

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 20th day of AUGUST 2007

Original Application No. 536 of 2004

Hon'ble Mr. P.K. Chatterji, Member (A)

Rafi Uddin, S/o late Sri Minhazuddin, Railway Colony, Block No. 65-A, Chheoki, Naini, Allahabad.

. . . .Applicant

By Adv: Sri Rakesh Verma

V E R S U S

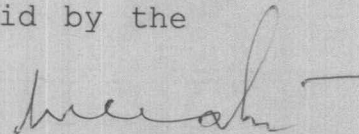
1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.

. . . .Respondents

By Adv: Nil

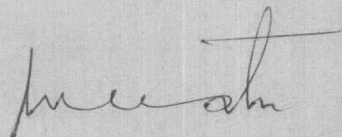
O R D E R

The applicant who worked as Driver in the Railways retired from service on 31.07.1977. Earlier he had filed an OA No. 195 of 1998 in this Tribunal. In that OA the applicant had sought for intervention of the Tribunal for directing the respondents to revise his retiral benefits on the basis of 75% running allowance for which a favourable decision was given by the Hon'ble Supreme Court on 25.07.1997. The applicant's case was that he retired on 31.07.1977 i.e. before the notification dated 05.12.1988 regarding running allowance which was declared null and void by the

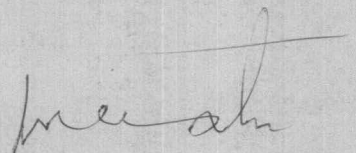


decision of Hon'ble Supreme Court which decided that the decrease in the running allowance could not be given retrospective effect. In other words the applicant who had already retired before notification dated 05.12.1988 could not be brought under the purview of reduced running allowance.

2. The applicant had sought direction from the Tribunal upon the respondents for payment of 11% interest on the difference in the retiral benefits which was paid to the applicant on the basis of 55% running allowance and what was due to him on the basis of 75% running allowance which was applicable at the time of retirement of the applicant. After considering the matter the Tribunal in its order dated 27.06.2000 on OA No. 195/98 decided that the payment of 11% interest should be made to the incumbent on this difference for the period from 25.07.1997 till 02.11.1999. Incidentally 25.07.1997 is the date of the judgment of the Hon'ble Supreme Court which struck down retrospective effect of the reduced running allowance, and 02.11.1999 is the date on which the difference on account of the revised calculation was paid to the applicant. The applicant, however, says that the respondents paid him a meager amount of Rs. 685/- as interest by way of compliance with the direction of the Tribunal. As it was much less than 11% of the difference amounting to Rs. 144232/-, he filed Contempt



Application No. 41/01 against the respondents. This Contempt Application however, was dismissed by the Tribunal by its order dated 11.10.2002 in which the Tribunal pronounced that the respondents have fully complied with the direction of the Tribunal. The applicant, however, was not satisfied with the decision and he filed the present OA. During the preliminary arguments at the time of admission of the OA, the learned counsel for the respondents objected to the admission of the OA on the ground that the matter relating to payment of interest on the difference of the retiral dues was already considered by the Tribunal in OA 195/98 and subsequently through the Contempt Application. The matter, therefore, was settled and the same relief cannot be sought for by the applicant afresh as it is not admissible on the principle of res-judicata. Learned counsel for the applicant has taken me through the order of the Tribunal dated 21.05.2004 in which the Hon'ble Member pronounced that the amount of Rs. 685/- patently being much less than 11% of the difference of the retiral dues, the applicant should not be debarred on filing this OA on the same relief. Learned counsel for the applicant by referring to this order argues that although he had approached the Tribunal earlier on the question of the same relief, as his grievance was still not fully settled, he was entitled to



rising the matter afresh for considering by the Tribunal.

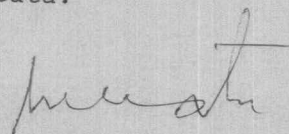
3. After the orders of the Tribunal dated 21.05.2004 notices were issued to the respondents for filing CA. CA was filed by Sri A.K. Gaur the then counsel for the respondents. However, after elevation of the learned counsel as Member (J) CAT fresh notice were issued to the respondents for nominating another counsel for defending the case. Despite several notices thereafter, the respondents have not engaged any counsel and it was decided by the Tribunal vide order dated 28.02.2007 that if no steps was taken by the respondents to engage another counsel appropriate orders will be passed. On this background I have decided to hear the learned counsel for the applicant and decide the case on the basis of arguments of learned counsel for the applicant and the reply of the respondents which was furnished in response to the notice on the OA.

4. Paragraphs in CA which in my opinion is relevant in deciding this OA are extracted below: -

"12. That, the applicant thereafter filed contempt petition No. 41 of 2001 in which by means of filing counter affidavit supplementary counter affidavit, it was stated that the order of the Tribunal has fully been complied with. This Hon'ble Tribunal accordingly dismissed the contempt proceedings and discharged the notices issued to the alleged contemnors. . .

13. That, the aforesaid OA filed by the applicant is clearly barred by the provisions of Order II Rule 2 of C.P.C. and the principle of res-judicata.

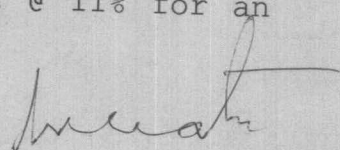
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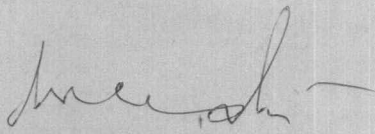
17. That, the contents of paras 4.1 to 4.7 of the OA denied. It may be stated that the judgment passed by the Tribunal has been misinterpreted by the applicant. The applicant is entitled to get the interest only on the difference of the amount w.e.f. 25.07.1977 to 02.11.1999. The Hon'ble Supreme Court has nowhere observed in its judgment that interest @ 11% should be paid on delayed payment. This Hon'ble Tribunal has also observed in its judgment that this issue of grant of interest was not included in the order of the Hon'ble Supreme Court. In these circumstances, when there was no direction for payment of interest on the delayed payment on pensionary benefit, the Railway Administration was justified in calculating the amount in accordance with the provisions of rules."

5. After hearing the learned counsel for the applicant and after going through the reply furnished by the respondents I have applied my mind to the same. The respondents have raised the plea of res-judicata in para 13 of the CA which in my opinion stands settled by order of this Tribunal dated 21.05.2004. Therefore, I do not think it necessary to dilate upon this matter any more.

6. The respondents have taken the plea in the reply that the Tribunal was satisfied while examining the Contempt Petition that the direction of the Tribunal passed in OA No. 195/98 was fully complied with. For that reason it was considered appropriate to dismiss the Contempt Petition and it would be inappropriate now to raise the matter again as the direction of the Tribunal for payment of interest has been fully complied with. The respondents, however, have not clarified in any part of their reply as to how the interest @ 11% for an



amount of Rs. 1.5 lacs for a period of over two years could be only Rs. 685/-. The applicant has given the calculation of the amount which is due to him @ 11% interest in Annexure A-IX (page 36/37) to the OA. The amount comes to Rs. 84816/-. All that the respondents have to do is to verify the correctness of this calculation and make payment strictly @ 11% interest as decided by the Tribunal in OA No. 195/98. After going through the factual matrix of this case I am of the view that there is merit in this OA which deserves to be allowed. I, therefore, allow this OA and direct respondent No. 2 i.e. DRM, NR, Lucknow to pay the amount equivalent to 11% of the difference of the retrial dues between the period from 25.07.1997 to 02.11.1999 i.e. Rs. 144232/- which is stated to have been paid to the applicant by the respondents on 02.11.1999. Respondent No. 2 will effect the payment to the applicant within a period of four months from the date of receiving a certified copy of this order. With this direction the OA is disposed of. No cost.


Member (A)

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