

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NUMBER 864 OF 1997

WEDNESDAY, THIS THE 8th DAY OF JANUARY, 2003

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Nathi Singh,
s/o Late Shri Lala Ram,
R/s House No.552-A Mehlipur,
District-Mathura,
retired as T.C. Central Railway,
Jhansi.

.....Applicant

(By Advocate : Shri B. Tiwari)

V E R S U S

1. D.R.M., Central Railway,
Jhansi.
2. Union of India, through the General Manager,
Central Railway,
Bombay.

..... Respondents

(By Advocate: Shri A.K. Gaur)

O R D E R

Hon'ble Mrs. Meera Chhibber, J.M.

By this O.A. , the applicant has claimed a direction to the respondents to pay interest @ 18% for delayed payment of his pension, gratuity, leave encashment salary and other allowances admissible under Rules.

2. It is submitted by the applicant that he retired on 31.03.1993 as T.C. in basic pay Rs.1350/- p.m. but he was *not* given his gratuity computation leave salary, arrear of D.A. ~~was~~ difference of Rs.150/- etc. etc. The applicant gave number of representations from time to time , subsequently he filed application in the Tribunal and the Tribunal directed the respondents to pay all dues within

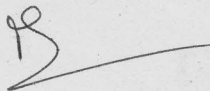


....2/-

3 months. The applicant gave application on 29.03.1996 to the respondents, but the respondents still did not pay the amount which was due in favour of the applicant, thus forcing him to file the present O.A. for claiming the interest. He has submitted that on 20.04.1995, he has been given Rs.4,034/- on 06.08.1996 Rs.55,130/- ~~and~~ on 17.01.1997 Rs.16,491/- which ought to have been paid in the year 1993. As such the respondents are bound to pay interest @18%.

3. The respondents have opposed the O.A. and have submitted that the present O.A. is not maintainable in as much as applicant cannot ^{be allowed to file applications after} application and the Tribunal cannot permit him to file applications seeking reliefs in piecemeal. They have submitted that at the time of his retirement, the applicant had filed Court case No.137/98, which was pending in the Tribunal with regard to his penalty order ~~and~~ ^{for} reversion from the grade of Rs.330-560(RS), 260-400 (RS). Hence N.C.P.F. amounting to Rs. 49,269/- was passed vide Co 7 No.662 of dated 29.01.1993. Thereafter, the applicant filed another O.A. bearing No.1207/93 wherein the Tribunal had directed the respondents to pay the revisional pension of Rs.750/-+ Dearness Allowance from 01.02.1993 which has been passed vide PPO No.CR/CR/10/14/123783 dated 23.03.94 on the basic pay Rs.1500/- Further general Insurance amounting to Rs.4034/- was paid vide cheque No.254303 dated 20.04.1995. After the order was passed by the Tribunal on 21.03.1996, the following payments were arranged:-

- (i) DCRG amounting to Rs.24,750/-
- (ii) Commuted value to the tune of Rs.31,380/- dated 06.08.1996:
- (iii) Leave Salary amounting to Rs.14,208/- for 148 days
- (iv) 98% DA enhanced from 01.01.1993 was also passed vide CO 7 No.443 dated 06.01.1997. D.A. arrears from 01.01.1993 to 31.01.1993 for Rs.134/- passed vide Co 7 No.443 dated 06.01.1997.
- (v) P.L.V. for 1992-1993 for Rs.2148/- passed Co 7 No.443 dated 06.01.1997.



4. They have thus submitted that gratuity, commuted value and leave salary were made to the applicant as per the order of this Tribunal passed on 21.03.1996 in O.A. No.1207/1993. Thus, the applicant is not entitled to claim any interest in this O.A. They have also relied on the Judgment of the Hon'ble Supreme Court, given in the case of COMMISSIONER OF INCOME TAX, BOMBAY VS. T.P. KUMARAN, 1997 SCC(L & S) 135. Wherein the Hon'ble Supreme Court has held as under:-

"This appeal by special leave arises against an order of the Central Administrative Tribunal, Ernakulam made on 16-8-1994 in O.A NO. 2026 of 1993. The admitted position is that while the respondent was working as Income Tax Officer, he was dismissed from service. He laid a suit against the order of dismissal. The suit came to be decreed and he was consequently reinstated. Since the arrears were not paid, he filed a writ petition in the High Court. The High Court by order dated 16-8-1982 directed the appellant to pay all the arrears. That order became final. Consequently, arrears came to be paid. Then the respondent filed an O.A claiming interest at 18% per annum. The Administrative Tribunal in the impugned order directed the payment of interest. Thus, this appeal by special leave.

The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive resjudicata under Section 11, Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter 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 either event, the O.A. is not sustainable.

The appeal is accordingly allowed. No costs."

5. I have heard both the counsel and perused the pleadings as well.

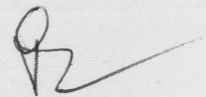
6. At the outset, it would be relevant to mention here

B

that the applicant has opted not to file any rejoinder, even though he was given opportunity. It is seen that by the first order dated 24.08.1993, the Tribunal was pleased to direct the respondents to pay provisional pension to the applicant at the rate which according to the respondents is payable.

Thereafter, the provisional pension was paid. Vide subsequent order passed on 21.03.1996, the Tribunal had directed the respondents to clear all the retiral benefits of the applicant which are yet not paid, within a period of 3 months from the date of this order. There was no direction to pay any interest on the said amount. Thereafter, the respondents had calculated and already paid the amount due to the applicant. This O.A. claiming only interest is not maintainable.

7. In my considered view, the facts of the present case are fully covered by the judgment relied upon by the respondents counsel which is quoted above. Accordingly, I do not find any merit in the case. The O.A. is dismissed with no order as to costs.



MEMBER (J)

shukla/-