

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD.

O.A.N/146 1298 of 1997

Date of decision 06/04/04

K.P. Karan

Applicant(s)

S/Sn SK Dey, SK Mishra

Counsel for the applicant(s)

Versus

Union of India and Others

Respondent(s)

Sn AK Gaur

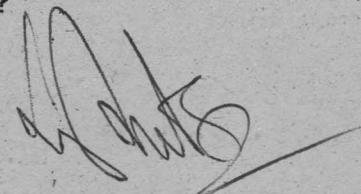
Counsel for the respondent(s)

CORAM

Hon'ble Mr. Gen K.K. Srivastava V.C/Member(A)

Hon'ble Mr. A.K. Bhatnagar Member(J)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?



SIGNATURE.

Manish/-

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 6th day of April 2004.

Original Application no. 1248 of 1997.

Hon'ble Maj Gen K K Srivastava, Member-A
Hon'ble Mr A K Bhatnagar, Member-J.

K.P. Karan, S/o Sri S. Lal,
R/o Kailash Puri P.O. Moghalsarai,
VARANASI.

... Applicant

By Adv : Sri S K Dey
Sri S K Mishra

V E R S U S

1. Union of India through the General Manager, E. Rly.,
CALCUTTA.
2. Divisional Railway Manager, E. Rly., Moghalsarai,
VARANASI.

... Respondents

By Adv : Sri A K Gaur

O R D E R

Maj Gen K K Srivastava, Member (A).

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for direction to the respondents to fix his pay after adjusting yearly increments in due scale of pay from 1975 to 1983. The applicant has also prayed for direction to the respondents to make payment of his settlement dues, DCRG, Pension, leave encashment of 40 days and complimentary passes after due fixation of pay with interest.

2. The facts, in short, are that the applicant entered

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in Railway service on 11.01.1948 as Trains clerk and retired on 30.11.1983. He was suspended on 06.11.1970 and was removed from service on 05.04.1975. During the period of suspension i.e. from 06.11.1970 to October 1974 he was paid subsistence allowance. The suspension was also merged into the removal order dated 05.04.1975. The applicant filed OA no. 956 of 1987 and the removal order dated 05.04.1975 was quashed vide order dated 02.11.1992. The applicant retired on 30.11.1983. The grievance of the applicant is that because of suspension and removal he was not considered for due promotion and his colleagues were retired in higher pay scale of Rs. 550-750.

3. Sri S.K. Dey, learned counsel for the applicant submitted that on quashing of removal order dated 05.04.1975, by this Tribunal vide order dated 02.11.1992, the applicant is deemed to be continuing in service and is entitled for due yearly increments besides due promotion and other service benefits. The juniors of the applicant retired in the pay scale of Rs. 550-750 and, therefore, the applicant is also entitled for fixation of his pay in the pay scale of Rs. 550-750.

4. Learned counsel for the applicant also submitted that though the applicant was entitled for 180 days for encashment of leave, yet the respondents arbitrarily paid leave encashment amount for 140 days only. Besides the respondents without giving any reasonable opportunity deducted the damage rent of Rs. 9932/- from DCRG amount of Rs. 11192/-. The payment of Provident Fund of Rs. 6378/- was delayed and was paid only on 18.01.1995 without interest, though the applicant retired 30.11.1983. Learned counsel

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further submitted that the pension of the applicant has been fixed much less than pension fixed in respect of his juniors and colleagues Sri B.B. Singh, Sri V.N. ^{v to h} Chaube and Sri S.K. Biswas. Due/erroneous fixation of pension the applicant has suffered on account of commutation of pension.

5. Relying upon the judgment of Hon'ble Supreme Court in case of Union of India & Others Vs. Madan Mohan Prasad, 2003 (1) ATJ 246, the learned counsel for the applicant submitted that the respondents could not withhold the DCRG and the leave encashment due to the applicant on account of non vacation of Railway Quarter after retirement. In this regard the learned counsel for the applicant has also placed reliance in case of Gorakhpur University & Ors Vs. Dr. Shitla Prasad Nagendra & Ors, 2001 (3) ATJ 545. The learned counsel for the applicant also placed reliance on the order of this Tribunal dated 16.02.1999 passed in OA no. 164 of 1995, S.R. Zehidi Vs. Union of India & Ors and also order of this Tribunal dated 21.11.1997 passed in OA no. 176 of 1996, Tej Bahadur Singh Vs. Union of India & Ors. Placing reliance on the above judgments, the learned counsel for the applicant finally submitted that the respondents could not effect recovery of penal rent from the DCRG of the applicant, which they ^{had,} have done/ therefore, the applicant is entitled for refund of Rs. 9932/-, which has been deducted illegally from the DCRG due to the applicant and the applicant is also entitled for the interest thereon at the market rate.

6. Resisting the claim of the applicant Sri A.K. Gaur learned counsel for the respondents submitted that the

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claims made by the applicant in this OA are barred on the principle of Constructive Res judicata as the issue now raised should have been raised in OA no. 956 of 1987 (Ann 1). The OA is not maintainable and is liable to be dismissed in view of the judgment of Hon'ble Supreme Court in case of Commissioner of Income Tax, Bombay Vs. T.P. Kumaran, 1997 SCC (L&S) 135.

7. Learned counsel for the respondents also invited our attention to the order of this Tribunal dated 15.04.1997 passed in Contempt Petition no. 2039 of 1993 (Ann 3) and submitted that the issues raised in this OA stand finally disposed of in view of the observation of this Tribunal in para 8 of the order dated 15.04.1997 (Supra).

8. Heard learned counsel for the party, considered their submissions and perused records.

9. In this case the applicant has prayed for fixation of his pay by granting increments, payment of post retiral benefits, payment of leave salary for 140 days, proper fixation of pension etc on the ground that he is entitled for the reliefs claimed for after removal order was quashed by the order of this Tribunal dated 2.11.1992 passed in OA 956/87. We consider it appropriate to reproduce the operative portion of the order of this Tribunal dated 2.11.1992, which is as under :-

"Accordingly, this application is entertained and the removal order of the applicant is quashed. However, in view of the fact that the applicant is responsible for delaying the matter, as such, he would not be entitled for any salary or allowances

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from the year 1975 upto the date when he attained the age of superannuation, but he will be deemed to be continuing in service and is entitled all the service benefits in accordance with law within a period of 3 months from the date of communication of this order. The applicant will be entitled for the salary from the month of November, 1974 till April 1975 in accordance with law. No order as to the costs."

It will also be pertinent to reproduce the observations of this Tribunal in its order dated 15.4.1997 passed in Contempt Petition no. 2039 of 1993, the same is quoted below :-

"A decision reported in J.T. 1996 (7) 517 V. Kanakrajan Vs. General Manager, South Eastern Railway and ors needs to be noted also. In view of the said decisions it is not open to the applicant to plead non payment to him or inadequate payment in respect of other dues or entitlements with regard to which there was no adjudication in the OA nor they were the subject matter of the OA. In the facts of the present case once the respondents show that the applicant has been paid salary for the period of November 1974 to April 1975 for which a specific direction was given the respondents must be held to have complied with the direction. "

10. A bare perusal of the above leaves no doubt in our mind that it is not open to the applicant to plead for the reliefs sought for in this OA. ~~By failing to do the present OA~~ such a claim should have been made in the earlier OA no. 956 of 1987. The Hon'ble Supreme Court in the case of Commissioner of Income Tax, Bombay (supra) has held as under :-

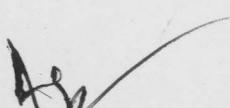
"The Tribunal has committed a gross error of law in directing the payment. The claim is barred by contractive res judicata under Section 11, Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attach in a former suit, shall be deemed to have been a matter

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directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not seek so and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2 Rule 2 CPC prohibits the petitioner to seek the remedy separately. In earlier event, the OA is not sustainable."

11. In view of the law laid down by the Hon'ble Supreme Court, the OA is barred by res judicata and is, therefore, not sustainable. The law laid down in the cases relied upon by the learned counsel for the applicant shall not, in any way, be helpful to the applicant.
12. In the facts and circumstances and our aforesaid discussions the OA is dismissed with no order as to costs.


Member (J)


Member (A)

/pc/