EB and even did not pray for grant of any such relief by the Civil Court.

Even when the matter was before the Tribunal on transfer and registered as TA 21/86, the Suit/TA was not got amended and as such the application was disposed of in May, 1987. The operative portion of the judgement quoted above directs the respondent to give pensionary benefits on the post held substantively by the applicant and in that case there is an implied direction that the pay as drawn by the applicant employee before his premature retirement should be the guideline for calculating the pensionary benefits. This should not be opened now to revise that judgement. Any such claim shall also not be within time as envisaged by Section 21(1) of the A.T. Act, 1985.

Another obstacle of the case is that personal cause died with a person. In this case the learned counsel for the applicant argued that since the respondents have not followed the procedure laid down for consideration of crossing the EB so it should be deemed that the EB has been cross and he referred to the case of Rajani Bajaj

repeated in ATJ 1992 Vol.1 P.592. In fact the EB according to the applicant himself fell due in March, 1974 and utmost in one year time the DPC should have been summoned to consider the matter. The matter was taken up by the Review Committee under FR 56(J) and ultimately it appears that a decision was arrived at prematurely retiring the applicant employee. In such a situation had there been a review DPC subsequently after the retirement having been upheld by the judgement in TA 131/86 decided in May, 1987, to my mind the result is obvious. But this court is not to adjudicate on that issue nor it should be taken that the case of the applicant could not have been considered at the relevant time for crossing of EB or that the decision of crossing the EB could not have been in his favour. What is highlighted by this observation, is that the time was too short for taking the deemed crossing of EB as per cited judgement by the learned counsel.

Another hurdle of the case in the way is that actual beneficiary of the pensionary benefits is the widow of the deceased, pre deceased him and only eldest son has been substituted as legal representative though other the legal heirs of the deceased are themselves are also beneficiary of the estate of the deceased. The learned counsel for

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the applicant, however, stated that the applicant has been authorised in that behalf.

Having given a careful consideration to all these aspects and also heard the learned counsel for the respondents Shri R.S. Aggarwal, I find that the application does not merit for grant of the relief prayed for and is, therefore, accordingly dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 20.5.82,
MEMBER (J)