

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 3136/92.

Date of decision 5-3-93

Shri H.R. Mehta

...

Applicant

V/s

Union of India & Ors.

...

Respondents

CORAM:

The Hon'ble Shri C.J. Ray, Member (Judicial)

For the Applicant

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Shri Gurmeet Singh, counsel

For the Respondents

...

Shri J.C. Madan, Proxy counsel
for Shri P.H. Ramchandani,
counsel for the Respondents.

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

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[Delivered by Hon'ble Shri C.J. Ray, Member (Judicial)]

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following reliefs :-

- (i) Direct the respondents to grant the arrears of pay and allowances from 16.10.1973 to 7.2.1978 arising from deemed promotion of the applicant as Naval Stores Officer and his consequent fixation of pay vide Annexure 'A-3'.

(ii) To direct the respondents to sanction enhanced pension and gratuity to the applicant consequent upon his pay fixation vide Annexure 'A-3' and make payment of arrears of pension and gratuity arising thereof without further delay.

(iii) Grant interest at the rate of 12% per annum from the date the abovesaid arrears in (i) & (ii) above, became due till the date of actual payment.

2. The applicant, who was working as Emergency Commissioned Officer in the Army from 1963 to 1967 was released from there and subsequently selected through UPSC and was appointed as Assistant Naval Store Officer. He was promoted to the post of Naval Stores Officer on 8.2.1978. He was entitled to count his aforesaid service as E.C.O. in the Army from 1963 to 1967 towards pay fixation and seniority in the new appointment but the respondents denied the same. Therefore, the applicant filed a writ petition in the Delhi High Court which was subsequently transferred to this Tribunal and numbered as T.A. 56 of 1986 and decided on 11.3.1987 directing that the petitioners should count their army service for the purpose of not only pay but also for the purpose of seniority.

3. The applicant retired from service on 29.2.1988. By virtue of the direction of this Tribunal (Annexure A-2), the applicant was given promotion with effect from 16.10.1973

nationally and his passed arrears were not paid.

Consequent upon the judgement of the Tribunal, a

review DPC was held and he was given national pro-

tection w.e.f. 16.10.1973 but the department took lat

of time ^{to fix it} and pay fixation order was issued on 5.12.1991.

The pay was fixed at Rs. 1,100/- p.m. w.e.f. 16.10.1973

in the pre-revised scale of 1100-50-1600 with further

increments from 1st October of each year; and at

Rs.4,000 w.e.f. 1.1.1986 in the revised scale of 3000-

100-3500-125-4500 at the time retirement. Therefore,

he was entitled to :-

(i) upward revision of pension and other
retiral benefits; and

(ii) arrears of pay and allowances from
16.10.1973 onwards.

But though the arrears of pay and allowances were paid

to the applicant, the arrears of pay and allowances for

the upward revision of payments werenot made and the

applicant filed a contempt of court application in the

Tribunal under CCP No. 260/91 which was decided on 14th

February, 1992. After the CCP was decided on 14.2.1992,

the respondents paid the arrears of pay and allowances

amounting to Rs. 29,250/- on 7.2.1992 from 8.2.1978

onwards. The Hon'ble Chairman observed in the Judgement

as under :-

" We are, therefore, satisfied that the judgement of the Tribunal has been fully complied with. There is no doubt that there is a long delay in complying with the judgement, but it is necessary to notice that no time limit as such has been fixed in the judgement of the Tribunal."

In the original case No. T-56/86 the direction of the Tribunal was only that the petitioners' army service should be counted for the purpose of pay and also for the purpose of seniority.

4. After the contempt application is disposed of this O.A. is filed claiming the three reliefs as cited above. Hence, this O.A.

5. The respondents have filed a counter. During the course of the arguments, the Ld. counsel for the applicant states that the relief No. (i) is a subject matter of pending SLP before the Hon'ble Supreme Court. Therefore, he is not pressing the same.

6. The second relief is also met by payment/subsequent made to the disposal of the contempt application some time in January, 1993 or so. The fixation of pay was done and the payments of pension, gratuity etc. was also made.

In view of these two reliefs not being pressed, the ~~this~~ relief is there for adjudication.

6. In view of the non-pressing of reliefs (i) and (ii), the allegations of the counter with reference to items (i) & (ii) are not ~~germane~~ ^{now} ~~to be decided~~ ^{considered}. Now the respondents counter that the interest is not to be paid because the applicant has not chosen to claim the same in TA 56/86 nor in the elaborate petition filed in the contempt application and hence it is hit by resjudicata and barred by limitation.

7. I have heard the counsel for the applicant and the respondents. The short point for consideration now is only relief No. (iii). It could be seen that in TA 56/86 this Tribunal had directed only for counting army service for the purpose of not only pay but also for the purpose of seniority in accordance with O.M. of 13.5.1968 as the same is also applicable. They have not awarded any interest. In the original writ petition which is transferred and numbered as TA 56/86 and disposed of on 11.6.1986 as stated supra no interest is granted. In the contempt application

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also, which is elaborate one, nothing has been whispered about interest.

8. The applicant cited the case of State of Kerala & Ors. v/s M. Padmanabhan Nair [AIR 1985 SC356 7]

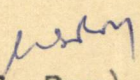
However, supposing the applicant has claimed interest but not granted in TA 56/86 or if he has not claimed and not granted, ^{then,} now it is not possible for the applicant to ask for interest. No doubt, he makes out a case that the delay is by the Department and he cited the above judgement.

9. The argument of the Ld. counsel for the applicant that he could not have raised the point of interest until he filed this O.A. cannot cut ^{by much less.} ~~by much less.~~ ~~choice.~~ The applicant ought to have asked the interest in the beginning when he is asking for the past reliefs. After receiving this amount now, he cannot claim for interest. The law is that if interest is claimed and not granted and if the interest is not claimed but not granted in any event it would amount to constructive resjudicata. Therefore, the decision cited for the Ld. counsel for the applicant do not apply in this case. In view of the fact that it is hit by resjudicata, the applicant is not entitled

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for any interest on the payment already received by him. In view of the above, the point of limitation is not adverted to.

10. Under the circumstances, I am not inclined to grant any interest to the applicant. The petition is, therefore, dismissed with no order as to costs.


(C.J. Ray)
Member (Judicial)