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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2689/1991.

DATE OF DECISION: 27-7-1992.

Narain P.

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Applicant.

V/s.

Union of India & Ors.

Respondents.

CORAM: Hon'ble Mr. T.S. Oberoi, Member (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri V.P. Sharma, counsel for the applicant.
Shri Shyam Moorjani, counsel for the respondents.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

In this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed order dated 26-3-89 (Annexure A/1) and has prayed for the following reliefs: -

- i) That the application of the applicant be allowed with costs of the litigation.
- ii) That the Hon'ble Tribunal may be pleased to pass an order, declaring the impugned order dated 26-3-89 (Annexure A-1) as illegal, unjust, against the mandatory provision of law, against the judgement of S/C and hence the same is null and void. It is further prayed that the Hon'ble Tribunal may be further pleased to pass an order, directing the respondents to grant the Pension to the applicant from the date i.e. 30-12-81 alongwith the back arrears of pension. Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

A notice was directed to be issued to the respondents on admission and maintainability of the O.A. Accordingly, the respondents filed a short reply opposing the O.A. on the grounds:

- (1) That the O.A. is devoid of any cause of action;
 - (2) That the Principal Bench does not have the territorial jurisdiction;
 - (3) That the O.A. is hopelessly barred by time;
 - (4) That the matter in dispute has already been decided by the Supreme Court;
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(5) That the O.A. is barred by the principles of resjudicata and at least by the principles of constructive resjudicata; and

(6) That the O.A. is bad in law, misconceived and barred by the principles of estoppel.
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Despite time prayed for/allowed to the applicant, the applicant did not file any rejoinder to the reply filed by the respondents.

2. By the impugned order dated 26.3.1989, the applicant was informed with reference to his application dated 3.3.89 that he has already been paid the P.F. Bonus of Rs.7,874/- in accordance with the orders of the Supreme Court and that no pension is payable to him, as already informed to him in the letter dated 2-7-87.

3. We have carefully perused the material on record and also heard the learned counsel for the parties.

4. As regards the objection of the respondents that the Principal Bench has no jurisdiction, it may be stated that the applicant has stated in his O.A. that he is resident of C-1 Chandra Hospital, C-1, Janakpuri, New Delhi. Accordingly, the Principal Bench has jurisdiction in accordance with the provisions of sub-rule (2) of Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987. Thus, the contention of the respondents in this regard is not tenable.

5. As regards the contention of the respondents that the O.A. is barred by limitation, it should suffice to notice that the impugned order is dated 26.3.89, which also refers to a reply sent to the applicant vide letter dated 2.7.87. Thus, the O.A. is prima-facie barred by limitation. Even if it is taken into account that his letter dated 4-5-89 was a representation against the impugned order, which, in fact, ^{C.J.} is not, the O.A. should have been filed by 3.11.90, but it was filed on 11.11.91. However, the substantive point in this case is that the applicant was removed from service in pursuance of the disciplinary proceedings held against him, vide order

passed in December, 1981. His appeal to the appellate authority against the punishment order was rejected. He filed a writ petition being Civil Writ Petition No.1804/1982 in the Rajasthan High Court, which was dismissed by order dated 5.9.1983. His appeal (D.B. Civil Special Appeal No.76/84) against the aforesaid order was dismissed vide order dated 25.7.1984. The applicant, thereafter, preferred an S.L.P. before the Hon'ble Supreme Court of India (SLP No.12400/1984). A notice was directed to be issued to the respondents in the S.L.P. to show cause confining to the question whether the petitioner's Provident Fund and Gratuity are being illegally withheld and the same should not be granted to the petitioner. After hearing the counsel for the parties, the Supreme Court disposed of the aforesaid S.L.P. vide the following order dated 18.8.86: -

" In the circumstances of the case we think that the petitioner should be paid 2/3rd of the amount of Gratuity and the entire amount of Provident Fund to his credit. It may be done soon. The Special Leave Petition is disposed of accordingly."

The applicant filed thereafter ~~another~~ M.P. No.4679/88 and after hearing the parties, the Supreme Court passed the following orders thereon on 9.1.1989: -

" Heard learned counsel for parties. The respondent / Railway Authorities is directed to make payment of the balance amount of Rs.7874/- within six weeks from today. The Crl. M.P. is disposed of accordingly."

Thereafter, he filed another Interlocutory Application, which was dismissed as per the following orders: -

"The Special Leave Petition has already been disposed of. The Interlocutory Application does not lie. The I.A. is dismissed."

6. In accordance with Rule 309 of the Manual of Railway Pension Rules, 1950, pension is not payable to a Railway servant on whom the penalty of removal or

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dismissal from service is imposed. In fact, in his representation dated 2-89 (Annexure A-2), the applicant himself has stated that as per the extant rules, a Railway servant who is removed from service, forfeits his pension. Further, in the S.L.P. as well as M.P. in the S.L.P. filed by the applicant before the Supreme Court, he has raised the issue of payment of pensionary benefits / pension and it is clear from the facts, as stated above, that the Supreme Court did not hold the applicant entitled to any pension. In fact, even the notice on S.L.P. was confined to payment of gratuity and Provident Fund, which have already been paid. An amount of Rs.7,874/- was also paid to the applicant as directed by the Supreme Court while disposing of the M.P. in the S.L.P.

7. From the above, it is clear that the O.A. is not only barred by limitation, but more particularly it is barred by the principle of res-judicata and constructive res-judicata. The material on record leaves no manner of doubt in this respect. The O.A., thus, is not maintainable and is accordingly rejected at the admission stage itself. No costs.

27/7/92
(P.C. JAIN)
MEMBER(A)

27.7.92
(T.S. OBEROI)
MEMBER(J)