

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.211/2019

Reserved on:01.09.2021
Pronounced on:03.09.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs.Hina P. Shah, Member (J)**

Smt. Queen W/o Late Shri H.A. Brown (Retired Station Superintendent from the Office of DRM, NWR, Ajmer) aged about 75 years, R/o 86/10, Isa Bhawan, Civil Lines, Ajmer.

...Applicant.

(By Advocate: Shri N.K.Gautam)

Versus

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur (302017).
2. Divisional Railway Manager, North Western Railway, Ajmer-305001.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: Dinesh Sharma, Member (A):

In this case, the applicant has prayed for the following reliefs:

- “(i) The respondents be directed to fully comply with the judgment dated 6.10.2016 passed by the Division Bench of Hon'ble High Court and grant the remaining relief to the applicant i.e.
 - (1) Restoration of pay as Rs.8500/- on the date of his voluntarily retirement
 - (2) Fixation of pension be revised by treating the basis of pay as Rs.8500/- p.m. and payment

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of the difference amount be paid with interest.

- (3) Retiral benefits are to be given on the basis of pay as Rs.8500/- p.m. and payment of the difference amount be paid with interest.
- (4) Other relief such as interest, litigation expenses etc.
- (ii) Cost of the writ petition may be awarded to the applicant.
- (iii) Any other just and appropriate relief, the Hon'ble Court consider just and reasonable in the facts and circumstances of the case may be awarded to the applicant."

2. Briefly put, the O.A. is by the widow of an employee of the respondent, late Shri H.A. Brown, whose basic pay was reduced from Rs.8500 to Rs.7500 at the time of his voluntary retirement and a sum of Rs.1,44,607/- allegedly overpaid in the past years was recovered from his retirement dues. Shri Brown filed an OA (No.92/2007) against the illegal recovery. He died during the pendency of this OA, and the present applicant was brought on record as his Legal Representative (LR). The Tribunal dismissed this OA as time-barred and also lacking in merit, vide order dated 21.03.2011. A Review Petition against it was also dismissed by order dated 09.09.2011. The applicant filed a Writ Petition (No.18574/2011) against the decision of the Tribunal before the Hon'ble High Court of Jaipur, praying for quashing this Tribunal's orders, fixing his basic salary at the time of voluntary retirement as Rs.8500/- along with all

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consequential benefits of pension and arrears thereof, and refund of Rs 1,44,607 with interest. The High Court allowed the Writ Petition. The applicant has stated that the respondents have refunded the amount of Rs.1,44,607, but not granted the other reliefs for which she filed a Contempt Petition before the Hon'ble High Court. This Contempt Petition was disposed of vide order dated 22.02.2018 with the observation that other demand which has been raised does not fall within the contempt jurisdiction. The High Court has left it open for the applicant to file appropriate proceedings for rest of the demand. Since the respondents did not comply with the applicant's demands despite notice, the applicant approached the Hon'ble High Court with Writ Petition No.12245/2018, which the Hon'ble High Court has dismissed (by order dated 29.09.2018) with liberty to the applicant to raise the dispute before this Tribunal.

3. The applicant has filed this OA on grounds that:

- a) there is no reason why the respondents are supposed to escape from the compliance of the Hon'ble High Court Judgment dated 06.10.2016;
- b) The respondents are wrongfully gaining at the cost of wrongful loss to the applicant;

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c) There is recurring cause of action due to such non-compliance;

d) The respondents being Central Government officials are supposed to be impartial and just and not prejudicial and

e) Other arguments to be stated at the time of hearing.

4. The respondents have filed a written statement in their reply denying the claim of the applicant mainly on ground of principles of res-judicata/constructive res-judicata, estoppel and waiver. It is stated that the applicant had approached this Tribunal and later the Hon'ble High Court praying for the same reliefs. Following the Hon'ble High Court's order dated 06.10.2016, the applicant was allowed refund of the deducted amount along with interest @ 8% from the date of the institution of OA. The contempt petition alleging non-compliance of the order dated 06.10.2016 was also disposed of by the Hon'ble High Court by their order dated 22.02.2018 (Annexure A/3). Even despite prayer to this effect there was no direction to treat/restore the pay at Rs. 8500/- on the date of voluntary retirement. Hence, any challenge to ask for it at this belated stage is not only barred by principles of res-judicata, constructive res-judicata, principles of estoppels and principles of waiver but also limitation.

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5. A rejoinder has been filed by the applicant citing decisions of the Hon'ble Supreme Court/High Court and this Tribunal where the recoveries of old payments without any fault of the employee have been found irrecoverable and ordering refund of such recovered amounts. The rejoinder also states that the respondents are causing injuries to the applicant violating Articles 16, 14, 39 and 43 of the Constitution of India.

6. The matter was finally heard on 01.09.2021. Both the learned counsel of the parties reiterated the arguments mentioned in their pleadings.

7. After going through the pleadings and hearing the arguments, it is clear that while the applicant wants the reduced pay of her husband to be restored on ground of the decision of the Hon'ble High Court dated 06.10.2016, the respondents have questioned this on legal grounds of res-judicata/constructive res-judicata/estoppel/waiver and period of limitation. There is no dispute regarding the facts involved in this matter. The applicant had prayed for the same reliefs before this Tribunal in their earlier OA and in their Writ Petition before the Hon'ble High Court. The Hon'ble High Court "allowed" their Writ Petition but

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specifically mentioned only about the refund of the amount recovered from the applicant's husband. We are reproducing here the last two paragraphs of the judgment dated 06.10.2016 of the Hon'ble High Court:

"We cannot remain oblivious of the fact that the recovery of a sum of Rs. 1,44,607/- from a person retiring from service, is a serious matter at a time when his sources of income get reduced. We are therefore unable to sustain the order of the Tribunal which declined to entertain the O.A. Application only on the grounds of delay without considering the fact that the order itself was completely in violation of the principles of natural justice. There is no allegation that the deceased was in any way responsible for any alleged wrong fixation of the pay.

The writ petition is allowed. If the amount has been deducted, it is ordered to be returned to the petitioner within a maximum period of eight weeks from the date of receipt and/or production of a copy of this order, failing which it would carry interest @ 8% p.a. from the date of institution of the O.A. Application till date of payment."

8. The Hon'ble High Court disposed of the Contempt Petition (No 1229/2017, for willful disobedience of the order dated 06.10.2016, in DB Civil Writ Petition No 18574/2011, whereby the Writ Petition of the petitioner was allowed) by following orders, dated 22.02.2018:

"The directions issued by the court on 06.10.2016 reads as under:-

"If the amount has been deducted, it is ordered to be returned to the petitioner within a maximum period of eight weeks from the date of receipt and/or production of a copy of this order, failing which it would carry interest @ 8% p.a. from the

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date of institution of the O.A. Application till date of payment”

Counsel for the respondent states that order has been complied with. However, counsel for the petitioner has come with other demand which is not in the directions issued by the court.

The other demand which has been raised does not fall within the contempt jurisdiction. However, it will be open for the petitioner to file appropriate proceedings for rest of the demand.

The contempt petition stands disposed of.”

9. According to the learned counsel for the applicant, the Writ Petition filed before the Hon’ble High Court (No. 12245/2018) and this OA filed before the Tribunal now are the appropriate proceedings for the “rest of the demand”. The learned counsel for the respondents argues that these cannot be the appropriate proceedings since the matter has already been decided by the Hon’ble High Court by their decision dated 06.10.2016 in WP 18574/2011. Therefore, getting into the same issues again is hit by the principles of “res judicata”. The Hon’ble High Court did not, specifically, give any direction about restoration of the basic pay, while allowing the Writ Petition. While allowing the Writ Petition, it gave direction to refund if any amount was deducted and did not say anything about restoring the pay. The applicant did not approach any appropriate forum for reviewing/revising that direction, nor did they challenge the decision in the Contempt Petition. The respondents are

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therefore bound by that decision and estopped from raising it again.

10. We have gone through the decision of the Hon'ble High Court dated 06.10.2016 in full. It starts with mentioning the dismissal of the applicant's OA on ground of delay and the short submission of the petitioner's counsel about retrospective reduction of pay resulting in recovery of Rs.1,44,607. The Hon'ble High Court, after discussing hardship caused due to such retrospective reduction and recovery without following principles of natural justice, found the "recovery of a sum of Rs.1,44,607 from a person retiring from service a serious matter". The Hon'ble High Court, therefore, found the Tribunal's declining to entertain the OA only on ground of delay un-sustainable, and ordered to return the amount recovered with 8% interest from the date of institution of the OA. It is clear from this that the Hon'ble High Court did not accept any other requests made in the Writ Petition, nor did it issue any specific direction with respect to them. The judgment mainly deals with the past amounts recovered without even giving the person concerned a chance to represent against. The other demands made in the Writ Petition (and in the OA against which this Writ Petition was filed) are apparently not pursued by the applicant before the Hon'ble High Court, nor

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did they file any appeal against the decision of the Hon'ble High Court, which limited their direction to the refund of the deducted amount alone. Hence, we agree with the argument of the learned counsel of the respondents that the matter is hit by principles of res-judicata. The applicant is estopped from raising this matter now, when the same issue has been raised, heard and finally decided (and even if left undecided, should be construed as decided) by the Hon'ble High Court.

11. To summarise, we have no doubt that the issue (of restoration of pay and consequential pension etc.) raised in the OA was raised by the applicant in their Writ Petition before the Hon'ble High Court. Therefore, the decision of the Hon'ble High Court, dated 06.10.2016 is final on this and other issues raised in that Writ Petition. If that decision is to be construed as having already granted the applicant's prayers, including what she is asking now, there is no need for further agitating it before us. Conversely, and more likely, if the Hon'ble High Court has not granted that specific prayer and limited their decision to only refund of recovered amount, the applicant has to be satisfied with it and she is estopped from raising it now.

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12. For reasons mentioned above, the OA is dismissed.

There would be no order regarding costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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